

Hearings Commissioner

Notice of Meeting

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

**Friday
4 February 2011
9.15 am**

**Application by
Seaforth Pacific Ltd**

**Commissioner
Alan Withy**

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Report to Hearings' Commissioner Alan Withy on Resource Consent Application By:



Seaforth Pacific Ltd (formerly Ocean Sweep Ltd) seeking consent to subdivide a 1.004 hectare site located on St Anne Road, Waipu, creating four lots in the Countryside Environment ranging in net site area from 1,441 m² to 3,580 m². The lots are to be serviced by a network of rights of way, including existing rights of way D and E over Lot 5 DP 340906, with new rights of way F and G proposed over Lot 5 DP 340906, and H and I proposed over Lot 3 DP 340906. The lots include existing conservation covenants and it is proposed to extend the bush area further into Lots 3 and 4 to incorporate an area of proposed indigenous replanting.

The subdivision layout is as per the plan '*Proposed subdivision of Lot 6 DP 201334*' prepared by Reyburn and Bryant 1999 Ltd, dated July 2004 and revised 24th November 2006, reference S9434c.

Overall, the proposal has a non-complying activity status in terms of the allotment areas proposed in the Countryside Environment. It is a restricted discretionary activity with respect to the access provisions applying within this Environment.

This report was peer reviewed by the following signatories:

Environmental Planner (Consents):

Date: 24th January 2011

Liz Jolley

Resource Consents Manager:

Date: 24th January 2011

Alister Hartstone

Statement of staff qualification and experience

Liz Jolley – Council Environmental Planner (Consents)

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

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

Alan Young – Council Senior Environmental Engineering Officer

I hold a Senior Civil Engineering Works Supervisors Certificate, and have designed and supervised construction of numerous roading, drainage, sewerage, water supply, and building projects over the past 44 years, including assessing and recommending conditions of consent and undertaking construction inspections and certification of land use and subdivision consents for the past 21 years.

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

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

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

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

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

Resource Management Act 1991

Hearing By: Hearings' Commissioner Alan Withy of a non-complying subdivision proposal by Seaforth Pacific Ltd (formerly Oceans Sweep Ltd) seeking to create four lots in the Countryside Environment ranging in net site area from 1,441 m² to 3,580 m².

The site is located at St Anne Road, Waipu, being legally described as Lot 6 DP 201334 (title identifier 130A/159).

Evidence By: Liz Jolley

File Refs: RC38634 P099315.SD

TRIM 11/5013

Dated: 24th January 2011

1. Background

- 1.1 Oceans Sweep Ltd lodged an application on the 7th December 2004 seeking approval to subdivide Lot 6 DP 201334 creating five lots ranging in net site area from 1,322 m² to 2,508 m². The subdivision layout was revised on the 12th April 2005 to seek approval for four lots ranging in size from 1,178 m² to 4,781 m², as per a revised plan of subdivision prepared by Reyburn and Bryant 1999 Ltd (dated July 2004, referenced S9434b and updated 12th April 2005). The plan shows shared access from an existing easement over Lot 7 DP 201334 in favour of the site, with proposed right of way easements C, D, F and R over Lots 1, 2 and 3 also servicing the subdivision. These new easements were proposed through existing conservation covenants M, N, O, P, S and T.
- 1.2 The above proposal was subject to full notification, with a staff report recommending in favour of the proposal and agenda item prepared and circulated to submitters for a judicial hearing scheduled on the 9th August 2005.

Notes: A copy of the revised subdivision plan referred to in paragraph 1.1 above is included on page 29 of the 2005 judicial agenda. A copy of this agenda was circulated to submitters on the 29th July 2005. It will be forwarded to Commissioner Alan Withy with the current agenda.

Given the changes to the proposal as outlined below and the requirement to revise the district planning assessment, this report to the Hearings Commissioner replaces the earlier staff planning recommendation of the 27th July 2005 contained on pages 1 to 28 of the 2005 agenda. The following report and its attachments should be read in conjunction with the relevant attachments to the 2005 agenda. Cross referencing to the 2005 agenda is included within this report.

Additional copies of the agenda can be made available for submitters if requested.

- 1.3 In correspondence dated the 4th August 2005, the applicant requested that the hearing date be rescheduled to the 13th September 2005 to allow the applicant to prepare a revised concept plan reducing the number of proposed lots to three and restructuring the design to potentially utilise the existing right of way servicing the Jones/Dye subdivision (as opposed to forming access through the conservation covenant area). A copy of this correspondence is included as 'Attachment 1'.
- 1.4 A number of tentative hearing dates were subsequently deferred by Oceans Sweep Ltd and Council did not receive further comment from the applicant until the 27th November 2006 as per correspondence from Reyburn and Bryant 1999 Ltd confirming Seaforth Pacific Ltd as the new applicant and submitting a revised subdivision layout (refer to 'Attachment 2'). The proposal was revised as per the attached plan 'Proposed subdivision of Lot 6 DP 201334' prepared by Reyburn and Bryant 1999 Ltd, dated July 2004 and revised 24th November 2006, reference S9434c. In summary, Seaforth Pacific Ltd proposes four lots to be serviced by a network of rights of way, including existing rights of way D and E over Lot 5 DP 340906, with new rights of way F and G proposed over Lot 5 DP 340906, and H and I proposed over Lot 3 DP 340906. The existing conservation covenants will therefore remain intact and it is proposed to extend the bush area further into Lots 3 and 4 to incorporate an area of proposed indigenous replanting.
- 1.5 The landowner of the dominant tenement to rights of way D, E, F and G, being Lot 5 DP 340906, is Jones-Dye Holdings Limited. The landowner of the dominant tenement to rights of way H and I, Lot 3 DP 340906, is RJ and SS Moody. The applicant has provided the written approvals of these persons, refer to 'Attachment 3'.
- 1.6 The current subdivision proposal to be considered by Hearings Commissioner Alan Withy is as follows:

Lot 1 of 1,490 m² Lot 1 has a net site area of 1,441 m², and contains a small storage building. The eastern portion of this lot includes an existing conservation covenant protecting 560 m² of vegetation, shown as 'AA'.

The lot is subject to a right of way easement in favour of Lot 45 DP 40483 to the east, shown as right of way C. This will not provide any vehicle access to the lot. Lot 1 will gain access to St Anne Road via existing rights of way D and E over Lot 5 DP 340906.

Lot 2 of 2,050 m² Lot 2 is a vacant lot with a net site area of 1,810 m². The eastern portion of this lot includes an existing conservation covenant protecting 930 m² of vegetation, shown as 'AB'.

The lot is subject to a right of way easement in favour of Lot 45 DP 40483 to the east, shown as right of way B. This will not provide any vehicle access to the lot. Lot 2 will gain access to St Anne Road via existing rights of way D and E over Lot 5 DP 340906 and proposed rights of way F and G over Lot 5 DP 340906, and H over Lot 3 DP 340906.

Lot 3 of 2,920 m² Lot 3 is a vacant lot with a net site area of 2,908 m². The eastern portion of this lot includes an existing conservation covenant protecting 1,274 m² of vegetation, shown as 'AC'.

The applicant proposes an area to be set aside for proposed plantings adjacent to the existing conservation covenant, shown as OA on the subdivision plan. This includes the majority of land that Hawthorn Geddes (engineers and architects) has shown as potentially unstable for development on their site plan (reference R1, Sheet 1 of 1, prepared by Hawthorn Geddes, dated 20th April 2005). (A copy of this engineering plan is included on page 47 of the 2005 agenda).

The lot is subject to a right of way easement in favour of Lot 45 DP 40483 to the east, shown as right of way A. This will not provide any vehicle

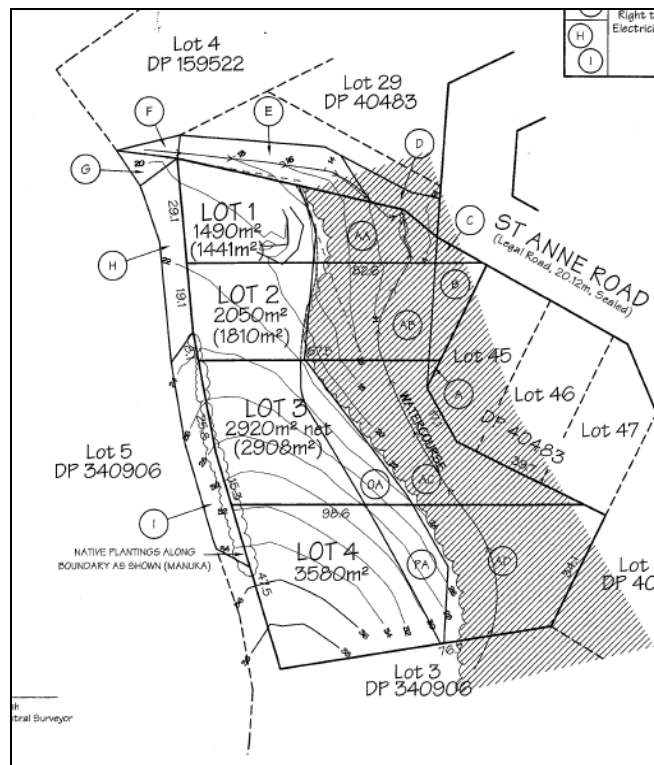
access to the lot. Lot 3 will gain access to St Anne Road via existing rights of way D and E over Lot 5 DP 340906 and proposed rights of way F and G over Lot 5 DP 340906, and H and I over Lot 3 DP 340906.

Lot 4 of 3,580 m² The eastern portion of this vacant lot includes an existing conservation covenant protecting 1,400 m² of vegetation, shown as 'AD'.

The applicant proposes an area to be set aside for proposed plantings adjacent to the existing conservation covenant, shown as PA on the subdivision plan. This includes the majority of land that Hawthorn Geddes (engineers and architects) has shown as potentially unstable for development on their site plan (reference R1, Sheet 1 of 1, prepared by Hawthorn Geddes, dated 20th April 2005).

Lot 4 will gain access to St Anne Road via existing rights of way D and E over Lot 5 DP 340906 and proposed rights of way F and G over Lot 5 DP 340906, and H and I over Lot 3 DP 340906.

The subdivision layout is as follows:



- 1.7 As shown above, native plantings (Manuka) are proposed along the western boundary of the site, adjacent to extending midway from Lot 2 through to midway along the boundary of Lot 4. This planting does not extend to the southern boundary of Lot 4 due to the building height restriction imposed against the existing title that also applies to vegetation (referred to below). These plantings are intended to provide a backdrop to the subdivision when viewed from the north and will provide some screening of the existing access road when viewed from the north-west/west.
- 1.8 The areas outside the conservation covenants are subject to a building height restriction specifying that any building, fence, structure (including but not limited to television aerials, satellite dishes and vent pipes, and vegetation) shall not exceed a height RL41.5 from benchmark RL 32.92 shown on DP 201334.

The building height restriction corresponds with the ground level at the south western most point of Lot 4. The application states, "*The applicant is quite happy for this existing height restriction to be extended so it results in an inclined plane parallel to the existing ground level. It is proposed to confirm the details of the revised height restriction at the time of submitting the plan for a 223 but in general terms the building height restriction plane will be inclined in a north/south direction and also an east/west direction so as to generally allow no buildings to be built in excess of 7.5 metres above ground level*". This restriction will ensure that future buildings will not extend above the height of the ridgeline.

- 1.9 Seaforth Pacific Ltd also volunteers to accept conditions of consent restricting site development to a single built structure on each of the lots and requiring revegetation with appropriate species to be undertaken along the eastern side of the subdivision. This planting is intended to strengthen the existing vegetative framework and assist in integrating future buildings on the lots.
- 1.10 On the 12th January 2005 Council advised the applicant that despite the property being outside the area of benefit for connection to Council's reticulated sewerage system, Council's Senior Engineer Waste and Drainage agreed that the lots could connect if the applicant met Council's charges. The applicant advised that they would also seek to connect to Council's reticulated water supply. Water requirements could be determined when engineering plans and calculations were prepared to confirm it as practical and economic to provide a Council reticulated system to service all the lots.
- 1.11 In subsequent correspondence dated the 13th December 2010, Council advised that a moratorium had since been imposed on the existing scheme until the completion of an upgrade. Hence the delay to date (partially) in the proposal being considered by Council.
- 1.12 On the 5th August 2010 Council's Major Projects and Infrastructure Services Manager Curt Martin advised that the reticulated sewerage system had been upgraded to include sufficient capacity to service the development, and Council no longer had any objection to the connection of the three additional lots to the wastewater system subject to the normal detailed engineering plan approval and the payment of the wastewater coastal development contribution charges. The applicant has confirmed that they wish to connect into the wastewater system, indicating that any designs will allow for sufficient capacity for two additional properties to connect into the system at some point along the new concrete rights of way H and I.
- 1.13 Overall, the proposal has a non-complying activity status in terms of the allotment areas proposed in the Countryside Environment. It is a restricted discretionary activity with respect to the access provisions applying.
- 1.14 The Resource Management Act 1991 makes provision for Council to determine that an application for resource consent has lapsed. The application by Oceans Sweep Ltd (now referred to as Seaforth Pacific Ltd) was lodged on the 7th December 2004. Section 159 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 provides that Council must determine that an application has lapsed where an application was lodged before the 9th August 2005 and Council has requested further information, and the applicant does not comply with the request within twelve months after the later of:
 - (i) the date of commencement of section 159 (having commenced on the 1st October 2009), or
 - (ii) the date on which the request was made.

As the applicant reactivated the consent prior to the 1st October 2010 Council is satisfied that the application has not lapsed.

2. The Site and its Setting

- 2.1 The 1.004 hectare site is located down a sealed right of way extending from the western side of St Anne Road, approximately 50 metres from the road's intersection with Cove Road, Waipu. The site is located on the southern side of this right of way, with approximately 15 metres of frontage onto St Anne Road. St Anne Road is classified as a local road and has a sealed surface maintained by the Council.
- 2.2 Simon Cocker, consultant landscape architect, assessed the proposal on behalf of Council describing the site and its context in a letter dated 18th July 2005. Pages 123 to 131 of the 2005 judicial agenda include a copy of this assessment which is still regarded as relevant (with the exception of comments relating to establishing site access through the bush covenants). The following has regard to Mr Cocker's comments.
- 2.3 The site is included within the 'Countryside Environment' of the operative Whangarei District Plan. Land to the east and fronting St Anne Road is developed in accordance with its Living 1 Environment zoning, whilst land to the rear of the site retains the same zoning as the subject site. Resource Area Map 59B of the District Plan shows the site as included within a Notable Landscape Area. 'Attachment 4' includes a copy of the relevant planning maps, aerials, a stability hazard map, a map of archaeological/historical building sites in vicinity, and maps of the parcel lot sizes in the immediate vicinity. The aerials show the pattern of development within the locality. As the parcel lot size maps indicate, site sizes to the north are consistent with their residential zoning. Whilst the sites zoned for rural purpose include large land parcels, there is a pattern of small lot development within the vicinity, particularly to the north in proximity to Cove Road and along Cullen Road (although it is recognised that the lots on Cullen Road in particular are contained within a separate visual catchment).
- 2.4 'Attachment 4' also includes a property information map showing the site with respect to 'Proposed Natural Area 08/225g – Brynderwyn Hills Forest Complex'. PNA 08/225g buffers the site from the larger land parcels in the Countryside Environment to the west of the property.
- 2.5 The site occupies an elevated position above St Anne Road and offers extensive views of the ocean from north to south; encompassing views of the Waipu River mouth and Bream Bay in the northwest, round to the camping ground to the north. Views in the coastal marine area include Whangarei Heads, and the Hen and Chicken Islands.
- 2.6 The site occupies the crest of a small ridge that extends from inland. The ridge is currently under pasture and is flanked by two small gullies. These gullies are vegetated with regenerating native vegetation – primarily manuka but with some larger remnant pohutukawa, totara and puriri, and also a developing diversity of sub and canopy species. The vegetation within the gully to the east is covenanted. The upper portion of the site is under pasture and it is this area where future built development on the four lots will occur. Viewed from the coast, and from locations along Waipu Cove Road this grass portion appears as a prominent open area, with built development within the vicinity generally restricted to lower elevations or screened by bush. The bush to the east is associated with a watercourse, as shown on the subdivision plan that includes the covenanted areas of bush on site. To the west, the bush on Lot 7 DP 201334 is located on the opposite (western) side of a spur that defines this boundary of the site.
- 2.7 The vegetated gully separates the site from existing residential development that is located off St Anne Road. As described by Mr Cocker, these dwellings peek over and between the vegetation. Whilst mainly on a level with, or below the upper portion of the site, one dwelling sits amongst vegetation above the level of the site.



- 2.8 To the west no built development is visible. On the adjacent ridge to the west and on land further to the west pine plantations have been established within the framework of the existing native vegetation.
- 2.9 Existing built development abuts the lower end of the ridge that includes the subject site, and as described by Mr Cocker this forms the northern edge of the Waipu Cove settlement.
- 2.10 The 'Coastal Management Strategy – Part III: Waipu/Langs Beach' as adopted by Council on the 11th February 2009 identifies the site as having the potential to sustain large lot residential development, suggesting a future Living 3 zoning with bush protection and stormwater control. Although the Strategy is not a statutory planning document and has no legal status, the applicant suggested with respect to an earlier draft (August 2003) that it is a strong indicator that the subject property and surrounding land is suitable for residential development of the nature proposed. This is discussed further within section 11.1 of this report. A copy of the 'Structure Plan Concept' and the Strategy as currently applies to the site is included as 'Attachment 5'.

Notes: The strategy as adopted in February 2009 confirms that no changes have been made to the original version and main objectives for the Waipu Cove/Langs Beach area and decided as part of the underlying structure plan finalised in 2003.

In terms of the density provisions, the Living 3 Environment rules would allow for four dwellings on the site, each with minimum net site areas of 2,000 m².

- 2.11 The site is not directly affected by any plan changes, although it is noted that it sits between land to the south where Council proposes to alter the zoning from Countryside to Coastal Countryside as per public Plan Change 95 (Coastal Countryside Environment review) and existing Living 1 Environment land to the south. A copy of planning map 59B of the plan change is included as 'Attachment 6' As shown on the map, there are nine sites (including the subject site) that separate the area of projected Coastal Countryside from the existing Living 1 Environment.

3. District Plan Assessment

- 3.1 On the 7th December 2004 (the date that the application was lodged) the following zonings/notations applied to the site:
- ♦ The site was included within the Countryside Environment of the proposed Whangarei District Plan and had a Notable Landscape Area resource notation.
 - ♦ It was zoned Rural A in the Transitional District Plan (County section).

The subdivision was assessed as follows under the rules of relevance in the District Plans:

Proposed District Plan	<ul style="list-style-type: none"> ▪ The subdivision does not meet the standards for a controlled activity, as it does not provide for a minimum net site area of four hectares per allotment. It does not meet the
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<i>Countryside Environment</i>	standards for a discretionary activity, as the subdivision does not provide for an average of four hectares under Rule 50.4. The average area for the four allotments to be created is 2,239 m ² . Therefore the proposed subdivision is assessed as a <u>non-complying</u> activity.
<i>Notable Landscape Area</i>	<ul style="list-style-type: none"> ▪ The subdivision does not meet the requirements of Rule 50.8, 'Property Access', which limits the number of allotments or residential units serviced by shared access to eight. As right of way B will serve 12 residential users following the subdivision the activity is <u>restricted discretionary</u> in this respect. ▪ The subdivision meets the subdivision requirements relating to building area, existing buildings, site of significance to Maori, vehicle crossings, provision for extension of services, water supply, stormwater, sewage, electricity, telecommunications, and earthworks. ▪ The applicant has confirmed that in accordance with Rule 39.9, relating to indigenous vegetation clearance in Notable Landscape Areas, no more than 500 m² of indigenous vegetation will be removed (being 377 m²). ▪ Rule 39.10, earthworks in Notable Landscape Areas, limits the maximum volume of earthworks to 500 m³, with a maximum face height of any cut and/or batter face of 2.0 metres. The application also complies in this regard, with 395 m³ of cut and 44 m³ of fill.
Transitional District Plan	The subdivision is a <u>non-complying</u> activity given the existing title area.
<i>Rural A Zone</i>	

3.2 Section 88A of the Resource Management Act 1991 - Description of the type of activity to remain the same

The application was lodged prior to the 3rd May 2007 - the date on which the Proposed District Plan became fully operative. The following outlines the subdivision rules as now apply (changes as per bold underline font and deletions as per strikeout).

Rule 73.3.1 Allotment Area	
Subdivision is a controlled activity if:	Subdivision is a discretionary activity if:
<ul style="list-style-type: none"> a) In the Countryside Environment, every proposed allotment has a minimum net site area of 4.0ha20.0ha; or c) In the Countryside Environment the subdivision complies with Rule 73.3.3 Boundary adjustment. 	<p>In the Countryside Environment <u>the following three standards are met</u>:</p> <ul style="list-style-type: none"> i. The minimum average net site area of all proposed allotments is 4.0ha, and for the purpose of calculating average net site area, any proposed allotment with a net site area greater than 8.0ha, will be deemed to have a net site area of 8.0ha except where: <ul style="list-style-type: none"> a) Only two allotments are created by the subdivision, and one of those allotments has a net site area of less than 4.0ha while the other allotment has a net site area of 8.0ha or greater; or b) proposed allotment is intended exclusively for reserve purposes and has a net site area of 8.0ha or greater; and ii. The minimum net site area of any proposed allotment is 4,000 m²; and iii. There are a maximum of four proposed allotments with a net site area of less than 3.0ha, of which: <ul style="list-style-type: none"> a) No more than two allotments may have a net site area of less than 2.0ha; and b) No more than one allotment may have a net site area of less than 1.0ha.
Control is reserved over:	
<ul style="list-style-type: none"> a. The location of vehicle crossings, access or right-of-ways and proposed allotment boundaries so as to avoid ribbon development; b. The location of proposed allotment boundaries and building areas so as to avoid potential conflicts between incompatible land use activities, including the avoidance of reverse sensitivity activities; c. The location of proposed allotment boundaries, building areas and access ways or right-of-ways so as to avoid sites of historic and cultural heritage including Sites of Significance to Maori. d. The additional matters listed in Section 70.3. 	<p>Assessment criteria for discretionary activities undertaken in accordance with the rule above include:</p> <ul style="list-style-type: none"> i. The matters over which control is reserved; and ii. The likely location of future rural and urban development,

Rule 73.3.1 Allotment Area

including the effects of sporadic subdivision and ribbon development and effects on the efficient provisions of infrastructure and services; and

- iii. The potential effects of the type and density of subdivision and development on rural amenity, landscape, open space, heritage value, ecological values, riparian management, and the natural character of the rural and coastal environment; and
- iv. The cumulative effects of subdivision and development on the environment and on the provision of infrastructure and services; and
- v. The risks from natural hazards; and
- vi. Any other matters that council considers relevant.

Subdivision that does not comply with a standard for a controlled or discretionary activity is a **non-complying** activity.

Further subdivision of any allotment created by application ~~as a consequence of the discretionary activity averaging requirements~~ of Rule 73.3.1 ~~by which such subdivision was authorised as a discretionary activity~~ pursuant to a resource consent granted after the 28th of February 2006 shall be a non-complying activity **unless any lot created exceeds 40ha.**

In instances such as this where rules change, section 88A(1A) of the Act provides that where the status of an activity would alter as a result of a rule changing during the consent process, then the application continues to be processed, considered and decided as an application for the *type/status* of activity that it was for, or was treated as being for, at the time the application was first lodged as opposed to any altered status thereafter. As outlined above, the application was assessed as being for a non-complying activity on the date that it was lodged, being the 7th December 2004. As the revisions to the subdivision rules outlined above do not alter the status of the current activity, which remains non-complying, the provisions of section 88A(1) and (1A) do not influence the subdivision.

Whilst section 88A(1A) assists in determining the status of an application, section 88A(2) applies to Council's consideration of resource consents. In accordance with section 88A(2), section 104(1)(b) requires that in considering the application regard be had to the most up to date version of the District Plan/s applying at that time, in this instance being the operative Whangarei District Plan. The rules applying prior to this (including the Transitional District Plan) effectively no longer exist for the purposes of considering applications. The overall effect is that regard is to be had to the operative Whangarei District Plan, with these rules effectively replacing the rules for subdivision in the Countryside Environment applying when the application was lodged.

The retrospective protection afforded by section 88(1A) is intended only to assist applicants by avoiding the requirement to amend accompanying assessments of environmental assessments.

In summary, the application was regarded as a non-complying activity when lodged. Therefore it will be assessed as such, yet considered under the operative rules.

- 3.3 In terms of the revised subdivision proposal submitted on the 27th November 2006, it is therefore necessary for the purposes of the section 104 assessment to determine the infringements under the operative Whangarei District Plan. These rules in the Countryside Environment apply as follows:

- ♦ For a controlled activity, Rule 73.3.1 'Allotment Area' requires a minimum net site area of 20 hectares. This rule also makes provision for subdivision as a discretionary activity where a number of qualifications are met and an average net site area of 4 hectares is achieved. As the applicant proposes an average net site area of 2,239 m² the proposal does not comply with the standards for a controlled or discretionary activity and is therefore a non-complying activity under Rule 73.3.1.
- ♦ Rule 73.3.7 'Property Access' requires access to comply with all the relevant standards in Appendices 6 and 9. The following indicates the number of existing users on the rights of way and the number of future users as proposed by the applicant:

Right of way I 3 existing users, 4 future users
Right of way H 3 existing users, 5 future users
Right of way G 4 existing users, 6 future users
Right of way F 7 existing users, 9 future users
Right of way E 7 existing users, 10 future users
Right of way D 8 existing users, 11 future users

The Council's Senior Environmental Engineering Officer Alan Young has advised that access requirements for the development should be assessed in terms of sheet 9 of Council's Environmental Engineering Standards (1998 Edition). Sheet 9 of the standards requires nine or more lots to have access via a public road standard or as per resource consent. Public road standard for this number of users is a 6 metre wide sealed carriageway with no kerb and channelling or footpath. The existing rights of way D, E and F, have been constructed with a 5.5 metre wide sealed surface and kerb and channelling, with no footpath. The applicant has indicated that there are physical constraints to widening these rights of way as per Sheet 9 and is of the opinion that there is no requirement to provide any passing bays, with the existing 5.5 metre width regarded as sufficient to accommodate the number of users. A footpath is however proposed along rights of way D and E. Mr Young has advised that Council does not wish to accept ownership or maintenance responsibility for the access as it will not comply with the road standard, particularly at the stream crossing and intersection with St Anne Road.

Rights of way G, H, and I have already been constructed with a 3 metre wide concrete surface. As a minimum, the standards require a gravel surface to comply.

Therefore whilst rights of way G, H and I satisfy the engineering standards, the subdivision will not comply with Sheet 9 on the basis of the reduced standard of formation proposed over rights of way D, E and F. Consequently, the subdivision is a restricted discretionary activity under Rule 73.3.7. Council's discretion is reserved to the following matters:

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

- xii. *The safe and efficient movement of people, vehicles and goods;*
 - xiii. *The ability of the road structure to withstand anticipated loads;*
 - xiv. *The effects of water runoff.*
- ♦ Rule 47.2.7, *Formation Standards*, also requires that all shared access ways are constructed to meet the requirements of Appendix 9 of the District Plan. As rights of ways D, E and F are not fully compliant, as per above, the application is a restricted discretionary activity under this rule. Council's discretion is restricted to the following:
 - i. *Surfacing material;*
 - ii. *Gradient of the area to be surfaced;*
 - iii. *Amenity values;*
 - iv. *Stormwater control;*
 - v. *Type and frequency of use;*
 - vi. *Pedestrian safety;*
 - vii. *Traffic safety and visibility.*
 - ♦ Rule 47.2.9, *Shared Access Widths*, requires shared access to be constructed in accordance with Appendix 6J of the District Plan. As rights of way D, E and F are not fully compliant, as per above, the application is a restricted discretionary activity under this rule. Council's discretion is restricted to the following:
 - i. *Effects on amenity values;*
 - ii. *Road safety and efficiency;*
 - iii. *Type and frequency of use;*
 - iv. *Traffic safety and visibility;*
 - v. *Effects of dust;*
 - vi. *Effects of stormwater.*
 - ♦ The subdivision satisfies the controlled activity criteria of the subdivision rules relating to building area, existing buildings, sites of significance to Maori (none identified on site), vehicle crossings, provision for extension of services, water supply, stormwater, sewage, electricity, telecommunications, and earthworks.

3.4 The subdivision complies with the rules relating to indigenous vegetation clearance and earthworks in 'Notable Landscape Areas',

3.5 Overall, the subdivision in the Countryside Environment has a non-complying activity status under the allotment area rule of the operative Whangarei District Plan, also requiring consent as a restricted discretionary activity under the rules relating to property access.

4. Consultation, Public Notification and Submissions

4.1 As the subdivision was lodged as a non-complying activity and Council was not satisfied that the adverse effects on the environment would be minor (in terms of the effects of the proposed lot sizes upon visual character and amenity) Council determined on the 5th May 2005 that the four lot subdivision proposal required full notification pursuant to section 93 of the Resource Management Act 1991.

4.2 The application was notified on the 16th May 2005, with the closing date for receiving submissions lapsing on the 14th June 2005. Council received five submissions within the timeframe, with four in opposition from surrounding landowners requesting that the application be declined. Each of the submitters opposing the application requested to be heard. The issues raised by the submitters are as follows:

1. Coral Hammer and Laurence Thomsen – Oppose and request to decline, request to be heard

- These submitters object to the proposed right of way access roading. The submitters consider that the applicant should use the existing right of way to avoid forming access through the covenanted bush. The removal of the bush will impact upon the submitter's site north of the property, particularly at night-time when vehicle headlights will be directed towards their property.
- The proposed roadway will create an intersection on a very narrow roadway where there are no footpaths and forming a footpath may require bridging over the gully.
- The submitters also have concerns regarding surface water runoff – the point of discharge is proposed to be the gully on the submitter's property. Whilst the submitters are not concerned regarding the volume of stormwater, they do however consider that channelling the water into the gully will alter the flow rate and has the potential to increase the incidence of flooding in the culvert at the intersection of St Anne Road and Cove Road, and potentially the submitter's property. It may also cause erosion within the gully.
- The submitters request that the applicant utilise the existing right of way or that an independent engineer's recommendation for attenuation of runoff into the submitter's property be prepared at the applicant's cost for the submitter's approval. The construction of a detention pond or form of attenuation basin could be considered.

2. Paul and Debbie Gould – Oppose and request to decline, request to be heard

- The application does not meet the District Plan criteria, and is in breach of the rules and requirements. It represents 'land creep'.
- The proposal does not comply regarding the shared access rules.
- Increased traffic, visual impact, and excessive impact upon natural watercourse/creek.

3. E and K Friedlander – Oppose and request to decline, request to be heard

- Traffic safety effects resulting from the number of users on the right of way and the location of the proposed entrance point onto the existing right of way.
- The number of users on the right of way warrants vesting it as road reserve.
- Adverse visual effects associated with three additional house sites on an elevated site with landscape significance. These effects will not be mitigated by placing controls on the height and/or colour of new structures or revegetation.
- The subdivision will create a precedent and undermine the District Plan integrity. The site does not have any unique features. The subdivision represents an uncoordinated form of residential expansion at Waipu Cove.
- The application refers to the Coastal Management Strategy, however the submitters do not consider that the subdivision represents the form of large lot residential development referred to in the Strategy.
- The subdivision does not satisfy the provisions of section 104D of the Act and must therefore be refused.
- The subdivision is contrary to the public interest.

- The subdivision does not represent the sustainable management of the natural and physical resources and is therefore in conflict with Part 2 of the Act.
- 4. Jones-Dye Holdings Ltd, TA and KN Jones Family Trust, Gael Dye and Kerry Mackay - Oppose and request to decline, request to be heard**
- The additional demand that will be placed on the newly upgraded carriageway and private accessway onto St Anne Road.
 - The application is contrary to the Waipu Cove/Langs Beach Structure Plan.
 - The application is non-complying and by its nature is contrary to the Objectives and Policies of the Proposed District Plan and Part 2 of the Act.
 - Decline consent unless mitigation of the effects on St Anne Road, the newly upgraded carriageway and the right of way is proposed.
- 5. New Zealand Historic Places Trust – no objection**
- It does not appear that the activity will result in any adverse effects upon cultural heritage. The Trust is not aware of specific archaeological sites being present on the property or in the immediate vicinity. A significant number of sites are, however, known to exist in the wider area. There is, therefore, a chance that unknown sites could be unearthed. It is therefore recommended that the consent include Council's standard advice note, warning of obligations pursuant to the Historic Places Act 1993, should any discovery be made.

In summary the key issues raised by the submitters relate to:

- The existing right of way – number of users and the location of the proposed entrance point onto the existing right of way
 - Surface water run off from the proposed rights of way - impact upon natural watercourse/creek and the potential to increase the incidence of flooding
 - Non-complying activity, contrary to District Plan provisions/Waipu Cove/Langs Beach Structure Plan, and precedent effect
 - Adverse visual effects associated with three additional house sites on an elevated site with landscape significance
 - Contrary to Part 2 and section 104D of the Act.
- 4.3 Pages 171 to 191 of the 2005 agenda include a plan showing the location of submitters with respect to the subject site and a copy of the full submissions.
- 4.4 The revisions to the application would appear to address the concerns raised by Coral Hammer and Laurence Thomsen.
- 4.5 Whilst Jones-Dye Holdings Ltd has now provided their written approval to the proposal, they have not withdrawn their submission.
- 4.6 In terms of the status of the activity, the issue relating to this subdivision proposal is not whether the District Plan supports the activity but rather whether it is appropriate to allow it. Section 104D of the Act recognises that a non-complying activity will not be permitted by the District Plan, yet it may be granted provided either of the criteria of section 104D are met. (Section 5 below discusses section 104D.)
- 4.7 On the 14th December 2010 Council circulated a copy of the revised subdivision plan to submitters. Submitters were advised that the key change to the subdivision plan was the proposal to use existing rights of way G, H and I instead of constructing the previous alignment from St Anne Road through the bush valley and covenant area.

Recognising that the further information was intended to address some submitter concerns, Council asked that submitters consider the amended proposal and matters raised within their submission, forwarding any additional comments to Council by the 24th December 2010. Council received the following responses:

- ♦ The New Zealand Historic Places Trust confirmed in email correspondence dated the 21st December 2010 that they did not wish to make any changes to their submission, highlighting the procedures relating for an 'Accidental Discovery Protocol'.
- ♦ E and J Friedlander raised a number of queries in email correspondence of the 21st and 23rd December 2010. These submitters sought confirmation with respect to the status of their submission. It was subsequently confirmed to the submitters that their submission as received on the 14th June 2005 remained valid.

The following issues were also raised by E and J Friedlander:

- The new proposal makes provision for traffic to travel further up the privately owned right of way in order to gain access to the subdivision and in our view that will cause even more of a traffic problem.
- This adds additional users on the right of way which is ostensibly over the allowable limit before the right of way becomes a public road.
- In addition to this when an earlier subdivision was approved, which resulted in that particular access being made from the private right of way, conditions required the right of way to be upgraded and a right hand turn lane established from St Anne Road into the right of way. There is currently no right hand turn bay, raising questions with respect to compliance with the conditions of consent.
- The submitter questions the decision not to renotify the proposal.

A copy of the letter circulated to submitters and the above submitter responses are included within 'Attachment 7'.

- 4.8 In terms of the notification issue raised by E and J Friedlander, Council has had regard to the significant lapse in time since the application was fully notified and the change in tenure of some properties. Council has sought legal advice and is however of the opinion that the application does not require re-notification.

5. Resource Management Act 1991

- 5.1 As the application was lodged on the 7th December 2004, amendments to the Resource Management Act 1991 up to the date of assent of the Resource Management (Waitaki Catchment) Amendment Act 2004 only are relevant to the proposal. Subsequent amendments do not require consideration.
- 5.2 In considering the application for a non-complying activity, section 104D of the Act provides that Council may grant the application if it is satisfied that the activity will not be contrary to the policies and objectives of the operative Whangarei District Plan or the adverse effects of the activity on the environment will be minor. These two conditions are not tests, the passing of which would justify the grant of consent but are conditions, which if passed, enable Council to consider granting consent to the proposal. Subject to at least one of the above thresholds of section 104D being satisfied, after considering an application for non-complying resource consent, Council may grant or refuse the application, and if it grants the application, may impose conditions under section 108 of the Act.
- 5.3 Part 2 of the Resource Management Act sets out the purpose and principles of the Act, including matters of national importance. The purpose of the Act is to promote the sustainable management of natural and physical resources.

In the 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 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.”*

Comment: From the information provided I regard the proposal as consistent with the purpose of the Act, in that the subdivision will not reduce the versatility of the land which already has limited productive capacity by virtue of its size, topography, land use capability classification, and the area of the existing bush covenant.

Note: The majority of the site which includes the covenant area has a land use capability classification of ‘Other’ which is defined as including urban areas. A narrow strip of land adjacent to the site’s western boundary has a classification of IV which is regarded as land with moderate limitations for arable use but suitable for occasional cropping, pasture, or forestry.

I believe that the proposal is generally consistent with the purpose of the Act as the site is located within an area already fragmented by a pattern of large lot residential lifestyle development within the coastal environment which has been identified through preliminary Council investigations as likely suited for more intensive residential expansion on the urban-coastal/rural interface (as per the structure plan process).

Despite the pattern of surrounding mixed development in the adjacent Living 1 and Countryside Environments, I had some initial concerns with respect to the treatment of coastal/rural land within identified growth areas and the potential for the development to undermine the future structure plan process that will otherwise assist in integrating land uses, identifying key natural resources, transport and infrastructure requirements, and any potential constraints to development. With suitable development restrictions (including servicing), I am however of the opinion that any adverse effects on the environment will be adequately avoided, remedied or mitigated.

The proposal is also regarded as unlikely to foreclose any future development patterns anticipated through the structure plan.

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

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

Comment: Despite its close proximity to the coastal environment and the potential for future development to detract from the natural character of the locality, the subdivision is not regarded as an inappropriate form of development.

The Council's consultant landscape architect, Simon Cocker of Simon Cocker Landscape Architecture, has had regard to the development's potential impact on natural character and is satisfied that with appropriate mitigation measures the effects will be no more than minor. A copy of Mr Cocker's assessment dated the 18th July 2005 is included on pages 123 to 133 of the 2005 agenda. This assessment is still regarded as valid with the minor amendments to the area and shape of the lots unlikely to result in additional adverse effects further to those already considered, as expressed in further correspondence from Mr Cocker relating to the revised subdivision (refer to 'Attachment 8' for a copy of Mr Cocker's correspondence of the 14th December 2010).

With respect to the revised development proposal, Mr Cocker expresses the view that "*the amendment which provides for use of the existing right of way and avoids cutting through the bush and bridging the gully is considered to be an improvement in proposal. It will avoid further severance of the gully, retain vegetation which will have useful screening benefits in relation to neighbours views of the proposal, and avoid the potential for any adverse visual effects experienced by neighbours in relation to the proposed earthworks and accessway*". Given the retention of the existing bush covenant and the replanting proposed within Lots 3 and 4, I believe that the application would fulfil section 6(c) of the Act.

On the basis of the above, the proposal is regarded as achieving the relevant matters of national importance outlined in the Act.

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

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

In terms of the intrinsic value of ecosystems, as previously discussed this issue can be addressed via retaining the existing bush covenant area and enhancing it via the adjacent indigenous planting proposed within Lots 3 and 4 (shown as areas of replanting 'OA' and 'PA').

Whilst the site is not included within the Coastal Countryside Environment, it is included within a Notable Landscape Area. Landscapes having a sensitivity rating of 6 are regarded as 'notable' and should be protected against inappropriate subdivision.

Typically, I would have concerns with the scale of development proposed within the Countryside Environment and the density effects on amenity values. In this instance, I do however believe that there are unique or unusual circumstances to justify setting such matters aside – the property is considered a discrete site that is contained by the bush and landform, and viewed from the principle public viewpoints is contiguous with the existing residential development. The proposal is considered to have minimal effect on the natural character of the coastal environment, establishing development where that character had already been compromised to a large degree. With respect to maintaining and enhancing amenity values, this matter is discussed further in section 9.3 of this report wherein I conclude that the development density proposed is not contrary to the pattern of mixed development already existing in the locality, with amenity values unlikely to be significantly compromised. Recognising and accepting the level of mixed residential/lifestyle amenity currently found in the vicinity of the site, the application and supporting documentation are in my view consistent with section 7 of the Act.

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

As the Historic Places Act 1993 provides protection for unrecorded sites, it is not anticipated that the subdivision would impact adversely upon the relationship of Maori and their culture and traditions with their ancestral lands, water, sites of waahi tapu and other taonga. Therefore the proposal is considered to satisfy section 8 in that it is unlikely to undermine the principles of the Treaty of Waitangi. The New Zealand Historic Places Trust has advised as per their submission that they do not consider that heritage values will be at any increased level of risk from the proposal. An advice note can be attached to any consent granted indicating the protective provisions of the Historic Places Act 1993. In terms of cultural matters, the local iwi have not commented on the proposal.

5.7 Section 104

Section 104 of the Act prescribes the matters considered relevant and reasonably necessary to reach a conclusion as to whether the application should be granted or declined pursuant to section 104B of the Act. Hence the following sections of this report provide an analysis of the proposal against the *'New Zealand Coastal Policy Statement 2010'*, the *'Regional Policy Statement for Northland'*, the objectives and policies of the operative Whangarei District Plan, and the environmental effects. As the proposal is not relying upon on-site servicing, I have not commented on the *'Regional Water and Soil Plan for Northland'*.

Section 104(3)(b) states that when considering an application Council must not have regard to any effect on a person who has given their written approval to the application. I note that Jones-Dye Holdings Ltd lodged a submission in opposition to the proposal and more recently provided their written approval to the revised proposal. As the submission has not been withdrawn, the following assessment will have regard to the matters raised in so far as they relate to the general community.

5.8 Section 104B

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

6. New Zealand Coastal Policy Statement 2010 (NZCPS)

- 6.1 The NZCPS is of relevance to the proposal due to the site's location within the coastal environment. Objective 6 of the Statement recognises that the protection of values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits. Policy 6 relates to activities in the coastal environment. Subsection (1)(c) of Policy 6 encourages the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth. Subsection (1)(c) of Policy 6 requires Council to consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change of character would be acceptable. Policy 13 relating to the preservation of natural character places emphasis upon preserving natural character and protecting it from inappropriate subdivision, use and development.
- 6.2 These matters have been discussed previously. The operative Whangarei District Plan recognises that the site does have some landscape quality as it is located within a 'Notable Landscape Area'. The adjacent Living 1 Environment that abuts the site and is in closer proximity to the coastline has however undermined the natural character of the locality. As the site will not be seen in isolation but in the context of the existing residential and lifestyle development, the proposal is regarded as meeting the intent of the NZCPS. It is also noted that *'Proposed Natural Area 08/225g – Brynderwyn Hills Forest Complex'* to the rear of the

site, provides a natural buffer that contains the areas of built development (including the subject site).

- 6.3 The mitigation measures volunteered by the applicant will ensure that future built development will be consistent with the intent of the Statement. These measures include ensuring that future buildings will not extend above the height of the ridgeline, restricting site development to a single built structure on each of the lots, requiring revegetation with appropriate species to be undertaken along the eastern side of the subdivision, and extending the bush areas within Lots 3 and 4. This planting is intended to strengthen the existing vegetative framework and assist in integrating future buildings on the lots. Whilst it is arguable that the proposal will intensify development, I do not consider the level of intensification as inappropriate or beyond the capacity of the local environment, with future development likely to be of similar character and effect to existing adjacent residential development. Conditions of consent can also be imposed requiring that all vehicle driveways and manoeuvring areas associated with buildings on the lots be formed with natural materials, and that the exterior facades and roofs of all buildings be constructed with materials or painted with colours that have a reflectance value of less than 35%.
- 6.4 Therefore, having regard to the level of development within the adjacent residential area, and the proposed mitigation measures involving on-site landscaping and restricting the scale/appearance of built development, any associated effects are considered minor.

7. Regional Policy Statement for Northland (RPS)

- 7.1 A principal purpose of the RPS is to provide for policies and methods which achieve integrated management of the Region's natural and physical resources. As the site does not include any identified outstanding natural features/landscape and the applicant is not relying upon on-site servicing, sections 19 and 20 of the RPS have not been considered directly relevant to the site. Therefore, the only objective and policy section of the RPS of relevance is generally limited to transportation.
- 7.2 The overall emphasis of Section 29 of the RPS, '*Transport*' is placed upon impacts on the region's major transport network (particularly strategic and arterial roads and railways). One of the issues identified in the RPS with respect to transport relates to the adverse impact that adjacent land use, development and subdivision can have upon the efficiency and safety of railways and roads, particularly heavily trafficked routes in rural areas.
- 7.3 Submitters E and J Freidlander have commented that when an earlier subdivision was approved, which resulted in that particular access being made from the private right of way, conditions required the right of way to be upgraded and a right hand turn lane established from St Anne Road into the right of way. There is currently no right hand turn bay, raising questions on the part of these submitters with respect to compliance with the conditions of consent. Council's Senior Environmental Engineering Officer Alan Young does not have any concerns in this respect. In terms of the right hand lane referred to, whilst a right hand turn was painted on St Anne Road at the time of kerb and channelling being installed for the right of way, Council's Southern Roding Supervisor has advised that over the years Council elected not to repaint the arrow, and return the road to single lane due to width restrictions. There is no intention at this stage to reinstate the right hand turn. Mr Young will be available at the hearing to provide further clarification with respect to this matter if required. A copy of Mr Young's assessment of the development proposal is included in '*Attachment 9*'.
- 7.4 In summary, as Council's Senior Environmental Engineering Officer has not identified any significant adverse effect upon the local roading network the application is regarded as achieving the relevant issues, objectives and policies of the Regional Policy Statement for Northland.

8. Objectives and Policies of the Operative Whangarei District Plan

8.1 In terms of the objectives and policies of relevance to the proposal, these are included within Chapter 5 '*Amenity Values*', Chapter 8 '*Subdivision and Development*', and Chapter 10 '*The Coast*'. A full copy of these chapters is included in '*Attachment 10*'.

8.2 Plan Change 92 re-writes the objectives and policies of Chapter 6 '*Built Form and Development*'. There are currently three appeals to the plan change, however as the appellants are seeking additional provisions and other minor amendments for consistency and legibility purposes, the Council is placing almost full weighting upon the plan change. A copy of this plan change is also included in '*Attachment 10*'.

8.3 The District Plan objectives and policies seek to:

- ♦ ensure that the characteristic amenity values of a locality are not compromised, particularly in terms of the coastal environment,
- ♦ address the effects of activities on the natural character of coastal areas and the need to preserve natural character from inappropriate use and development,
- ♦ retain trees and vegetation that contribute to the amenity values of an environment, unless the effects of removal are adequately remedied or mitigated,
- ♦ provide for the protection of, and where appropriate enhance, the District's natural features, coastal landscapes, and significant ecological areas,
- ♦ further develop, within existing built areas, so as to avoid sporadic subdivision and ribbon development, particularly in rural areas and along the coast,
- ♦ direct rural-residential development to appropriate locations adjacent to existing settlements (consolidation), rather than allowing sporadic development throughout rural and coastal areas,
- ♦ ensure consolidated development in appropriate locations and avoid sprawling or sporadic subdivision and ribbon development patterns in the coastal and rural environment,
- ♦ consolidate urban development by focusing residential development on those urban areas with demand, where the landscape and natural character have already been compromised,
- ♦ further develop within existing built up areas, so as to avoid sporadic or sprawling subdivision and ribbon development patterns, particularly in rural areas and along the coast,
- ♦ direct rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas,
- ♦ ensure that adverse effects of subdivision and development on indigenous vegetation and habitats of indigenous fauna that contribute to the natural character of the rural and coastal environment are avoided, remedied or mitigated,
- ♦ 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 which is incompatible in scale and character with the surrounding coastal landscape values,
- ♦ ensure that buildings and structures are of a scale, design and location that, where possible, avoids adverse visual effects on landscape character and values, and otherwise mitigates such adverse effects to the maximum extent practicable,
- ♦ ensure that adverse visual effects of earthworks scarps on outstanding natural features and landscapes are avoided and that the adverse visual effects on notable landscapes, coastal landscapes and other landscapes are avoided, remedied or mitigated far as practicable, by encouraging re-vegetation of earthworks scarps, and

- ♦ protect indigenous vegetation, which contributes to the character and visual quality of landscapes from inappropriate subdivision, use and development.
- 8.4 The proposal is generally considered to be consistent with the emphasis of the above objectives and policies. Recognising the pattern of residential development already existing in the Living 1 Environment, and the juxtaposition of the site with this residential area, I do not regard the proposal as a form of sporadic subdivision or 'scattered form of residential development'. I believe that the subdivision will consolidate the existing development pattern. Whilst it is arguable that the proposal will intensify development, I do not consider the level of intensification as unacceptable or beyond the capacity of the local environment, with future development likely to be of similar character and effect to the existing lifestyle development. It is not a significant departure from the existing form of lifestyle development characterising the locality. It fits within the context of the existing development pattern, consolidating rather than expanding Waipu settlement, with 'Proposed Natural Area 08/225g – Brynderwyn Hills Forest Complex' containing the area of built development .
- 8.5 Any additional bush/vegetation protection, albeit the area of replanting shown as 'OA' and 'PA' on the subdivision plan, is consistent with the objectives and policies relating to amenity values, and indigenous vegetation and habitat; including those which seek protection and enhancement of indigenous vegetation and its ecological values, retention of trees and vegetation that contribute to the amenity values of the environment, and maintenance and enhancement of the characteristic amenity values of each Environment. Notwithstanding this, the subdivision incorporates a low impact, holistic design approach locating building sites within existing cleared areas and minimising vegetation removal. It is also noted that the initial proposal to form access through the bush covenant has been removed in favour of utilising existing access that has already been formed on adjacent sites.
- 8.6 Overall it is assessed that the proposal is not contrary to the general intent of the objectives and policies, particularly as they relate to amenity, landscape, built form/development, and indigenous vegetation and habitat.

9. Actual and Potential Effects on the Environment

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

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

9.2 Permitted baseline -

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

The existing physical environment includes a vacant 1.004 hectare site in the Countryside Environment. In terms of land uses, the development is limited to one residential dwelling unit and one minor residential unit. A minor residential unit is defined as a residential unit located no more than 15 metres from another residential unit on the same site/lot with a gross floor area of no more than 70 m², excluding the gross floor area used exclusively for the storage of motor vehicles in association with the minor residential unit. There is no limit upon the number

of accessory buildings provided that the bulk and location criteria are satisfied. 'Attachment 11' includes a copy of Chapter 38 'Countryside and Coastal Countryside Rules' of the operative Whangarei District Plan. The District Plan also imposes restrictions upon developments in Notable Landscape Areas. A copy of Chapter 57 'Landscape Area Rules' is included in 'Attachment 11'.

The subdivision proposal would allow for a single residential unit to be established on each lot. As the lot areas are less than 8,000 m² there would be no provision for any minor residential units. In terms of building coverage, the District Plan permits building coverage where it does not exceed 500 m² or 5% of the net site area whichever is the greater, being 500 m² in this instance on each of the proposed lots. The subdivision will therefore allow the level of permitted building coverage to quadruple over the subject property.

Note: Mr Cocker has commented "The applicant has volunteered to accept conditions of consent restricting site development to a single built structure on each of the lots. It should be noted that site coverage rules in the Countryside Environment will allow coverage of 500 m². Allowing for the revegetated portion of the lots, this would equate to some 50% of some of the lots and could potentially result in a relatively intense built character on the site. The assessment below assumed building coverage of between 250-300 m². It would be helpful if the applicant could consider if restrictions on site coverage would be appropriate and present this information at the hearing."

Whilst it is considered appropriate to have regard to the permitted baseline in determining whether the adverse effects of the subdivision are minor or more than minor, I also believe that the pattern of surrounding development which includes more intensive lifestyle/residential development should be acknowledged.

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

9.3.1 Landscape character and amenity

In terms of defining amenity values, although the Countryside Environment tends to be used predominantly for primary production, Council also recognises its use for rural lifestyle purposes. As outlined in Section 5.2 of the District Plan, Council also anticipates the tendency towards high amenity values in rural areas, due primarily 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.

Despite its proximity to the coast, the subdivision development is unlikely to impact adversely upon the natural character of the coastline and its associated environment. The site is not part of a pristine or isolated environment.

It occupies a transitional area of different landscape characters where distant views of the site would be seen in the context of the adjacent residential development.

The site is included within an area where the natural character has been compromised by intensive residential development in the Living 1 Environment adjacent to the coast in the foreground to the site and within the smaller lot lifestyle development on sites in the Countryside Environment in proximity to the site. The development within the adjacent Living Environment provides a framework that will assist with the integration of future built

development on the proposed lots. Development of the site as proposed is unlikely to be perceived as a significant extension to the residential area of the Waipu coastal settlement. Although located within the Countryside Environment, I believe that the site could be regarded as part of the settlement rather than a significant extension to it. On this basis I don't believe that it warrants stringent protection.

Simon Cocker, consultant landscape architect has visited the site, and reviewed the application and submissions on behalf of the Council. Mr Cocker's comments of the 18th July 2005 and 14th December 2010 are included on pages 123 to 131 of the 2005 agenda and 'Attachment 8' to this agenda. I concur with Mr Cocker's conclusion that the mitigation measures as volunteered by the applicant will allow the proposal to be integrated successfully within the local landscape. Mr Cocker will be available at the hearing to provide further clarification with respect to this matter if required.

In summary, having regard to the existing development pattern and the development restrictions that may be imposed, I am of the opinion that the potential adverse character and amenity effects will be no more than minor.

9.3.2 Access and Traffic Effects

The Council's Senior Environmental Engineering Officer Alan Young is of the opinion that despite the number of users there would be little adverse effect on the safety or function of the rights of way. Whilst the rights of way are not of adequate width for a public road, nor suitable for construction of a vehicle turning head, vehicles are currently able to turn within the existing vehicle entrance crossings and rights of way. The potential for vehicle and pedestrian conflict is considered remote as the portion of right of way exceeding 8 users is to be upgraded to a width of 5.5 metres and will incorporate a footpath. Mr Young is also satisfied that the increase in traffic levels will be minor, with no adverse effects upon traffic safety or efficiency as complying sight lines are achieved. Given that the access is not formed to Council's roading standard, the Council does not consider it appropriate in this instance to consider vesting the right of way as road.

Mr Young recommends approval of the application without requiring the developer to carry out culvert and access widening and bush removal, which would have limited benefit and still leave the access unsuitable for Council to accept as a public road. In the event of consent issuing, Mr Young recommends that a concrete footpath be constructed from St Anne Road to right of way G as part of consent conditions.

Rights of way H and I have previously been constructed with a concrete surface and are considered suitable to service this application without upgrading.

Any further subdivision would require further consideration of upgrading to the rights of way.

9.3.3 Site Suitability

Each of the proposed lots will be serviced via connection into the existing Council reticulated wastewater and water supply systems. Onsite stormwater attenuation will be required as part of building consent to limit flows from each lot prior to discharge into the adjoining watercourse. Although this watercourse is close to tidal water, there are constraints within the roading and drainage network.

A geotechnical report prepared by Hawthorn Geddes Ltd, dated 18th April 2005, recommends a building setback clearance from the more severe creep movement identified on proposed Lots 3 and 4 unless specific investigation and design are undertaken to protect the building as set out under section 71 (2) of the Building Act 2004. This represents a setback varying from 10 to 14 metres from the present scrub/bush line on Lots 3 and 4, as shown on a plan attached to the report. A minimum foundation depth of 600mm below existing ground level is recommended, however this may be reduced to 300mm if the site is excavated below this depth. The report also indicates that excavations for house sites will need to be adequately retained or left at a maximum slope of 1 vertical to 3 horizontal. The assessment concludes that the proposed access alignment is considered suitable.

The Council's Senior Environmental Engineering Officer is satisfied that with appropriate conditions of consent any effects associated with site servicing will be no more than minor.

9.3.4 Cumulative effects

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

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

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

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

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

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

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

In September 2002, Council adopted the 'Whangarei Coastal Management Strategy', (CMS) establishing a strategic, integrated framework for managing the protection, use and development of the coastal environment within the Whangarei District and to provide direction to many of Council's functions and documents including the District Plan. Following this, the 'Waipu/Langs Beach Structure Plan Report', dated August 2003 and adopted on the 11th February 2009, was introduced to integrate the protection, use and development of land and resources, and set out how to implement the CMS vision and mission statements at a local level. The Structure Plan Report identifies the following direction for development in Waipu/Lang Beach – providing a clustered residential settlement at Waipu Cove and Langs Beach; promoting development that provides for protection of vegetation and landscape values along the coast and backshore hills; using natural and physical features and topography to define living boundaries; and infrastructure management to enhance residential amenity of settlement areas.

This includes providing for some Living 3 Environment expansion around the settlement areas, and retaining and expanding the Coastal Countryside Environments surrounding the settlement. The following provides guidance on the methods/actions to be undertaken to achieve residential growth and development within the Waipu/Langs Beach Structure Plan area and of relevance to the current proposal –

- Expanded low-density residential settlement surrounding the existing settlement areas. This would include investigation of topography and land suitability to confirm appropriate boundaries for 'large lot' residential living environment, confirmation of boundaries for 'large lot' residential on this basis, and implementing changes to the District Plan to provide for 'large lot' residential.

The 'Waipu Cove and Langs Beach 20 Year Structure Plan Concept', as shown in 'Attachment 5', includes the site within an intended 'Large Lot Residential (Living 3 with landscape and bush protection)' area. This concept is however subject to relevant detailed investigation, design, survey and consenting/statutory processes. It is also recognised that Council has considered introducing a 'Rural Residential' zoning into the District Plan that would form a transitional zone between residential living (Living 1, 2 and 3 Environments), which occurs around the urban area and coastal settlements, and rural farming (Countryside and Coastal Countryside Environments). Such lot sizes would reflect the transition zone and it is unclear if the Council would now consider such a zoning as more appropriate to the site. At this stage, further lot sizes in such zones are uncertain. Evan Cook, Council's Policy Planner, has however indicated that given the site's inclusion within the structure plan area where it is nominated for large lot living, it was excluded from the study area associated with public Plan Change 95 (as referred to in section 2.10 of this report) as Council did not wish to consider multiple zone changes over the same parcel of land.

While not a legal document, the provisions in a structure plan may be considered as 'other matters' when assessing a resource consent application.

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

10.2 Precedent effects

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

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

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

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

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

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

- ♦ it is generally contained by the bush and the landform,
- ♦ it maintains a close association with the adjacent Living 1 Environment, and
- ♦ despite its inclusion within the Countryside Environment, future development on the lots can be serviced by Council’s reticulated sewerage and water supply systems.

It is therefore considered that a distinction can be drawn between land in the general District included within the Countryside Environment, and the similarly zoned strip of pasture extending approximately 200 metres to the rear of the land zoned for residential purposes adjacent to St Anne Road and extending to the bush-line to the west of the subject site. The strip of land would appear to have limited productive potential, with the bush-line capable of forming a natural buffer between rural and residential land uses.

Whilst the subdivision will enable potential use and development of rural land that may diminish the rural character and amenities of the locality, it is not considered that the local area would be significantly altered by the proposal, with the longer term effects on the environment being a limited increase in built development on larger lots adjacent to urban land uses. The proposal is therefore unlikely to result in significant fragmentation and/or loss of the rural character and amenity that forms a backdrop to Waipu, with a minor impact on the environment and landscape effects.

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

11. Conclusion

- 11.1 Given its non-complying activity status, in order for Council to consider granting consent the application must pass one of the thresholds under section 104(D) of the Resource Management Act 1991. The two limbs of section 104(D) require Council to assess whether the effects of the proposal will be no more than minor, or whether the proposal will not be contrary to the relevant objectives and policies of the operative Whangarei District Plan. I believe that the application satisfies each of these limbs and therefore Council can consider granting consent to the proposal.
- 11.2 Having considered the application against the relevant provisions of the Act, it is therefore recommended that this application be granted, subject to conditions relating to access/footpath, stormwater disposal, sewerage/water reticulation, vegetation enhancement, landscaping and built development which will avoid, remedy or mitigate any adverse effects of the activity on the environment.

Recommendation A – Rights of way

THAT pursuant to section 348 of the Local Government Act 1974, Council **grants** consent to the application by Seaforth Pacific Ltd to grant rights of way over Lot 5 DP 340906 in favour of Lots 2, 3 and 4 of RC 38634. The rights of way are shown as rights of way F and G on the plan '*Proposed subdivision of Lot 6 DP 201334*' prepared by prepared by Reyburn and Bryant 1999 Ltd, dated July 2004 and revised 24th November 2006, reference S9434c.

THAT pursuant to section 348 of the Local Government Act 1974, Council **grants** consent to the application by Seaforth Pacific Ltd to grant a right of way over Lot 3 DP 340906 in favour of Lots 2, 3 and 4 of RC 38634. The right of way is shown as right of way H on the plan '*Proposed subdivision of Lot 6 DP 201334*' prepared by prepared by Reyburn and Bryant 1999 Ltd, dated July 2004 and revised 24th November 2006, reference S9434c.

THAT pursuant to section 348 of the Local Government Act 1974, Council **grants** consent to the application by Seaforth Pacific Ltd to grant a right of way over Lot 3 DP 340906 in favour of Lots 3 and 4 of RC 38634. The right of way is shown as right of way I on the plan '*Proposed subdivision of Lot 6 DP 201334*' prepared by prepared by Reyburn and Bryant 1999 Ltd, dated July 2004 and revised 24th November 2006, reference S9434c.

Recommendation B - Subdivision

THAT pursuant to sections 104, 104B, 104D, 108 and 220 of the Resource Management Act 1991, Commissioner Alan Withy **grants** consent to Seaforth Pacific Ltd (RC38634), subject to conditions that follow, to subdivide Lot 6 DP 201334 (title identifier 130A/159), creating four lots in the Countryside Environment ranging in net site area from 1,441 m² to 3,580 m².

The lots are to be serviced by a network of rights of way, including existing rights of way D and E over Lot 5 DP 340906, with new rights of way F and G proposed over Lot 5 DP 340906, and H and I proposed over Lot 3 DP 340906.

The lots include existing conservation covenants and it is proposed to extend the bush area further into Lots 3 and 4 to incorporate an area of proposed indigenous replanting.

Overall, the proposal has a non-complying activity status in terms of the allotment areas proposed in the Countryside Environment. It is a restricted discretionary activity with respect to the access provisions applying within this Environment.

Conditions:

1. **That before the survey plan is sealed the following requirements are to have been satisfied:**
 - (a) That subject to incorporating any changes necessitated by the following conditions of consent, the survey plan submitted for approval shall be in general accordance with the layout shown on the subdivision plan '*Proposed subdivision of Lot 6 DP 201334*' prepared by Reyburn and Bryant 1999 Ltd, dated July 2004 and revised 24th November 2006, reference S9434c (copy attached to this decision).
 - (b) The consent holder must submit a detailed set of engineering plans prepared in accordance with Council's Environmental Engineering Standards (1998 Edition). The engineering plans are to be submitted to Council's Senior Environmental Engineering Officer for approval.

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

All work needing design/certification by a Council approved IQP/CPEng will require

completion of a producer statement (design).

Plans are to include but are not limited to:

- ◆ Design details of complying sewer and water reticulation for each lot connecting to the existing Council system, with any necessary pipe bridge, manholes, hydrants, valves, and fittings, and utility service connections for each lot, inclusive of supporting calculations.
 - ◆ Design details of necessary stormwater disposal and recommendations in the amended Hawthorn Geddes Engineers and Architects Ltd report.
 - ◆ Design details of a concrete footpath from St. Anne Road to right of way G.
- (c) Submit an updated site suitability report prepared by a Council approved Chartered Professional Engineer (CPEng) or Independently Qualified Person (IQP) that includes applicable recommendations in the existing Hawthorn Geddes Engineers and Architects Ltd report dated 18th April 2005 and deletes superfluous details, and receive approval of Council's Senior Environmental Engineering Officer.
- (d) The consent holder must create necessary easements over services to the approval of the Council's Senior Environmental Engineering Officer.
- (e) The consent holder shall provide written confirmation from electricity and telecommunications utility service operators of their consent conditions in accordance with Council's Environmental Engineering Standards (1998 Edition) and show necessary easements on the survey plan to the approval of the Subdivision Officer.
- (f) The consent holder shall provide Council with three proposed access names in writing for rights of way D, E, and F, in accordance with Council policy, and in order of preference, giving reasons for each proposed name. A clear plan detailing the route of the access should also be submitted and any evidence of consultation relating to the proposed names. Please refer to the road naming policy and guidelines available on Council's website www.wdc.govt.nz.
- (g) The consent holder is to submit a site specific Traffic Management Plan (TMP) for approval compiled by a qualified Site Traffic Management Supervisor (STMS) for any works to be carried out within Council road reserve to the approval of Council's Senior Environmental Engineering Officer.
- (h) The consent holder is to submit a Road Opening Notice application for any works carried out within Council road reserve in accordance with Council's Environmental Engineering Standards (1998 Edition) to the approval of the Environmental Engineering Officer.
- (i) That all easements are granted and reserved.
- (j) That a landscape plan shall be prepared by a qualified landscape architect and submitted to Council to address all areas of the subdivision development. Any drawings contained within the landscape plan shall include the following information; sheet number/version number, north point, graphic scale, numerical scale and sheet size. Any drawings which detail planted areas shall be at a scale of 1:200 (A1) or similar.

The landscape plan shall include details illustrating how the proposed concrete footpath will seek to retain and avoid impacting on vegetation within the right of way. The landscape plan is to be generally consistent with the matters identified in the letter from Reyburn and Bryant dated 13th April 2005 and areas identified on the drawing S9434c, including the native plantings along the western boundary and areas of replanting shown as 'OA' and 'PA'.

With respect to areas 'OA' and 'PA', this shall include a '*management/restoration plan*' prepared by a suitably qualified and experienced person addressing the potential for the successful natural regeneration of bush to occur on these pastured areas; specifying a

likely timeframe for the bush to establish, any associated land management requirements and the supplementary planting that will also be required to assist the regeneration process. The indigenous species selected for planting shall be as per those found in the adjacent conservation covenant. It should outline a method of managing the kikuyu grass in a way to aid the process of natural/assisted indigenous forest regeneration (e.g. controlling 'rolling' sections of kikuyu by herbicide, spreading seed and/or planting small clumps of bulk seeding colonising tree species such as karamu (*Coprosma robusta*) and kanuka (*Kunzea ericoides*) on the upper slopes to aid seed dispersal).

The planting shall also address the provision of a visual buffer between Lot 1 and the property owned by the Jones-Dye Holdings and KN Jones Family Trust. Planning of this visual screen shall take place in consultation with the owners of this property if required by them.

The contents of the landscape plan shall be consistent with the requirements of the appropriate sections of Council's Environmental Engineering Standards. The plan shall detail the following matters:

- (i) A statement of planting intent and objectives against which the ongoing success of the mitigation planting can be assessed;
- (ii) The plan shall identify the extent of existing indigenous vegetation and prescribe methods to ensure its retention and protection during construction;
- (iii) Detailed planting plans. The plans shall include define the extent of existing indigenous vegetation to be retained, proposed species and source origin of plant material, stock sizes, spacing of plants, methods of staking plants, extent of grassed areas, maintenance methodology, and planting programme. Plant spacing shall be such that canopy closure is achieved within 3 years;
- (iv) Details of the concrete footpath and how its alignment/construction relate to existing vegetation.
- (v) Maintenance Plan. This shall form a subsection of the landscape plan and shall detail the ongoing methods of maintenance and management for the planted and existing vegetated areas for the 5 year maintenance period.
- (vi) A cost schedule for bond purposes.

The landscape plan shall be prepared to the satisfaction of Council's Resource Consents Manager or their delegated representative.

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

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

All work needing design/certification by a Council approved IQP/CPEng will require completion of a producer statement (construction) (Environmental Engineering Standards - PS4 or similar).

In the case of works to remain in private ownership, these may be inspected and approved by a Council approved IQP who has been certified to design/construct such works.

A producer statement (construction) (form Environmental Engineering Standards-PS4) is to be provided by the Council approved IQP, along with copies of all test results/photographs etc. Council's Senior Environmental Engineering Officer is to be advised of any necessary inspections/testing of private works a minimum of 24 hours before they take place in order that Council's Senior Environmental Engineering Officer may observe the inspection/testing

if so desired.

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

Failure to comply with these requirements may result in the work not being accepted as complying with the resource consent conditions/Environmental Engineering Standards (1998).

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

- (b) The consent holder shall notify Council, in writing, of their intention to begin works, a minimum of seven days prior to commencing works. Such notification shall be sent to Council's Senior Environmental Engineering Officer and include the following details:
 - i. Name and telephone number of the project manager.
 - ii. Site address to which the consent relates.
 - iii. Activities to which the consent relates.
 - iv. Expected duration of works
- (c) A copy of the approved engineering plans and a copy of the resource consent conditions and the above correspondence are to be held onsite at all times during construction.
- (d) That the consent holder shall submit written confirmation from power and telecommunications utility services operators that their conditions for this development have been satisfied in accordance with the Council's Environmental Engineering Standards (1998 edition) to the approval of the Senior Environmental Engineering Officer.
- (e) The consent holder must submit a certified and dated "as built" plan of completed services and any 'RAMM' data for any work on a public road prepared by a suitably qualified person in accordance with Council's Environmental Engineering Standards (1998 Edition) to the approval of the Council's Senior Environmental Engineering Officer.
- (f) The consent holder must supply and erect the private access name sign in accordance with sheet 25 of Council's Environmental Engineering Standards (2010 Edition), inclusive of the approved access name. (Note: Sheet 6 of the Environmental Engineering Standards (1998 edition) has been superseded).
- (g) A cash contribution for roading services to the value of \$1,000 plus GST must be paid for each additional allotment created in accordance with section 108 of the Resource Management Act 1991 and Section 53.2.1 of the Proposed District Plan.
- (h) A cash contribution for water supply services to the value of \$1,000 plus GST must be paid for each additional allotment created in accordance with section 108 of the Resource Management Act 1991 and Section 53.2.1 of the Proposed District Plan.
- (i) A cash contribution for sewerage services to the value of \$2,280 plus GST must be paid for each additional allotment created in accordance with section 108 of the Resource Management Act 1991 and Section 53.2.1 of the Proposed District Plan.
- (j) A cash contribution for stormwater services to the value of \$1,000 plus GST must be paid for each additional allotment created in accordance with section 108 of the Resource Management Act 1991 and Section 53.2.1 of the Proposed District Plan.
- (k) That a cash contribution in lieu of reserves to the value of \$1,600 for each additional allotment created plus GST is to have been paid in accordance with section 108 of the Resource Management Act 1991 and Section 53 of the Proposed District Plan.

- (l) That the proposed revegetation plantings shown in the plan approved under condition 1(j) shall be implemented all as detailed in the above landscape plan. The consent holder shall provide evidence to the satisfaction of the Council's Resource Consents Manager or their delegated representative that all plantings have been completed in accordance. The five year maintenance period shall commence after this.
- (m) That pursuant to section 108(1)(b) of the Act, a bond shall be entered into in respect of the planting and revegetation work required under Condition 1(j) to cover ongoing maintenance and failed plant replacement costs of the plantings over a five year period from the date of issue of the section 224(c) certificate. The value of the bond shall be based on the information supplied in the Landscape Plan approved under Condition 1(j) and calculated by a suitably qualified person. Details of the bond and operations covered by the bond to be submitted to the Resource Consents Manager for approval.

The bond shall be prepared at the applicant's expense. The bond may be either a cash bond or bond that is guaranteed by a recognised trading bank in New Zealand. The bond shall be reduced by up to 20% in any one year on certification by an appropriately qualified person that any replacement planting or supplementary planting identified in the Landscape Planting Plan approved under Condition 1(j) has been effectively carried out.

Upon satisfactory proof of transfer of the title by the consent holder to a new owner of any one or more of the lots, Council shall accept from the new registered proprietor a bond in substitution of the existing bond prepared at that new registered proprietor's expense and to the reasonable satisfaction of the council's solicitor which shall include the same terms and conditions as are included in the bond presently securing performance of the planting and revegetation programme for the subject lot. The substituted bond may be either a cash bond or a guaranteed bond at the new proprietor's option.

- (n) That the following conditions are to be complied with by the consent holder and/or their successor in title to the respective lots on a continuing basis and shall be the subject of a consent notice pursuant to section 221 of the Resource Management Act 1991 to be prepared at the consent holders cost and registered on the titles to the relevant allotments referred to in the conditions:
 - i. With respect to the building sites on Lots 1, 2, 3 and 4, no building shall exceed a height of 7.5 metres above the existing ground level or a height of RL41.5 (whichever is the lower).
 - ii. That development on site be limited to one building with maximum site coverage of **### (to be discussed within the hearing)**.
 - iii. That all vehicle driveways and manoeuvring areas associated with buildings on these lots shall be formed with natural materials, e.g. metal, or paved with other materials e.g. concrete or seal, using oxide additives which reduce brightness and visibility in the landscape. Details demonstrating compliance are to be submitted for the approval of Council's Compliance Officer at the time of lodging an application for building consent.
 - iv. That the exterior facades and roofs of all buildings on these lots are to be constructed with materials or painted with colours that have a reflectance value of less than 35%. This restriction does not apply to window joinery or doors.

Note: The reflectance value of a material or colour is the amount of light (and heat) they will reflect and is indicative of their likely visibility in the landscape. The reflectance values of painted values are detailed in the Resene Paints British Standard BS 5252 colour range with black having a reflectance value of 0% and white having a reflectance value of 100%. The Resene colour range is based of BS 5252:1976 Framework for Colour Co-ordination for Building Purposes.

Details demonstrating compliance are to be submitted for the approval of Council's Compliance Officer at the time of lodging an application for building consent.

- v. That all services, including power and phone connections shall be installed underground along the alignments of the access ways.
- vi. That planting within areas referred to in condition 1(j) shall be retained and not removed or pruned. Restoration and/or enhancement and/or pruning of vegetative cover may be undertaken by the landowner should the need arise, provided prior approval has been obtained from the Whangarei District Council's Resource Consents Manager.
- vii. Site development shall be in accordance with restrictions and recommendations identified in the amended site suitability report submitted under condition 1 b) of this consent, unless another site suitability report compiled by a CPEng is approved in writing by the Council's Senior Environmental Engineering Officer.

Advice Notes:

1. The Council's policy prohibits the building of any structure over an existing reticulation main.
2. That the consent holder shall be responsible for the installation of any necessary water hydrants and associated pipework to connect any building or facility to council's water reticulation system as part of this development.
3. The Council will not be responsible for vehicle access maintenance beyond the existing council road maintenance termination unless it is constructed within a legal road in accordance with prior approved engineering plans complying with table 1 of the council's Environmental Engineering Standards and to the satisfaction of the Senior Environmental Engineering Officer.
4. If any activity associated with this proposal, such as earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority for the New Zealand Historic Places Trust must be obtained for the work to proceed lawfully. An Authority is required whether or not the land on which an archaeological site may be present is designated, resource consent or building consent has been granted, or the activity is permitted under the District or Regional Plan.
5. 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.
6. This resource consent will expire five years after the date of commencement of consent unless, before the consent lapses:
 - (a) It is given effect to before the end of that period; OR
 - (b) An application is made to the Council to extend the period after which the consent lapses and the Council decides to grant an extension. The statutory considerations that apply to extensions are set out in section 125(1)(b) of the Resource Management Act 1991.
7. The Consent Holder shall pay all charges set by the Council under section 36 of the Resource Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The applicant will be advised of the charges as they fall.
8. Financial Contributions

As this application was lodged prior to the 19th April 2005, Council's development contributions as outlined in its '*Development Contributions Policy*' are not relevant, with the financial contributions included in the operative Whangarei District Plan applying instead.

Reasons for the Recommendation

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

1. Given its non-complying activity status, in order for Council to consider granting consent the application must pass one of the thresholds under section 104(D) of the Resource Management Act. The two limbs of section 104(D) require Council to assess whether the effects of the proposal will be no more than minor, or whether the proposal will not be contrary to the relevant objectives and policies of the District Plan. The application satisfies each of these limbs and therefore Council can consider granting consent to the proposal.
2. On the basis of the mitigation measures volunteered by the applicant, the development is regarded as consistent with the objectives and policies of the operative Whangarei District Plan and there are no apparent conflicts with Part 2, 'Purpose and Principles', of the Resource Management Act 1991.
3. The proposal is consistent with the intent of the New Zealand Coastal Policy Statement 2010.
4. The development is also regarded as achieving the relevant issues, objectives and policies of the Regional Policy Statement for Northland.
5. Having regard to the existing development pattern, the additional bush protection/enhancement volunteered by the applicant which will increase local amenity values and strengthen the landscape pattern, and the development restrictions that will be imposed, the potential adverse visual effects and adverse effects on rural/coastal amenity will be no more than minor.
6. There are unlikely to be any significant adverse cumulative effects that will result from the intensity of subdivision proposed, either in terms of the existing landscape, the local traffic environment or factors contributing to the local amenity (i.e. noise and privacy).
7. It is not considered that the subdivision would undermine the safety and efficiency of traffic on the rights of way or St Anne Road.
8. The development of the property as proposed would be unlikely to have wider implications beyond the site, and precedent effects and the integrity of the District Plan would not be a significant issue.

Attachments:

1. Correspondence from applicant seeking to defer hearing in favour of redesigning subdivision layout, dated 4th August 2005
2. Correspondence from the applicant confirming Seaforth Pacific Ltd as the new applicant and submitting a revised subdivision layout, dated 24th November 2006
3. Written approvals of Jones-Dye Holdings Limited, and RJ and SS Moody
4. Planning maps, map of '*Proposed Natural Area 08/225g – Brynderwyn Hills Forest Complex*', aerials, stability hazard map, map of archaeological/historical building sites in vicinity, and maps of the parcel lot sizes in the immediate vicinity
5. Coastal Management Strategy – Part III: Waipu/Langs Beach
6. Planning map 59B of public Plan Change 95 (Coastal Countryside Environment review)
7. Explanatory cover letter to submitters circulating revised subdivision plan and advising process

Further comment in response from the New Zealand Historic Places Trust, and S and R Campbell relating to the '*Amended Subdivision Proposal*'
8. Landscape assessment by Simon Cocker Landscape Architecture, dated 14th September 2006
9. Council's Senior Environmental Engineering Officer report dated 10th January 2010
10. District Plan Objectives/Policies Chapter 5 Amenity Values
Chapter 8 Subdivision and Development
Chapter 10 The Coast
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