

# Hearings Commissioner

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## **Notice of Meeting**

A meeting of the Hearings Commissioner will be held in the Whangarei Library, May Bain Room, Rust Avenue, Whangarei on:

**Friday  
6 May 2011  
10.00 am**

**Application by  
A Newbold**

**Commissioner  
Giles Bramwell**

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# **Planner's Report and Recommendation to the Hearings Commissioner on a Resource Consent Application by: Alister Lucas Newbold**

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**Alister Lucas Newbold to undertake a two lot subdivision at 312 Ocean Beach Road (Lot 2 DP 376931), Whangarei Heads in the Countryside Environment. The proposed net site areas are Lot 1 – 2,508m<sup>2</sup> and Lot 2 – 3.6742ha; and the allotments will utilise existing separate vehicle crossings along the paper road. Overall, the application is considered to be a Non-complying Activity requiring consent under the rules of the Operative Whangarei District Plan relating to allotment area.**

This report was written and peer-reviewed by the following signatories:

Environmental Planner  
(Consents):

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Lucy Deverall

Date:

Team Leader  
(Consents):

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Kelly Ryan

Date:

Resource Consent  
Manager:

.....  
Alister Hartstone

Date:

# Resource Management Act 1991

Hearing By: The Whangarei District Council Hearings Commissioner of an application by Alister Lucas Newbold to undertake a two lot subdivision in the Countryside Environment where the net site area of each allotment is less than 20ha: Lot 1 being 2,508m<sup>2</sup> and Lot 2 being 3.6742ha.

Evidence By: Lucy Deverall  
BA in Sociology and Political Studies; and  
MPlanPrac (Honours)  
Environmental Planner (Consent)  
Whangarei District Council

File Ref: SD1000110, P118327.SD

Dated: 14 March 2011

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## 1. The Proposal

- 1.1 The proposal involves the subdivision of 312 Ocean Beach Road (Lot 2 DP 376931), being 3.925ha in area. The proposed net site areas for the allotments are as follows:
- Lot 1 = 2,508m<sup>2</sup>; and
  - Lot 2 = 3.6742ha.
- 1.2 The proposed allotments will have existing separate vehicle crossings from the paper road. The proposal will involve upgrading the first 50m of the paper road (from Ocean Beach Road to the entrance of proposed Lot 1) to a right of way standard.
- 1.3 Lot 2 contains an existing residential unit and has existing systems for waste water, stormwater and water supply. Lot 1 is proposed to have on-site systems for waste water treatment/disposal and water supply. Additionally, stormwater is to be disposed of on Lot 1 to an existing drain along the western boundary or to a suitable water course.
- 1.4 The applicant has advised that only minimal earthworks would be undertaken on Lot 1 for a future building platform.
- 1.5 Furthermore, the application involves changing and cancelling an existing consent notice 6212351.1 and the variation of consent notice 6214454.2 as it relates to the new allotments.
- 1.6 The proposal is to retain clauses 1, 2, 5 and 6 of CONO 6212351.1 and retain the amended clause 4 (CONO 6214454.2). Clause 3 of CONO 6212351.1 is proposed to be removed and replaced with a requirement that all buildings constructed on Lots 1 and 2 shall be single storey with a maximum height of 6m. Clause 7 of CONO 6212351.1 is to be amended to refer to recommendations of the current engineering report.
- 1.7 A copy of the application lodged with Council on 28 September 2010 is included in **Attachment 1**.

- 1.8 Pursuant to Section 92 of the Resource Management Act 1991 (the "Act"), further information was requested by Council on 8 October 2010. The information requested included: the provision of a completed Form EES-SEW 1 (On-site Waste water Investigation/Site Evaluation Checklist) for engineering assessment of waste water for Lot 1; an assessment of the application against Rule 61.3.1 'Esplanade Requirements' in the District Plan; and the provision of the documents relating to the consent notices proposed to be cancelled and varied in order to undertake an accurate assessment of such a proposal.
- 1.9 The applicant first responded to the request on 20 October 2010 with the provision of the engineering form and the consent notices. Additionally, the applicant stated that the average stream width was approximately 2.5m and as such an esplanade reserve was not required to be provided pursuant to Rule 61.3.1 (which applies to streams with a width of at least 3m).
- 1.10 In a letter dated 1 November 2010, Council deemed that the information provided did not adequately address any of the issues raised in the letter from 8 October 2010. In particular, the Form EES-SEW 1 for Lot 1 was not complete; Council's Parks Division required certification that the stream width was measured accurately and using the appropriate measures outlined in case law; and that further assessment and clarification was required regarding the removal of consent notice CONO 6214454.2 in respect of the new allotments.
- 1.11 Continual correspondence occurred between the applicant's agent and Council until these matters were resolved. The working days for processing the application remained "on-hold" pursuant to Section 92 until 16 November 2010 when it was deemed these matters had been addressed sufficiently.
- 1.12 A partial resolution was eventually reached: a completed form was provided for engineering assessment; and more detailed information was provided regarding the proposed cancellation and variation to existing consent notices.
- 1.13 However, it is noted that the matter regarding the esplanade reserve requirements has not been satisfactorily resolved. The applicant's agent responded to the request for further information with a detailed assessment or comparison of the subject application against relevant case law regarding the measurement of river beds. The outcome of the applicant's response being that it was not practical to undertake a hydrological survey to determine stream width, that the previous assessment was accurate, and that the stream width was less than 3m. The response was reviewed by Council's Parks and Recreation Division who did not confirm whether they agreed with this final assessment or not, simply stating that *"there is no useful purpose to be gained in pursuing a hydrological approach to the determination of the width of this stream on this particular site at this time"*. While the Parks and Recreation Division have indicated verbally that this stream is of interest to protect for public recreation and conservation purposes – the design of the subdivision and flow of the stream does not provide adequate linkages for public access. It is considered that this is an outstanding matter and should the Commissioner determine to grant consent to the subdivision, the applicant may be required to undertake the necessary assessment to confirm the actual width of the stream.
- 1.14 Although the Rule 61.3.1 Esplanade Requirements for sites less than 4ha was listed as a reason for consent in the original notification report by Council, it has since been determined that this was an incorrect approach given that the matter of the width of the stream has not been resolved. As such, this report does not assess the matter any further.
- 1.15 The correspondence from Council (dated 8 October 2010 and 1 November 2010) and additional information from the applicant are also provided in **Attachment 2**.
- 1.16 Additional information was submitted following the close of submissions. The information addressed issues raised by submitters and the potential visual and

precedent effects of the proposed subdivision. This information is also included in **Attachment 3**.

1.17 In summary the proposal is for the following:

Subdivide a 3.925ha site in the Countryside Environment into two allotments which are less than 20ha in net site area and have an average net site area of 1.96ha which is less than 4ha.

## 2. The Site and the Surroundings

2.1 The subject site located at 312 Ocean Beach Road, Whangarei Heads and is accessed via a crossing on the western boundary from a private paper road which intersects with Ocean Beach Road. The site is irregular in shape, is approximately 3.925ha in area and contains an existing farm barn and residential unit. Most of the site is in pasture with some large mature trees and established landscaped areas.

2.2 The paper road is unformed and has a metalled surface. This road is also utilised as a parking area and walking access to walking tracks owned by the Department of Conservation. A total of four properties gain access from the paper road. Two of these properties have existing residential developments (being the subject site and 310 Ocean Beach Road to the south of the subject site), one property is currently under construction for a residential unit which was approved via building consent BC10001030 (being 316 Ocean Beach Road) and one of which is vacant (Lot 1 DP 376931).

2.3 The site is located on the outskirts of the Ocean Beach coastal settlement with Bream Head to the east (and the ranges following along the south). the Ocean Beach coastal settlement is characterised by a small cluster of residential development mainly clustered along the eastern side of Ocean Beach Road between the eastern end of the road and the paper road. This is surrounded by a single 'layer' of more rural-residential development (where development is located on larger allotments and more spaced out). Beyond this development is expansive undeveloped rural land and dense bush with occasional rural development located on the landscape.

2.4 The site is currently subject to consent notices CONO 6212351.1 and variation CONO 6214454.2 which relate to the location of building platforms, road maintenance, vegetation removal, building height, foundation design and the colour of materials. These consent notices were established via a previous non-complying subdivision (RC37718) which created three allotments being 4167m<sup>2</sup> (Lot 1), 5241m<sup>2</sup> (Lot 2) and 3.6057m<sup>2</sup> (Lot 3).

2.5 Following RC37718, Lots 1 and 3 were subject to a subdivision to re-align the adjoining boundary (RC39619). The new allotments as a result of this application were Lot 1 – 2000m<sup>2</sup> (net site area), and Lot 2 – 3.9175ha (the subject site). The consent notices were transferred to these allotments as no new titles were generated.

2.6 An aerial photo and map showing the locality of the sites is included at **Attachment 4**. GIS maps showing zoning and other resource area notations of properties in the area are provided at **Attachment 5**.

### 3. District Plan Requirements

#### Operative District Plan

- 3.1 The subject site is identified on Council Planning maps as being located within the Countryside Environment; as being subject to medium and high instability hazards; and subject to an esplanade priority area associated with a stream running through the site.
- 3.2 Rule 73.3.1 Allotment Area states that subdivision in the Countryside Environment is a controlled activity if the proposed allotments have a net site area of at least 20ha; and a discretionary activity where the average net site area is at least 4ha. Where these standards are not met, subdivision in the Countryside Environment is a non-complying activity.
- 3.3 The proposed allotment areas are less than 20ha in net site area, and the average net site area is 1.96ha. As such, the proposed subdivision layout would be a non-complying activity.
- 3.4 Rule 73.3.7 Property Access states that subdivision in the Countryside Environment is a controlled activity where every allotment is capable of having a vehicle access to the road and where there are two or more allotments, access should be shared.
- 3.5 The proposed allotments are to have separate access onto the paper road via existing vehicle crossings. As such, the application is a discretionary activity in terms of property access.
- 3.6 The activity is considered to meet the standards required as a controlled activity for the rules relating to building area, existing buildings, sites of significance to Maori (none shown on the site), vehicle crossings, water supply, stormwater, sewage, electricity, telecommunications and earthworks.
- 3.7 Overall, the subdivision is regarded as a **non-complying** activity in terms of allotment size. The application is a restricted discretionary activity in terms of property access and is a controlled activity in all other respects.

#### Proposed Plan Change 95 – Coastal Countryside Environment Review

- 3.8 The subject land is impacted by the above plan change which aims to rezone properties around the district in order to correct gaps and anomalies in the existing Coastal Countryside Environment. The subject land is proposed to be rezoned to Coastal Countryside Environment given its proximity to the coastal environment. Limited weighting is given to the plan change in the assessment of the application as the plan change has not yet been through the hearing process.
- 3.9 However, it is noted that the application would still be a non-complying activity when assessed against the rules for subdivision in the Coastal Countryside Environment as the proposed allotments do not meet the minimum net site area of 20ha as required for a controlled activity or the minimum average net site area of 10ha as required for a discretionary activity.

#### Proposed Plan Change 116 – Coastal Policy Areas

- 3.10 The subject land is affected by the above plan change. The plan change identifies the key characteristics of specific coastal environments in Whangarei. Council's Section 42A report supporting the plan change explains that the core purpose of Plan Change 116 is to *"incorporate area-specific information on character and better align the District Plan with the community's expectation for growth and development in these areas"*. The plan change contains objectives and policies only and is not yet a legal document adopted by Council. As such, the proposed plan change would not have an affect on the activity status of the proposal.

## 4. Consultation, Notification and Submissions

- 4.1 The application, as received on 28 September 2010 was supported by some written approvals from surrounding properties. The map shown in **Attachment 6** shows the location of the written approvals gained for the application (see **Attachment 1** for the signed copies).
- 4.2 On 23 November 2011, it was determined, pursuant to section 95(2)(b) of the Act that the application proceed on a publicly notified basis as, although written approval was obtained from immediately adjoining properties as potentially affected parties, the cumulative adverse effects on the amenity and character of the wider surrounding environment would be more than minor.
- 4.3 The application was fully notified on 21 December 2010, with the closing date for receiving submissions being 7 February 2011. This timeframe is pursuant to the definition of 'working day' in Section 2 of the Act, which excludes any day in the period beginning 20 December and ending 10 January.
- 4.4 The application attracted three submissions. A summary of the submissions is provided below:
- 4.5 **Tim Cunningham – Support – Do not wish to be heard**
- Submitter seeks for the application to be approved and supports the whole application. It is noted that the submitter did not clarify on the submission form whether they wished to be heard in support of their submission. Subsequently, the submitter confirmed verbally that they did not wish to be heard.
- 4.6 **Department of Conservation – Opposed – Wish to be heard**
- Submitter opposed the application in its entirety and sought that should the application be approved that cats and dogs be prohibited on each of the proposed titles. Specifically, the submitter listed the following concerns:
- That the site is within a high density kiwi habitat;
  - That the proposal does not recognise and provide for protection of the kiwi habitat, noting that dogs, cats and must lids are key predators to North Island Brown Kiwi; and
  - The proposal does not achieve the purpose of the Act as it does not meet Policy 17.4.5C of the District Plan by not identifying the site as a high density kiwi area.
- 4.7 **Judy Plain – Oppose – Does not wish to be heard**
- The submitter opposes the application in general. However, the support the proposed height limits and colour restrictions for any development on Lot 1 and as minimal earthworks are proposed for the building location on Lot 1.
- 4.8 Copies of the submissions are provided in **Attachment 7**.
- 4.9 Following the close of submissions the application was amended to impose a no cats and dogs covenant on the titles. It was agreed between the Department of Conservation and the applicant that a covenant requiring a prohibition on all cats and dogs would be placed on Lot 1 and a similar covenant on Lot 2 but which contains a "grandfathering clause". This will enable the current owners to retain their existing pets, but does not allow for them to be replaced. This clause would apply to the current owner of Lot 2 only, and a complete no cats and dogs policy would apply should the land change ownership.
- 4.10 Since the amendment to address the cats and dogs issue, the Department of Conservation have amended their submission, withdrawing their right to be heard.

## **5. Statutory Context**

- 5.1 Section 104 of the Resource Management Act 1991 sets out those matters that, subject to Part 2, the Consent Authority must have regard to when considering an application for resource consent. These matters include any actual or potential effects on the environment of allowing the activity, any relevant provisions of a plan or proposed plan, and any other matter the Consent Authority considers relevant and reasonably necessary to determine the application.
- 5.2 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.
- 5.3 The following sections of this report address those matters considered relevant to this application, including an assessment of environmental effects, an analysis of the proposal against the objective and policies of the District Plan, and consideration of any other relevant matters, in order to reach a conclusion and recommendation as to whether the application should be granted or declined pursuant to Section 104D of the Act.

## **6. Assessment of Environmental Effects**

- 6.1 Pursuant to Section 104(1)(a) of the Act, when considering an application for a resource consent and any submissions received, the Consent Authority must, subject to Part 2, have regard to any actual and potential effects on the environment of allowing the activity.
- 6.2 The Permitted Baseline**
- 6.3 When considering any actual and potential effects of the proposed activity, Section 104(2) of the Act provides that Council may have regard to permitted baseline comparisons i.e. a comparison with the environment as it would exist if the land were used in a manner permitted as of right.
- 6.4 The permitted baseline approach to effects assessment enables Council to disregard any adverse effects on the environment if those effects are related to an activity or activities permitted by the District Plan. Existing activities and any activity which could be carried out as a permitted activity without being fanciful may be discounted as giving rise to any adverse effects.
- 6.5 The subject site is identified as Countryside Environment. The District Plan (the Plan) does not permit any effects for subdivision and as such the standards relating to land use activities must be taken into account with respect to considering the permitted baseline.
- 6.6 In this instance the Plan permits the construction of residential unit where, after completion it is the only residential unit on the site; or where there are multiple units on site, at least 20ha of net site area can be associated with each residential unit. Additionally, the plan permits the construction of a minor residential unit where, on completion, it is the only minor residential unit on site and the site is at least 8,000m<sup>2</sup> in area.
- 6.7 As the subject site is 3.925ha in area, one residential unit and one minor residential unit could theoretically be constructed as of right provided that all other bulk and location requirements of the Plan are complied with. If approved, the proposed application would create further development rights, allowing one residential unit on Lot 1 and one residential and one minor residential unit on Lot 2.
- 6.8 The permitted baseline is of limited consideration when considering effects in this case.

## 6.9 Visual Effects

- 6.10 The Ocean Beach settlement contains a pocket of high density residential development, which is then surrounded by a “buffer” of more rural-residential development where the subject site is located. Beyond this, to the west and north, is expansive rural land with minimal development. To the south (running south-east to south-west) is Bream Head containing dense bush of high ecological and landscape value. To the far east, is the coastal management area and associated dunes.
- 6.11 It is considered that the construction of an additional residential unit along the paper road will appear to increase the density of development in the layer rural-residential development. As such, it is considered that there is the potential for adverse visual effects as a result of the proposed subdivision.
- 6.12 However, it is noted that the proposal includes amending an existing consent notice (CONO 6212351.1) to impose a maximum height of 6m on any buildings on Lots 1 and 2 which will assist in mitigating potential adverse visual effects. Furthermore, it is acknowledged that such effects could be further minimised and mitigated through additional conditions controlling landscaping, colour and reflectance values.

## 6.13 Amenity and Character Effects

- 6.14 Chapter 5 ‘Amenity Values’ of the District Plan identifies the Countryside Environment as having high amenity levels due to key characteristics including:
- *The intermittent nature of most agricultural activities;*
  - *Open landscapes and views;*
  - *A low intensity of development;*
  - *Feelings of remoteness and community;*
  - *Low noise levels, particularly at night;*
  - *A high degree of privacy;*
  - *Daylight and sunlight access;*
  - *Low levels of vehicular traffic;*
  - *Green 'unspoiled' landscape with indigenous vegetation.*
- 6.15 The Ocean Beach coastal settlement includes a small cluster of isolated residential development in the Living 1 Environment which is largely restricted to the eastern side of Ocean Beach Road, stopping approximately 200m to the north-east of the intersection with the paper road. Along the western side of Ocean Beach Road and then along the eastern side of the paper road, is a single ‘layer’ of more rural-residential development. This ‘layer’ is considered to act as a buffer between the more intensive residential development of the Ocean Beach coastal settlement and the largely undeveloped rural area extending to the south, west and north.
- 6.16 The amenity of Ocean Beach is also significantly defined by the high amenity and ecological values of the unspoilt natural landscape character contained in the area. Bream Head is identified on Council Planning Maps as being an outstanding natural landscape and the wider area is identified on Council’s Geospatial Information System (GIS) as being a ‘Kiwi Presence’ area.
- 6.17 The applicant argues that the close proximity of the proposed 2,508m<sup>2</sup> allotment (Lot 1) to the Living 1 Environment will result in the proposal having “*a negligible impact on the few truly rural elements remaining in this landscape*”.
- 6.18 The existing development along the paper road is significantly less intensive than the existing development within the Living 1 Environment of the Ocean Beach settlement. Presently, four allotments gain access from the paper road, three of which contain residential units (with one currently being under construction) and

one which is currently vacant but on which a residential unit could be constructed as of right. The proposal would result in an additional allotment on which an additional residential unit could be constructed as of right. Overall, this would result in a total of five residential units along the paper road, three of which would be in close proximity to the intersection of Ocean Beach Road.

- 6.19 Additionally, the paper road is considered to form part of a rural-residential buffer between the undeveloped countryside and the more intensive residential settlement. It is considered that the effects of the proposed subdivision are likely to alter the intensity of development such that the character of the rural-residential buffer will appear more residential in character. In particular, it is noted that the proposed area of Lot 1 is consistent with the density anticipated within the Living 3 Environment, with the District Plan requiring at least 2000m<sup>2</sup> for subdivision and development in that environment. Comparatively, the District Plan anticipates a density of at least 20ha in the Countryside Environment.
- 6.20 Following the close of submissions, the applicant provided more detailed evidence in support of the application where the main focus of the argument was on the visual effects of associated development. In particular, that the views of the allotment will be set against a backdrop of existing development and as such the proposed subdivision could be considered appropriate development for the surrounding area. Furthermore, the applicant places weight on the stream running through the valley on the eastern side of Ocean Beach Road as being a fundamental geographical feature in identifying areas for appropriate and inappropriate development.
- 6.21 I disagree with this submission. In the first instance, case law has clearly identified that character and amenity are not restricted to visual effects. Simply because a development cannot be seen, or because visual mitigation is provided - does not mean that the effects on character and amenity are minor or less than minor (*Jennings v Tasman District Council* (2003) 9 ELRNZ 344 (EnvC) and *Foster v Rodney District Council* (ENV-2008-AKL-000330)).
- 6.22 In this instance, it is considered that regardless of visual effects, the proposal would still generate a change in development intensity that would have adverse effects on the rural-residential character and amenity of this particular area. It is considered that these adverse effects would be more than minor, given that currently the development along the paper road is clearly different in density that that of the existing residential development in and around the Living 1 Environment.

Conclusion:

- 6.23 Given the above, it is considered that the proposed subdivision is not consistent with, and will not maintain or enhance, those amenity values identified as being characteristic to the Countryside Environment. In particular:
- It does not promote open landscapes and views;
  - It does not a low intensity of development and will actually increase the intensity of development;
  - While it may contribute to feeling of community, the proposal will not promote a feeling of remoteness; and
  - While indigenous vegetation could be planted on site, the proposal would still be inconsistent with the ideal of a green 'unspoiled' landscape.

#### **6.24 Cumulative Effects:**

Capacity of the environment to accommodate change:

- 6.25 As described above, the overall character of Ocean Beach is essentially an isolated pocket of development nestled within a coastal environment, a rural

environment and an environment of significant landscape and vegetation. It is considered that those surrounding areas have high characteristic coastal and rural amenity values which are sensitive to development.

- 6.26 Given the sensitive and significant landscape environments in the surrounding area; and the isolated nature of the existing residential development (which is largely contained within the Living 1 Environment) - it is questionable as to whether the surrounding environment has the capacity to accommodate additional development which would result in a more intensive density.

Physical density:

- 6.27 It is acknowledged that a number of the surrounding countryside properties do not meet the minimum 20ha required in the Countryside Environment. However, it is noted that the majority are in excess of 2ha in area (including density along the paper road which is predominately in excess of 3ha).
- 6.28 There are currently three allotments in close proximity to the subject site which are between 2000m<sup>2</sup> and 2050m<sup>2</sup>. One of these allotments is Lot 1 DP 376931 and is immediately adjacent to the northern boundary of the subject site. It is noted that this allotment was originally 4167m<sup>2</sup> (created in the approved subdivision consent RC37718 which itself involved a significant amount of conservation protection to mitigate the effects of subdivision) and was reduced in size via subdivision consent RC31619. This consent was essentially a boundary re-alignment between this allotment and the subject site and as such no new allotments or development rights were created. The two other allotments in this density range are historical, have frontage to Ocean Beach Road and are situated immediately adjacent to the Living 1 Environment. Accordingly, these are considered to physically form part of the more intensive Ocean Beach settlement.
- 6.29 As such, it is considered that the existing allotments which are between 2000m<sup>2</sup> and 2050m<sup>2</sup> had unique characteristics which made the allotments more appropriate to the local area. Given that there are only three other allotments with a similar density as proposed Lot 1, it is not considered that the proposed density reflects the common pattern of development of the existing settlement.

Conclusion:

- 6.30 It is considered that the proposal for an additional allotment on the paper road with a net site area of 2,508m<sup>2</sup> will initiate a change in the rural-residential character of this particular area to a more intensive pattern of development. The effects of such a change are considered to have the potential to impact the wider environment. In particular, this area of less intensive development along the paper road is deemed to provide a buffer between the existing, more intensive, residential development in the Living 1 Environment and the relatively unspoilt natural landscape of Bream Head, which itself is a significant element of the high quality of amenity currently experienced in Ocean Beach.
- 6.31 Overall, it is considered that the proposal is likely to generate more than minor cumulative adverse effects on the character and amenity of the surrounding area.

**6.32 Traffic and Access Effects**

- 6.33 The application has been assessed by Council's Senior Environmental Engineering Officer (SEEO), Dean Murphy, who did not raise any concerns with regards to separate access on the existing crossings. Nor did Mr Murphy raise any concerns regarding additional traffic movements as a result of an additional allotment.

## **6.34 Services**

6.35 Mr Murphy did not raise any concerns with regards to the provision of on-site water supply, waste water treatment and disposal and stormwater attenuation.

## **7. Objectives and Policies of the District Plan**

7.1 Pursuant to Section 104(1)(b) of the Act, when considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any relevant provisions of the District Plan. The following objectives and policies of the District Plan are considered to be relevant in the consideration of this application:

### **7.2 Chapter 5 Amenity Values**

#### *Objective*

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

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

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*

5.4.1 *Effects on the Local Environment – To ensure that activities do not produce, beyond the boundaries of the site, adverse effects those 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. The following effects should be given particular consideration in this respect:*

- *Noise and effects;*
- *Shading;*
- *Glare;*
- *Light spill;*
- *Dust;*
- *Smoke;*
- *Odour;*
- *Vibration;*
- *Spray drift;*
- *Visual amenity.*

*Where internalisation of effects cannot be wholly achieved, the Council will consider a Best Practicable Option approach.*

5.4.5 *Countryside Environments – To ensure rural amenity values in the Countryside Environments are protected from subdivision, use or development that is sporadic or otherwise inappropriate in character, intensity, scale or location.*

5.4.7 *Intensity and Design of Subdivision and Development – To encourage that subdivision and development do not unduly compromise the outlook and privacy of adjoining properties, and to be appropriate to the Environment in which it is located. Particular regard should be had to:*

- *The layout and intensity of subdivision;*
- *The location, design and sitting of buildings and structures except where such buildings and structures provide a specific service for the surrounding environment. In the latter case any building or structure shall be designed, laid out and located, so as to avoid, remedy or mitigate any adverse effects on the environment.*

7.3 **Comment:**

7.4 As discussed in Section 6 of this report, Chapter 5 'Amenity Values' of the District Plan states that the Countryside Environment has high amenity values, primarily due to the following characteristics:

- *The intermittent nature of most agricultural activities;*
- *Open landscapes and views;*
- *A low intensity of development;*
- *Feelings of remoteness and community;*
- *Low noise levels, particularly at night;*
- *A high degree of privacy;*
- *Daylight and sunlight access;*
- *Low levels of vehicular traffic;*
- *Green 'unspoiled' landscape with indigenous vegetation.*

7.5 This chapter also outlines the characteristic amenity values of Living Environments as including some or all of the following:

- *Low intensity development;*
- *Presence of trees and private gardens;*
- *Landscaped frontages and street set backs;*
- *Off-street parking;*
- *High degree of privacy;*
- *Daylight and sunlight access;*
- *A high proportion of private and public open space;*
- *Low levels of noise, visual pollution, odour and nuisances;*
- *Safe environment for children, cyclists and pedestrians;*
- *Low levels of vehicular traffic;*
- *Feeling of community;*
- *Non-residential support activities, such as business and community activities, of an appropriate scale.*

7.6 It is noted that there are similarities in the characteristics of the Living and Countryside Environments. The key differences which are associated with the Countryside Environment include "open landscapes and views"; "feelings of remoteness"; low noise levels at night; and green unspoiled landscapes".

7.7 The rules in the District Plan, which are directed towards achieving the objectives and policies, also clarify the difference in amenity and character anticipated in Countryside and Living Environments. For instance, the net site areas required for subdivision and multiple development, with a minimum of 500m<sup>2</sup> in the Living 1 Environment, 2000m<sup>2</sup> in the Living 3 Environment and 20ha in the Countryside and Coastal-Countryside Environments.

- 7.8 The proposal is considered to be contrary to objectives 5.3.1 and 5.3.4, and policy 5.4.1 for the reasons discussed in Section 6 of this report. In particular, that the increase development of the buffer rural-residential development will degrade the characteristic amenity values specific to the separate environments. Simultaneously, this will degrade the overall character of Ocean Beach, which is essentially an isolated pocket of development nestled within a coastal environment, a rural environment and significant landscape and vegetation.
- 7.9 Additionally, it is considered that the surrounding coastal, rural and outstanding landscape environments are clearly identifiable from each other. This re-enforces the notion that each have strong individual characteristics that should be protected from over development. It also calls into question the capacity of that surrounding land to accommodate further growth.
- 7.10 The proposal is also considered to be contrary to objective 5.3.5. The application argues that the proposed subdivision is in keeping with the existing pattern of development. As discussed in Section 6 of this report, this assessment is not agreed with by the processing planner as only three other allotments are around the 2000m<sup>2</sup> range: two of which are historic and one of which did not result in any new titles or create any additional development rights. Additionally, this argument does not address cumulative reduction in amenity character values.
- 7.11 Moreover, the proposal is contrary to policies 5.4.5 and 5.4.7 as the increase in development will change the nature of the buffer area, reducing its effectiveness to safeguard the amenity values of the different environments and significant landscapes. As such, the proposal is considered inappropriate in character, intensity and scale to the locality.

## **7.12 Chapter 6 – Built Form and Development**

*Objective 6.4.1 (1.) 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.*

*Objective 6.4.3 Avoid urban development in sensitive areas (i.e. natural hazard areas, outstanding natural features and landscapes, areas of significant ecological habitats, sites of significance to Maori).*

*Policy 6.5.2 Consolidated Development – To consolidate urban development by:*

*(i) Focusing residential development on those urban areas with demand, where the landscape and natural character have already been compromised.*

*(ii) Further develop within existing built up areas, so as to avoid sporadic or sprawling subdivision and ribbon development patterns, particular in rural areas and along the coast.*

*Policy 6.5.9 Rural-Urban Interface*

*(i) To carefully manage the interface between rural areas and adjacent residential or Urban Transition Environments and between rural land and the land managed for conservation purposes.*

*(ii) To provide for the establishment of Urban Transitional living, particularly where normal urban residential densities would be inappropriate.*

**7.13 Comment:**

- 7.14 The applicant's agent, Mr Brett Hood, argues that the proposed subdivision is consolidated development, as described in Chapter 6. In particular, that the proposed subdivision reflects transitional development. Chapter 6 states:

*The strategy of urban consolidation is underpinned by the principles of infill development, transition, and contiguous development.....The principle of transition provide for a more gradual transition of densities from urban to rural and coastal environments"*

- 7.15 It is agreed that the existing buffer of rural-residential development along the paper road fits the principle of transitional development. However, as discussed throughout the report, the additional allotment and increase in development rights along the paper road will result in cumulative adverse effects to the character of that area and its effectiveness as a 'buffer'. The proposed subdivision will change this existing rural-residential development such that it is no longer transitional and simply reflects a pattern of density and development which is more in keeping with a Living Environment.
- 7.16 As such, it is considered that the proposed subdivision is not in keeping with the notion of consolidated development and is therefore contrary to 6.4.2(1) and policy 6.5.9. This is re-enforced by the fact that the proposal would increase the residential intensity in an area lacking in infrastructure – both in terms of services and social/community needs.
- 7.17 Furthermore, the proposal is considered to be contrary to objective 6.4.3 and policy 6.5.2(i) and (ii). While it is acknowledged that Ocean Beach has been compromised by existing development, it is considered that with the presence of the coast line, the undeveloped rural land and the outstanding landscape of Bream Head, the surrounding environment can still be deemed as being highly sensitive to development. It is considered that an increase in development and density within such a sensitive environment would be inappropriate and would further compromise the quality and amenity of the environment. This would have significant adverse effects on the character and amenity of these environments.

**7.18 Chapter 8 Subdivision and Development**

*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 8.3.7 Subdivision and development that provides for comprehensive development of land with a range of allotment sizes and is appropriate to the character of the Environment in which it is located.*

*Policy 8.4.3 Density of Development – To ensure that subdivision and development results in a pattern of 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 on on-going subdivision and development do not compromise the objectives and policies of the 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 8.4.7 Design and Location – To ensure subdivision and development is designed and located so as to avoid, remedy or mitigate adverse effects on, and where appropriate, enhance:*

- *Amenity values and sense of place;*
- *Versatile soils;*

*Policy 8.4.21 Natural Character*

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

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

**7.19 Comment:**

7.20 The proposal is considered to be contrary to objectives 8.3.2 and 8.3.7. As detailed in Section 6 of this report and elsewhere in Section 7, it is deemed that the increase in development will detract from the character of the locality to a degree where adverse effects are more than minor. Accordingly, such development is not deemed to be appropriate to the area.

7.21 Additionally, Chapter 8 refers specifically to cumulative effects on the environment. Policy 8.4.4 is supplemented by a brief providing an explanation and reason for the policy. In particular, this policy is aimed at ensuring subdivision “does not exceed the environmental capacity of the land to absorb the effects of potential development”. Such concerns regarding cumulative effects and in particular, the ability of sensitive areas (such as rural land, the coast line and outstanding natural areas) to absorb the effects of development are also raised in supplementary explanations provided under objective 8.3.7 and policies 8.4.3, 8.4.7 and 8.4.21.

7.22 As discussed in Section 6 and elsewhere in Section 7 of this report, the increase in density and development rights in the transitional rural-residential area along the paper road will reduce its effectiveness as a buffer in protecting and maintaining the character and amenity of the surrounding sensitive environments. It has already been described how a core part of the Ocean Beach character is the isolated pocket of development within the clearly distinguishable features of the coastal, rural and outstanding landscape environments. As such, the cumulative adverse effects of the proposal would affect the character and amenity of those individual environments as well as the overall character and amenity of Ocean Beach itself.

7.23 Therefore, the proposal is contrary to those objectives and policies listed in paragraph 7.25 above. Furthermore, the proposal is contrary to objective 8.3.1 and Policy 8.4.7 as the overall cumulative adverse effects of the development will be more than minor and cannot be avoided, or adequately remedied or mitigated.

## 8. Other Matters

8.1 Section 104 of the Resource Management Act 1991 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, and relevant provisions of policy statements, regional and district plans, and any other matters considered relevant.

### 8.2 Precedent:

8.3 Precedent has been described in case law as being “*the effect which allowing the activity might have on the fate of subsequent applications for resource consents*” (*Dye v Auckland Regional Council* [2002] 1 NZLR 337). Case law has confirmed that precedent is a relevant consideration under Section 104(1)(d) and Section 104(1)(i) in determining non-complying activities.

8.4 When considering whether a precedent effect could arise from approval of a non-complying activity (such as the proposed subdivision), consideration must be given to the extent to which that activity is consistent or otherwise with the relevant provisions of the District Plan at the time the matter is considered. Relevant provisions include objectives and policies, as well as the rules.

8.5 Following the close of submissions the applicant provided a more detailed assessment of the application including consideration of precedent (**Attachment 3**). The applicant referred to the decision and comments made in case law *Rodney District Council v Gould* (2005) 11 ELRNZ 165; [2006] NZRMA 217 (HR). This particular case rejected Council’s decision to decline a subdivision in a rural area due to precedent effects.

8.6 In particular, this case found that a non-complying application does not have to demonstrate unique characteristics to prove it will not create precedent in granting consent. The Court found that it was sufficient to show a clear distinction between the subject land, the application and that of potential neighbouring applications. The Court then listed the four matters which the appellant had provided to demonstrate a clear distinction:

- The actual and potential effects on the environment (including visual and landscape) are less than minor;
- Subdivision to the average lot size proposed is relatively common, and proportionally will not be significantly altered by the proposal;
- Every adjoining neighbour has given express written approval;
- It is set in an area where Council has publically adopted a forward policy of increase Countryside Living density, which is consistent with the intent of the application.

8.7 In the information dated 4 March 2011, the applicant’s agent Mr Hood compared the current application against those matters listed. Mr Hood states that “*the land is located in a geographically defined settlement area...the actual and potential effects on the environment (including landscape and visual effects) are less than minor, it is set in an area where the average lot size is similar to that proposed, and every neighbour has given their express approval to the development. Coupled with this, when the geographical context is taken into account, the site is removed from the generality of cases, and few (if any) similar opportunities exist within the defined settlement area and surrounds.*”

8.8 I do not concur with the above conclusion by Mr Hood. In the first instance, it is acknowledged that the adverse visual effects could be mitigated such that effects are minor or less than minor. It is considered relevant and important to note that

the Court in *Gould* stated effects were “less than minor” as opposed to minor. However, as discussed in detail in Section 6 and 7 of this report, it is considered that the adverse effects on character and amenity will be more than minor.

- 8.9 Secondly, with regards to the average net site area of the surrounding environment, it is not clear which properties have been included in Mr Hood’s assessment. In the application, Mr Hood has restricted the surrounding environment to include that land bound by the paper road to the east, and to the south of Ocean Beach Road. However, Council’s processing planner considers the surrounding environment would also include those properties to the north of Ocean Beach Road and potentially the property immediately to the west of the paper road. Which properties are included as part of the surrounding environment would significantly alter the average lot size – potentially resulting in the proposal being less common than as initially assessed by Mr Hood.
- 8.10 In terms of the actual net site area, as discussed in Sections 6 and 7 of this report, the proposed lot size is not common in the existing pattern of development within the Countryside Environment. There are three allotments in the range of 2000m<sup>2</sup>: two of which are historical developments and the third which did not create any additional titles or development rights.
- 8.11 It is acknowledged that written approval has been provided by all neighbouring properties. However, it is noted in *Rodney District Council v Gould* (2005) 11 ELRNZ 165; [2006] NZRMA that while the Court found written approvals to be relevant in considering precedent, this did not necessarily mean they had to be considered and the weight given to these written approvals should be determined on a case by case basis (paragraph 91). The Court does not provide guidance on how to determine the weight to be given to written approvals.
- 8.12 In this instance, it is noted that written approvals of immediate neighbours was obtained and only three submissions were received following full notification of the application. It is considered that the cumulative adverse effects of the proposal would extend beyond the boundaries of those parties who have provided written approval. Additionally, it is not considered that the three submissions received could be taken as an accurate reflection of wider community opinion.
- 8.13 Moreover, with regards to Council’s intention for future patterns of development, it has been discussed in Section 7 of this report that Ocean Beach does not contain suitable infrastructure to support further development (neither in terms of physical services or community/social needs); the Coastal Management Strategy does not identify the settlement as an area to direct future growth; and (although Plan Change 95 is not yet a legal document) Council is currently in the process of re-zoning the area surrounding the existing Living 1 Environment, from Countryside Environment to Coastal-Countryside which will impose further restrictions on subdivision and development.
- 8.14 Furthermore, it is noted that Mr Hood has undertaken a visual and landscape assessment of the proposal in the information provided 4 March 2011. In figure 4, Mr Hood has shown a birds-eye view of the area, identifying an appropriate area for development defined by the paper road, a stream running through the valley and the existing Living 1 Environment. Mr Hood identified this area as being appropriate for development as there would be restricted views from public places and roads, and development would be in close proximity to the existing Living 1 Environment.
- 8.15 When considering the information provided in Figure 4, it is noted that Mr Hood has identified a wider area, beyond the subject site, which he has assessed as being appropriate for development. Mr Hood has defined this area based on geographical and landscape features. The information provided utilises these physical features in an attempt to demonstrate that adverse visual and landscape effects will be less than minor, and to demonstrate that the application is clearly distinguishable from other potential non-complying applications.

- 8.16 However, in the first instance, it is acknowledged that Mr Hood does not have any relevant qualifications to put weight on the landscape and visual assessment and regardless – as it has been stated throughout the report, Council does not refute that visual effects could be mitigated. Additionally, in defining an area beyond the site as being potentially visually appropriate for development the applicant has not addressed the appropriateness of development in terms of character and amenity effects.
- 8.17 Most importantly, the evidence does not appear to show a clear distinction between the subject land, the application and that of potential neighbouring applications. As it stands, Council’s processing planner views the evidence being a clear demonstration that there is potential for a precedent to be set should this application be granted. As an aside, it is also noted that the majority of the land contained within the area identified by Mr Hood as being appropriate for development is owned by the applicant. Given the applicant has created all of the allotments along the paper road thus far, it is not inconceivable that the applicant would undertake further subdivision in the area – especially when considering that an economic benefit has been stated in the application lodged with Council as a positive effect of this proposed subdivision.
- 8.18 It is considered that if the land within the area identified as appropriate for development by Mr Hood were actually to be subdivided into an average lot size of 1.96ha that this would result in significant adverse effects on the character and amenity of Ocean Beach as well as on the character and amenity values of the surrounding environments. Further development at the proposed scale would significantly change the scale and intensity of development at Ocean Beach from a small isolated pocket of residential development, to sprawling development. Such an occurrence would also place significant pressure on the natural and character values of the coastal environment, Bream Head and the relatively undeveloped productive rural land. It is considered that the growth of residential development in the subject area would erode the character and amenity values, as well as the quality of the environment.
- 8.19 Overall, it is considered that there is the potential for a more than minor precedent effect to be set in granting this application.

### **District Plan**

#### **8.20 Proposed Plan Change 116: Coastal Policy Area 6 “Ocean Beach – Whangarei Heads”**

*Objective 1 Protect the conservation estate from edge effects of development.*

*Objective 2 Protect productive rural land uses from reverse sensitivity effects.*

*Objective 7 Protect the high density Kiwi habitat of Whangarei Heads.*

*Policy 1 To locate built development so as to provide an adequate buffer from the conservation estate.*

*Policy 2 To avoid locating built development and sensitive activities near productive rural land uses.*

*Policy 8 To avoid any increase in the exposure of Kiwi to dogs(sic) and dogs resulting from subdivision and development.*

- 8.21 Although Plan Change 116 is not yet a legal document, it is considered relevant to take into account as an ‘other matter’. As mentioned in Section 3 of this report and above, the purpose of Plan Change 116 is to identify the key characteristic of specific coastal environments to assist protecting and enhancing those values and directing growth as outlined in the Coastal Management Strategy.

8.22 In describing the character of the Ocean Beach – Whangarei Heads area, the plan change states:

*The area is characterised by smaller residential and coastal settlements around bays and beaches, with a backdrop landscape of rural activities, including productive land uses, and the conservation estate”*

8.23 Additionally, the plan change identifies the Pacific Ocean Beach (being the coastal environment of Ocean Beach) and Bream Head as being “sensitive landforms”.

8.24 Following the close of submissions, the application has been amended to include a no cats and dogs covenant on the proposed titles. This is consistent with objective 7 and policy 8.

8.25 However, as discussed through out this report, it is considered that the proposed subdivision will result in cumulative adverse effects on the character and amenity of the Ocean Beach environment and on the characteristic values of the surrounding sensitive environments.

8.26 The additional allotment with additional development rights will increase the intensity of development such that the effect will be to erode the rural-residential nature of the paper road, and reduce the “buffer” function between the different environments to an extent that effects are more than minor.

8.27 Accordingly, it is deemed that the proposal is contrary to objectives 1 and 2, and policies 1 and 2.

#### **8.28 Proposed Plan Change 95 – Coastal Countryside Environment Review**

8.29 This plan change is discussed in Section 3 of this report. If the plan change were to be adopted by Council, the same objectives and policies in Section 7 would still apply and the activity status would remain the same.

#### **8.30 Whangarei District Council’s Coastal Management Strategy**

8.31 The core purpose of this document is to identify those areas where future growth is to be directed, in particular those parts of the Whangarei Heads where further infrastructure systems are to be put in place to encourage and enable growth. It is noted that Ocean Beach is not identified as an area for future growth. Currently, no infrastructure is provided in the area, and none is intended to be provided as seen in this strategy. A map taken from the strategy is provided in **Attachment 8**. This map shows the priority structure plan areas for the ‘Ocean Beach – Whangarei Heads’ area.

8.32 This strategy document does not have legal weighting, however it is considered relevant to consider under other matters as it is fundamental in directing policy and rule development in the District Plan. In particular, it has assisted in directing the development of the above plan changes.

## **9. Part 2 of the Resource Management Act 1991**

9.1 Part 2 of the Resource Management Act 1991 details the purpose and principles of the Act and as such underpins all the documents and processes that are prepared under the Act.

9.2 **Section 5 of the Resource Management Act 1991 states:**

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act 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 wellbeing 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.*

9.3 It is considered that the proposal is consistent with promoting development of land to provide for social, economic and cultural wellbeing of people and for their health and safety. Furthermore, it is acknowledged that the proposal has the ability to avoid, remedy or mitigate potential adverse effects on the environment in terms of visual effects. However, as detailed in sections 6 and 7 of this report, it is considered that adverse cumulative effects on the character and amenity of Ocean Beach, and the surrounding individual environments, will be more than minor and are not considered to be consistent with the overall intent of the objectives and policies of the District Plan. Therefore, it is the opinion of the processing planner that the proposal is not entirely consistent with Section 5 of the Act.

**9.4 Section 6 – Matters of National Importance states:**

9.5 The following Section 6 – Matters of National Importance are considered relevant to this application.

*(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:*

*(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

9.6 As discussed in Sections 6 and 7 of the report, the adverse cumulative effects of the proposal will increase the intensity of development along the paper road such that it no longer provides a transitional or buffer area between the intensive residential Living 1 Environment and those more sensitive coastal and cumulative environments.

9.7 Additionally, as discussed in Section 8 of this report, the granting of this consent would set a precedent for similar development in the immediately surrounding area.

9.8 Given the above, it is therefore concluded that the proposal is not entirely consistent with Section 6 of the Act.

**9.9 Section 7 - Other matters states:**

9.10 The following Section 7 – Other Matters are considered relevant to this application.

*(b) The efficient use and development of natural and physical resources:*

*(c) The maintenance and enhancement of amenity values:*

*(f) The maintenance and enhancement of the quality of the environment;*

9.11 With regards to whether the proposal is efficient use and development of resources, it could be said that the proposal is efficient use of the land in terms of

productivity. However, Council's processing planner does not believe that this necessarily renders the proposal as appropriate development of the land in terms of density. Given the cumulative adverse effects are considered to be more than minor and the ability for the proposal to result in precedent effects - it is believed that overall, the proposal would not result in efficient use and development of natural and physical resources.

#### **9.12 Section 8 – Treaty of Waitangi**

9.13 The site is not identified as containing any other archaeological features or features listed in the District Plan as being of significance to iwi. There is no knowledge or evidence of previous habitation or reference to cultural or environmental issues on this site. It is not considered that the activity would impact upon the relationship of Maori and their culture and traditions with their ancestral lands, water, sites of waahi tapu and other taonga. Therefore, no matters pertaining to the Treaty of Waitangi, as outlined in Section 8 of the Act, are considered relevant to this application.

### **10. Conclusion**

10.1 Section 104B of the Act requires that after considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

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

10.2 In considering the matters discussed in Section 6 of this report, it is concluded that the proposal has the potential to generate more than minor adverse effects on the character and amenity of the surrounding environment, as well as more than minor adverse cumulative effects. In terms of visual effects it is considered that subject to mitigation measures, effects would be minor.

10.3 In terms of matters discussed in Section 7 of this report, it is concluded that the proposal is not consistent with the objectives and policies of the District Plan, primarily those that relate to amenity values, built form and development and subdivision and development.

10.4 In applying discretion as to whether consent should be granted or declined it is considered that the application is generally contrary to the objectives and policies of the District Plan; and the cumulative effects of the proposal would have more than minor adverse effects on rural amenity and character. The assessment of Part 2 of the Act suggests that the proposed activity would be inappropriate as the application is not considered to maintain the quality of the environment or amenity values, and it is considered that the cumulative effects are unlikely to be adequately avoided, remedied or mitigated.

10.5 When considering the application's non-complying activity status, in order for Council to consider granting consent the application must pass one of the thresholds under section 104(D). As detailed above, the application will result in cumulative adverse effects which are more than minor. Additionally, the proposal is considered inconsistent with numerous objectives and policies of the District Plan. Furthermore, of considerable importance in this case is the likelihood that a precedent would be set by approving the proposal. This would have significance in terms of achieving the purpose of the Act to maintain and enhance the quality of the environment. Therefore, it is the view of council's processing planner that consent in this case should not be granted.

## **Recommendation**

That pursuant to Section 104, 104B and 104D of the Resource Management Act 1991, Council **DECLINES** the application by Alister Lucas Newbold to subdivide a site of 3.925ha in the Countryside Environment at 312 Ocean Beach Road, Whangarei Heads being Lot 2 DP 376931 into two allotments: Lot 1 – 2,508m<sup>2</sup>, and Lot 2 – 3.6742ha, with separate access from existing vehicle crossings from a paper road.

### **Reasons for the Recommendation:**

1. While it is possible that potential adverse effects on visual amenity could be addressed through conditions of consent, those the cumulative effects on character and amenity are unlikely to be adequately avoided, remedied or mitigated. Furthermore, the proposal is generally inconsistent with objectives and policies contained within Sections 5 'Amenity Values', 6 'Built Form and Development' and 8 'Subdivision and Development'.
2. The proposal is considered to give rise to potentially more than minor adverse precedent effects. There are no site specific circumstances warranting approval, therefore granting consent to this application has the potential to signal that further subdivision where the average lot size is less than 4ha is acceptable in this location and in the Countryside generally.
3. Overall, the proposal does not satisfy matters in Part 2 of the Act or both tests of Section 104D for the approval of a non-complying activity.

### **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.
2. The consent holder shall pay all charges set by Council under Section 36 of the Resource Management Act 1991, including any administration, monitoring, inspection and supervision charges relating to the conditions of this resource consent. The applicant will be advised of the charges as they fall.

### **Attachments:**

- 1 A copy of the original application as lodged with Council on 28 September 2010
- 2 Correspondence between Council and the Applicant regarding issues raised pursuant to Section 92 of the Act
- 3 Further information submitted following close of submissions dated 4 March 2011
- 4 Locality and Aerial Maps
- 5 District Plan Maps
- 6 Locality of written approvals obtained.
- 7 Copy of the submissions
- 8 Coastal Management Strategy: Priority Structure Plan Areas for Ocean Beach – Whangarei Heads
- 9 Copy of the report by Council's SEEO