

Notice of Decision

SD1400011 P042293.SD

IN THE MATTER of the Resource Management Act 1991

and

IN THE MATTER of an application under Section 88 of the Resource Management Act 1991 by C A Geraghty.

Application

Application for Resource Consent by C A Geraghty within the Countryside Environment at 41 Connell Road, legally described as Lot 1 DP 82945 comprising an area of 8730m² contained in Computer Freehold Register NA39B/1099. The applicant seeks subdivision consent to produce two independent title areas of 1700m² (Lot 1), 7030m² (Lot 2), and Lot 3 of 15m width and 2170m² in area, being an Esplanade Reserve to Vest. Proposed Lots 1 and Lot 2 contain existing residential units and are served by independent access arrangements.

The independent access arrangements are a Restricted Discretionary Activity pursuant to Rule 73.3.7(b) *Property Access*, whilst consideration of the Esplanade Reserve width of 15m (as opposed to the required 20m) is required as a Discretionary Activity under Rule 61.3.1 *Esplanade Requirements- Sites Less than 4ha*. The proposed allotment areas are a non-complying activity under the provisions of Rule 73.3.1 *Allotment Area*.

Decision

The application has been considered and determined under authority delegated to the Team Leader (Consents) of Whangarei District Council, pursuant to Section 34A of the Resource Management Act 1991. The decision is as follows:

Determination

That pursuant to Sections 104, 104B, 104D, 108 and 220 of the Resource Management Act 1991, Council grants consent subject to the following conditions:

- 1 That before the survey plan is certified pursuant to Section 223 of the Act, the following requirements are to be satisfied:**
 - a That the survey plan submitted for approval shall conform with the subdivision consent obtained and the plan of subdivision (as attached to this decision) prepared by Lands and Survey dated Feb 2014, Ref 9103/1/1/A,
 - b The survey plan submitted for approval shall demonstrate Lot 3 as an Esplanade Reserve to Vest with the Whangarei District Council and shall have a minimum width of 15m.
 - c The consent holder shall provide written confirmation from power and telecommunications utility service operators of their consent conditions in accordance with Council's Environmental Engineering Standards 2010 Edition and show necessary easements on the survey plan to the approval of the Senior Environmental Engineering Officer or their delegated representative.
 - d The consent holder must create easements over services etc to the approval of the Senior Environmental Engineering Officer (SEEO).
- 2 Before a certificate is issued pursuant to Section 224(c) of the Act the following requirements are to have been satisfied:**
 - a The consent holder shall submit written confirmation from power and telecommunications utility services operators that their conditions for this development have been satisfied in accordance with

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Council's Environmental Engineering Standards 2010 Edition to the approval of the Senior Environmental Engineering Officer or their delegated representative.

- b The consent holder must provide written confirmation from a Licensed Cadastral Surveyor that the existing effluent disposal field for proposed Lot 1 is contained within the allotment boundaries. Written confirmation is also required from a registered drain layer to confirm compliance with Section 15.1 - Permitted Activities for Sewage discharges of the Northland Regional Council Regional Water and Soil Plan for Northland noting the required separation distances to boundaries & surface water.
- c The consent holder must provide written confirmation from a Licensed Cadastral Surveyor that all services and accesses are located within the appropriate easement boundaries.

Reasons for the Decision

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

- 1 Pursuant to section 104D(1)(a) any actual or potential effects on the environment are considered to be less than minor, taking into account the existing environment, the existence of a residential unit within each respective allotment, and recognising the lack of development rights facilitated by the application. Positive recreational and ecological effects are identified through the creation of the Esplanade Reserve.
- 2 Pursuant to section 104D(1)(b) it is considered that the proposal will not be contrary to the relevant objectives and policies of the operative District Plan, particularly those which seek to ensure which seek to ensure development is compatible with existing patterns of development and levels of amenity in the surrounding environment.
- 3 As above, the proposal satisfies both aspects of the 'gateway tests' for the approval of a non-complying activity under Section 104(D) of the Resource Management Act
- 4 There are no other relevant matters, relevant to the consideration of this application. Precedent has not been identified as of concern, taking into account the existing environment.
- 5 The proposal is consistent with Part 2 of the Act.

Advice Notes

- 1 Council determined that the application need not be notified as the allotments proposed are formed around consented residential activity within each respective allotment, and will not give facilitate additional development rights that would be likely to compromise existing levels of amenity. No effects of an externalised nature have been identified with respect to site suitability, servicing or access arrangements, and the provision of a 15m wide esplanade reserve adjoining the Pohuehue Stream will provide for strategic recreation and ecological linkages within Waipu. On this basis, the adverse effects on the environment are considered to be less than minor. The application includes the written approvals of adjacent sites, however no persons have been determined to be adversely affected taking into account the existing environment; and there are no special circumstances to warrant public notification.
- 2 This resource consent will lapse five years after the date of commencement of this consent (being the date of this decision) unless:
 - It is given effect to before the end of that period; or
 - An application is made to Council to extend the period after which the consent lapses, and such application is granted prior to the lapse of consent. The statutory considerations which apply to extensions are set out in Section 125 of the Resource Management Act 1991.
- 3 Section 357 of the Resource Management Act 1991 provides a right of objection to this decision. An objection must be in writing, setting out the reasons for the objection and delivered to Council within

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15 working days of the decision being notified to you. A fee may be payable to cover the costs of processing any objection.

- 4 A copy of this consent should be held on site at all times during the establishment and construction phase of the activity.
- 5 All archaeological sites are protected under the provisions of the Historic Places Act 1993. It is an offence under that act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to the New Zealand Historic Places Trust for an authority to modify, damage or destroy an archaeological site(s) where avoidance of effect cannot be practised.
- 6 The Consent Holder shall pay all charges set by Council under Section 36 of the Resource Management Act 1991, including any administration, monitoring and supervision charges relating to the conditions of this resource consent. The applicant will be advised of the charges as they fall.
- 7 Pursuant to Section 102 of the Local Government Act 2002, Whangarei District Council has prepared and adopted a Development Contributions Policy. Under this policy, the activity to which this consent related is subject to Development Contributions. You will be advised of the assessment of the Development Contributions payable under separate cover in the near future. It is important to note that the Development Contributions must be paid prior to commencement of the work or activity to which consent relates or, in the case of a subdivision, prior to the issue of a Section 224(c) Certificate. Further information regarding Councils Development Contributions Policy may be obtained from the Long Term Community Consultation Plan (LTCCP) or Council's web page at www.wdc.govt.nz.



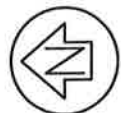
Gemma Sands, Senior Environmental Planner
(Consents)

25 June 2014



Kelly Ryan, Team Leader (Consents)

4 July 2014



Scale 1:10000

Areas and distances are approximate only and subject to survey.
Building Setbacks are 4.5m from all road boundaries, one boundary at 1.5m and 3m from all other boundaries.
Total Area: 8730m²
Comprised In: CT398/1099

[illegible]

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Proposed Subdivision of
Lot 1 DP82945

Prepared for:

CA Geraghty

SHEETS

SCALE

SCALE

SERIES 1 of 1

REF 9103/1/1/A

Notification Assessment - Non-Complying Activity

1 Consent Application

Council Reference	SD1400011 P042293.SD
Reporting Planner	Gemma Sands
Applicant	C A Geraghty
Application	Application for subdivision consent to produce two independent title areas of 1700m² (Lot 1), 7030m² (Lot 2), and Lot 3 of 15m width and 2170m² in area, being an Esplanade Reserve to Vest. Proposed Lots 1 and Lot 2 contain existing residential units and are served by independent access arrangements. The independent access arrangements are a Restricted Discretionary Activity pursuant to Rule 73.3.7(b) <i>Property Access</i>, whilst consideration of the Esplanade Reserve width of 15m (as opposed to the required 20m) is required as a Discretionary Activity under Rule 61.3.1 <i>Esplanade Requirements- Sites Less than 4ha</i>. The proposed allotment areas are a non-complying activity under the provisions of Rule 73.3.1 <i>Allotment Area</i>. Overall, the application is a Non Complying Activity.
Property Address	39-41 Connell Road, Waipu.
Legal Description	Lot 1 DP 82945 comprising an area of 8730m ² contained in Computer Freehold Register NA39B/1099.
Date Lodged	18 February 2014
Site Visit	27 March 2013
Environment	Countryside Environment
Resource Notations	Part of the site is subject to the Flood Susceptible Resource Area notation under the Operative District Plan.
Other	HAIL Activity (refer to NES (Contaminated Soils) assessment).
Plan Changes	n/a
Distributions	

Internal	Date sent	Amendments sent	Comments received
Senior Environmental Engineering Officer, Vlad Rozov	19 February 2014		28 February 2014

2 Further Information

On 6 March 2014, a Section 92 request was issued, requiring the applicant to demonstrate compliance with the NES (Contaminated Soils), as detailed within Section 5 of this report. This request was satisfied on 25 June 2014, at such time the applicant provided a Ground Contamination Assessment by Tonkin Taylor (dated 25 June 2014, Job No 30101).

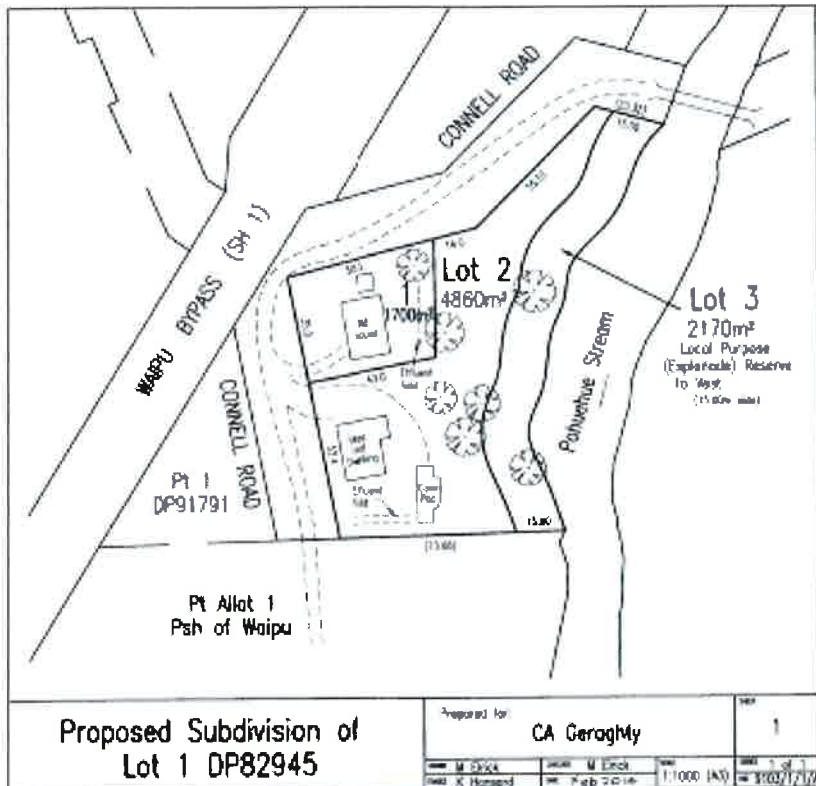
3 Description of Proposal

Application for subdivision consent to produce two independent title areas of 1700m² (Lot 1), 7030m² (Lot 2), and Lot 3 of 15m width and 2170m² in area, being an Esplanade Reserve to Vest. Proposed Lots 1 and 2 contain existing residential units and are served by independent access arrangements.

The independent access arrangements are a Restricted Discretionary Activity pursuant to Rule 73.3.7(b) *Property Access*, whilst consideration of the Esplanade Reserve width of 15m (as opposed to the required 20m) is required as a Discretionary Activity under Rule 61.3.1 *Esplanade Requirements- Sites Less than 4ha*. The proposed allotment areas are a non-complying activity under the provisions of Rule 73.3.1 *Allotment Area*.

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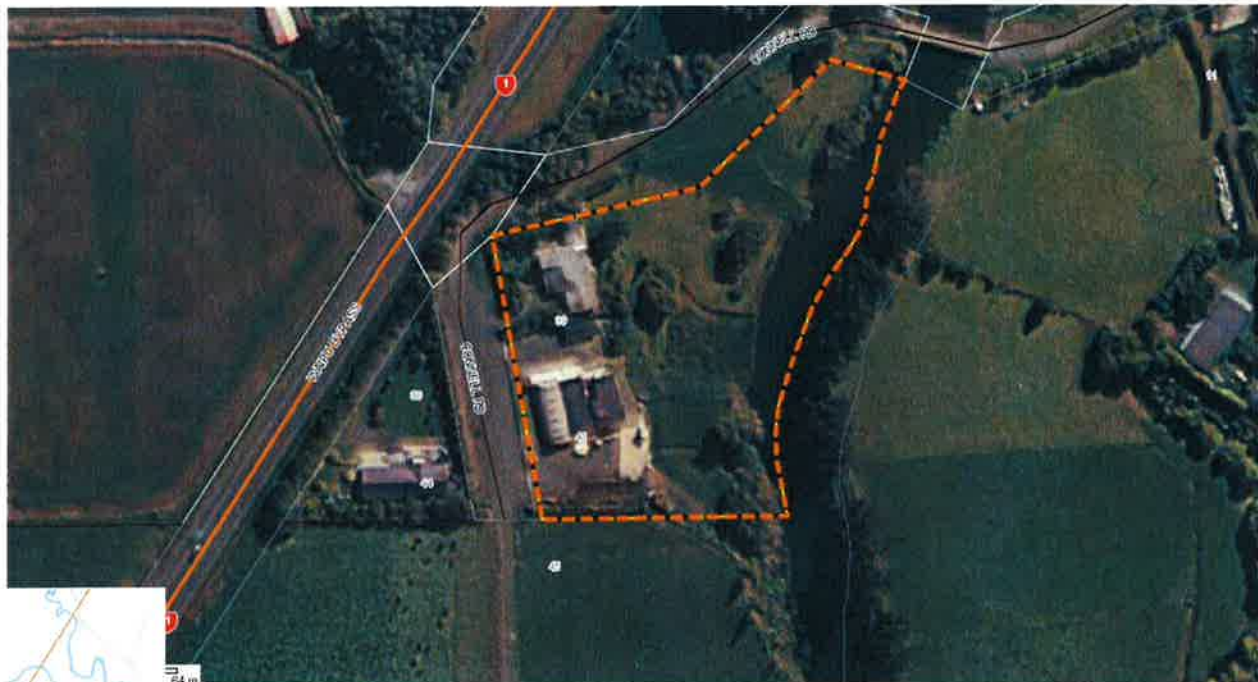


Overall, the application is a Non Complying Activity.

4 Site and Surroundings

A description of the site and surrounds, with which I concur, is provided within the application and further reflected in the aerial photograph below. The site is occupied by two residential units. The second residential unit was authorised in 2009, under land use consent LU0900020 (copy on file).

The eastern boundary of the application site adjoins the Pohuehue Stream.



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5 Reasons for Consent

Operative Whangarei District Plan

The proposed allotment sizes of 1700m² (Lot 1) and 7030m² (Lot 2) are a non-complying activity under the provisions of Rule 73.3.1 *Allotment Area*

Rule 73.3.7(b) *Property Access* stipulates that vehicular access to a road shall be shared where there are 2 or more allotments in the subdivision. As independent access arrangements to each allotment are proposed, consideration of this matter is required as a Restricted Discretionary Activity. Discretion is restricted to the following matters:

- i. The matters over which control is reserved;
- ii. The need for access to the allotment;
- iii. The safe and efficient movement of people, vehicles and goods;
- iv. The ability of the road structure to withstand anticipated loads;
- v. The effects of water runoff.

In other respects, the proposal meets the relevant subdivision standards contained within Chapter 73 of the District Plan for assessment as a controlled activity under Rule 73.3.4 *Building Area*, Rule 73.3.5 *Existing Buildings*, Rule 73.3.6 *Sites of Significance to Maori* (none identified), Rule 73.3.8 *Vehicle Crossings*, Rule 73.3.9 *Road Formation*, Rule 73.3.10 *Provision for Extension of Services*, Rule 73.3.11 *Water Supply*, Rule 73.3.12 *Stormwater*, Rule 73.3.14 *Sewage*, Rule 73.3.15 *Electricity*, Rule 73.16 *Telecommunications* and Rule 73.317 *Earthworks*.

Rule 61.3.1 *Esplanade Requirements – Sites Less than 4 ha* stipulates where any allotment of less than 4.0 ha in area is created, an esplanade reserve or esplanade strip of a minimum of 20.0 m in width is set aside along the bank of any river whose bed has a width of 3.0 m or more (except in the areas specified in Appendix 5), and Esplanade reserves or esplanade strips are vested in the Council, or registered, in accordance with Sections 231 and 232 of the Resource Management Act 1991.

Proposed Lot 3 of 15m width and 2170m² in area is identified as an Esplanade Reserve to Vest. Given the failure to meet the required 20m width, the proposal is a Discretionary Activity under this rule.

Overall, the application is considered to be for a Non-Complying Activity.

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

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 13th October 2011 and took effect on 1st 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 piece of land to which this application applies?	No Evidence	The application site was previous used a cartage facility by the Waipu Fertiliser Plant. No fertiliser was stored on site; however the site was used for fuel storage, including a diesel underground storage tank.
Has an activity described on the HAIL ever been undertaken on the piece of land to which this application applies?	Yes	A Site Validation Report prepared by MWH dated September 2005 is provided within the application and confirms a 5,000 litre diesel tank (installed in 1978) was removed on 14/9/2005. The report concludes 'any residual hydrocarbon associated with the UPSS would not limit commercial use of the site'.
Is it more likely than not that an activity described on the HAIL is	Yes	As this report did not provide conclusions with

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being or has been undertaken on the piece of land to which this application applies?		respect to residential land use, a Section 92 was issued in order to satisfy the requirements of the NES (Contaminated Soils). On 13 May the applicant provided a report by Roger Barber, Horticultural Consultant, which identified the potential for contaminants in soil from the diesel tanks, but failed to provide conclusions with respect to whether any residual contaminants would be within acceptable guidelines for residential land use. The writer of this report was not qualified to make conclusions with respect to this matter, and as such, the report was rejected. On 25 June 2014, the applicant provided a report by Tonkin Taylor (ref 30101), prepared in accordance with the requirements of a Preliminary Site Investigation and serving to re-assess the findings of the MWH report with respect to residential land use criteria. The report concludes: <i>'The results of the 2005 testing indicate that contaminant concentrations in soils and groundwater are not at levels that would pose a risk to human health in a residential setting. An assessment of the site condition indicates that the proposed activity to subdivide and change use of the land can comply with the permitted activity requirements in Regulation 8(4) of the NES Soil, provided this report is provided to Council'.</i> Based on the conclusions of the Tonkin Taylor report, the proposal is a permitted activity under the NES (Contaminated Soils).
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6 Notification Assessment (Sections 95A to 95E)

Statutory matters – Public Notification section 95A to 95D

Section 95A of the Resource Management Act 1991 (the Act) gives a council discretion to decide whether or not to publicly notify an application. However, an application must be notified if:

- 1 the activity will have, or is likely to have, adverse effects on the environment that are more than minor
- 2 the applicant requests public notification of the application
- 3 a rule or national environmental standard requires public notification.

Section 95A (3) provides that an application must not be notified if a rule or national environmental standard precludes public notification and the applicant has not requested public notification.

Section 95B provides that if an application is not publicly notified, a council must decide if there are any affected persons (or affected order holders) in relation to the activity. Limited notification of the application must be given to affected persons unless a rule or national environmental standard precludes limited notification.

Section 95D *In determining whether to publicly notify an application, section 95D specifies a council must decide whether an activity will have, or is likely to have, adverse effects on the environment that are more than minor. In making this decision, a council:*

- i. must disregard any effect on persons who own or occupy:
 - a) the land in, on, or over which the activity will occur; or
 - b) any land adjacent to that land; and

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- ii. may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and
- iii. in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and
- iv. must disregard trade competition and the effects of trade competition; and
- v. must disregard any effect on a person who has given written approval to the relevant application.

Limited notification - sections 95B and 95E

If the application is not publicly notified, a council must decide if there are any affected persons and give limited notification to those persons.

In deciding who is an affected person under section 95E, a council:

- 1 may disregard an adverse effect of the activity on a person if a rule or national environmental standard permits an activity with that effect (i.e. council may consider the 'permitted baseline')
- 2 must disregard an adverse effect of the activity on a person that does not relate to a matter for which a rule or environmental standard reserves control or restricts discretion
- 3 must have regard to every relevant statutory acknowledgement made in accordance with a statute set out in Schedule 11 of the Act.

Further, and pursuant to s95E(3)(a), a council must not consider that a person is affected if they have given their written approval or pursuant to s95E(3)(b) it is unreasonable in the circumstances to seek that person's approval.

Land excluded from public notification assessment

Pursuant to Section 95D(a)(ii) and (e) it is considered that effects on adjoining properties, and sites from which written approval have been received (refer affected party assessment) should be excluded from an assessment of the wider potential and actual effects on the environment required for public notification:

Permitted Baseline – section 95D(b)

Pursuant to section 95D(b) of the Act a consent authority may disregard an adverse effect of an activity on the environment if the plan permits an activity with that effect (the 'permitted baseline' test). There are three categories to the permitted baseline test, these being

- 1 what lawfully exists on the site at present
- 2 activities (being non-fanciful activities) which could be conducted on the site as of right; i.e. without having to obtain resource consent
- 3 activities which could be carried out under a granted, but as yet unexercised, resource consent.

Having regard to the above, the following points are considered relevant to the consideration of this application:

- 1 There are no permitted forms of subdivision under the Operative Whangarei District Plan, and therefore the standards for land use activities within the Countryside Environment are relevant to the consideration of this application. The Countryside Environment provides for the establishment of one residential unit per site, or where an additional residential unit is proposed, there is at least 20ha of net site area associated with each residential unit. In this instance, the existing environment represents a single title, occupied by two lawfully established residential units. The applicant seeks to form legal boundaries around existing, consented development.
- 2 The proposal generates a technical infringement to the property access rule, as each allotment will continue to enjoy independent access arrangements. As this is part of the existing environment (and authorised under LU0900020), no further assessment of this arrangement is required.

Assessment of Wider and Localised Environmental effects

Having regard to the above and after undertaking an analysis of the application, including any proposed mitigation measures, the adverse effects of the activity on the wider environment are discussed below:

Taking into account the existing environment, and development rules for the Countryside Environment, it is recognised that the proposal does not facilitate any further development rights beyond those forming part of the existing environment. The proposal serves to form boundaries around existing consented development, and will therefore not give rise to effects that would be discernible from the wider or localised environment to which the site relates. Existing levels of visual amenity will be maintained, and the proposal will not intensify existing levels of residential activity. Notwithstanding this, it is recognised the applicant has provided the written approval of adjacent sites (refer map below), and any effects on these parties has been discounted.

As per the email correspondence on file, the applicant has consulted with Whangarei District Council's Parks and Recreation Department, who have confirmed an Esplanade Reserve of 15m width, is appropriate and acceptable to provide for the strategic growth of the parks network around the Waipu growth node, and will support recreation and natural values. As such, any adverse effects associated with the 5m reduction in width are considered to be less than minor in this instance.

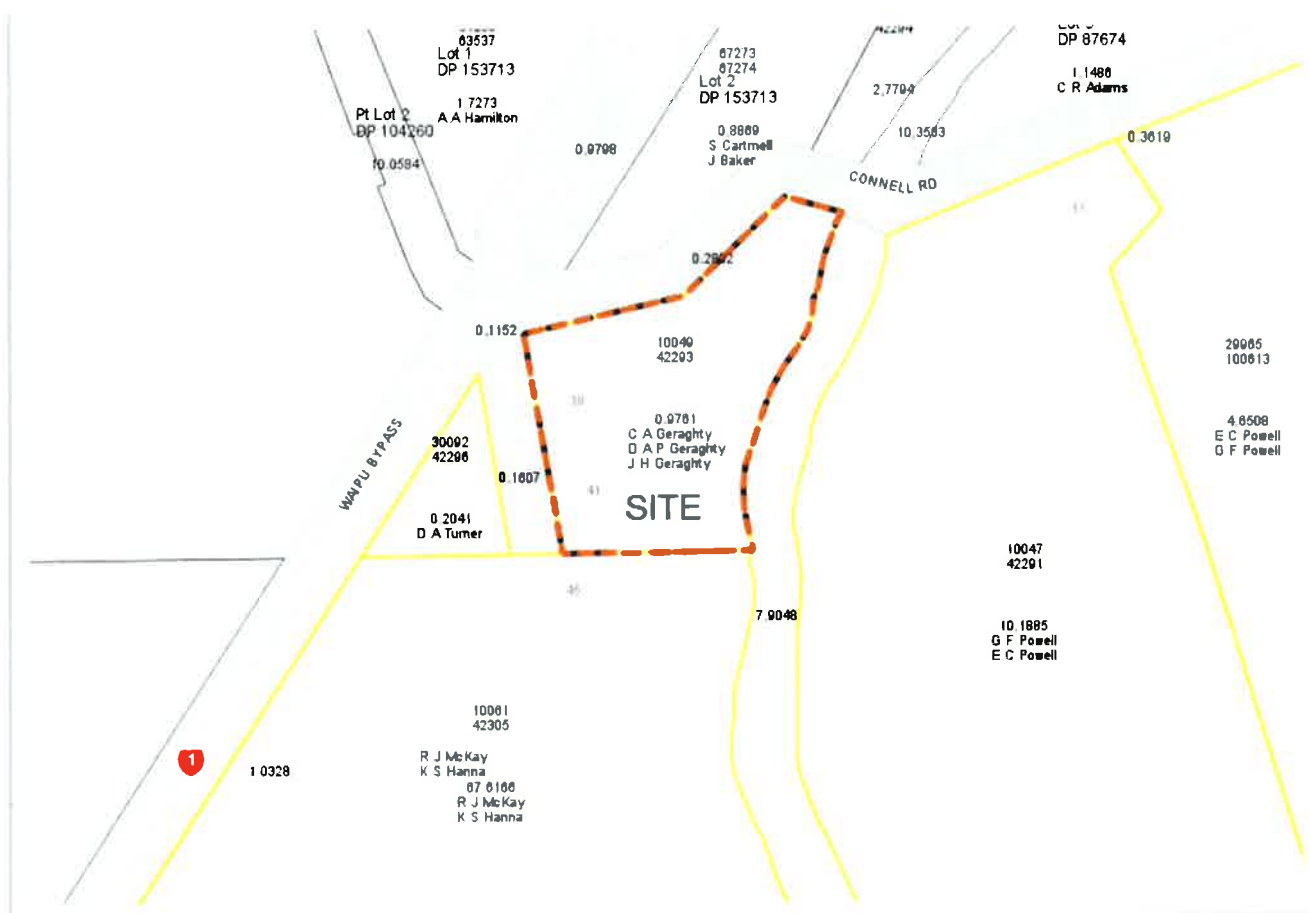
As detailed in Mr Rozov's engineering report (on file), no externalised effects relating to site suitability, servicing, or access arrangements have been identified.

In conclusion, the effects on the wider and localised environment are considered to be less than minor. It is therefore recommended that the application proceed without full public notification or service.

Adversely Affected Parties

The application includes the written approvals of the following parties. Pursuant to s95E(3)(a), any effects on these parties have been discounted accordingly:

- G & E Powell of 1-11 Connell Road
- RJ Mackay of 45 Connell Road.
- The application includes the written approval of L & N Buck of 38 Connell Road (signed on 27 April 2013). In December 2013, this property was sold to D Turner. terms of the legal implications of this change in ownership, it is noted that when a property is sold under a standard agreement for sale and purchase, the agreement contains vendor warranties that enable the vendor to disclose to the purchaser such matters including whether any written approvals have been provided in respect of any consents which may affect the property. As such, the written approval of L & N Tuck is considered to lie with the land.



Special circumstances - section 95A(4)

Section 95A(4) of the Act states that a consent authority may also publicly notify an application for resource consent if it decides that special circumstances exist in relation to the application.

In this case, it is considered that there are no special circumstances to warrant public notification under section 95A(4).

7 Recommendation

That pursuant to Sections 95A- 95F of the Act, this application proceed on a non-notified basis because:

- 1 The allotments proposed are formed around consented residential activity within each respective allotment, and will not give facilitate additional development rights that would be likely to compromise existing levels of amenity. No effects of an externalised nature have been identified with respect to site suitability, servicing or access arrangements, and the provision of a 15m wide esplanade reserve adjoining the Pohuehue Stream will provide for strategic recreation and ecological linkages within Waipu. On this basis, the adverse effects on the environment are considered to be less than minor.
- 2 The application includes the written approvals of adjacent sites, however no persons have been determined to be adversely affected taking into account the existing environment; and
- 3 There are no special circumstances to warrant public notification.

Gemma Sands

Gemma Sands, Environmental Planner
(Consents)

26 June 2014

KRyan.

Kelly Ryan, Team Leader (Resource
Consents)

4 July 2014

Consideration Assessment - Non-Complying Activity

1 Processing Details

Reporting Planner Gemma Sands

Date of Report 26 June 2014

Section 37 n/a

2 Application Details

The application details, including the proposal have been detailed in Section 1 of the attached Notification Assessment. In addition, the reasons for consent, and the application site and the surrounding environment have been detailed in Sections 4 and 5 respectively of the attached Notification Assessment report.

3 District Plan Zoning/Environment and other Notations

The District Plan zoning/environment and other notations affecting the site have been detailed in Section 1 of the attached Notification Assessment.

4 Statutory Context

Section 104 of the Act sets out those matters that, subject to Part 2, a consent authority must have regard to when considering an application for resource consent. These matters include any actual or potential effects on the environment of allowing the activity, any relevant provisions of a plan or proposed plan, and any other matter the consent authority considers relevant and reasonably necessary to determine the application.

Pursuant to Section 104B of the Act, after considering an application for resource consent, a consent authority may grant or refuse the application, and if it grants the application, may impose conditions under Section 108 of the Act.

Pursuant to section 104D, Council must consider the 'threshold tests' for non-complying activities. Therefore Council may only grant a consent for a non-complying activity if it is satisfied that either:

- 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
- the application is for an activity that will not be contrary to the objectives and policies of—
 - the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
 - the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
 - both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

5 Actual or Potential Effects on the Environment (Section 104(1)(a))

Section 104(2) of the Act allows the consent authority to disregard an adverse effect of the activity on the environment if the Plan permits an activity with that effect (i.e. the permitted baseline principle). This matter has been addressed in Section 6 of the Notification Assessment report and also applies to this consideration.

The adverse effects of this activity have been addressed in Section 6 of the Notification Assessment report. This assessment also applies to this consideration. In order to avoid, remedy or mitigate these adverse effects conditions of consent relating to the following matters are recommended:

- 1 General Accordance Condition – in order to ensure the effects considered within this application are consistent with those that result, a condition shall require the proposal to be given effect to in accordance with the information and details provided in support of the application.
- 2 Engineering Conditions – required to ensure all engineering works are carried out in accordance with Council's Environmental Engineering Standards and the standards of the appropriate utility providers.

Overall, upon consideration of the existing environment and the existence of a residential unit within each respective allotment, and recognising the lack of development rights facilitated by the application, the effects of the activity are considered to be less than minor. Positive recreational and ecological effects are identified through the creation of the Esplanade Reserve.

6 Relevant Provisions of the Operative/Proposed Plan (Section 104(1)(b)(vi))

Those objectives and policies relevant to the consideration of this application are set out within Chapter 5 *Amenity Values*, Chapter 6 *Urban Form and Development* and Chapter 8 *Subdivision and Development*. The District Plan recognises that the overall intensity and scale of subdivisions can have the potential to cause adverse environmental effects in terms of insensitive design and location, while the ability of the surrounding environment to accommodate additional built development and any associated effects in terms of vehicle movements, capacity of infrastructure and services must also be taken into account. Broadly, in respect of subdivision, the overall intent of the relevant objectives and policies of the District Plan are to ensure that the existing levels of character and amenity are protected from the adverse effects of subdivision and development, and that development is appropriately located by:

- Further developing within existing built up areas, so as to avoid sporadic subdivision and ribbon development;
- Consolidating development in appropriate locations so as to avoid sprawling or sporadic subdivision and ribbon development;
- Providing for the comprehensive development of land with a range of allotment sizes that is appropriate to the character of the Environment in which it is located;
- Ensuring 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;
- Directing rural lifestyle and rural residential development to appropriate locations adjacent to existing settlements rather than allowing sporadic development throughout rural and coastal areas.

Objectives and policies relating to riparian margins are also contained within Chapter 11, with relevant provisions seeking to maintain and enhance public access along the coast and rivers. Taking into account the creation of proposed Lot 3, being an Esplanade Reserve to Vest adjoining the Pohuehue Stream, the proposal is consistent with these provisions.

Despite the allotment areas proposed representing a significant departure from those anticipated and provided for within the Countryside Environment, it is considered the proposal will result in allotment areas that are compatible with the pattern and density of existing development patterns, given allotment boundaries are formed around consented residential activity, and the proposal will not facilitate additional development rights that would be likely to compromise existing levels or character and amenity within the receiving environment.

For these reasons, the proposal satisfies the relevant objectives and policies of the District Plan, whilst the adverse effects of the proposal are also considered to be less than minor. For these reasons I am satisfied that the proposal meets both gateway tests under Section 104D relating to the approval of non-complying activities.

7 Other Relevant Matters (Section 104(1)(c))

Consideration of Potential 'Precedent' Effect

Caselaw, specifically *Rodney DC v Gould* [2006], has established that it is not necessary for a proposal being considered for a non-complying activity to be truly unique before precedent or 'integrity' matters cease to be a potentially important factor. Nevertheless, this case establishes the need for a decision maker in such an application to examine whether there might be factors which take the particular proposal outside the generality of cases to ensure a precedent is not set by the approval of a non-complying activity.

In this instance, it is recognised the allotment areas proposed represent a significant departure than those anticipated and provided for within the Countryside Environment. Notwithstanding this, I am satisfied that the proposal is entirely distinguished from the generality of cases, due to the presence of a residential unit within both proposed Lot 1 and Lot 2, and the proposal failing to generate additional development rights beyond those existing within the environment at present. For these reasons, the proposal does not set a precedent for the approval of other non complying subdivisions in the locality, nor the Countryside Environment in general.

8 Part 2 Matters

In terms of Part 2 of the RMA it is important to ensure that a proposed activity meets the purpose of the Act (Section 5), which promotes the sustainable management of natural and physical resources. The application is considered to be consistent with those matters detailed within Part 5.0.

Section 6 of the Act highlights matters of national importance that regard shall be had to in order to achieve the purpose of the Act. In this instance, no adverse effects upon matters detailed within Section 6 are identified, and it is recognised the formation of proposed Lot 3- Esplanade Reserve to Vest, facilitates the enhancement of public access.

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 matters that relate to the proposed activity include: the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values and the quality of the environment. It is considered the proposal recognises and provides for such matters.

Overall, the proposed subdivision is considered to be in accordance with purpose and principle of the Act.

9 Conclusion and Recommendation

Having considered the application against the relevant provisions of the Act, it is recommended that this application be granted, subject to the conditions identified in Part 5 of this report that will avoid, remedy or mitigate any adverse effects of the activity on the environment.

The reasons for this recommendation are as follows:

- 1 Pursuant to section 104D(1)(a) any actual or potential effects on the environment are considered to be less than minor, taking into account the existing environment, the existence of a residential unit within each respective allotment, and recognising the lack of development rights facilitated by the application. Positive recreational and ecological effects are identified through the creation of the Esplanade Reserve.
- 2 Pursuant to section 104D(1)(b) it is considered that the proposal will not be contrary to the relevant objectives and policies of the operative District Plan, particularly those which seek to ensure which seek to ensure development is compatible with existing patterns of development and levels of amenity in the surrounding environment.
- 3 As above, the proposal satisfies both aspects of the 'gateway tests' for the approval of a non-complying activity under Section 104(D) of the Resource Management Act.
- 4 There are no other relevant matters, relevant to the consideration of this application. Precedent has not been identified as of concern taking into account the existing environment.
- 5 The proposal is consistent with Part 2 of the Act.