

# Hearings Commissioner

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## **Notice of Meeting**

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

**Thursday  
13 September 2012  
9am**

**Application by  
Stuart Flexman**

**Commissioner  
Les Simmons**

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# Index

Page No

Authorisation Sheet .....	1
Environment Planner (Consents) Report.....	2
Recommendation.....	35
Attachment 1 Copy of Application as lodged, including supporting documents.....	37
Attachment 2 Addendum Report from Reyburn & Bryant plus Amended Subdivision Plan dated 7 August 2012 .....	223
Attachment 3 Littoralis Landscape Report dated June 2012 .....	260
Attachment 4 Landscape and Visual Effects Report dated September 2011 and Addendum Report dated August 2012 from RA Skidmore .....	280
Attachment 5 Copy of submissions received (including late) .....	292
Attachment 6 Correspondence New Zealand Historic Places Trust .....	317
Attachment 7 Engineering Assessment of Senior Environmental Engineering Officer .....	319
Attachment 8 Whangarei District Council's Coastal Management Strategy (Oakura Section) and Structure Plan .....	325
Attachment 9 Building Consent Information .....	355
Attachment 10 District Plan Maps .....	360

## Report to Hearings' Commissioner Les Simmons on a Resource Consent Application

Mr Stuart Flexman proposes to undertake a subdivision of the subject property into five allotments as shown on the plan referenced S12039 Rev: F (dated July 2012). The subject site has a total area of 4.6460ha and the proposed subdivision will create four lots (numbers 1 – 4), each of 601m<sup>2</sup> (net site area) with the balance area (Lot 5) being 4.4056ha (4.2868ha net site area).

The site is situated within the Countryside Environment under the operative provisions of the Whangarei District Plan. The proposal does not comply with the controlled or discretionary activity provisions relating to allotment areas pursuant to Rule 73.3.1 and is therefore considered a non-complying activity.

This subdivision consent application was lodged by Reyburn and Bryant Ltd on behalf of Mr Flexman and was reported on by Council's Consultant Environmental Planner (Consents), Mr Ian McAlley.



3 September 2012

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**Ian McAlley – Consultant Environmental Planner**  
(Consents)

\_\_\_\_\_  
**Date**

This report was peer reviewed by the following signatory:

\_\_\_\_\_  
**Alister Hartstone – Resource Consents Manager**

\_\_\_\_\_  
**Date**

## Statement of staff qualification and experience

### **Ian McAlley – Council Consultant Environmental Planner (Consents)**

*I hold a Bachelor of Planning (Honours) from Auckland University, graduating in 1996 and I have some 16 years' experience in the field of planning. I am the director of McAlley Consulting Group, a planning consultancy based in Rotorua, servicing private and local/central government clients in the central and upper North Island. I am a Full member of the New Zealand Planning Institute.*

*My local government experience in planning covers both district plan development and district plan implementation, as well as structure planning and strategic planning exercises and the development of policy and other council planning documents such as long-term council community plans. With respect to my consultancy experience, I have prepared subdivision and land use consent applications, private plan change applications, structure plan assessments, notice of requirement applications and also undertaken peer review and application processing work, including appearances in front of the Environment Court.*

### **Dean Murphy – Council Senior Environmental Engineering Officer**

*I hold the role of a Senior Environmental Engineering Officer for the Whangarei District Council. I am a civil engineer, having qualified from Waikato Polytechnic in 2007 with a NZCE (Civil). I am a graduate member of the Institute Of Professional Engineers New Zealand Inc. I have five years' experience in civil construction, site engineering and project management, including earthworks, drainage, roading, water treatment plant, sewer scheme and roading maintenance and five years' experience as WDC Senior Environmental Engineering Officer.*

*My position within the Resource Consents department requires me to assess all engineering aspects of resource consent applications based on the evidence provided by the Applicant and to provide a report as to the viability of the proposal.*

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.

In addition, Council has engaged Consultant Landscape Architect, Rebecca Skidmore to provide a visual landscape effects technical assessment of the proposal. Ms Skidmore's report and addendum report is provided in Attachment 4 of this report. A statement of Ms Skidmore's qualification and experience is provided below:

### **Rebecca Skidmore – Urban Designer and Landscape Architect**

*I am an Urban Designer and Landscape Architect. I hold a Bachelor of Science degree from Canterbury University, Christchurch, a Bachelor of Landscape Architecture (Hons.) degree from Lincoln University, Christchurch and a Master of Built Environment (Urban Design) degree from Queensland University of Technology in Brisbane, Australia. I am a director of the consultancy R. A. Skidmore Urban Design Limited and have held this position for approximately nine years.*

*I have approximately 17 years experience in practice in both local government and the private sector. In these positions I have assisted with district plan preparation and I have reviewed a wide range of resource consent applications throughout the country. These assessments relate to a range of rural, residential and commercial proposals. Many proposals I have assessed relate to the introduction of structures in sensitive and highly valued landscapes including coastal environments.*

*In my current role I regularly assist local authorities with policy and district plan development in relation to growth management, urban design, landscape, and amenity matters. I also have considerable experience in carrying out character assessments.*

*I regularly provide expert evidence in the Environment Court. I have appeared as the Court's witness in the past.*

## Section 42A Hearing Report

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<b>Hearing By:</b>	Hearings' Commissioner Les Simmons, of a Non-Complying subdivision application by Stuart Flexman to create 4 lots of 601m <sup>2</sup> (net site area) each (Lots 1 – 4), with a balance area (Lot 5) being 4.4056ha (4.2868ha net site area), within the Countryside Environment.
<b>Evidence By:</b>	Ian McAlley <i>BPlan (Hons), MNZPI</i>
<b>File Refs:</b>	SD1100055 P117016.SD TRIM: 12/69258
<b>Dated:</b>	3 September 2012

### 1.0 The Proposal & Background

#### 1.1 The Proposal

- 1.1.1 Mr Stuart Flexman proposes to undertake a subdivision of the subject property into five allotments as shown on the plan referenced S12039 Rev: F. The application was originally lodged on 11 July 2011 (Attachment 1), with revisions to the proposal made in August 2012. The revisions mainly related to proposed mitigation measures and it is the August 2012 information that will be the focus of this report, except where earlier information is applicable (refer Reyburn and Bryant Addendum report, Attachment 2).
- 1.1.2 The subject site has a total area of 4.6460ha and the proposed subdivision will create four lots (numbered 1 – 4), each of 601m<sup>2</sup> (net site area) with the balance area (Lot 5) being 4.4056ha (4.2868ha net site area).
- 1.1.3 The site is the result of previous subdivisions that are in the process of being completed. This process/history is described in Section 2.3 of this report.
- 1.1.4 All proposed allotments will gain access over a shared access (right-of-way), onto an unformed paper road and then via the beach, over Ohawini Bay around the point to Ohawini Road (being a legal formed road). Effluent disposal for Lots 1 to 4 will be provided separately from the sites, in easement areas contained within proposed Lot 5 (shown as easements C, D, E and F).
- 1.1.5 An assessment of visual landscape and amenity effects prepared by Mr Mike Farrow of Littoralis Landscape Architecture, dated March 2011, was provided with the original application (Attachment 1). A further landscape report was provided (dated June 2012) with the revised application (refer Attachment 3). The landscape assessment concludes that *"the proposal can be achieved without impact of any magnitude upon the natural character, landscape values and amenity values of Ohawini"*<sup>1</sup>.
- 1.1.6 An archaeological assessment prepared by Mr Jonathan Carpenter of Geometria Ltd supports the application (Attachment 1). The archaeological assessment notes that there are archaeological sites on the subject site and that new sites were discovered during the assessment. One recorded site lies within the path of the proposed right-of-way access and it is recommended that an authority under Section 11 of the Historic Places Act be applied for to modify this affected site. Other than this issue, Mr Carpenter does not raise any concerns with respect to the proposal.
- 1.1.7 Further to the archaeological assessment, a cultural impact assessment has been provided by the Ngati Wai Trust Board, prepared by Mr Clive Stone, dated 1 April 2011 (Attachment 1). The assessment details conditions to be placed on any approved subdivision consent application and does not raise any specific concerns or reservations with the proposal.

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<sup>1</sup> Littoralis report, June 2012, pg.16

- 1.1.8 Further, an e-mail exchange between the applicant's agent and Mr Stone in February 2011 raises the issue of the applicant potentially having to apply for an authority under Section 12 of the Historic Places Act should there be a requirement to modify "*unknown sites ... uncovered during construction*". Mr Stone in his response of 14 February 2011 states that the Ngati Wai Trust Board would support a Section 12 application along with their earlier stated support for a Section 11 application.
- 1.1.9 An engineering suitability report prepared by Mr James Blackburn of Hawthorn Geddes Engineers and Architects (reference 7882) dated 31 May 2011 was submitted with the application (Attachment 1). The report includes a detailed site investigation and concludes that subject to restrictions and recommendations regarding stability, foundations and effluent, the subject site is suitable for development.
- 1.1.10 As a result of assessments undertaken, the applicant proposes the following mitigation measures to be applied to any granted subdivision:
- An 8m setback and landscaping along the southern boundary of Lots 1 - 4, with maximum building coverage on each lot of no more than 210m<sup>2</sup>.
  - Restrictions on the location of any dwelling on Lot 5 along with a height restriction of 6m, restrictions on the exterior colours and reflectivity values of such and a requirement for backdrop and foreground landscape planting to occur.
  - Wetland protection, weed control and enhancement planting to occur in the areas around the existing wetlands/ponds and stream on the site, including portions of the site to the north being Lot 1 LT 423624 (created by RC 38688).
  - Protection of the existing native vegetation on the elevated portion of the subject site and the same on portions of the site to the north, being Lot 1 LT 423624 (created by RC 38688).
  - That the remaining lower, flat portions of the subject site, including those to the north being Lots 1 and 3 LT 423624 (created by RC 38688), be subject to 'no subdivision' covenants.
- 1.1.11 A copy of the amended scheme plan for the proposed subdivision is provided in Attachment 2.

## 1.2 Background

- 1.2.1 The application was lodged with Council on 11 July 2012 and is included as Attachment 1.
- 1.2.2 Following an initial assessment, a decision was made on 3 August 2011 to publicly notify the application. Direct notification was provided to 83 parties with ten submissions (2 late) received (detailed in Section 4 of this report and included as Attachment 5).
- 1.2.3 On 30 August 2011, Council commissioned Ms Rebecca Skidmore, landscape architect, to undertake a review of the consent application. A draft report was received from Ms Skidmore (dated 5 September 2011, refer Attachment 4) which was provided to the applicant for their information.
- 1.2.4 Following the receipt of Ms Skidmore's report there has been further correspondence with the applicant, including meetings to discuss the proposal, which has resulted in the revised proposal, accompanied by the revised landscape report and addendum report from Mr Hood dated 7 August 2012 (refer Attachment 2). It is noted that the revised application does not amend the lot layout or the physical characteristics of the proposal, but does provide further justification and proposed mitigation measures with respect to the proposal.

## 2.0 Site and Surrounds Description

### 2.1 Environment, Resource Areas and Other Notations

- 2.1.1 The site is zoned Countryside Environment, as are the sites immediately to the north, south and east. The site adjoining the western boundary of the subject site is zoned Coastal Countryside Environment (refer Environment Planning Maps 1 and 23A) (Attachment 10).
- 2.1.2 The lower (eastern) portion of the site is shown as Flood Susceptible Area and the western portion Notable Landscape Area (refer Resource Area Planning Maps 1 and 23A) (Attachment 10). It is noted that the proposed building area on Proposed Lot 5 is free from the Notable Landscape Area.
- 2.1.3 Further, the WDC GIS system details the site to be a mixture of high, medium and low stability hazard and medium and low effluent disposal potential. Also the proposed development is located on an “at risk” aquifer, identified in the Regional Water and Soil Plan. The aquifer is listed as being at risk from ‘saltwater intrusion’.
- 2.1.4 The Ohawini Bay settlement is considered in the Whangarei District Council Coastal Management Strategy (adopted 2003) and the Oakura Structure Plan (adopted 2009) applies to Ohawini Bay settlement (further detailed in Section 8.1).
- 2.1.5 There are no plan changes that apply to the subject site.

### 2.2 Site and Surrounds

2.2.1 The site and its setting are described in:

- The “Site Description”, Section 2, page 3 of the Application, prepared by Reyburn and Bryant reference 12039, dated July 2011 (see Attachment 1).
- “The Setting and the Site” section on page 2 of the assessment of Visual, Natural Character and Amenity Effects prepared by Mike Farrow of Littoralis Landscape Architecture dated March 2011 (see Attachment 1); and the second landscape report with the same title and author, with reference to the same section and page number, dated June 2012 (see Attachment 3).
- The “Site Description” section on pg. 1 of the Engineering Suitability Report compiled by Hawthorn Geddes Engineers and Architects Ltd reference: 7882 dated 31 May 2011 (see Attachment 1).
- “The Site and its Context” section of the Landscape and Visual Effects Assessment Review prepared by Rebecca Skidmore, dated 5 September 2011 (see Attachment 4).

2.2.2 Having visited the subject site on 23 November 2011, I concur with the descriptions of the site and surrounding environment as contained within the above reports. I consider the following the key elements of the site and the surrounding area:

- i. The site is considered to be within the coastal environment<sup>2</sup>.
- ii. The site has two distinct elements to it, being the flat, western portion adjacent to the existing ‘residential’<sup>3</sup> development and the hill portion to the east. The only vehicle access to the site is via the unformed road, along the beach to the settlement of Oakura.

<sup>2</sup> Both Mr Farrow (Littoralis report, dated June 2012, pg. 12) and Ms Skidmore (Skidmore report, September 2011, para 5.2) confirm that the subject site is located within the “coastal environment”.

<sup>3</sup> I consider for the purposes of assessing this application ‘residential’ development to be development on lots of 2000m<sup>2</sup> or less, as this is the controlled activity subdivision standard in the Living 3 Environment and/or the Living 1 Environment, where reticulated services are not available.

- iii. The western portion of the site is subject to a conservation covenant, protecting the existing bush area (as is the immediately adjacent site to the north). The majority of the site is in grass with some single trees along with other stands of bush existing on the site.
- iv. There is an existing farm track running through proposed Lot 5 and a stream that runs down from the hills in the west, joining a waterway that enters the site from the south, both draining north, through adjoining sections to the coast.
- v. The significant majority of the physical built development in the Ohawini Bay settlement is located in the flat back shore of the bay, encased by bush covered hills. The flat backshore area sits behind the north-south running beach, which forms the western boundary of the settlement.
- vi. There are two concentrations of 'residential' development within the wider settlement, firstly in the northern portion of the settlement, located to the east of the subject site with an average lot size of 816m<sup>2</sup>. Secondly in the southern portion of the settlement located on the south side of Taiwa Road, with an average lot size of 955m<sup>2</sup>. However, the only residential zoning (Living 1 Environment) within the settlement applies to the eight waterfront sections located to the east of the subject site, adjacent to the vehicle access from the beach. All other land within the settlement is zoned Countryside Environment.
- vii. Additional to the development on smaller residential sized lots there are a number of larger allotments in the settlement, some of which contain multiple dwellings/buildings.

### 2.3 Certificate of Title Interests & Previous Resource Consents

- 2.3.1 The underlying certificate of title for the site is CFR 282224 and it is legally described as Lot 4 DP 369518, with a total area of 9.6650ha.
- 2.3.2 A subdivision consent (WDC reference RC 38402) was granted on 1 November 2004 which created a lot of 0.5189ha, now referred to as Lot 3 LT 423624 (as shown on the plan of subdivision) and a balance area of approximately 9ha, including a conservation covenant.
- 2.3.3 The 9ha balance area from the above subdivision was then subdivided (WDC reference RC 38688) creating two lots of 4.5 and 4.6460ha, now referred to as Lots 1 and 2 of LT 423624 respectively.
- 2.3.4 The proposed subdivision that is the subject of this application is a subdivision of Lot 2 LT 423624. A certificate pursuant to section 224 of the RMA has now been issued (before the 17th September lapse date) and new titles are now pending.
- 2.3.5 Because new titles will be issued prior to this subdivision potentially being implemented it is proposed any covenants be registered on Lots 1 and 3 DP 423624.
- 2.3.6 Access to the site, where it does not occur on legal formed or unformed road, occurs below mean high water springs. The legality and appropriateness of this access has been assessed in previous applications and found to be appropriate. It is noted that a consent notice (CONO 6866548.2, Attachment 1) is attached to Lots 1, 2, 3 and 4 of LT 369518, relating to the extent of Council obligations with respect to vehicle access and landowner obligations to maintain vehicle access beyond the point where Council's obligations end. If the subdivision application is successful then a consent notice will come down onto the titles of the new lots proposed.

## 3.0 Reasons for Consent

### 3.1 District Plan Assessment

- 3.1.1 The subject site is located in the Countryside Environment of the Operative Whangarei District Plan. The rules governing subdivision are contained within Chapter 73 of the Plan. Detailed below are the applicable rules and the degree of any infringement.

Relevant Rule	Proposal Relative to Rule Requirement	Activity Status
71.3.1 Allotment Area	As a controlled activity subdivision, every allotment in the Countryside Environment must have a minimum net site area of 20.0ha. The discretionary activity requirement is a minimum average net site area of 4.0ha. The average lot size (net) of the five lots proposed is 0.9054ha, therefore less than the 4ha average.	Non-Complying
Rule 73.3.7 Vehicle crossings	The proposal will have access to an unformed road and the proposed access (right-of-way) is not proposed to comply with the formation standards detailed in the Environmental Engineering Standards.	Restricted Discretionary
Rule 73.3.8 Vehicle Crossings	The proposed vehicle crossing from the subject site onto the adjoining paper road is not proposed to be constructed to the applicable standard.	Restricted Discretionary
Rule 73.3.14 Sewage	There is no Council maintained reticulated sewerage system available for connection and proposed Lots 1 – 4 are not proposed to dispose of their wastewater within the net site area of these lots.	Restricted Discretionary

3.1.2 The proposed subdivision complies with all other required standards.

3.1.3 Overall the proposal is regarded as a **non-complying** activity.

### 3.2 Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

3.2.1 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES Contaminated Soils) were gazetted on 13<sup>th</sup> October 2011 and took effect on 1<sup>st</sup> January 2012. Council is required by law to implement this NES in accordance with the Resource Management Act 1991 (RMA). The standards are applicable if the land in question is, or has been, or is more likely than not to have been used for a hazardous activity or industry and the applicant proposes to subdivide or change the use of the land, or disturb the soil, or remove or replace a fuel storage system. The following table assesses the proposal's compliance with the NES regulations:

Question	Answer	Comment
Is an activity described on the HAIL currently being undertaken on the site to which this application applies?	No Evidence	<i>There is no evidence to suggest that an activity identified in the HAIL is currently being undertaken on the site</i>
Has an activity described on the HAIL ever been undertaken on the site to which this application applies?	No Evidence	<i>There is no evidence to suggest that an activity identified in the HAIL has ever been undertaken on the site.</i>
Is it more likely than not that an activity described on the HAIL is being or has been undertaken on the site to which this application applies?	No Evidence	<i>There is no evidence to suggest that an activity identified in the HAIL is or has ever been undertaken on the site. As such it is considered not likely that a HAIL activity has or is being undertaken on the subject site</i>

- 3.2.2 Following the above assessment, the NES Contaminated Soils is not considered applicable in this instance.

## 4.0 Public Notification, Submissions and Written Approvals

### 4.1 Notification

- 4.1.1 The application was publicly notified on 3 August 2011 with the notification period closing on 6 September 2011.
- 4.1.2 A total of eight submissions were received within the notification period and two submissions (from Erica Wellington on 8 September 2011 and Ohawini Bay Limited on 9 September 2011) after the close of the submission period. A decision was made pursuant to Section 37 of the RMA, under delegated authority on 23 September 2011, to accept the two late submissions. The applicant's agent was informed of this decision by letter dated 23 September 2011 and has not objected to the acceptance of the late submissions.

### 4.2 Submissions

- 4.2.1 The following is a summary of the submissions received:
- 4.2.2 **Jillian Ruth Logan**, Support, have not requested to be heard. No issues raised.
- 4.2.3 **Wayne Forlong**, Support, have not requested to be heard. No issues raised.
- 4.2.4 **Donaghue Brothers Family Trust**, Support, have not indicated if they wish to be heard. No issues raised.
- 4.2.5 **Diane Henderson**, Support subject to amendments, do not wish to be heard.
- 4.2.6 Request retention of the "green environment" of the area, with sections no smaller than those previously allowed (800m<sup>2</sup>). The submitter considers that sections any smaller will impact on the environment creating extra pressure on water, sewerage and traffic. The submitter proposes that instead of four allotments of 600m<sup>2</sup> each that there could be three of 800m<sup>2</sup>, plus the balance lot. The submitter considers that this is not urban infill and the preference should be for the area to remain a "beach holiday" atmosphere.
- 4.2.7 **Georgina Walton Murray and Melvyn Pery Kingi** (joint submission), Oppose, have not requested to be heard.
- 4.2.8 The submitters own shares in the neighbouring property to the South (Ohawini B1) adjoining the boundary of proposed Lots 1- 4. They raise concerns related to the location of the four lots on an adjoining, currently pastoral area on the north side of their property and consider the new development will affect their privacy and the quality of time they spend at their property on holidays and weekends.
- 4.2.9 The submitters raise concerns regarding the potential precedent effects from the creation of small lots considering that others may follow suit, diminishing the tranquillity of the Bay. The submitter raises other concerns that more development will result in an increase in lots resulting in increased traffic, noise, pollution and other environmental issues.
- 4.2.10 The submitters consider that the current Countryside zone has inappropriate environmental rules for this type of development, particularly in relation to building heights of 10m and building coverage of 500m<sup>2</sup> or 5% whichever is the greater, along with concerns regarding shadowing effects from dwellings on the proposed sites.
- 4.2.11 **Graham Milne**, Director, Ohawini Bay Limited, Oppose, have not indicated if they wish to be heard.
- 4.2.12 The submitter has concerns that there is no formed road access with the only access to the subject site currently being along the beach, necessitating driving over his legal title with subsequent concerns about the additional traffic that this development will cause. However, the submitter has no objection to the subdivision per se provided that alternative access is provided.

- 4.2.13 **Ohawini Bay Limited**, Oppose, have not indicated if they wish to be heard.
- 4.2.14 Further to the above submission, the submitter considers that as there is no proper access, no further intensification of land use should occur until a formed and sealed road is provided. The submitter states they would be happy for the Council to approve the proposal subject to conditions requiring formation of road access which does not include the beach.
- 4.2.15 **Erica Wellington**, Oppose, wish to be heard.
- 4.2.16 The submitter raises concerns regarding allotment size, vehicle access, water quality monitoring and sewage disposal. The submitter considers that they were not consulted and is of the opinion that the environmental effects of the proposal will be more than minor with sewage disposal proposed adjacent to a watercourse and wetland habitat.
- 4.2.17 The submitter requests that vehicle access should be provided to a standard sufficient to allow for possible future expansion of the Ohawini Bay settlement.
- 4.2.18 **Whangaruru South Residents & Ratepayers Association**, Neutral, do not wish to be heard.
- 4.2.19 The Association details that over the years constant, on-going complaints have been received from the residents of Ohawini regarding the issue of road access. With only beach access available to Ohawini, during peak holiday periods Parutahi Beach, the beach before Ohawini (and which is part of the beach access to Ohawini), is blocked by parked boat trailers and vehicles making access in and out of Ohawini difficult and close to impossible towards high tide. The Association request that WDC become more proactive with finding an area or piece of land that can be set aside for parking of boat trailers to accommodate the greater vehicle movements into and out of Ohawini as the residential population increases.
- 4.2.20 **Northland Regional Council**, Neutral, do not wish to be heard.
- 4.2.21 Regarding wastewater management, NRC comment that the dripper irrigation wastewater disposal system proposed by the applicant's engineering consultant has been proven to work and is a viable option of relatively low risk if installed, operated and maintained correctly. This is the NRC's preferred option for this subdivision proposal and the required discharge consent from NRC has been applied for.
- 4.2.22 With respect to natural hazards the application information contains a flood level assessment based on HIRDS version 2, which has been superseded by version 3. NRC recommends that the flood assessment should be undertaken using version HIRDS version 3, in addition to making an allowance for climate change for storm rainfall, in line with WDC Environmental Engineering Standards. There will also be a need to make adjustments to the floor levels as the ground level of the subject site is between 2m and 3m but most is under 2.5m One Tree Point datum. The NRC recommends that the minimum floor levels associated with this development should be 3m OTP datum (in line with WDC Engineering Standards) or 500mm above the revised 5% flood level, whichever is higher.
- 4.2.23 The proposed development is located on an "at risk" aquifer, identified in the Regional Water and Soil Plan. The aquifer is listed as being at risk from 'saltwater intrusion'. Inappropriate development of the site through the diversion of stormwater and the use of impervious surfaces can reduce the aquifer recharge (water getting back into the aquifer) and potentially contaminate the groundwater (where low quality water enters the aquifer). NRC request that, if the application is approved, an advice note be placed on the title, recognising that an "at risk" aquifer is located beneath the proposed development and to ensure that the development does not result in contamination of the surrounding aquifer or a reduction in groundwater recharge.
- 4.2.24 Further to the above submissions, no submission was received from the **New Zealand Historic Places Trust** during the submission period. This matter was followed up due to the specific identification of archaeological sites on the property. It came to light that the Trust response had been delayed due to staff changes and staff being on leave. Correspondence with Historic Places Trust showed that the Trust had no significant concerns with the proposal and this matter will be addressed further in the effects assessment (refer Attachment 6).

## 5.0 This Resource Management Act 1991- Statutory Considerations

### 5.1 Section 104

5.1.1 Section 104(1) provides the matters, subject to Part 2 of the Act that Council must have regard to when considering an application for resource consent and any submissions received. These matters are:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of—*
  - (i) *a national environmental standard;*
  - (ii) *other regulations;*
  - (iii) *a national policy statement;*
  - (iv) *a New Zealand coastal policy statement;*
  - (v) *a regional policy statement or proposed regional policy statement;*
  - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

### 5.2 Section 104B

5.2.1 Section 104B outlines Council's authority when making a determination on a discretionary or non-complying activity. Section 104B states that:

*After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—*

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

### 5.3 Section 104D

5.3.1 Being a non-complying activity, the proposal is subject to the thresholds outlined in section 104D of the Act, '*Particular restrictions for non-complying activities*'. Section 104D states:

- (1) *Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
  - (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
  - (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
    - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
    - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
    - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
- (2) *To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity*

5.3.2 From the above, the relevant assessment will occur below.

## 6.0 Actual and Potential Effects on the Environment

### 6.1 Definition of Effect

6.1.1 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.

### 6.2 Permitted Baseline

6.2.1 In terms of determining whether the adverse effects of the proposal are more than minor, section 104(2) of the Act provides that Council “may” have regard to the permitted baseline. Effects on the environment that are permitted under the Plan (or by way of resource consent) are disregarded.

6.2.2 The District Plan does not contain any 'permitted' subdivision activities. However, the standards relating to land use activities may be taken into account to determine the extent to which the District Plan anticipates and provides for intensification or development 'as of right'.

6.2.3 The subject site is 4.6460ha hectares and is void of any built development. The construction of residential units on the site (excluding a minor residential unit) is controlled by Rule 38.4.1 *Residential Units*. One residential unit is permitted per site, with a minimum of 20.0ha (net site area) required for each residential unit beyond the first (e.g. two residential units requires a site area of 40ha).

6.2.4 In addition Rule 38.4.2 *Minor Residential Units* allows the construction of one minor residential unit per site, provided that the site has a minimum area of 8,000m<sup>2</sup>. A minor residential unit is defined in Chapter 4 as:

*a residential unit located no more than 15.0 metres from another residential unit on the same site/lot with a gross floor area of no more than 70.0m<sup>2</sup>, excluding the gross floor area used exclusively for the storage of motor vehicles in association with the minor residential unit.*

6.2.5 The permitted baseline dictates that at present one residential unit and associated minor residential unit can be constructed as of right on the subject site, subject to any other relevant provisions being met.

6.2.6 Additional development rights applying to the subject site under the District Plan are:

- Allowable building coverage (specified in Rule 38.4.4) of 500.0m<sup>2</sup>, or 5% of the net site area of (whichever is the greater). With regard to the subject site area of 4.6460ha, the maximum allowable will building coverage is 2,323m<sup>2</sup>, although considered unlikely to be established (i.e. a 'fanciful proposal').
- There is no limit on the number of accessory buildings that can be constructed, provided that the bulk and location criteria applying within the Countryside Environment are satisfied and total building coverage (detailed above) is not exceeded. The general bulk and location controls are: an 8.0m road setback and 3m setback from other boundaries, with a height limit of 10m.

6.2.7 With regard to the proposed subdivision, using the same standards, the extent of development enabled post subdivision and not taking into account any of the mitigation measures offered, would be:

**Lots 1 – 4**, one residential unit and accessory buildings, with total building coverage not exceeding 500m<sup>2</sup>.

**Lot 5**, one residential unit and one minor residential unit and accessory buildings, with total building coverage not exceeding 2,143m<sup>2</sup>.

6.2.8 Therefore the additional development permitted by the proposed subdivision would result in the addition of four residential units into the environment.

6.2.9 Notwithstanding the above, it is considered that the permitted baseline is of limited relevance to the consideration of this application because of the reliance upon a non-complying activity subdivision for the level of development activity detailed above to be able to occur.

### 6.3 The Countryside Environment

6.3.1 In terms of understanding the character and amenity values that relate to the Countryside Environment, within the overview (section 5.2) Chapter 5, Amenity Values of the District Plan, the following statement is provided to describe in general terms the characteristics of the Countryside Environment:

*The Countryside Environment tends to be used predominantly for primary production, but is also used for low-density residential purposes. When choosing to live in a rural area, people must expect and accept a certain level of odour, noise and other effects which are characteristic of primary production, recognising the scale and intensity of these activities which contribute to rural character. Rural areas do, however, tend to have high amenity values, 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.*

*The Countryside Environment is sensitive to activities which have continuous or ongoing effects, or that are located in close proximity to other land uses such as residential units.*

6.3.2 The potential effects of this proposal, including those on the character and amenity values that relate to the Countryside Environment will be discussed below.

6.3.3 In terms of this application, the actual and potential effects arising from the proposed development relate primarily to effects on character and amenity values, landscape and visual effects, servicing, traffic and access effects, archaeological and cultural effects and cumulative effects. It is necessary to consider effects with regard to the site, its immediate environment and the wider environment also, noting the agreed coastal context.

### 6.4 Servicing

6.4.1 The application as lodged is supported by an engineering assessment from Hawthorn Geddes. An assessment of the proposal has been undertaken by Mr Dean Murphy, WDC Senior Environmental Engineering Officer. Overall, it is considered that the potential effects of the proposal with regard to engineering and servicing matters will be no more than minor.

6.4.2 Some specific issues have been raised through the assessment and submission process and these will be detailed below:

6.4.3 **Roading and Access.** Ohawini Bay does not have access available from a Council maintained road, with the only access being available along the beach to Oakura, with this access being tide dependent.

- 6.4.4 It is noted that an indicative road access is depicted from Oakura to Ohawini Bay on Planning Map 23A, but WDC has no intention of constructing this access at this point in time. Submissions from the Whangaruru South Residents & Ratepayers Association and Ohawini Bay Ltd/Graham Milne raise issues with regard to access along the beach, principally concerns related to the parking of cars and boat trailers on the beach, conflicting with through traffic and vehicles crossing private land whilst accessing properties at Ohawini Bay.
- 6.4.5 In both instances, these activities are considered to be an extension of existing activities and in terms of the provision of sufficient legal and physical access<sup>4</sup>, it is considered that this is provided as the lots have access to a 'legal road'. Beyond the road that the site fronts, it is recognised that access is along the beach
- 6.4.6 It is noted that the underlying title for the subject site contains a consent notice (CONO 6866548.2, refer Attachment 1) outlining the lot owner's obligations in terms of maintenance of access and detailing that "*Council will not be responsible for maintenance of the legal road which gives access to their properties beyond the point where the Council's maintenance of the road currently terminates*".
- 6.4.7 Whilst this situation is not considered the norm, Council's Roading Manager, having expressed some unease, principally due to the pressure to form an alternative access to alleviate pressure/conflict with boat launching/parking, considers the imposition of a consent notice detailing Council's and landowners obligations with respect to access is a sufficient means by which to manage this issue.
- 6.4.8 With regard to vehicles crossing private land as they travel along the beach, this is an existing situation and the landowner has the right to fence off their private land if they so wish to avoid this issue.
- 6.4.9 In terms of the access construction standards proposed as part of the subdivision, the proposed access is considered sufficient for the use and in keeping with the existing pattern of development.
- 6.4.10 **Wastewater Disposal.** On-site treatment and disposal will be required as there is no reticulated system available. It is considered that the proposed effluent disposal method is appropriate.
- 6.4.11 **Flooding/Floor Levels.** The Northland Regional Council raise concerns regarding the engineering assessment undertaken with respect to possible flood levels and required allowances for climate change. This matter has been discussed with the applicant's agent post the receipt of submissions and it is understood that they will be presenting evidence at the hearing to address this matter.
- 6.5 Archaeological and Cultural Effects**
- 6.5.1 The proposal is supported by an archaeological assessment and a cultural impact assessment. Whilst there are archaeological sites identified on the subject site, with new sites having been identified as part of the assessment, neither the archaeological, nor the cultural impact assessment raise significant concerns with respect to the proposal. Furthermore, it is recognised that undertaking the works necessary to implement the proposal would require authorities to be obtained from the New Zealand Historic Places Trust to modify known and un-known sites.
- 6.5.2 Notwithstanding the requirement to obtain authorities from the New Zealand Historic Places Trust to modify archaeological sites, the Trust has reviewed the application and the supporting information and has not raised any concerns (refer Attachment 6). Therefore, it is concluded that the potential effects of the proposal on archaeological and cultural values will be no more than minor.

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<sup>4</sup> Section 106, RMA

## 6.6 Landscape and Visual Effects

- 6.6.1 “Amenity values” is defined in section 2 of the Resource Management Act 1991 as “...*those natural and physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence and recreational attributes.*” As such the amenity values of an area can be described as those special attributes, relating particularly to natural and physical characteristics that make an area or neighbourhood unique. Therefore it is important to consider the effects that development may have on the various visual and landscape characteristics (as a subset of wider character and amenity) that contribute to the amenity and character of the receiving environment.
- 6.6.2 With regard to this proposal it is considered that landscape and visual effects must be considered in terms of both the site, the immediate and the wider environment and coastal context.
- 6.6.3 The applicant has provided two assessments of ‘Visual, Natural Character and Amenity Effects’, both prepared by Mr Mike Farrow of Littoralis Landscape Architecture. The first assessment from Mr Farrow accompanied the original application and the second accompanied the revised proposal, in particular providing further comment with respect to landscape and visual amenity matters and also proposing mitigation measures.
- 6.6.4 As part of this assessment process, Council undertook a review of the information provided by Mr Farrow, via Ms Rebecca Skidmore from RA Skidmore Urban Design Ltd. Ms Skidmore has provided two reports, the first being in response to the original application as lodged and the second in response to the revised proposal.
- 6.6.5 In terms of the potential effects of development on the site, an assessment has been made of the extent of development that can occur as a permitted activity. As assessed, a dwelling and a minor household unit can be built anywhere on the site (subject to compliance with all bulk and location controls) with no mitigation necessary, as a permitted activity. The two locations on the site proposed for such development are the flat area in the eastern portion of the site, adjacent to the southern boundary, or the more elevated western portion of the site. In terms of a permitted activity proposal, building a dwelling in these areas would be an either/or scenario as it is not permitted in both. However, because of the extent of building coverage enabled on the site in total (approximately 2,300m<sup>2</sup>) it is possible to establish built development in both areas.
- 6.6.6 Further, as detailed in Section 1.1.10 of this report, the applicant has proposed a number of mitigation measures to avoid potential adverse effects from proposed future development on the proposed lots in terms of landscape and visual amenity effects. Specifically with regard to development on the elevated portion of Lot 5, those mitigation measures include:
- i. Restricting location of development to the lower slope;
  - ii. A height restriction of 6m;
  - iii. A requirement for backdrop and foreground landscape planting; and
  - iv. Restrictions on colour and reflectivity.
- 6.6.7 With regard to the potential for a dwelling to be constructed on Lot 5 on the elevated portion of the site, Ms Skidmore concludes that:

*“I remain of the opinion that the construction of a dwelling in the elevated location proposed will diminish the natural character of the coastal environment and will result in adverse visual effects when viewed from the settlement. However, the suite of controls and additional vegetation protection and enhancement measures will result in an outcome that is superior to the ‘permitted’ baseline scenario set out in the amended application”<sup>5</sup>*

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<sup>5</sup> Skidmore, Addendum report, August 2012, para 4.2

- 6.6.8 As the construction of a dwelling in the location proposed on Lot 5 is a permitted activity (when considered against the un-subdivided subject site), the potential effects of this are considered to be no more than minor.
- 6.6.9 With regard to proposed Lots 1 – 4, I will address the landscape and visual amenity effects, particularly with regard to the adjoining property to the south, in this section and issues regarding settlement pattern, character and amenity effects (the wider effects) separately.
- 6.6.10 Specific mitigation measures proposed to be applied to Lots 1 – 4 are:
- i. An 8 m setback from the southern boundary;
  - ii. A requirement for planting along the southern boundary;
  - iii. A requirement that only post and wire fencing be used along the southern boundary (unless an alternative is approved by the neighbours); and
  - iv. A maximum building coverage per lot of 210m<sup>2</sup>
- 6.6.11 With regard to development on proposed Lots 1 – 4, Ms Skidmore notes that the “*permitted baseline’ scenario ... would see the construction of a very large dwelling and associated accessory buildings in the vicinity of existing buildings on the adjoining property*”<sup>6</sup>. However, “*the creation of these lots will not result in adverse visual effects when viewed from the coast or the settlement itself*”<sup>7</sup> and the “*additional restrictions on site development for proposed Lots 1 to 4 will be effective in limiting the adverse visual effects on the adjoining property to the south*”<sup>8</sup>.
- 6.6.12 Therefore, it is concluded that the potential landscape and visual amenity effects resulting from development on proposed Lots 1 – 4, when viewed from the coast, the settlement and particularly the adjoining property to the south will be no more than minor.

## 6.7 Settlement Pattern, Character and Amenity Effects

- 6.7.1 The maintenance and enhancement of amenity values<sup>9</sup>, including natural or physical qualities and characteristics of an area<sup>10</sup>, along with maintenance and enhancement of the quality of the environment<sup>11</sup> and the preservation of the natural character of the coastal environment<sup>12</sup>, including protection from inappropriate subdivision, use and development<sup>13</sup>, are all prominent resource management issues.
- 6.7.2 Issues of character and amenity can have a number of subjective meanings derived specifically from tangible elements such as density of development, noise, odour etc. and the more intangible elements arising from peoples own perceptions and associations with a particular area/matter.
- 6.7.3 Section 6.3.1 of this report details the characteristics of the Countryside Environment. Below is a bullet point assessment with regard to the site and the surrounding area with respect to those characteristics as defined:
- The site and the surrounding area is not predominantly used for primary production, with any primary production activities being of very low scale;

<sup>6</sup> Skidmore, Addendum report, August 2012, para 3.3

<sup>7</sup> Skidmore, Addendum report, August 2012, para 3.1

<sup>8</sup> Skidmore, Addendum report, August 2012, para 3.3

<sup>9</sup> Section 7(c), RMA

<sup>10</sup> Meaning of “amenity values”, Section 2, RMA

<sup>11</sup> Section 7(f), RMA

<sup>12</sup> Both Mr Farrow (Littoralis report, dated June 2012, pg. 12) and Ms Skidmore (Skidmore report, September 2011, para 5.2) confirm that the subject site is located within the “coastal environment” and therefore section 6(a) RMA is relevant.

<sup>13</sup> Section 6(a), RMA

- The residential development is not low density (residential density approximately 2,500m<sup>2</sup> per unit<sup>14</sup> across the settlement but Council records show that some properties appear to have no building consents (refer Attachment 9)), when compared against the 20ha controlled activity subdivision limit and there are varying degrees of density across the wider settlement, however the average lot size in the Ohawini settlement is 18.7568ha, recognising that some properties that have flat portions within the immediate settlement stretch up into the hills beyond;
- Feelings of remoteness and community would change depending on the time of the year, with variance between summer and winter depending on the number of people/holiday makers at the settlement;
- There are no significant noise producers in the immediate area such as roads, airports or factories, so it would be expected that there would be low noise levels, particularly at night;
- Like feelings of remoteness and community, the degree of privacy would vary depending where in the settlement you are. Overall, the settlement has a very informal feel to it, with limited fencing and/or screening and distance between dwellings varies across the settlement;
- Apart from screening by way of vegetation and/or natural topography, daylight and sunlight access is effectively unimpeded;
- The level of vehicular traffic will vary depending on the time of year and the number of people/holidaymakers in the settlement. Submissions received do point toward high levels (comparatively) of vehicular traffic in the peak summer period and some traffic conflict occurring on the beach; and
- The area would not be described as a green 'unspoiled' landscape due to the level of built development that exists in the settlement. However, the indigenous vegetation on the hill areas behind the settlement is a predominant feature encasing the backshore area and whilst zoned Countryside Environment the coastal context of the site must be taken into account.

6.7.4 Therefore, in my opinion, the subject site and the surrounding area is not reflective of the characteristics as detailed in the District Plan that are "primarily" evident in the Countryside Environment. The wider area does display some residential characteristics, in terms of the density of existing development, however, only a very small portion of the Ohawini settlement is actually zoned for residential purposes. This I consider is the key issue with respect to the assessment of this application, particularly that there are existing lots of a 'residential' nature, zoned Countryside Environment in the Ohawini settlement, not supported by a residential (Living Environment) zoning.

6.7.5 Concerns have been raised in submissions particularly Henderson, Murray, Kingi and Wellington that subdivision to the lot size proposed is out of character with the surrounding environment and will cause effects on outlook and privacy. In terms of the rules of the District Plan, the size proposed for Lots 1 – 4 is significantly smaller than the controlled and discretionary activity standards and being categorised as non-complying activities are therefore not envisaged by the Plan's structure.

6.7.6 However, within the Countryside zoned portion of the Ohawini settlement there are existing lots not entirely dissimilar to Lots 1 – 4. The residential sized sites in close proximity to the subject site (to the east), including those zoned Living 1, have an average lot size of 816m<sup>2</sup> (being 26% larger than Lots 1 – 4) and those to the south, fronting Taiwa Road (all zoned Countryside Environment) have an average site size of 955m<sup>2</sup>, being 37% larger than Lots 1 – 4.

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<sup>14</sup> Reyburn and Bryant, letter report, 7 August 2012, pg. 3

- 6.7.7 It is widely accepted by the Environment Court that there is a direct correlation between a decreasing average lot size and loss of rural character (as affirmed in *Foster v Rodney District Council [2010] NZRMA 159*). However, as detailed above I consider that the subject site and the surrounding area does not display a number of the characteristics detailed in the Plan as being evident in the Countryside Environment. Therefore, it could be concluded that the proposal, if approved, would not result in a loss of 'rural' character (recognising the sites zoning), but the impact on the character of the settlement, particularly its coastal nature, requires further consideration.
- 6.7.8 Notwithstanding the above, the site is zoned Countryside Environment and the District Plan places significant emphasis on allotment size as a mechanism for maintaining amenity and character. In this regard section 73.4 states:

*"Subdivision that does not comply with a standard for a controlled or discretionary activity is a non-complying activity. Consequently, for any such proposal to be assessed as acceptable, the applicant would first need to show that the proposed subdivision would have no more than minor effects on the overall level of density appropriate to the Environment in question, and/or was consistent with the density of development in the immediate area surrounding the proposal. In other words, the proposed subdivision would need to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes".*

- 6.7.9 The average lot size (net) of the five lots proposed is 0.9054 ha, which is greater than the average residential density (approximately 2500 m<sup>2</sup>) of the Ohawini Bay settlement, however proposed Lots 1 – 4 are only 601m<sup>2</sup> each and therefore significantly smaller than the average lot size in the wider settlement (18.7568ha) and also noticeably smaller than the existing 'residential' sections in the Ohawini Bay settlement. Therefore, whilst the proposed subdivision may not increase the existing density of residential development, it will reduce the average lot size. Therefore, whether proposed Lots 1 – 4 are in keeping with the surrounding development is an issue at hand.
- 6.7.10 In terms of the historic provisions that have applied to subdivision in the Ohawini area, both the former County Plan, which became the Transitional Plan and the Proposed Plan (the subdivision provisions of such were the subject of significant change through the hearing, submission and Environment Court process), do not contain provisions that enable the small lot development that is evident today as a controlled activity. Therefore any possible historical relevance to the current development pattern would appear to be minimal.
- 6.7.11 With regard to the proposal being considered, Mr Farrow states that proposed Lots 1 – 4:

*"are unobtrusively positioned at the rear of the backshore flat ... [and] would have almost no exposure to views from outside the extent of the settlement ... [and] from within the body of the settlement ... would be experienced as an expansion (essentially an "infilling") of an existing pattern of built form being most evident to those properties that immediately border the Trust's land holding"*<sup>15</sup>

Mr Farrow further concludes that:

*"in the very contained setting, these four lots will have extremely limited adverse effects from beyond their immediate setting. Development of those titles would have amenity impacts upon a small number of adjoining properties, although not in a manner that is out of context with established patterns of housing within Ohawini" whereby, the proposed mitigation measures "will assist to mitigate potential effects upon the amenity of those neighbours"*<sup>16</sup>

- 6.7.12 With regard to the above comments, I am of the opinion that an "expansion" to a settlement and "infilling" are two separate outcomes. I consider that infilling occurs between or within existing development, but that the subdivision proposed, particularly proposed Lots 1 – 4 will be an expansion of the existing intensive (residential) development pattern, westward into an area of rural development.

<sup>15</sup> Littoralis report, June 2012, pg 8

<sup>16</sup> Littoralis report, June 2012, pg 15

- 6.7.13 Further, I note Mr Farrow states “*these four lots will have extremely limited adverse effects*” (emphasis added), rather than ‘minor effects’ with such effects not “*out of context with established patterns of housing within Ohawini*”.
- 6.7.14 Whilst I recognise the above, Ms Skidmore has concluded that the mitigation measures proposed will address any visual and landscape effects with respect to future development on proposed Lots 1 – 4. However, an outstanding issue is whether the amenity effects can be assessed to be no more than minor. The existing amenity (particular for adjoining landowners to the south) could be impacted upon by noise, intensity of activity and the density of development, which whilst a similar density of development may be evident in other parts of the Ohawini settlement this density of development is not uniform across the whole of Ohawini and this such is not envisaged by the subdivision standards applicable in the Countryside Environment.
- 6.7.15 In terms of the settlement pattern, Ms Skidmore states that:
- “I do not concur with the overall conclusions that the creation of four additional residential lots is an appropriate extension to the settlement that will not result in adverse amenity effects”<sup>17</sup> and that “the proposal will result in a fragmented settlement pattern that is inconsistent with the established subdivision pattern of Ohawini Bay. In particular, the sites are of a smaller scale and different proportion than generally found in the settlement and do not have a direct relationship to the street network”<sup>18</sup>.*
- 6.7.16 With regard to the above issues, and recognising my earlier conclusion that the landscape and visual effects of future development on proposed Lots 1 – 4 can effectively be mitigated with respect to the neighbouring property to the south, the potential effects with regard to settlement pattern, character and amenity are different.
- 6.7.17 These potential effects on the wider environment are proposed to be mitigated by:
- Requiring wetland protection, weed control and enhancement planting to occur in the areas around the existing wetlands/ponds and stream on the site, including portions of the site to the north being Lot 1 LT 423624 (created by RC 38688).
  - Protecting the existing native vegetation on the elevated portion of the subject site and the same on portions of the site to the north, being Lot 1 LT 423624 (created by RC 38688).
  - Requiring the remaining lower, flat portions of the subject site, including those to the north being Lots 1 and 3 LT 423624 (created by RC 38688), be subject to ‘no subdivision’ covenants.
- 6.7.18 These proposed mitigation measures are designed to form a backdrop to the proposed new lots and also to limit the extension of any further small lot development into the adjoining rural land.
- 6.7.19 Notwithstanding the mitigation offered the proposed subdivision would result in a concentration of development not envisaged by the applicable rules of the District Plan, with lot sizes albeit similar, but smaller than those residential lots already existing in the wider settlement. The creation of Lots 1 – 4 would be an extension of the settlement, rather than an infilling and I agree with Mr Skidmore’s comment that the proposal would result in a “*fragmented settlement pattern ... inconsistent with the established subdivision pattern*”.
- 6.7.20 Overall having regard to the above matters I consider that the adverse effects on settlement pattern, character and amenity will be **more than minor**.

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<sup>17</sup> Skidmore report, dated September 2011, para 2.4

<sup>18</sup> Skidmore addendum report, dated August 2012, para 4.1

## 6.8 Cumulative Effects

- 6.8.1 *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.”*

- 6.8.2 With reference to *Dye*, the determination of cumulative effects requires the consideration of any adverse effects of the proposal when added to any adverse effect of an existing activity or activities that forms part of the existing environment. As such the assessment of cumulative effects should be undertaken with reference to the environment that presently exists.
- 6.8.3 Concerns have been raised in submissions with regard to traffic effects, which will potentially be exacerbated by increasing numbers of people driving vehicles on the beach, living and/or holidaying at Ohawini Bay and launching boats and parking boat trailers. It is difficult to quantify these potential effects, particularly given the very uncommon nature of the access arrangements to Ohawini Bay. Further, any subdivision consent if granted will be subject to a requirement to attach consent notices to any new title, requiring that any new lot owner is responsible for maintaining access where a road or access way has not been constructed to Council standards. Council's engineers are satisfied that the imposition of such a requirement will alert any lot owner to the limitations of the access provided and make them aware of their obligations, creating a 'buyer beware' situation. As such, any potential adverse effects are considered to be mitigated.
- 6.8.4 The principle area of concern in regards to cumulative effects in this instance, is the proposed subdivision's potential to result in the cumulative deterioration of the character and amenity values within the receiving environment beyond an acceptable level. It is considered that in accordance with the overall conclusions in section 6.7.20 of this report, the proposed subdivision would enable potential use and development of the subject site that would negatively impact on the settlement pattern, character and amenity.
- 6.8.5 The proposed subdivision seeks to form five allotments with a minimum area of 601m<sup>2</sup> and an average net site area of 0.9054ha, assessed to be a non-complying activity. Whilst the District Plan identifies the need for flexibility in allotment sizes to allow for 'consolidated development' in appropriate locations, the onus is placed on maintaining the existing density levels and not increasing the existing density levels of development by allowing incrementally smaller allotments. This is highlighted in section 73.4 of the Plan which states that any non-complying subdivision within the Countryside Environment *“would need to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes.”*
- 6.8.6 The existing environment within the Ohawini Bay settlement contains a range of allotment sizes. Proposed Lots 1 – 4 would be smaller than the most intensive, residential development that exists. Whilst it is possible to mitigate the visual and landscape effects with respect to the adjoining site to the south, by way of creating a vegetative screen, overall I consider that the addition of these smaller allotments and attendant development would negatively impact the character of the subject site with an extension of the 'residential' development into the rural fringe.
- 6.8.7 Whilst the site specific landscape and visual amenity effects can be mitigated, there exists the potential for this proposal to permanently alter the character of the site and the surrounding area from one of rural character to one of intensive residential. It is noted that the recent subdivision of the site and the adjoining sites have retained some degree of rural amenity due to the more appropriate lot sizes, in terms of the subdivision rules of the Countryside Environment.

6.8.8 In my opinion this potential change therefore “*tips the balance*”. I concur with the opinion of Ms Skidmore that the proposed subdivision will result in a “*fragmented settlement pattern ... inconsistent with the established subdivision pattern*”. As such, there is the potential that this further subdivision, particularly the concentration of small lots, will result in cumulative effects on the environment that are incongruent with the rule structure applied to the Countryside Environment, are not in keeping with the expectations as to amenity and character preservation in the coastal environment and will lead to an erosion of the character and amenity experienced in the Ohawini Bay settlement.

6.8.9 Overall, I consider that the proposed subdivision will result in **more than minor** cumulative effects on character and amenity.

## 6.9 Effects Summary

6.9.1 Overall, it is considered that the effects of the proposed subdivision are **more than minor** for the following reasons:

- After reviewing the application report and supporting material and having visited the subject site and surrounds I consider that whilst there is a permitted baseline that exists with respect to the extent of built development that could occur on the subject site, coupled with the potential to mitigate the visual and landscape effects of proposed Lots 1 – 4 with respect to the neighbouring landowners to the south, that overall the effects of enabling the establishment of four lots, smaller than those existing at the smaller end of the scale within the Ohawini settlement, will have adverse effects on the settlement pattern, the character and the overall amenity of the site and the surrounding area.
- While there are smaller lots that exist in the surrounding area, the District Plan rule structure that applies to the subject site, does not support the creation of more small lot development.
- The permitted level of residential development post the subdivision is significantly greater in percentage terms than the current situation today.

6.9.2 Therefore as the potential adverse effects of the proposal are assessed to be more than minor, I consider that the proposal does not pass the first gateway test in section 104D(a) of the RMA.

## 7.0 Relevant Policy Statements, Plans or Proposed Plans

### 7.1 Hierarchy of Documents

7.1.1 Having completed an effects assessment pursuant to section 104(1)(a) an assessment pursuant to Section 104(1)(b) of the relevant planning documents will be undertaken. This assessment will be laid out in a hierarchical manner (noting that an assessment against the National Environmental Standard for Contaminated Soils has been undertaken above) with assessments against:

- i. The New Zealand Coastal Policy Statement 2010;
- ii. The Northland Regional Council Regional Policy Statement;
- iii. The Northland Regional Council Regional Water and Soil Plan; and
- iv. The Whangarei District Council Operative District Plan.

## 7.2 Statutory Gateway Test

7.2.1 Further to section 104(1) of the Act, Section 104D(b) explicitly directs that Council consider whether the proposed activity will not be “contrary” to the objectives and policies of the relevant plan<sup>19</sup>.

7.2.2 The meaning of “contrary” was considered in the decision of *Monowai Properties Ltd V Rodney District Council* (A215/03) where it was established:

*“A non-complying activity will rarely, if ever, find direct support in the objectives and policies of a Plan but an absence of support does not equate to the activity being contrary to those provisions. Contrary to in this context means... repugnant to... or opposed to... the objectives and policies considered as a whole”.*

7.2.3 Amongst other matters, the following assessment considers whether the proposed subdivision will be contrary to the relevant objectives and policies of the relevant plans for the subject site and the surrounding area.

## 7.3 New Zealand Coastal Policy Statement

7.3.1 The following policies of the New Zealand Coastal Policy Statement are considered relevant, with a related commentary underneath each:

### 7.3.2 **Policy 6: Activities in the coastal environment**

1. *In relation to the coastal environment:*

*c. encourage 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;*

*f. consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable*

### **Policy 13: Preservation of natural character**

1. *To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*

*b. avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; ...*

2. *Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:*

*a. natural elements, processes and patterns;*

*g. a range of natural character from pristine to modified; and*

*h. experiential attributes, including the sounds and smell of the sea; and their context or setting.*

### **Policy 14: Restoration of natural character**

*Promote restoration or rehabilitation of the natural character of the coastal environment, including by:*

*a. identifying areas and opportunities for restoration or rehabilitation;*

*c. where practicable, imposing or reviewing restoration or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require restoration or rehabilitation, possible approaches include:*

*i. restoring indigenous habitats and ecosystems, using local genetic stock where practicable; or*

*ii. encouraging natural regeneration of indigenous species, recognising the need for effective weed and animal pest management; or*

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<sup>19</sup> ‘Plan’ is defined in Section 43AA of the RMA to be “a regional plan or a district plan”

iii. creating or enhancing habitat for indigenous species; or

v. restoring and protecting riparian and intertidal margins; ...

**Policy 15: Natural features and natural landscapes**

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:

b. avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment; ...

- 7.3.3 Whilst the proposal will result in development occurring adjacent to an existing settlement, because the proposed subdivision is on the settlement edge, it will not lead to the avoidance of sprawling or sporadic patterns of settlement growth. This issue was very recently considered by the Environment Court in the recent case of Longview Estuary Estate v WDC, whereby the Court stated that “s 6 of the Act and the NZCPS<sup>20</sup> and the NRPS<sup>21</sup> provide a clear policy framework that seeks to preserve the natural character values of the coastal environment by ensuring that coastal settlements are consolidated in a manner that avoids sprawling or sporadic patterns of settlement and urban growth. Some of the objectives and policies of the District Plan support the approach: others which purport to set up a “transitional” approach, in our view, take matters too far in a policy sense, and are inconsistent with the superior instruments to that extent. The superior instruments must of course prevail”. With regard to the application at hand, Ms Skidmore is of the opinion that “the location and configuration of the small residential sites, while contiguous with the existing settlement, is fragmented from it and represents sporadic expansion of the urban environment. It does not represent the established pattern of development where sites are configured to front the street<sup>22</sup>”. Further, because the site is not supported by an urban/residential zoning and neither is the majority of the small lot development in Ohawini, it will not lead to the “consolidation” of an existing urban area. Therefore, I consider that the proposal will be contrary to Policy 6.
- 7.3.4 It is recognised that the site and the surrounding area does not demonstrate a number of the characteristics considered to be normally evident in the Countryside Environment. The site specific landscape and visual effects of the proposal can be effectively mitigated, however, there are outstanding concerns with respect to the effect of the proposal on the settlement pattern, character and amenity of the area. Therefore, I consider that the proposal will not “*preserve the natural character of the coastal environment and ... protect it from inappropriate subdivision*” (emphasis added) and therefore is contrary to the direction contained in Policy 13.
- 7.3.5 The proposal does include mitigation options related to wetland protection, streamside enhancement, landscaping and vegetation protection. However, the potential positive effects of these actions have not been quantified beyond a general degree and whilst the benefit potential is recognised, these actions are also proposed as mitigation/offset methods. Therefore, I am of the opinion that the proposal is neutral in terms of its achievement or otherwise of Policy 14.
- 7.3.6 The proposed reduction in building development allowed on proposed Lot 5 has been recognised as an improvement, in terms of minimising landscape effects, when compared to the permitted activity standards. However, there is the potential that if the proposed subdivision were not occurring, that built development would occur on the flat, less obtrusive area on the site, therefore further reducing any potential landscape effects.
- 7.3.7 Furthermore, whilst the site specific effects of the proposed development on Lots 1 – 4 can be successfully mitigated, there are wider settlement pattern, character and amenity effects that are considered to be more than minor. Therefore, on balance I consider that the proposal does not achieve the above Policy 15.

<sup>20</sup> New Zealand Coastal Policy Statement

<sup>21</sup> Northland Regional Policy Statement

<sup>22</sup> Skidmore report, dated September 2011, para 5.3

### 7.3.8 Policy 20: Vehicle access

1. Control use of vehicles, apart from emergency vehicles, on beaches, foreshore, seabed and adjacent public land where:

c. Danger to other beach users; or

d. Disturbance of the peaceful enjoyment of the beach environment; ...

might result.

2. Identify the locations where vehicular access is required for boat launching, or as the only practicable means of access to private property or public facilities, or for the operation of existing commercial activities, and make appropriate provision for such access.

3. Identify any areas where and times when recreational vehicular use on beaches, foreshore and seabed may be permitted, with or without restriction as to type of vehicle, without a likelihood of any of (1)(a) to (g) occurring.

7.3.9 From submissions received it appears that there are existing issues related to vehicle use of the beach which will potentially be exacerbated by way of this proposal. Particularly that increased traffic could be a “danger to beach users” and disturb “the peaceful enjoyment of the beach environment”.

7.3.10 There is no alternate road access available to Ohawini Bay except for the beach, therefore a greater number of lots and associated dwellings will result in increased traffic. However, the beach is “the only practicable means of access to private property” in Ohawini Bay and Council has stated they have no intention of providing alternate road access and are satisfied that placing consent notices on any new lots identifying these issues and detailing the lot owner's responsibilities in terms of access maintenance is sufficient. Therefore, whilst I consider that the proposal does not achieve the above policy, relevant Council staff are confident that the issue can be appropriately managed, therefore I consider that the proposal does not offend the above policy either.

7.3.11 Overall, on balance, I consider that the proposal is contrary to the relevant policies of the New Zealand Coastal Policy Statement, particularly as the proposal will not avoid sprawling or sporadic patterns of settlement growth, will not lead to consolidation of an existing urban area and will not preserve the natural character of the coastal environment and protect it from inappropriate development.

## 7.4 Northland Regional Policy Statement

7.4.1 The Northland Regional Policy Statement covers the management of natural and physical resources across the Northland region. The provisions within the Regional Policy Statement give guidance at a higher planning level in terms of the significant Regional issues. As such it does not contain specific rules that trigger the requirement for consent but rather give guidance to consent applications on a Regional level.

### 7.4.2 22.3 Objectives

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

#### 22.4 Policies and Methods of Implementation

##### (a) Preservation of Natural Character

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

##### (a) In relation to preservation of natural character avoiding

(i) Types of use and development (including sporadic and sprawling subdivision) that would be likely to have adverse effects on the coastal environment; and

(ii) Cumulative adverse effects (including those associated with incremental change and a shift towards dominance of the built form); and

(iii) Any conflict (potential or actual) with current or existing uses, values and the natural character of adjacent land and water areas, and

*Where it is not practicable to avoid these matters, Councils will have regard to the extent to which they may be remedied or mitigated.*

- 7.4.3 It is considered that the proposed subdivision is within the coastal environment. Further it has been concluded that there will be effects from the proposal with respect to settlement pattern, amenity and character which will not protect “*the coastal environment from inappropriate subdivision, use and development (including any adverse effects associated with location, scale and/or character)*”, therefore I consider that the proposal does not achieve the above objective and policies.

## 7.5 Regional Soil and Water Plan for Northland

- 7.5.1 The Regional Soil and Water Plan for Northland (RSWP) provides strategic direction for the management of soil and water resources within the Northland region. It controls discharges onto land and water and land disturbance activities and aims to prevent and control activities occurring within the Northland Region which may result in unacceptable adverse effects.
- 7.5.2 The Northland Regional Council has made a submission on this application which has been detailed in this report. The Northland Regional Council consider that subject to appropriate effluent disposal and engineering management of any development that the effects of the proposal will be no more than minor.
- 7.5.3 Therefore, I consider that the proposal (subject to obtaining any necessary resource consents and undertaking development in accordance with the conditions of such consents) is in keeping with the policy direction as contained within the Regional Water and Soil Plan.

## 7.6 Operative Whangarei District Plan

- 7.6.1 The relevant objectives and policies in the Operative Whangarei District Plan for the proposed subdivision are located in *Chapter 5 – Amenity Values, Chapter 6 – Built Form and Development, Chapter 8 – Subdivision and Development and Chapter 10 – The Coast.*

### 7.6.2 Chapter 5 – Amenity Values

- 7.6.3 This Chapter describes the expectations of the various Environments (zones) in terms of amenity values. The Countryside Environment overview broadly describes this part of the Whangarei District as an area predominantly utilised for primary production, but also an area used for low density rural residential purposes. As noted in section 6.3.1 of this report, Chapter 5 identifies nine central characteristics which influence the high amenity values typically experienced within the Countryside Environment.

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

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

**Objective 5.3.5** *The actual or potential effects of subdivision use and development is appropriately controlled and those activities located and designed, are to be compatible with existing and identified future patterns of development and levels of amenity in the surrounding environment.*

- 7.6.5 Objective 5.3.1 represents the overarching objective for the Amenity Values Chapter. Whilst the surrounding area does not demonstrate a number of the characteristics of the Countryside Environment, the effects assessment concludes that the proposed subdivision will represent the continuation of sporadic and ad hoc subdivision that will result in more than minor effects on the character and amenity values of the site and locality. Further, the proposal will not maintain or enhance the amenity values of the coastal environment.
- 7.6.6 With specific respect to the above objectives, Ms Skidmore provides the opinion that “*the creation of a number of smaller lots arranged in a disconnected manner from the existing settlement will diminish the amenity of the area. The small residential sites are not*

*characteristic of the rural land to the south, west and north and those characteristics described in the District Plan as contributing to a rural character”<sup>23</sup>.*

7.6.7 The Coastal Management Strategy and the Oakura Structure Plan do not detail the locality around the site as an area proposed for future development or intensification. The proposed subdivision continues the irregular nature of allotment sizes and development within the wider area in an ad hoc nature that will advance the cumulative degradation of amenity and character values within the surrounding environment. Therefore I consider that the proposed subdivision will not be compatible with existing and any future patterns of development and levels of amenity and therefore is contrary to the Objectives stated above.

**7.6.8 Policy 5.4.1 Effects on the Local Environment**

*To ensure that activities do not produce, beyond the boundaries of the site, adverse effects that are not compatible with the amenity values characteristic of the surrounding and/or adjacent environment unless, such effects are authorised by a district plan, a designation, a resource consent or otherwise. The following effects should be given particular consideration in this respect:*

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

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

**Policy 5.4.2 Character and Timing of Activities**

*To allow activities where their nature, timing and duration do not result in adverse effect on amenity values beyond the extent compatible with the characteristics of the surrounding and/or adjacent Environment/s.*

7.6.9 Whilst the site-specific effects of the proposal are planned to be mitigated by means of planting and boundary setback, this may not effectively manage all effects. The proposal introduces the potential for four additional lots to be created where it would have been reasonable to expect, at a maximum, only one dwelling and a minor household unit to be established. Therefore, it is not possible “to ensure” that the level of effects due to the concentration of development created by Lots 1 – 4 will be “compatible with the amenity values characteristic of the surrounding and or adjacent environment”. Consequently, I consider that the proposal does not achieve the above Policies.

**7.6.10 Policy 5.4.5 Countryside Environments**

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

**Policy 5.4.7 Intensity and Design of Subdivision and Development**

*To ensure that subdivision and development do not unduly compromise the outlook and privacy of adjoining properties, and should be compatible with the character and amenity of the surrounding environment. Particular regard should be given to:*

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

*Restrictions on density of development and subdivision size may be required to ensure new development does not increase population concentration in noise-sensitive areas.*

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<sup>23</sup> Skidmore, report dated September 2011, para 5.7

7.6.11 “*The intensity, scale and design of subdivision, and buildings within subdivisions, have the potential to cause adverse environmental effects*”.<sup>24</sup> Creating progressively smaller allotments in an area not set aside for intensive development will impact the character and amenity values of the environment. The proposal represents sporadic subdivision, with the “*proposed small lots ... not well integrated with the existing settlement pattern and are inappropriate in character, scale and location*”.<sup>25</sup> In particular, “*the layout and intensity of the subdivision*” is not “*compatible with the character and amenity of the surrounding environment*”. Therefore, the proposal is in opposition to and considered to be contrary to the above Policies.

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

7.6.13 This recently developed chapter primarily provides policy direction for the urban areas of the Whangarei District. However it is highlighted that Objectives 6.3.2 and 6.4.2 (provided below) are directly relevant as they refer to avoiding sprawling or sporadic and ribbon development in the rural environment.

7.6.14 **Objective 6.3.2.1** *Subdivision and development that ensures consolidated development in appropriate locations and avoids sprawling or sporadic subdivision and ribbon development patterns in the coastal and rural environment.*

##### **Policy 6.4.2 Consolidated Development**

To consolidate urban development by:

- i. *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.*
- ii. *Directing rural lifestyle and rural-residential development to appropriate locations adjacent to existing settlements, rather than allowing sporadic development throughout rural and coastal areas.*

7.6.15 Having regard to the existing density of development within the vicinity I consider that the proposal clearly does not represent the appropriate consolidation of that development, but rather promotes the extension of sporadic subdivision and ribbon development in a rural environment that has not been identified for such intensification within the District Plan.

#### 7.6.16 **Chapter 8 – Subdivision and Development**

7.6.17 This chapter provides a policy framework to address the effects of subdivision and development on the environment and acknowledges that subdivision and development can have both positive and negative effects.

7.6.18 **Objective 8.3.1** *Subdivision and development that achieves the sustainable management of natural and physical resources whilst avoiding, remedying or mitigating adverse effects on the environment.*

**Objective 8.3.2** *Subdivision and development that does not detract from the character of the locality and avoids conflicts between incompatible land use activities.*

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

##### **Policy 8.4.3 Density of Development**

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

##### **Policy 8.4.4 Cumulative Effects**

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

##### **Policy 8.4.7 Design and Location**

To ensure subdivision and development is designed and located so as to avoid, remedy or mitigate adverse effects on, and where appropriate, enhance:

<sup>24</sup> WDC District Plan, Policy 5.4.7, Explanation and Reasons

<sup>25</sup> Skidmore report, September 2011, pra 5.9

- *Natural character of the coastal environment, indigenous wetlands, lakes and rivers and their margins;*
- *Landscape values;*
- *Ecological values;*
- *Amenity values and sense of place;*
- *Archaeological, cultural (including tangata whenua) and heritage features;*
- *Sites of Significance to Maori;*
- *Heritage areas of significance to Maori;*
- *The relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;*
- *Infrastructure, particularly roads and the Airport;*
- *Water and soil quality;*
- *Versatile soils;*
- *Mineral resources;*
- *Business growth and development opportunities within defined Business Environments;*
- *Cross boundary coordination;*
- *Human health and safety.*

7.6.19 The Explanation and Reasons associated with Objectives 8.3.1, 8.3.2, 8.3.7 and Policies 8.4.3 8.4.4 and 8.4.7 state the following:

- i. Overall environmental quality can be compromised by inappropriate subdivision and development.*
- ii. Subdivision and development that is sensitive to the surrounding environment is an important means of achieving sustainable management.*
- iii. Ongoing and subsequent subdivision and development of land, can potentially result in cumulative adverse effects as the volume of development exceeds the carrying capacity of the environment to absorb these effects.*
- iv. Higher density subdivision can potentially result in conflict between existing and potential land uses.*
- v. Provision of onsite mitigation between such activities, particularly through larger lot sizes, is therefore desirable.*

7.6.20 It is considered that the proposed subdivision represents a continuation of an ad hoc approach to subdivision and development that does not represent the sustainable management of natural and physical resources. I consider, the effects of the subdivision on the wider environment cannot be avoided, remedied or mitigated, as the subdivision results in the further degradation of rural and coastal character and amenity values beyond an acceptable level.

7.6.21 The proposed subdivision seeks to establish allotments with an average net site area smaller than the average that exists in the area and also with lot sizes that are smaller than anything currently existing in the area. Whilst the District Plan identifies the need for flexibility in allotment sizes, the onus is placed on creating a density “*appropriate to the locality*” (Policy 8.4.3).

7.6.22 This is highlighted in section 73.4 of the Plan which states that any non-complying subdivision within the Countryside Environment “*would need to be in keeping with the surrounding allotment sizes already in existence and should not increase the existing density of development by producing smaller allotment sizes.*” While I acknowledge that the receiving environment in part has been compromised by smaller allotments, these lots have been approved under previous planning regimes and would arguably be viewed less favourably under the current regime. Irrespective of this, I consider that the intensification of development in the locality, proposed by this subdivision will result in the further intensification of the site in a sporadic manner that will cumulatively result in the degradation of character and amenity within the locality.

7.6.23 As noted, I consider that the proposed allotment sizes are not of an appropriate density within the context of the receiving environment. Increased density should only occur in appropriate areas or areas that have been identified for intensification in the District Plan. The flexibility provided within the District Plan is not enabled at the cost of the existing amenity and character elements that are apparent in the locality. In this instance it is concluded that the

proposed subdivision has the potential to result in the further erosion of the amenity and character elements within the area, beyond an acceptable level.

#### 7.6.24 **Policy 8.4.12 Services and Infrastructure**

*To ensure that all subdivision and development is capable of being provided, by the subdivider or developer, with adequate services and infrastructure having regard to Whangarei District Council's Environmental Engineering Standards 2010 (except where the subdivision or development is for specific protection purposes), including:*

- *Vehicle access, including emergency service vehicle access;*
- *Water supply, (including for fire fighting purposes), storm water and sewage disposal;*
- *Energy and telecommunication connections;*
- *Useable open space in urban areas;*
- *During the design and construction of the subdivision, measures to reduce storm water run off.*

7.6.25 Council's Senior Environmental Engineering Officer has assessed the site servicing arrangements of the proposed subdivision in accordance with the Whangarei District Council Environmental Engineering Standards 2010 in terms of access, water supply, provision of telecommunications and power, wastewater management and stormwater management. Having regard to these matters, the application site was assessed as being developable in the manner proposed and satisfies Section 106 of the Act. Therefore, the suitability of the site for the development proposed is not in question and it is consequently considered that the proposal is consistent with this policy.

#### 7.6.26 **Chapter 10 – The Coast**

7.6.27 The overview to Chapter 10, The Coast states:

*The coastal environment has high amenity, landscape, intrinsic, cultural and ecological value. Due to the demands placed upon this resource, and the potential effects on its values, it is important that the coast, including coastal settlements, is managed to ensure that its use and development does not exceed the capacity of the environment to absorb the adverse effects of such activities.*

*The preservation of the natural character of the coastal environment is a matter of national importance (section 6(a) Resource Management Act 1991). It is necessary to protect the natural character of the coastal environment from inappropriate subdivision, use and development. Whether a subdivision, use or development in the coastal environment is appropriate will in part be determined by the extent to which that location still has natural character, and the extent to which the activity will affect this character.*

7.6.28 **Objective 10.3.1** *Preservation and protection of the natural character of the coastal environment from inappropriate subdivision, use or development.*

**Objective 10.3.2** *The maintenance or, where appropriate, enhancement of the amenity, landscape, cultural, intrinsic and ecological values of the coastal environment by taking account of the cumulative effects of subdivision development.*

#### **Policy 10.4.1 Natural Character**

*To ensure that subdivision, use and development is managed in a manner that seeks to preserve, enhance and restore (where appropriate) the natural character of the coastal environment. Particular consideration should be given to:*

- *Landscapes, seascapes and landforms;*
- *Significant indigenous vegetation and significant habitats of indigenous fauna;*
- *Intrinsic values of ecosystems;*
- *Sites of Significance to Maori;*
- *Significant places or areas of historic or cultural significance;*
- *Heritage values, including cultural, historical, spiritual and intrinsic values;*
- *Amenity values*

#### **Policy 10.4.2 Natural Character**

*To recognise, in assessing the actual and potential effects of an activity, that most parts of Whangarei District's coastal environment have some degree of character which requires protection from inappropriate subdivision, use and development.*

#### **Policy 10.4.3 Location of Activities**

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

7.6.29 It has been concluded that the proposal will have negative effects on the character and amenity of the area and will result in adverse cumulative effects. As such the proposal is considered to be “*inappropriate subdivision*” that will not lead to the “*preservation and protection of the natural character of the coastal environment*”. Therefore, I consider that the proposal is contrary to Objectives 10.3.1 and 10.3.2 and Policies 10.4.1 and 10.4.2.

**7.6.30 Policy 10.4.4 Services and Infrastructure**

*To avoid adverse effects on the natural character, amenity, landscape, cultural, intrinsic and ecological values and functioning of an area by ensuring that subdivision, use and development occur where there is adequate infrastructure, services and on-site mitigation measures.*

7.6.31 Whilst the site specific servicing aspects of the proposal have been concluded to be capable of being successfully undertaken, the limited road access to the site is recognised. It is therefore questioned as to whether there is adequate infrastructure to service this proposal, however on balance I consider that the proposal neither achieves nor offends this Policy.

**7.6.32 Policy 10.4.7 Future Development**

*To ensure that subdivision, use and development in the coastal environment for business and residential use is located within existing coastal settlements. Subdivision, use or development should only occur in other areas where there will be no more than minor adverse effects, taking into account:*

- *The objectives and policies in this chapter (Chapter 10);*
- *Landscape values, landform and scenic values;*
- *Indigenous flora and habitats of indigenous fauna;*
- *Heritage values including archaeological sites and sites of significance to Maori;*
- *Amenity values;*
- *The degree of modification from the natural state;*
- *Infrastructure and services, particularly roads;*
- *Water and soil quality;*
- *Cross boundary conflicts;*
- *Human health and safety.*

7.6.33 The explanation and reasons associated with the above policy states that:

*It is important to avoid sporadic and sprawling residential ... development in the coastal environment, due to the adverse effects that such development can have, particularly on the natural character of the coastal environment. Intensive ... development should therefore be confined to those areas that are already within the bounds of existing coastal settlements. Structure Plans and the Whangarei Coastal Management Strategy help to identify appropriate future development areas.*

7.6.34 It is specifically noted that the site is not zoned for residential development, nor is it identified in the Coastal Management Strategy and the associated structure plan as an area for future residential development. It is concluded earlier that the proposal will have negative effects on the character of the surrounding environment and therefore is considered to be contrary to the above Policy.

7.6.35 Overall, I consider that the proposal is contrary to the relevant Objectives and Policies of the Whangarei District Council Plan, which does not support the proposed subdivision in this locality because it will result in:

- i. Significant adverse effects on amenity and character values;
- ii. Subdivision that is sporadic, sprawling or ribbon development, otherwise inappropriate and incompatible, in character, intensity, scale or location;
- iii. Consolidation of urban development in areas not identified either currently, or in the future, for that purpose; and
- iv. Results in a density not appropriate for the locality

7.6.36 Therefore, in alignment with the assessment undertaken, I conclude that the proposed subdivision is contrary to the overarching intent of the aforementioned relevant objectives and policies of the Operative District Plan and consider that the proposal does not pass the second gateway test in section 104D(b).

## 8.0 Other Matters

### 8.1 Non-statutory Planning Documents & Plan Changes

- 8.1.1 The Coastal Management Strategy was adopted by WDC in 2003. From that the Oakura Structure Plan was developed as a 'high priority structure plan' (adopted in February 2009) and includes consideration of the Ohawini Bay area (refer Attachment 8).
- 8.1.2 The Structure Plan provides an overall development and management vision for the Oakura area to 2025. The Structure Plan map and the Structure Plan document provide no indication of residential expansion in Ohawini beyond the existing residential (Living 1) zoned area.
- 8.1.3 To better understand Council's consideration of the future development I spoke to Mr Paul Waanders, Council's Policy Manager. His comments were:
- i. There was an existing indicative road between Oakura and Ohawini shown on the District Plan Maps which did not follow any particular alignment.
  - ii. Resulting from a previous subdivision application adjacent to the end of Oakura Road it was decided to walk the route to establish an appropriate alignment should there be a road connecting Oakura and Ohawini.
  - iii. This more exacting route was included in the District Plan.
  - iv. During the discussion on the revision of the Structure Plan for Oakura the indicative road was discussed with Council and the decision was to remove the indicative road to show Council's intention to limit the growth of Ohawini.
  - v. This decision also led to the drawing of an urban boundary around the existing residentially zoned portion of Ohawini Bay to limit the development of the area.
  - vi. These proposals have not yet found their way into the District Plan but are included in the Structure Plan as adopted by Council.
- 8.1.4 Further, expansions to the 'urban' residential settlement surrounding the existing settlement area at Oakura are a low priority with respect to the implementation of the Oakura Structure Plan<sup>26</sup>. This low priority could be considered to show that any consideration of residential expansion at Ohawini was beyond the lifespan of the structure plan (i.e. beyond 2025)

### 8.2 Precedent

- 8.2.1 Case law has established that the precedent of granting a resource consent is a relevant factor for a consent authority in considering whether to grant a non-complying resource consent. A precedent effect is likely to arise in situations where consent is granted to a non-complying activity that lacks the evident unique, unusual or distinguishing qualities that serve to take the application outside of the generality of cases or similar sites in the vicinity.
- 8.2.2 In general terms the Countryside Environment has established a 20ha minimum net site area for controlled subdivision and a 4ha average provision for discretionary subdivision. Any subdivision outside of these limitations is a non-complying activity.
- 8.2.3 In this instance the proposed subdivision seeks to establish five allotments with net site areas of 601m<sup>2</sup> (Lots 1 – 4) and 4.2868ha (Lot 5), with an average of 0.90544ha, being approximately 23% of the 4 ha, discretionary activity standard. Lots of the size proposed are considered a significant departure beyond what the District Plan intends for future subdivision and development within the Countryside Environment.
- 8.2.4 In Section 8.5 of the original application (Attachment 1) and pages 10 – 14 of the Addendum Report (Attachment 2) the applicant's agent comments on issues related to 'precedent' and 'unique characteristics' with respect to the proposed subdivision.

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<sup>26</sup> Oakura Structure Plan, section 3.1, pg. 17

- 8.2.5 With regard to the bullet point matters raised in Section 8.5.2 of the original application, I consider the following:
- i. The actual and potential effects of the proposal in terms of visual amenity and landscape effects with respect to the immediately adjacent property to the south of the subject site have been assessed to be no more than minor, however other effects, particularly those related to settlement pattern, character, amenity and cumulative effects have been assessed to be more than minor.
  - ii. The proposed subdivision enables lots less than the average lot size that exists in the surrounding environment, with proposed Lots 1 - 4 being significantly smaller than the average lot size and also smaller than anything that exists in the immediate environment.
  - iii. The adjoining landowners have not given their written approval to the proposal and there are submissions in opposition to the proposal.
  - iv. The subject site and the surrounding area is not included in the Coastal Management Strategy as an area of future growth/density.
- 8.2.6 Therefore, I do not consider any of the matters raised as being grounds for concluding that the granting of the proposal would not lead to a potential precedent effect.
- 8.2.7 Further, the Addendum Report considers a number of “*unique characteristics*” associated with the proposal. In that regard, I agree that Ohawini Bay has a “*distinctive landscape setting [and] existing development pattern*” where the “*isolated nature of the settlement set it aside from the generality of coastal settlements in the Whangarei district*”.
- 8.2.8 However, I do not consider the mitigation measures offered (landscape protection and enhancement, no subdivision covenant and the restriction of development on Lot 5) as being matters that are “*unique characteristics*”. I am of the opinion that these are mitigation measures designed to off-set the effects of the four small lots proposed and in terms of this overall assessment, do not successfully do so.
- 8.2.9 Whilst the mitigation measures proposed utilise resources available on the site, in terms of native vegetation, a stream and wetland and propose covenanting and planting, the primary consideration is the creation of the small lots. These mitigation methods attempt to offset the creation of the lots and the no subdivision covenant attempts to limit the further creation or spread of such lots, but still the approval of the lots is a significant departure from what the District Plan provisions allow for. Of note is that the District Plan already contains rules related to the creation of ‘Environmental Benefit Lots’ (Rule 73.3.2) and this proposal does not comply<sup>27</sup>.
- 8.2.10 Furthermore, there are other blocks of land within the Ohawini settlement that could be subdivided in a manner similar to that proposed by this subdivision. Whilst those blocks may not have a stream, wetland or bush areas to protect, their subdivision could be designed in a manner that offers landscaping and bulk and location controls similar to the proposed subdivision and utilise this application as a justification for approval. Although there are blocks of land in multiple Maori ownership in the surrounding settlement, the subdivision of which maybe a somewhat protracted process, I do not consider this grounds to view the issue of precedent any differently.
- 8.2.11 With reference to the Blampied<sup>28</sup> decision as quoted by Mr Hood on pages 12 and 13 of his addendum report, I consider that the site does not have any “*evident unusual qualities that would set this proposal apart from others*” and as such “*those other properties are sufficiently similar in most respects, and sufficiently close, being in the same visual catchment, that owners of them would be likely to gain expectations of being able to subdivide if the present application was granted*”. I therefore do not conclude with Mr Hood that the differences are such that the issue of precedent does not apply to this application.

<sup>27</sup> Rule 73.3.2 allows, as a restricted discretionary activity, the creation of a 4,000m<sup>2</sup> lot, with a 4ha balance where an ‘environmental benefit’ is obtained in accordance with the assessment criteria contained in the Plan.

<sup>28</sup> Blampied v Whangarei District Council [2012] NZEnvC 54

8.2.12 Overall and in light of the above comments, I consider it would be reasonable in this instance to assume that landowners of similar sites, proximate to the subject site, would gain an expectation as a result of the approval of the proposed subdivision, that they would be successful with similar proposals to subdivide down to smaller allotments. Granting of this application could lead to further ad-hoc development and a gradual change in the overall Ohawini settlement, from one of mixed density to one of predominantly residential development. This is of particular concern given the current zoning and the lack of a future direction of growth or increased density for the site and the surrounding area.

## 9.0 Part 2 Matters

### 9.1 Section 5 – Purpose

9.1.1 Part 2 of the Resource Management Act 1991 details the overarching purpose and principles of the Act

9.1.2 In terms of Part 2 of the Act, the proposed activity must meet the purpose of the Act set out in section 5 which is “to *promote the sustainable management of natural and physical resources.*” As outlined in section 5(2), “*sustainable management*” means:

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

(a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

(b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*

(c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

9.1.3 The proposal is considered to be inconsistent with the purpose of the Act. Whilst at the site specific level the potential effects of the proposal can to some degree be mitigated, at the wider, settlement based level, the proposal does not recognise and provide for the sustainable management and development of natural and physical resources or enable people and communities to provide for their social, economic and cultural well being in a way or at a rate that will avoid, remedy or mitigate adverse effects on the receiving environment.

9.1.4 As has been demonstrated in the previous sections of this report, the proposal represents the continuation of an ad hoc and sporadic approach to subdivision and will result in the erosion of character and amenity elements in the surrounding environment beyond an acceptable level. For these reasons, the proposal is not consistent with the short term, or long term integrated and sustainable management of the receiving environment in accordance with section 5 of the Act.

9.1.5 Beyond section 5, sections 6, 7 and 8 of the Act provide decision makers with a set of guidelines reflecting current government policies and ideologies with regard to resource management, assisting in the interpretation of sustainable management. An assessment against these matters is also contained below.

### 9.2 Section 6 – Matters of National Importance

9.2.1 Section 6 of the Act highlights matters of national importance that shall be recognised and provided for in order to achieve the sustainable management purpose of the Act. Of particular note are:

(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*

9.2.2 Earlier in this assessment it has been concluded that the proposal will potentially adversely affect the character of the coastal environment with the proposal considered to be “*inappropriate subdivision, use and development*”. Therefore in achieving the purpose of the RMA the proposal is not assessed to recognise and provide for this matter.

### 9.3 Section 7 – Other Matters

9.3.1 Section 7 of the Act lists other matters that particular regard shall be given to in order to achieve the purpose of the Act. The following matters as outlined in Section 7 of the Act are considered particularly relevant to the consideration of this application;

- (b) *The efficient use and development of natural and physical resources;*
- (c) *The maintenance and enhancement of amenity values;*
- (f) *Maintenance and enhancement of the quality of the environment*

9.3.2 In regards to section 7(b) it is considered that in accordance with the assessment in previous sections of this report that the proposal does not represent the efficient use and development of natural and physical resources, as it promotes the continued sporadic, ad hoc subdivision within the local environment, not specifically provided for in Council's statutory or non-statutory documents.

9.3.3 In terms of section 7(f) and (c) it is considered that the proposal does not have particular regard to the maintenance and enhancement of amenity values or the quality of the environment. The subdivision if granted has been assessed to lead to the cumulative degradation of the character and amenity values that contribute to the quality of the receiving environment.

### 9.4 Section 8 – Treaty of Waitangi

9.4.1 Section 8 requires that decision makers take into account the principles of the Treaty of Waitangi in managing the use development and protection of natural and physical resources. A cultural impact assessment accompanies the application, concluding that the effects of the proposal will be no more than minor. As such, the principles of the Treaty of Waitangi are considered to have been taken into account.

## 10.0 Conclusion & Recommendation

### 10.1 Conclusion

10.1.1 Given this proposals non-complying activity status, in order for Council to consider granting consent the application must pass one of the 'gateway tests' under section 104(D) of the RMA. The two facets of section 104(D) require Council to assess whether the effects of the proposal will be no more than minor, or whether or not the proposal will be contrary to the relevant objectives and policies of the relevant plans. In this regard, the proposal is assessed to fail both, for the following reasons:

- A. It is considered that the effects of the proposed subdivision are **more than minor** in this instance for the following reasons:
  - i. Proposed Lots 1 – 4 are smaller than those existing and at the smaller end of the scale with respect of the Ohawini settlement and will have adverse effects on the settlement pattern, the character and the overall amenity of the site and the surrounding area;
  - ii. While there are smaller lots that exist in the surrounding area, the District Plan rule structure that applies to the subject site does not support the creation of more small lot development; and
  - iii. The permitted level of residential development post the subdivision is significantly greater in percentage terms than the current situation today.
- B. Overall, I consider that the proposal **is contrary** to the relevant Objectives and Policies of the Whangarei District Council Plan, which does not support the proposed subdivision in this locality because it will result in:
  - i. Significant adverse effects on amenity and character values;

- ii. Subdivision that is sporadic, sprawling or ribbon development, otherwise inappropriate and incompatible, in character, intensity, scale or location;
  - iii. Consolidation of urban development in areas identified either currently, or in the future, for that purpose; and
  - iv. Results in a density not appropriate for the locality.
- 10.1.2 The proposal does not achieve and on balance is contrary to the relevant policies of the New Zealand Coastal Policy Statement, particularly as the proposal will not avoid sprawling or sporadic patterns of settlement growth, will not lead to consolidation of an existing urban area and will not preserve the natural character of the coastal environment and protect it from inappropriate development.
- 10.1.3 The proposed subdivision, considered to be within the coastal environment does not achieve the relevant objectives and policies of the Regional Policy Statement. It has been concluded that there will be effects from the proposal with respect to settlement pattern, amenity and character which will not protect "*the coastal environment from inappropriate subdivision, use and development (including any adverse effects associated with location, scale and/or character)*".
- 10.1.4 The proposal is considered to be inconsistent with the purpose and principles of the Resource Management Act as set out within Part 2, sections 5, 6(a), 7(b), (d) and (f).
- 10.1.5 In terms of potential precedent effect, the proposal is a significant departure from the provisions of the District Plan pertaining to subdivision in the Countryside Environment and the proposal could be readily replicated in the surrounding environment. Therefore, it is considered that the proposal is likely to give rise to an unacceptable precedent for the approval of similar applications in the future, leading to the continuation of ad hoc, sporadic subdivision within this area and the associated cumulative deterioration of character and amenity values associated with it.
- 10.1.6 Having considered the application against the relevant provisions of the Act, it is therefore recommended that this application be **declined**.

## 10.2 Recommendation

THAT pursuant to sections 104, 104B and 104D of the Resource Management Act 1991, Commissioner Les Simmons **declines** consent to a Non-Complying subdivision application by Stuart Flexman to create 4 lots of 601m<sup>2</sup> (net site area) each (Lots 1 – 4), with a balance area (Lot 5) being 4.4056ha (4.2868ha net site area).

The site is situated within the Countryside Environment under the operative provisions of the Whangarei District Plan. The proposal does not comply with the controlled or discretionary activity provisions relating to allotment area pursuant to Rule 73.3.1 and is therefore considered a non-complying activity on this basis.

### Reasons for the Recommendation:

- 1 The proposal does not satisfy the statutory 'gateway tests' pursuant to Section 104D of the Act as:
  - a. The effects of the proposed subdivision are more than minor in this instance for the following reasons:
    - i. Proposed Lots 1 – 4 are smaller than those existing and at the smaller end of the scale with respect of the Ohawini settlement and will have adverse effects on the settlement pattern, the character and the overall amenity of the site and the surrounding area;
    - ii. While there are smaller lots that exist in the surrounding area, the District Plan rule structure that applies to the subject site does not support the creation of more small lot development; and
    - iii. The permitted level of residential development post the subdivision is significantly greater in percentage terms than the current situation today.
  - b. Overall, I consider that the proposal is contrary to the relevant Objectives and Policies of the Whangarei District Council Plan, which does not support the proposed subdivision in this locality because it will result in:
    - i. Negative effects on amenity and character values;
    - ii. Subdivision that is sporadic, sprawling or ribbon development, otherwise inappropriate and incompatible, in character, intensity, scale or location;
    - iii. Consolidation of urban development in areas identified either currently, or in the future, for that purpose; and
    - iv. Results in a density not appropriate for the locality.
  - c. The proposal does not achieve and is contrary to the relevant policies of the New Zealand Coastal Policy Statement, particularly as the proposal will not avoid sprawling or sporadic patterns of settlement growth, will not lead to consolidation of an existing urban area and will not preserve the natural character of the coastal environment and protect it from inappropriate development.
  - d. The proposed subdivision, considered to be within the coastal environment does not achieve the relevant objectives and policies of the Regional Policy Statement. It has been concluded that there will be effects from the proposal with respect to settlement pattern, amenity and character which will not protect "the coastal environment from inappropriate subdivision, use and development (including any adverse effects associated with location, scale and/or character)".
  - e. The proposal is considered to be inconsistent with the purpose and principles of the Resource Management Act as set out within Part 2, sections 5, 6(a), 7(b), (d) and (f).
  - f. In terms of potential precedent effect, the proposal is a significant departure from the provisions of the District Plan pertaining to subdivision in the Countryside Environment and the proposal could be readily replicated in the surrounding environment. Therefore, it is considered that the proposal is likely to give rise to an unacceptable precedent for the approval of similar applications in the future, leading to the continuation of ad hoc, sporadic subdivision within this area and the associated cumulative deterioration of

character and amenity values associated with it.

**Advice Notes**

- 1 The applicant shall pay all charges set by Council under Section 36 of the Resource Management Act 1991. The applicant will be advised of the charges as they fall.
- 2 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.

## 11.0 Attachments

1. **Application as Lodged Including Supporting Documents.**
2. **Addendum Report from Reyburn and Bryant plus Amended Subdivision Plan dated 7 August 2012.**
3. **Littoralis Landscape Report dated June 2012.**
4. **Skidmore Report dated September 2011 and Skidmore Addendum Report dated August 2012.**
5. **Submissions (including late).**
6. **E-mail Correspondence New Zealand Historic Places Trust.**
7. **WDC SEEO Report.**
8. **WDC Coastal Management Strategy (Oakura Section) and Structure Plan.**
9. **Building Consent Information.**
10. **District Plan Maps.**