



NOTICE OF MEETING
RESOURCE CONSENTS HEARINGS PANEL

TO: Chairperson Harry Bhana
 Crs Grahame Powell
 Wayne Walker

A meeting of the Resource Consents Hearings Panel will take place in the Council Chamber, Rodney District Council, Centreway Road, Orewa on Monday, 9 March 2009 commencing at 1.00 p.m.

for: CHIEF EXECUTIVE
Rodger Kerr-Newell

OREWA
26 February 2009

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<u>Time</u>	PROGRAMME	<u>Page</u>
1.00 p.m.	A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 AN APPLICATION FOR CONSENT TO SUBDIVIDE THE LAND ASSOCIATED WITH LOT 7 DP 176030 TO FORM 3 RURAL-RESIDENTIAL SITES, THE CREATION OF A 20 METRE WIDE LOCAL PURPOSE ESPLANADE RESERVE AND EARTHWORKS TOTALLING 600M². Address: Lot 7 DP 176030, Lennon Access Road, Stillwater 0993 APPLICANTS: GP & DL WOODSIDE	1

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ITEM NO: 1

APOLOGIES

ITEM NO: 2

REPORT



TO Resource Consents Hearings Panel
ON 9 March 2009
FROM Robert Walker – Reporting Planner
SIGNATURE

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APPROVED FOR Steve Seager – Team Leader
RELEASE BY
SIGNATURE

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SUBJECT **REPORT ON A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991**

AN APPLICATION FOR CONSENT TO SUBDIVIDE THE LAND ASSOCIATED WITH LOT 7 DP 176030 TO FORM 3 RURAL-RESIDENTIAL SITES, THE CREATION OF A 20 METRE WIDE LOCAL PURPOSE ESPLANADE RESERVE AND EARTHWORKS TOTTALLING 600M³.

Address: Lot 7 DP 176030, Lennon Access Road, Stillwater 0993

APPLICANTS: GP & DL WOODSIDE

FILE REF R54347

WARD Hibiscus Coast

Having considered the proposal against all the relevant statutory criteria it is recommended by the reporting planner that the application be granted consent subject to conditions. The reasons for this recommendation are set out in section 9 of this report.

Note: This report sets out the advice of the reporting planner. This report has yet to be considered by the Panel of Commissioners delegated by the Council to determine this application. The recommendation is not the decision on this application. A decision will only be made after the Commissioners have considered the application and heard the applicant and any submitters.

1.0 APPLICATION AND PROPERTY DETAILS

SITE ADDRESS: Lot 7 DP 176030, Lennon Access Road, Stillwater 0993

APPLICANT: G P & D L WOODSIDE

LEGAL DESCRIPTION: Lot 7 DP 176030

SITE AREA: 6.6 ha.

**DISTRICT PLAN:
ZONING:**

Plan Change 55:	Countryside Living Rural
Proposed District Plan 2000:	Countryside Living Rural
Other Notations:	Airfield Approach Fan

ACTIVITY STATUS:

Plan Change 55:	Discretionary
Proposed District Plan 2000:	Non Complying
Overall:	Non Complying
SNA:	None

**OTHER RELEVANT
CONSENTS:** TPA-770072 – Residential Farm Park & Wildlife Sanctuary Refused in 1977

CONSENT NOTICES: None

2.0 BACKGROUND

S93/94 Decision

2.1 This application was notified for the following reasons:

It is considered that the proposed subdivision can occur without creating adverse effects on the rural character anticipated within the Countryside Living Zone. While the application site does not meet the density requirements in the District Plan, it is considered the non-compliance with the density rules must be considered in light of the fact that the original site area of the property would have otherwise allowed for compliance with this requirement had there not been a mandatory need to vest an esplanade reserve.

While the application does not meet the requirements in terms of the maximum sites being served from a jointly owned access lot, it is considered that the addition of two further sites to the current situation will bring little discernable difference to the effects that are currently being generated in the environment. Council's Development Engineer has not raised any concerns in regard to access issues.

The subdivision is not considered to have a more than minor adverse effect on amenity values. The building platforms for each proposed lot are centrally positioned within the sites well clear of yard set backs thus ensuring that the potential adverse effects on general amenity values are no more than minor.

Council's Development Engineer has also evaluated the proposal in terms of site suitability and natural hazards. No further geo-technical investigation was seen as necessary and no concerns were raised that the site could not accommodate the rural-residential living that would be promoted through the subdivision.

All persons that are either joint owners of the jointly owned access lot or have a right-of-way over the jointly owned access lot are considered to potentially be adversely affected, due to the increased traffic adversely affecting their amenity values. All joint owners of the jointly owned access lot are also considered to be adversely affected as landowners.

The effects on any other persons are considered to be no more than de minimus. Sites across the water are essentially too far away and too effectively screened from the site to be considered adversely affected by the addition of two further lots that this subdivision proposes.

2.2 The full S.93/94 report and decision is appended as **Attachment I**.

Relevant Planning History

2.2 The only planning history associated with this particular site is an application in 1977 which sought to establish a Residential Farm Park and Wildlife Sanctuary on site. That application was refused. There are no other relevant applications associated with this site.

3.0 THE PROPOSAL AND REASONS FOR APPLICATION

3.1 This application relates to the subdivision of the existing Lot 7 DP 176030 which is a 6.6ha plot to be subdivided to 3 rural-residential lots measuring 1.49, 1.61 and 1.95ha. Lot 4 would also be created as part of this application and would form a Local Purpose Esplanade Reserve, this lot would measure some 1.55ha.

3.2 Access would comprise 3 individual access drives which would obtain right of way over Lennon Access Road. This road is a privately owned road with all the lots along the road having an equal share.

3.3 Earthworks totalling 600m³ have been indicated which would be needed to form the access drives and the stormwater retention pond. Only 200m³ is permitted by the Plan.

Reason for Application.

- 3.4 *Resource Consent is required for the following reason(s)*

Operative District Plan as amended by Plan Change 55

- 3.5 This site is zoned Countryside Living Rural 1 under Plan Change 55 to the Operative District Plan.
- 3.6 Rule 11.1 provides for subdivision of sites for countryside living purposes where the site or parent site existing on 12 October 1995 has an area less than 15ha as a Limited Discretionary Activity.
- 3.7 Under this rule there is a minimum frontage of 6 metres for all Countryside Living sites, provided that up to 5 sites may gain frontage over a jointly owned access lot, or right of way for the benefit of the sites, or combination of both, of not less than 6 metres in width. As 21 lots (including those proposed) are legally entitled to use the two JOALs (Lots 19 and 20) that serve the application site, the proposal does not comply with this rule.
- 3.8 Under Rule 11.1 the Plan states that 'The Council may consent to a subdivision which does not meet the limited discretionary standard for minimum frontage and access as a **Discretionary Activity.**'
- 3.9 Rule 11.1.5 (i) requires that the minimum average site size is 2 hectares except that the minimum size maybe reduced to 1ha where the minimum average site size on the plan of subdivision is 2ha and for every site smaller than 2ha there is one site of between 2ha and 3.9ha and the average size of each pair of sites is between 2 and 2.9ha.
- 3.10 The application does not meet this averaging and balancing requirement in the rules as the average site size within the proposed subdivision is 1.68ha not 2ha and all the sites are under 2ha in the subdivision therefore there are no other sites of between 2ha and 3.9ha. Subsequently, this being the case, the average size of each pair of sites does not fall between 2ha and 2.9ha.
- 3.11 The reason for this non-compliance is that while the application site is over 6ha the applicant must vest 1.55ha of esplanade reserve (a requirement of S.230 (3) of the RMA) and therefore is unable to create three 2ha lots which would meet the density requirements. However regard should be given to Section 230 (1) of the RMA which states that the size of any allotment shall be determined before any Esplanade Reserve or Esplanade Strip is set aside or created.
- 3.12 While the proposal does not meet the requirements for minimum frontage and access it also does not meet the density requirements. As the Plan does not specify what activity status should be applied when both the frontage and access and density requirements are not met it is considered section 77 C (1) (b) of the RMA would apply where a **Discretionary Activity** status is applied to the application.
- 3.13 In addition to the above rule 3.3 (b) states that up to 200m³ would be a permitted activity where the volume of earthworks exceeds this level, as is the case here, the proposals would be considered under rule 3.3(b) (iii) as a Discretionary Activity.

Proposed District Plan 2000

- 3.14 Under the Proposed District Plan 2000 the application site is zoned Countryside Living Rural and rule 7.14.9 deals with the subdivision of standard Countryside Living Rural sites.
- 3.15 The density rules are contained in 7.14.9.2 and are identical to the density rules in 11.1.5 (i) in Plan Change 55 to the Operative District Plan. In addition to the provisions of the RMA rule 23.8.4 of the Proposed District Plan 2000 also requires an Esplanade Reserve to be set aside. Based on the assessment made of these rules under Plan Change 55 to the Operative District Plan the proposal does not meet the equivalent rule in 7.14.9.2 in this Plan.

- 3.16** The minimum access and frontage rules in this Plan which come under Rule 7.14.9.3 are also identical to the access and frontage rules in Plan Change 55 to the Operative District Plan. Again based on the assessment made under Plan Change 55 rules, the proposal is therefore not compliant with Rule 7.14.9.3.
- 3.17** Rule 7.14.1.3 (a) in Proposed District Plan 2000 requires that any subdivision not complying for that particular subdivision type in Rules 7.14.2-7.14.13 shall be a **Non-Complying Activity**.
- 3.18** In addition to the above rule 7.9.4.2.2 permits up to 200m³ of earthworks cut and fill whilst anymore than this, as is the case here, would be assessed as a Restricted Discretionary Activity under the provisions of rule 7.12.12.
- 3.19** Accordingly the proposal should be assessed as a **Non-Complying Activity** under the Proposed District Plan 2000.

Overall the application is a Non-Complying Activity.

4.0 SITE DESCRIPTION

- 4.1** This site forms part of a small peninsula adjoining the estuary and is one of the furthest plots down the right of way. The lot adjoins the tidal river estuary on three sides with the south western boundary joining the neighbouring lot. A wide formed access drive leads down to the site from the Lennon Access Road. This access drive is bordered by exotic trees.
- 4.2** The topography of the site is gently undulating in nature with little change, though the access does drop from the Lennon Access Road before levelling out. This is evident in Image 1 below.

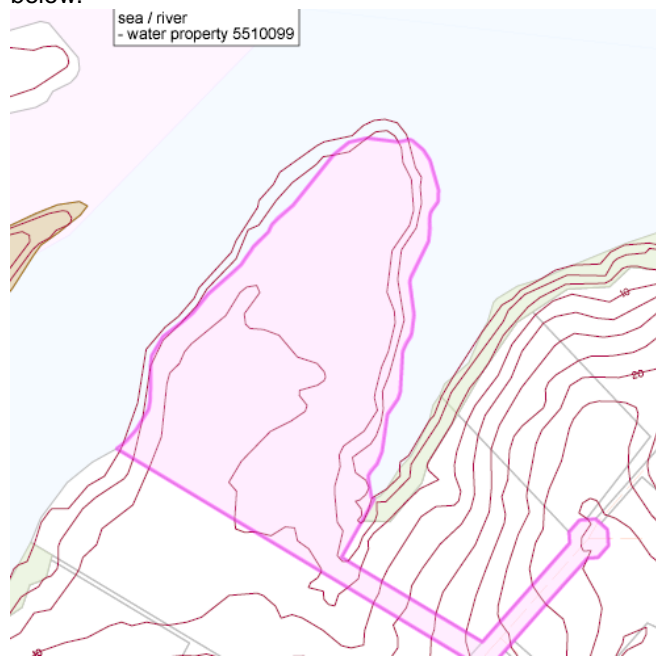


Image 1: Image depicting the contours of the land

- 4.3** There are few dwellings along the Lennon Access Road with the majority of lots remaining undeveloped. There are no residential properties within close proximity to the site though more distant views can be achieved to residential properties. There are properties some distance away on the opposite side of the estuary to the north.
- 4.4** An aerial photo depicting the site and surroundings is found in Image 2.

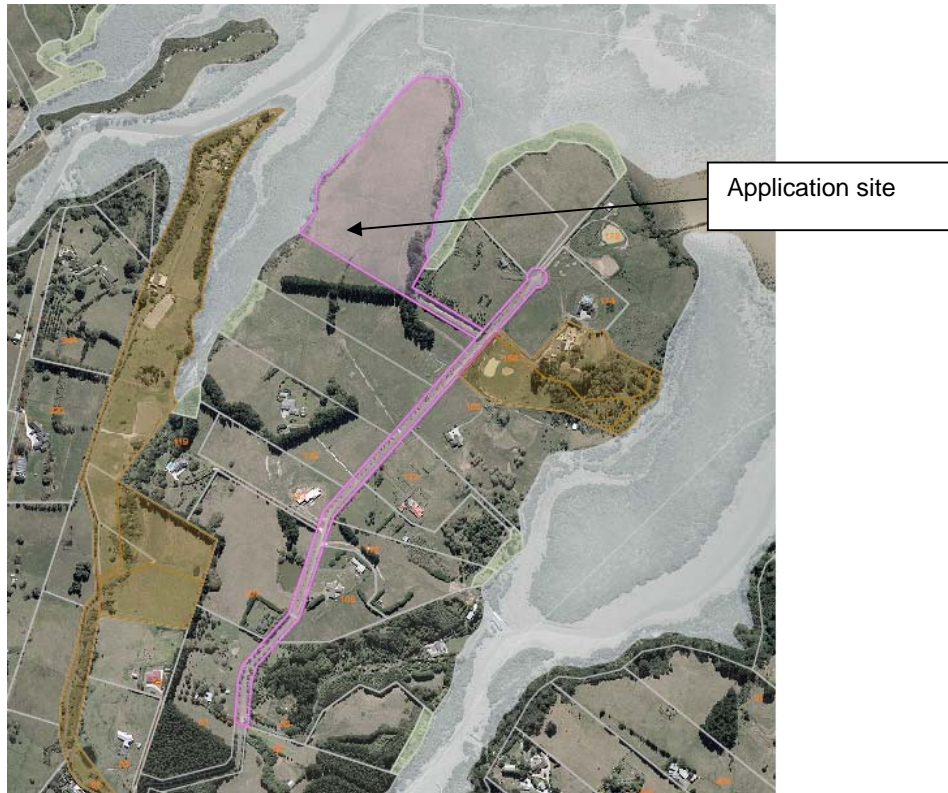


Image 2: Aerial photo depicting the application site and surroundings

- 4.5** There are various easements relating to access rights and the right of way to supply water, telecommunications and electricity rights. A land covenant exists under the Land Transfer Act 1952 relating to the electricity and telecommunications rights. In addition the first schedule places various limitations on the transferee including building restrictions and of most relevance this private covenant states :

The Transferee will not:

(n) Subdivide, cross-lease or in any other way deal with the property which results in the property being divided in to two or more separate properties.

- 4.6** **Attachment II** includes a copy of the application as submitted incorporating this Covenant in Transfer.

5.0 WEIGHTING OF DISTRICT PLANS

- 5.1** Plan Change 26 was made operative in July 2005 and Plan Change 55 was made operative in April 2006.

- 5.2** Proposed District Plan 2000 was publicly notified in November 2000. Decisions have been released however there remain outstanding appeals in relation to Chapter 7 though none specifically that would affect the consideration of this proposal.

- 5.3** Given the number of appeals that remain outstanding I would suggest that greater weight be attributed to the provisions of Plan Change 55 to the Operative District Plan with this being the dominant Plan.

6.0 NOTIFICATION AND SUBMISSIONS

6.1 Notification

The application was notified on 18 December 2008 and submissions closed on 9 February 2009. A summary of the submissions is set out below. A full copy of the submissions and Neighbour Approval Forms is attached as **Attachment III**.

Submissions

6.2 A total of 8 submissions were received by the close of the submission period. Of these 8 opposed the application and none supported the proposal.

LOCAL RESIDENTS

Name	Address	Main Concerns	Relief Sought	Wish to be heard
Lawrence Scott Webb	81 Lennon Access Road	The existence of covenants D004628.1 and T.7759935.1 contributed significantly for the purchase of this property. The privacy, safety, wellbeing and lifestyle will be negatively affected if approved as they share common boundaries.	Wish the Council to refuse the application.	Yes
Helene Marie Webb	81 Lennon Access Road	The existence of covenants D004628.1 and T.7759935.1 contributed significantly for the purchase of this property. The privacy, safety, wellbeing and lifestyle will be negatively affected if approved as they share common boundaries.	Wish the Council to refuse the application.	Yes
Mike Relling	119 Lennon Access Road	All submitted the same submission with the following main concerns: Refer to existing land covenants included on transfer which precluded the subdivision of the land to more than 2 lots. Concerns relating to precedent, the impact on the existing JOAL and impinging upon the enjoyment associated with the area	Either refused until such a time as the land covenant issue has been resolved with the relevant parties or granted with a consent notice condition requiring the covenant issue be resolved prior to the transfer or disposition of the created lots	Yes
Gary & Denise Chambers	123 Lennon Access Road			
Dave Baldwin	164 Lennon Access Road			
Jim & Marlene Glover	108 Lennon Access Road			
Wayne Francis Donovan	174 Lennon Access Road			
David & Genelle Clark	116 Lennon Access Road			

Written Consents

Section 104 (3) of the Act states that a consent authority must not have regard to any effect on a person who has given written approval to the application.

Written consents have been received from the following persons.

- Lot 4 D.P 176030 – T & P Felton
- Lot 6 DP 176030 – R & S Hale
- Lot 7 DP 176030 – G & D Woodside
- Lot 8 DP 176030 – W. Williams
- Lot 1 DP 392680 – P & A Visini
- Lot 2 DP 392680 – P & A Visini

- Lot 1 DP 199169 – E & D Cooper
- Lot 13 DP 176030 – F Helsby
- Lot 1 DP 352473 – N & H Smith
- Lot 2 DP 352473 – N & H Smith
- Lot 2 DP 349624 – D Clark
- Lot 1 DP 349624 – J & M Glover
- Lot 16 DP 176030 – J. Thompson
- Lot 2 DP 337587 – M Relling
- Lot 2 DP 159268 – R Taylor & P Canavan

It is noted that the owners of Lot 2 DP 349624 (116 Lennon Access Road), Lot 1 DP 349624 (108 Lennon Access Road) and Lot 2 DP 337587 (119 Lennon Access Road) have also submitted against the application following notification. Having received their written submissions against these would take precedence over their written approval.

The properties that have provided written approval are identified within Image 3.

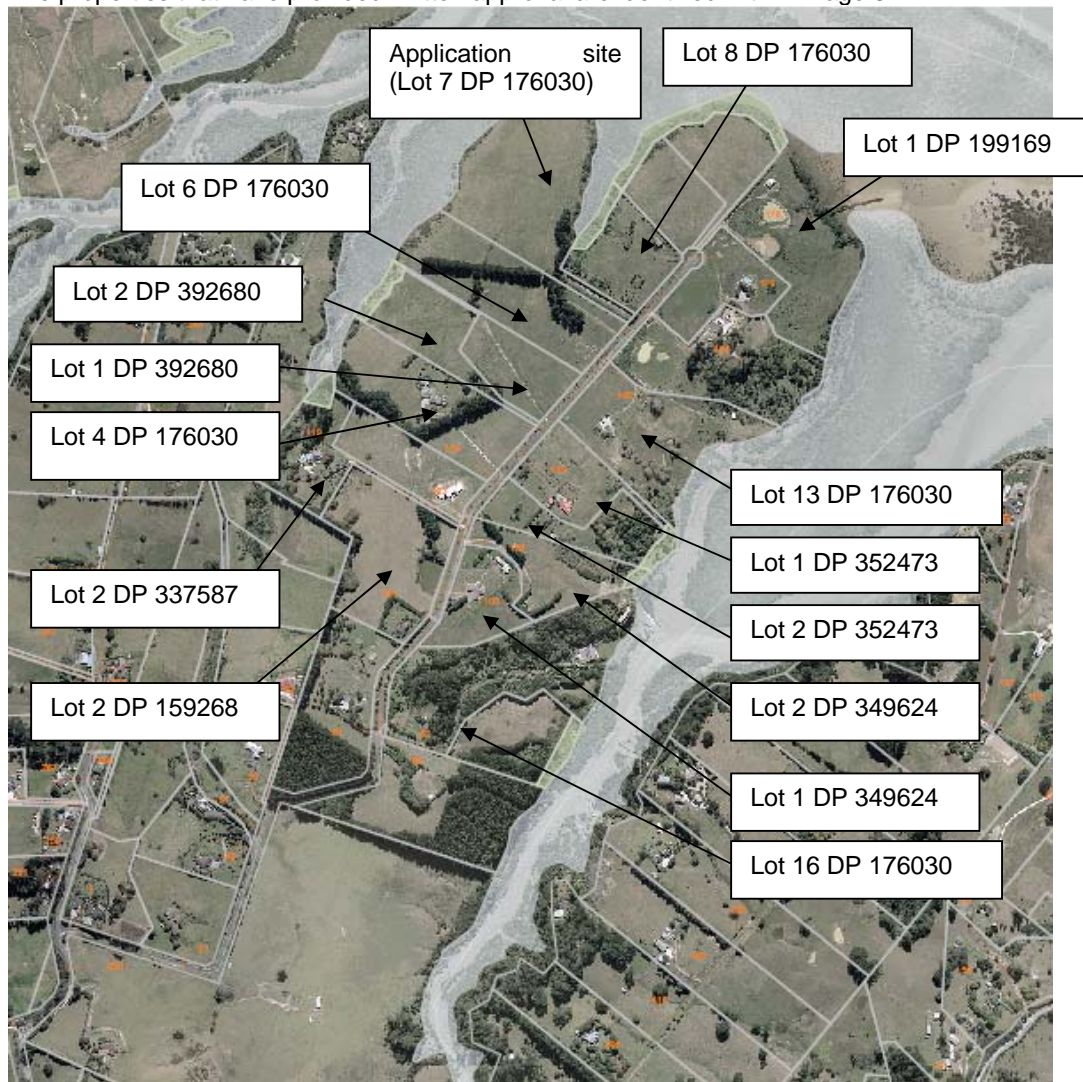


Image 3: Aerial photo depicting properties that have provided written approval

7.0 PRE HEARING MEETING

7.1 No pre hearing meeting has been held.

7.2 REPORTS FROM OTHER OFFICERS/DEPARTMENTS/CONSULTANTS

Reports and/or comments have been received from the persons with respect to this application:

- (1) Development Engineer's report from *Ross Green*. (see **Attachment IV**)
- (2) Ngati Manuhiri Resource Management Unit. (see **Attachment IV**)

8.0 STATUTORY ASSESSMENT

8.1 The Act requires for all applications for resource consent that subject to Part 2 of the Act, the Council must have regard to the matters set out in section 104 of the Act.

8.2 Section 104 (2) of the Act states that the Council "may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect." The permitted baseline of effects will therefore be assessed prior to the assessment in terms of section 104 (1) of the Act.

8.3 Following the section 104 (1) assessment an assessment will be made in terms of sections 104 B and 104D, as applicable, and Part 2 of the Act.

9.0 SECTION 104 ASSESSMENT

Permitted Activities Assessment

The Existing Environment

9.1. The application site is currently undeveloped and is used as grazing however could be developed for the erection of one household unit in accordance with the provisions of the Plan. This potential use would coincide with the existing surrounding environment where some of the lots have now been developed for residential occupation.

Unimplemented Consents

9.2 There are no unimplemented consents associated with this application site that would form part of the permitted baseline.

Activities Permitted by the Plan

9.3 Whilst no subdivision can be undertaken as of right, the appropriate permitted baseline can be derived from those activities within the District Plan that would be permitted as of right, these include the erection of one dwelling per site, childcare facility for not more than 10 children at a time, home occupations and homestay accommodation for not more than 10 guests at a time. Earthworks totalling 200m³ cut and fill would be a permitted activity.

Section 104(1) (a) Any Actual and Potential Effects on the Environment of Allowing the Activity.

9.4 Section 3 of the Act states that the term "effect" includes any positive or adverse effect; temporary or permanent effect; past, present, or future effect; any cumulative effect and potential effects.

Environmental and landscape values

9.5 This application does involve earthworks and therefore some land modification through the formation of the access drives and the proposed stormwater retention pond. These earthworks amount to approximately 600m³ cut and fill which over the course of the site is a small amount and would result in minimal impact from a landscape perspective. The provision of the pond and the access drives are considered necessary in the circumstances of facilitating the development of these proposed plots.

- 9.6** The site is not of a particularly high landscape value and these proposals would result in minimal overall land modification. The main areas of environmental and landscape value are confined to the coastal boundaries and these areas would remain unaffected and would in fact be vested in Council as Esplanade Reserve providing a link to the adjacent Esplanade Reserve to the east.
- 9.7** Minimal truck movements would be required which would not be over and above what could be reasonably expected in the development of a site. In this respect I would be satisfied that the proposals would have a no more than minor impact on the environmental and landscape values of the area.

Character

- 9.8** The character of the area is derived from the intensity of development and the form of development resulting from this intensity. The general locality of this site is characterised by open pastoral rural-residential sites of between 1 and 4ha in size, with residential dwellings and associated accessory buildings predominating the built form.
- 9.9** One of the single most significant contributing factors toward the erosion of rural character even in a rural-residential context as opposed to a production-based rural context, is the introduction of a lot size that is inappropriately small and will encourage overly intensive land-use activities.
- 9.10** While the application site does not meet the density requirements in the District Plan it is considered the effects of this must be considered in light of the fact that the original site area of the property would have otherwise allowed for compliance with this requirement, had there not been a mandatory need to vest an esplanade reserve.
- 9.11** While the vesting of the esplanade reserve will result in lot sizes that are smaller than what would otherwise be allowed, it is considered that this non-compliance generates little adverse effect on rural character because the esplanade reserve which would not be expected to be built on effectively appears as an open area forming part of the rural-residential lots. Furthermore the size of the lots is not considered to pre-dispose them to development that would be inconsistent with the current countryside living character. On this basis the effects on rural character are considered to be no more than minor.
- 9.12** Without a requirement for an Esplanade Reserve the size of the lot at 6.6ha would allow for a site average of 2.2ha which would meet the density requirements of the zone. With the inclusion of the Esplanade Reserve and despite the reduction in the average site size, the proposed subdivision will still retain the open spacious character and non-urban characteristics of the area. The Countryside Living zone in this location forms part of the 'greenbelt' of the Hibiscus Coast and Auckland metropolitan area. The character anticipated for this area is for countryside living purposes, combined with some part time or hobby farming. Each site proposed is considered to be able to cater for this and the proposed subdivision will keep in character with the intended and anticipated use of the sites within the Countryside Living Rural zone.
- 9.13** On this basis the effects on rural character are considered to be no more than minor.

Frontage and Access and its associated impact on Transportation and Traffic issues

- 9.14** The application clearly does not meet the requirements in terms of a maximum of 5 sites being served from a JOAL. The current width of the formed and sealed JOAL is approximately 20m. Currently 23 sites use the combined access way, consisting of Lot 19 and Lot 20.
- 9.15** From a rural character and amenity perspective in terms of the general environment, it is considered that the provision of two additional sites to the current access arrangements would result in little discernable difference to the effects that are currently being generated on the environment. Currently the access operates in a very similar manner to a rural road, due to its formation standard, overall configuration with a number of lots fronting on to it, its length and the number of properties that are generally served by it. Other properties offer a more formal frontage to the JOAL than is the case here due to the site size, shape and orientation within the estuary necessitating three individual access drives to each Lot.

- 9.16** Council's Development Engineer has assessed the proposal and has not raised any concerns in regard to the formation standard of the access or the total number of sites that will be using the JOALs as a result of the subdivision. Furthermore the traffic generated by this subdivision is likely to be relatively low and capable of being accommodated on this access road and surrounding network without resulting in a more than minor impact on transportation and traffic issues.
- 9.17** For the reasons outlined above it is considered the effects in terms of access and frontage and their associated impact on transportation and traffic issues are no more than minor.

Amenity Values

- 9.18** Amenity values relate to people's appreciation of the pleasant, aesthetic, cultural and recreational features of the environment. With new subdivision proposals particularly in a rural context the potential for amenity values to be diminished often relates to the inappropriate or obtrusive location of the proposed building site.
- 9.19** With the proposal put forward in this application, the building sites associated with Lots 1, 2 and 3 are all positioned centrally within their lots. Each building site would be positioned on relatively level terrain well clear of the yard setbacks. Being in such a position on each site will thus maintain the amenity value of the area by ensuring that visual privacy and the open space is maintained. It is subsequently considered that the effects on the amenity values of the area would be no more than minor.

Site Suitability and Hazards

- 9.20** The access to the site has a moderate contours, dropping from where it joins the JOAL before levelling out as can be seen in Image 2 of this report. The proposed building sites for the proposed lots are centrally positioned within each lot on the relatively level ground. The proposed building area can provide the necessary 15m x 15m building platform and can comply with the development controls for the zone.
- 9.21** It is considered that the shape, configuration and topography of the sites appear to be suitable for countryside living rural purposes.
- 9.22** As with the access requirements, the Council's Development Engineer has also assessed site suitability and hazard issues in evaluating the proposal. In assessing this, the Council's Development Engineer has not sought any further geo-technical investigation. Additional information was requested to demonstrate that the subdivision would be hydrologically neutral following the provision of additional impervious areas through the concreting of the privateways and the building sites. It has been suggested by the applicant that a condition on the consent notice could require any concentrated discharges to be directed to a dispersal trench or as sheet flow off paved areas if it is not collected in a catchpit. Any catchpit discharges should also be directed to dispersal trenches. It has been suggested that the pond indicated on the scheme plan should be used as a 'rain garden' with the discharge directed to either a rock pitched outlet to disperse the flow or possibly also to a dispersal trench. After reviewing this additional information the Council's Development Engineer has recommended a condition to be registered on the title that requires all concentrated stormwater discharges from buildings and paved areas to be directed to dispersal trenches so that stormwater is not piped directly to the Weiti River.
- 9.23** The Development Engineer has also not raised any other concerns in regard to the building site being subject to any other hazards that would make the site unsuitable for building purposes.
- 9.24** The site is therefore considered suitable for the location and development with the associated impact on hazards unlikely to be more than minor.

Public Infrastructure

- 9.25** The application proposes to create two additional sites which in turn will more than likely result in the establishment of two additional household units. This situation creates additional loading on infrastructure such as the roading network, sewerage management, and community facilities.

- 9.26** Financial contributions under Plan Change 62 are recommended to be included as a condition of consent to mitigate adverse effects created by the proposal on the existing infrastructure. A schedule of financial contributions has been prepared by Council's in house Development Engineer and is attached as **Attachment IV** to this consent. It is considered that the sites are of sufficient size to allow for adequate treatment of stormwater as referenced in paragraph 9.20 above. Water and wastewater provisions will be supplied by the applicant onsite.
- 9.27** It is therefore considered that adverse effects created by the application on infrastructure will be no more than minor.

Cultural Heritage

- 9.28** There are no known sites of archaeological interest as recorded on the Cultural Heritage Inventory. Ngati Manuhiri Resource Management Unit have viewed the application and have advised that there are no concerns with regards to this application (see **Attachment IV**) however as a precaution in case of the discovery of archaeological remains, the standard archaeological condition has been recommended. With such a condition in place I would be satisfied that the proposals would have no more than minor impacts on cultural heritage issues.

Impact on Neighbouring Properties

- 9.29** As highlighted within the submissions there are various easements relating to access rights and the right of way to supply water, telecommunications and electricity rights. Two land covenants exist under the Land Transfer Act 1952 relating to the electricity and telecommunications rights. In addition the first schedule places various limitations on the transferee including building restrictions and of most relevance the following two private covenants that state :

Land Transfer D004628.1

The Transferee will not:

- (n) Subdivide, cross-lease or in any other way deal with the property which results in the property being divided in to two or more separate properties.*

Land Transfer T.7759935.1

The Transferee will:

- (m) Not subdivide, cross lease or in any other way deal with the property which results in the property being divided except that one subdivision is permitted to create 2 lots only provided that each lot created is at least 1.5 hectares. Following such a subdivision no further subdivision is permitted in respect of either of the lots created notwithstanding that one or both of the lots created is capable of subdivision into lots that would all be at least 1.5 hectares.*

- 9.30** These Covenants in Transfer are attached as **Attachment II** to this report. Despite the existence of these covenants it is considered that this issue can not be treated as a material planning consideration in the assessment of this application.
- 9.31** These are private land covenants placed on the title independently of the RMA process at the sale of land and its existence is an issue that the land owner would need to address independently of the RMA process if they were to proceed with the subdivision. It is recognised that the applicant would be unable to implement the consent without negotiating the removal of these land covenants and any grant of consent under the RMA would not in itself prejudice this private land covenant which would still be enforceable independently of the RMA.
- 9.32** As part of the submissions it has been suggested that the application be refused until such a time as this covenant has been removed from the Title, however given the above context the RMA is not the right forum for addressing what is a private land covenant.

9.33 Again submissions have suggested a condition requiring the applicant to address the covenant issue before being able to transfer the created lot. However, again I would consider that this would not be appropriate as the applicants would need to address this in any event. Furthermore the power to impose conditions on a planning consent is not unlimited and this has been brought through the 'Newbury tests' through case law referring specifically to *Newbury DC v Secretary of State for the Environment* in England. The findings of this case were approved and applied in New Zealand in *Coote v Marlborough DC W096/94 (PT)*, *Far East Investments Ltd v Auckland CC EnvC A048/01* and *Horn v Marlborough DC EnvC W030/05*. The result of these cases stipulated that to be valid by law a condition must:

(i) Be for a resource management purpose, not for an ulterior one;

(ii) Fairly and reasonably relate to the development authorised by the consent to which the condition is attached; and

(iii) Not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have approved it.

9.34 It is considered that any condition requiring the applicants to address the land covenant would not be for a resource management purpose under the RMA but instead would serve a purpose under the Land Transfer Act 1952. The use of a condition for such purposes would thus be found to be *ultra vires*.

9.35 Further concerns have been raised by the occupants of 81 Lennon Access Road which shares the boundary with the JOAL serving the access road as can be seen in Image 3. Concerns have been expressed by the owners of this property that the proposals would negatively affect their privacy, safety, wellbeing and lifestyle.

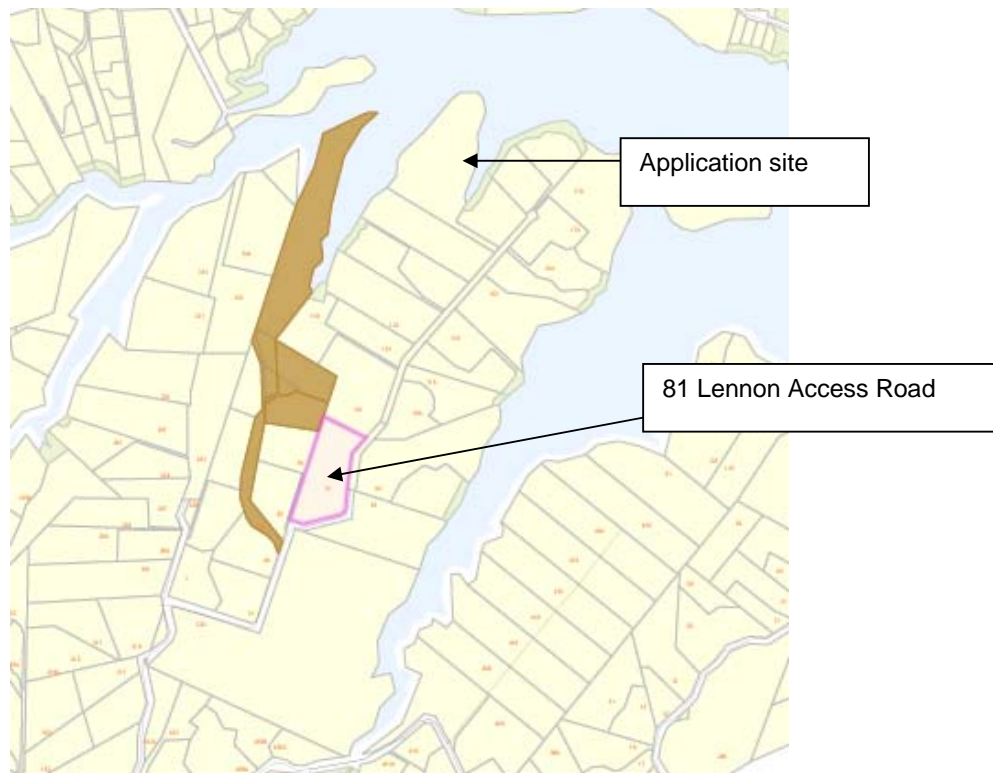


Image 4: Plan depicting the location of 81 Lennon Access Road

- 9.36** As can be seen in the plan within Image 4 the application site is located a considerable distance from this property with numerous other lots positioned in between. Given this context I would be satisfied that there would be no direct relationship between any built development within the proposed subdivided lots and 81 Lennon Access Road. Nevertheless it must be acknowledged that any vehicular activity associated with the proposals would pass the eastern and southern boundaries of 81 Lennon Access Road. However given the number of plots along Lennon Access Road that would have vehicular access past the southern and eastern boundaries I would suggest that the additional traffic generated by this subdivision would be low and unlikely to result in more than de minimus effects on the amenity enjoyed by the occupants of this property.
- 9.37** As joint owners of the access road there would be an expectation that the future of the owners would contribute to the maintenance of this JOAL and the private land covenants address this issue. It is understood that negotiations have been undertaken between all those affected by the land covenant restricting further subdivision and these have involved discussions around the maintenance of the JOAL, although it is understood that no agreement has been reached as yet. However in line with my conclusions within paragraph 9.33 of this report I would suggest that this is a private issue that should be dealt with and addressed independently of the RMA process. Subsequently notwithstanding the wishes of the owners of 81 Lennon Access Road seeking the application be refused I would not consider these points to be grounds to refuse the application.

Section 104(1) (b) Any Relevant Plan Provisions

District Plan Provisions

Operative Plan as amended by Plan Change 55

Objectives and Policies

- 10.0** The proposal is considered to be **consistent with** the following objectives and policies.

- (a) General Objective 4.1 (b) and policy 4 on pages 16 and 17.
- (b) General Objective 3 on page 70.
- (c) Specific Objectives 5.1, 5.5 and 5.9 on pages 71 and 72.
- (d) Specific Policies 5.2, 5.6, 5.8 and 5.9 on pages 71 and 72.

General

- 10.1** Objective 4.1 (b)
To recognise countryside living as a valid rural activity and to consolidate such development in those parts of the District where it can be accommodated without significant adverse effects on natural character, amenities and productive values including extraction of mineral resource and the efficient and safe functioning of the road network.

The proposed subdivision maintains the rural characteristics by creating sites that are large and open and will maintain the amenity value within the area.

- 10.2** *Policy 4: Countryside Living*
Facilitate countryside living opportunities focused on specified areas where pressures on rural production activities (including mineral extraction) are or can be limited, and a rural character is maintained. The extension or intensification of countryside living areas shall:

- (a) *avoid use of land of moderate to high value for primary production, (as defined by the New Zealand Land Resource Inventory worksheet) so far as practicable;*
- (b) *not result in significant adverse effects on regionally or locally significant landscape, heritage values, or biological and ecological resources;*
- (c) *protect the operational needs of rural production activities (including mineral extraction) from lifestyle amenity expectations;*
- (d) *not limit the likely land needs for growth of urban centres or settlements;*
- (e) *not adversely affect the safe and efficient operation of existing and future infrastructure;*
- (f) *not require reticulated wastewater and effluent treatment and disposal services;*

- (g) avoid or mitigate any increase in immediate and downstream flooding effects;
- (h) avoid adverse traffic impacts on local roads and state highways; and
- (i) have regard to the advantages of efficient use of the physical resources such as sealed roads, schools and commercial services.
- (j) Avoid use of land that is incompatible with existing rural production activities.

The site is located within an area where hobby farming is still possible and where the main use is for rural residential lifestyle living. The site is served by a local road, utilising a private right of way which will not create an adverse effect on the roading network. The appropriate services can be provided onsite.

Countryside Living Rural

10.3 General Objective

The overall objective of the activity area is to ensure the environmental quality enjoyed by residents is protected thus enabling countryside living in specified rural areas that are generally at some distance from settlements and suitable for this activity from the points of view of both effects on the environment and the needs for future residents. Provision is made in such a way that adverse impacts on natural resources and rural character are minimised, undue pressure to upgrade the rural roading network or provide reticulated water supply or stormwater or sewage disposal services is avoided, and the future expansion of existing urban settlements is not prejudiced. By concentrating lifestyle blocks at a limited number of locations, the potential for friction between lifestyle blocks and full time farmers over the impact on amenity levels of some farming operations is minimised. Also by offering lifestyle blocks the opportunity of obtaining a site in the countryside living activity area some of the pressure for sites for countryside living in the production, special character and conservation activity areas that make up the rest of the rural area of the District may be reduced, with benefits to their natural character and economics of farming in those areas.

The subject site is located within an area where access is gained from a formed and sealed road and right of way. The subdivision is concentrated within an area where the Countryside Living Rural zone already exists. The area offers countryside living as well as hobby farming. The residents will still be able to enjoy the present environmental quality of countryside living.

5 Specific objectives and policies

10.4 5.1 Objective

To locate Countryside Living (Rural) Activity Areas where they reinforce the preferred development strategy.

The proposed subdivision is located within the existing countryside living rural zone. The proposed lots are as envisaged under the District Plan.

10.5 5.2 Policies

- (i) *The Dairy Flat/Redvale/Coatesville/Riverhead area to be selected as an area for Countryside Living (Rural) Activity Areas as a means of reinforcing the green belt between the Auckland metropolitan area and the Hibiscus Coast.*
- (ii) *Land selected for Countryside Living (Rural) Activity Areas to be in locations that are clear of the expected growth paths of the District's urban settlements, and where no undue pressure will arise for the upgrading of roading at public cost.*

The Countryside Living Rural zone in this area is considered to be the greenbelt between the Hibiscus Coast and Auckland City. The proposed subdivision is located within the area where growth is expected and land can be subdivided into smaller lots compared to the rural zone. There will be no pressure on the infrastructure as this is mitigated by way of Plan Change 62.

10.6 5.5 Objective

To minimise the impact of countryside living on the rural and coastal landscape and natural environment.

As part of the subdivision, the District Plan requires the vesting of an esplanade reserve strip if the site adjoins water property. The subject site abuts the Weiti River in which a 20m strip will be vested in Rodney District Council. In this case, the subdivision will still maintain the coastal and natural environment as this will be protected as part of the application.

10.7 5.6 Policies

- (i) *Countryside Living (Rural) Activity Areas to be located in the parts of the District that are less sensitive to more intensive development in terms of impact on the natural and landscape values, being generally those in the southeast rather than the southwest of the District.*
- (ii) *Buildings in the Countryside Living (Rural) Activity Area to be well set back from roads and side boundaries, and minor household units to be located close to the main dwelling to reduce the apparent extent of building on a site.*
- (iii) *Rural landscape character in the Countryside Living (Rural) Activity Areas to be protected by limiting the extent to which native vegetation may be removed (for visual and erosion control reasons), and requiring larger areas of native vegetation within subdivisions to be fenced.*
- (iv) *Quality of water in streams and rivers to be protected by controlling earthworks and bush and vegetation removal, and the siting of buildings and discharge points from sewage treatment facilities along the margins of streams and rivers.*
- (v) *The range of activities permitted to be limited to low intensity operations rather than the full range of urban or primary production activities.*

The subject site is located within the Countryside Living Rural zone. The proposed building sites can comply with the development controls for this zone. There will be no need for vegetation removal, some earthworks will be required but amount to approximately 600m³ which is a relatively low amount given the size of the site. The proposed building sites are located well away from the water property located at the rear of the site.

10.8 5.8 Policy

- (i) *Provision for countryside living to be concentrated mainly in a limited number of defined areas (the Countryside Living (Town) and (Rural) Activity Areas).*
- (ii) *Land for Countryside Living (Rural) Activity Areas to be located in areas that are clear of the areas of best soils and established intensive rural production activities and are already subdivided into small blocks, as far as practical.*

The area is currently zoned as Countryside Living Rural. The District Plan allows for this site to be further subdivided due to the size of the parent lot. The newly proposed lots still allows for hobby farming and rural lifestyle living.

10.9 5.9 Objective

To provide a level of amenity in countryside living areas which reflects residential or lifestyle expectations rather than those of production.

The immediate surrounding neighbourhood of the area reflects countryside living due to the site sizes and the use of the land. The subdivision will still maintain the level of amenity of countryside living.

10.10 5.10 Policy

- (i) *Land to be selected for Countryside Living (Rural) Activity areas to be clear of sites used for established activities which have characteristics that are likely to have an adverse effect on the levels of amenity expected by rural lifestyle.*
- (ii) *Activities in Countryside Living Activity Areas should be consistent with the amenity values that would be expected with low density residential activities in a largely pastoral environment.*

Low density development can be expected where the lots will still be large and open spaciousness is retained. This area is fairly new where there are still a large number of sites undeveloped. It is recognised that the area has the potential for further subdivision.

Strategic Issues

- 10.11** The main strategic issue outlined in this zoning is to ensure that the area does not take on an urban character as residential development occurs. Furthermore, that those elements of farming and other non residential activities which tend to be resented by those not personally involved in the farming industry do not become established. This application would see the provision of three sites at a density that would generally accord with the expectations of this area when seen in the context of the Esplanade Reserve and surrounding land. In this respect it is considered that the strategic issues outlined would remain uncompromised by this subdivision.

Plan Rules

- 10.12** Perhaps the most relevant rules in terms of Plan Change 55 to the Operative District Plan relate to the number of properties accessed off a JOAL and the site sizes. Under rule 11.1.3 there is a minimum frontage of 6 metres for all Countryside Living sites, provided that up to 5 sites may gain frontage over a jointly owned access lot, or right of way for the benefit of the sites, or combination of both, of not less than 6 metres in width. As 21 lots (including those proposed) are legally entitled to use the two JOALs (Lots 19 and 20) that serve the application site, the proposal does not comply with this rule.
- 10.13** Rule 11.1.5 (i) requires that the minimum average site size is 2 hectares except that the minimum size maybe reduced to 1ha where the minimum average site size on the plan of subdivision is 2ha and for every site smaller than 2ha there is one site of between 2ha and 3.9ha and the average size of each pair of sites is between 2 and 2.9ha.
- 10.14** The application does not meet this averaging and balancing requirement in the rules as the average site size within the proposed subdivision is 1.68ha not 2ha and all the sites are under 2ha in the subdivision therefore there are no other sites of between 2ha and 3.9ha. Subsequently this being the case the average size of each pair of sites does not fall between 2ha and 2.9ha.
- 10.15** As set out previously however the reason for this non-compliance is that while the application site is over 6 ha the applicant must vest 1.55ha of esplanade reserve and therefore is unable to create three 2ha lots which would meet the density requirements. However regard should be given to Section 230 (1) of the RMA which states that the size of any allotment shall be determined before any Esplanade Reserve or Esplanade Strip is set aside or created.
- 10.16** Notwithstanding the infringement of these rules it is considered that for the reasons set out in section 9 of this report, the proposals are unlikely to result in more than minor adverse effects.

Proposed District Plan 2000

Objectives and Policies

- 10.17** The proposal is considered to be **consistent with** the following objectives and policies.
- (e) General Objective 4.1 (b) and policy 4 on pages 16 and 17.
 - (f) General Objective 3 on page 70.
 - (g) Specific Objectives 5.1, 5.5 and 5.9 on pages 71 and 72.
 - (h) Specific Policies 5.2, 5.6, 5.8 and 5.9 on pages 71 and 72.

General Policies and Objectives:

Objective 7.3.1

To maintain and enhance the rural character of the District.

The subdivision is catered for under the District Plan for the zone. As mentioned above, the character of the area will be maintained whilst the provision of the Esplanade Strip will offer environmental benefits.

10.18 *Objective 7.3.2*

To enhance and protect the distinctive special character of parts of the District which have a high degree of naturalness and high landscape and amenity values which contribute to the identity of the District.

A 20m esplanade strip will be vested in Council as a result of this subdivision application and requirement under the District Plan. This will ensure that the special distinctiveness of the area remains protected with the high landscape and amenity value which contributes to the identity of the District being maintained.

10.19 *Objective 7.3.3*

To maintain and protect the amenity values present in the rural parts of the District.

The proposed building areas within the newly created lots will still be able to comply with the development controls for the area. The amenity values in this case will not be affected by the subdivision proposal.

10.20 *Objective 7.3.5*

To avoid or minimise conflict between land uses which can adversely affect the ability of other rural sites to be used for rural productive purposes and affect the viability of other rural production based activities.

Given the context of the sites, the immediate surrounding properties are isolated from other sites and there will not be any conflict between rural properties.

10.21 *Objective 7.3.6*

To maintain and enhance a land tenure pattern which enables the rural land resource to be used for a range of activities on a sustainable basis for present and future generations.

The proposed land will not be able to be further subdivided unless the zone changes in the future. However in the meantime, the land pattern throughout the District for this zone should remain the same whereby activities provided for under the Plan will allow generations to undertake it sustainably.

10.22 *Objective 7.3.10*

To avoid, remedy or mitigate the adverse effects of subdivision and land use, including vegetation clearance, earthworks, stormwater and waste water treatment and disposal on water quality.

The proposed building sites will not require vegetation to be removed for the construction of the dwellings. There will be earthworks undertaken however given the amount proposed and due to the topography of the land adverse effects are likely to be avoided.

10.23 *Policy 7.4.1*

Intensive subdivision and activities which are primarily rural residential based should be located close to metropolitan Auckland or along major routes where road access is able to accommodate increased traffic volumes.

The site is located within Stillwater, a fair distance away from Auckland, however it is located close to a major route which is East Coast Road which allows for large volumes of traffic.

10.24 *Policy 7.4.2*

Rural subdivision and activities should be of a nature, scale, intensity and location consistent with the existing rural character of each part of the District and the foreseeable future rural character of those areas, and should be undertaken in a manner which avoids, remedies and mitigates adverse effects, including cumulative effects, and enhances the character, associated with rural areas, which include but are not limited to:

- (a) a very high ratio of open space in relation to areas which contain buildings;*
- (b) a predominance of natural features (sometimes modified by human activity);*
- (c) the open space areas being in pasture, trees, crops or indigenous vegetation;*
- (d) the presence of large numbers of farmed animals and extensive areas of plant or fruit crops, plantation forests and farm forests;*
- (f) streams, rivers, wetlands and ponds;*
- (g) the presence of large numbers of native wildlife;*

- (h) *the presence of large and small areas of native bush, scrub and wetlands;*
- (i) *few buildings and activities of an urban scale and nature of other than residential dwellings;*
- (j) *generally narrow roads with open drains, a significant road and a number of unsealed and low speed geometry, low traffic volumes (except State Highways and arterial roads);*
- (l) *a low density of buildings and structures with site sizes being in hectares rather than square metres, and a land tenure with a diversity of site sizes and shapes;*
- (m) *low population densities;*
- (n) *accessory buildings which dot the landscape particularly where farming activities are the dominant activity.*

The subdivision maintains a high open spacious feeling within the area where hobby farming is permissible and envisaged by the District Plan. Due to the large sites, the area allows for rural residential living.

10.25 *Policy 7.4.3*

Subdivision and land use should be undertaken in a manner which maintains and enhances the distinctive special rural character of parts of the District, this special character being a combination of a high degree of "naturalness" and high amenity values based on the existence of particular physical features such as beaches, ridgelines, estuaries, harbours, native bush, scrub and wetlands or similar unifying features.

The subdivision will result in a 20m esplanade strip vested in Council. The distinctive rural character of the area will be maintained where a high degree of naturalness and amenity value will be protected.

10.26 *Policy 7.4.4*

Subdivision and activities should be undertaken so that adverse effects, including cumulative effects, on amenity values are avoided, remedied or mitigated and in particular that:

- (a) *buildings and service areas, such as those for parking, are sited and designed so as to maintain and protect visual and aural privacy for neighbouring sites;*
- (b) *buildings and service areas are sited and designed so as to maintain admission of sunlight to neighbouring sites;*
- (f) *buildings are sited and designed so that they do not detract from, or impact on, in any more than a minor way, any significant natural features, including ridgelines, headlands, beaches, and areas of significant native vegetation and significant wildlife habitats;*
- (g) *subdivisions and buildings are of a scale and intensity that enable a high proportion of open space to buildings to be maintained;*
- (h) *subdivisions and buildings are sited and designed so that they do not detract in any more than a minor way from both highly valued landscapes, or significant rural landscapes;*
- (i) *subdivisions and land uses do not adversely affect the safety and efficiency of the roading network, through accessway design and standards, parking provision, traffic volumes and traffic types generated, and the density of subdivision;*
- (j) *subdivisions and land uses do not adversely affect water quality through and form modification, earthworks and vegetation removal;*
- (l) *subdivision and activities do not unduly restrict or prevent public access to the coast or the margins of rivers or streams;*
- (m) *the removal of areas of native bush, scrub, wetlands, riparian vegetation and other significant trees and vegetation is avoided, remedied or mitigated and these areas are managed, protected and enhanced as part of the design of the subdivision, or when any activity is carried out;*
- (n) *earthworks do not significantly detract from visual amenity, particularly in areas containing significant natural features and vegetation.*

As mentioned previously, the future building sites on the property will be able to meet the development controls of the zone. The scale and intensity of future developments have been envisaged by the District Plan allowing for this type of subdivision to proceed in relation to the site sizes proposed if it were not for the requirement for an Esplanade Reserve. Nevertheless the subdivision will create a 20m esplanade strip which will be vested in Council whereby the distinctive characteristics of the area will be protected. Access is provided for where the natural landscape will not be significantly modified as a result of this application.

10.27 Policy 7.4.5

Rural residential living opportunities should be located in specific areas, which are able to accommodate such development, without significantly altering rural character, adversely affecting rural amenity values or impeding the establishment and operation of rural production activities by introducing residents with differing expectations of rural amenity values.

The proposed site sizes will still allow the residents of the created sites to undertake hobby farming or any farming activity within a smaller scale compared to that within the General Rural zone. Countryside Living Rural sites cater for rural residential living as well. The amenity value of the area will thus be maintained.

10.28 Policy 7.4.6

Subdivision and activities, which require high amenity values, should not be located in areas where lower levels of amenity value are acceptable, and generate adverse effects capable of constraining or preventing the operation of:

- (a) activities utilising the productive potential of the rural land resource;*
- (b) the productivity of such activities on neighbouring sites.*

The site sizes required by the District Plan would have been possible were it not for the requirement for an Esplanade Reserve. Nevertheless the creation of this Esplanade Reserve and the amenity provision it affords with the subsequent site sizes proposed is considered to be in line with and comparable to the site sizes required by the District Plan. It is therefore considered that this will not create a constraint or prevent the land being utilised or create an effect on neighbouring properties.

10.29 Policy 7.4.8

Subdivision and activities should be undertaken in a manner which avoids, remedies and mitigates or enhances the adverse effects, including cumulative effects, on the natural environment and in particular that:

- (b) activities occur without an adverse effect on significant natural features, including bush, scrub, wetlands, dune areas, and significant native vegetation and wildlife habitat;*
- (c) activities do not adversely affect water quality through landform modification earthworks, vegetation removal and wetland modification;*
- (e) the removal of areas of native bush, scrub, wetlands, riparian vegetation and other significant trees and vegetation is avoided, remedied and mitigated and these areas are managed, protected and enhanced as part of the design of the subdivision and development.*

The subdivision will create an esplanade reserve towards the rear of the property 20m wide that will be vested in Council. It is considered that the protection of this strip is a positive outcome which will protect any wildlife habitat and significant native vegetation.

10.30 Policy 7.4.15

Subdivision and land use activities should be undertaken so that:

- (a) the area of exposed soils and the length of time they remain exposed during land modification is limited;*
- (b) the clearance of vegetation on riparian margins, wetlands, steep slopes and soils prone to erosion or instability and visually significant and sensitive areas is minimised;*
- (c) the scale and design of earthworks is such that any increase in the rate and volume of overland flows into waterways is minimised;*
- (d) the scale and design of earthworks seek to minimize sediment discharges and dust nuisance;*
- (e) effects of land uses on water quality, in particular waste water and stormwater treatment and disposal, are minimised;*
- (f) the overland flows post development should be the same as predevelopment (i.e. hydrologically neutral).*
- (g) the clearance of native vegetation and wildlife habitats should be avoided, or where this is not practicable, remedies or mitigated.*

The proposed subdivision will not create adverse effects on the land furthermore the natural landscape will not be significantly modified. Council's Development Engineer has assessed the application and concluded that the overland flows of post development will be similar to that of the predevelopment. Adverse effects are thus considered to be no more than minor on the environment.

10.31 *Policy 7.4.16*

Subdivision, development and land use should occur in a manner which does not have any actual or potential cumulative adverse effects, including:

- (a) the effects of the proposed activity adding to or acting together with the effects of existing activities located in the area;*
- (b) the effects of new activities that may establish in the future which will add to, or act together with the proposed activity;*
- (c) the effects on highly valued natural resources, such as significant natural areas, and highly valued landscapes; on rural character and amenity values; including the effects of:
 - (i) earthworks, vegetation removal and modification, and wetland modification;*
 - (ii) size and shape of sites and buildings erected and location of buildings erected;*
 - (iii) roading;*
 - (iv) provision of infrastructure.**

As mentioned above, the subdivision is proposed on a site where the proposed lot sizes are envisaged under the District Plans were it not for the requirement for an Esplanade Reserve. The effects of the new intensity will not have an adverse effect on the significant natural areas or the landscape where the character and amenity values will be retained. Roading has been provided for and the impact on infrastructure has been mitigated. The need for earthworks and vegetation removal will be minimal.

Specific Policies and Objectives:

10.32 *Objective 7.8.5.1*

To enable people to undertake rural lifestyle development and activities in a context where open space and amenity values reflect residential lifestyle outcomes and expectations.

The site sizes and composition of these lots would be such that each plot would enable the occupants to undertake rural lifestyle activities in an open space environment despite the infringement of the site sizes. This is because the open space environment would be maintained by its context on a small peninsula with the watercourse adjacent combined with the provision of an Esplanade Reserve.

10.33 *Objective 7.8.5.1.3*

To protect and enhance wherever possible significant natural areas and features, including landscapes, streams, rivers, lakes and wetlands.

This application would see the provision of an Esplanade Reserve which would see the enhancement of this feature in line with this objective.

10.34 *Objective 7.8.5.1.4*

To enable more intensive countryside living opportunities in locations where environmental conditions enable such activities to occur without more than minor adverse effects on rural character, amenity values and the quality of the environment.

This subdivision would enable more intensive countryside living opportunities where the environmental conditions of the adjacent watercourse provision of an esplanade reserve within the surrounding landscape would ensure the effects on rural character, amenity values and the quality of the environment would be no more than minor.

10.35 *Objective 7.8.5.1.5*

To minimise the impact of countryside living on the rural landscapes and natural environment.

The impact on the rural landscapes and natural environment has been minimised by the provision of an esplanade reserve and the central positioning of the building platforms within each lot on relatively level ground ensuring that the extent of land modification required would be minimal.

10.36 *Policy 7.8.5.2.2*

Opportunities for rural residential subdivision and development should be provided within these Zones where the open space character of the greenbelt can be retained.

It is considered that the open space character of the greenbelt would be retained due to the positioning of this site adjacent to the watercourse near the end of the JOAL, the provision of the esplanade reserve and the central positioning of the building platforms.

10.37 *Policy 7.8.5.2.4*

New buildings and structures within the Zone should be designed, sited and constructed so that they enable the open space, non-urban character of the zone to be retained.

Although there would be no control over the buildings and structures forming part of this application other than the development controls for the zone which would still apply it is considered that the central positioning of the building platforms combined with such development controls would be sufficient to enable the open space of the zone to be retained given the context of the site and its surroundings.

10.38 *Policy 7.8.5.2.5*

Activities should avoid any adverse effects upon streams, rivers and wetlands and wherever possible new activities or subdivision should lead to the enhancement and revitalisation of these areas by excluding grazing animals through fencing and undertaking replanting of riparian areas.

This application would see the provision of an Esplanade Reserve which would see the enhancement of this feature in line with this policy.

10.39 *Policy 7.8.5.2.11*

Buildings in the Countryside Living Zones should be well set back from roads and site boundaries to maintain the open space nature sought within the Zone.

This application would see the building platforms set well back from the site boundaries and roads in line with the expectations of this policy.

10.40 *Policy 7.8.5.2.13*

The quality of water in streams and rivers should be protected by controlling earthworks and bush and vegetation removal, protecting riparian margins through fencing and planting, and avoiding the siting of buildings and discharge points from sewage treatment facilities along the margins of streams and rivers.

This application would see the provision of an Esplanade Reserve which would see the enhancement of this feature in line with this policy. Furthermore the siting of the building platforms has ensured that they are detached from the adjacent watercourse.

10.41 *Policy 7.8.5.2.15*

Subdivision and activities shall not increase overland flows above pre-development levels.

Through conditions of consent it would be possible to ensure that no stormwater is piped directly into the Weiti River in line with the expectations of this policy.

Proposed Plan Changes

There are no Plan Changes considered relevant to this application.

Any Relevant National Policy Statement or Regional Policy Statement

10.42 Auckland Regional Policy Statement

The Auckland Regional Policy Statement (hereafter referred to as RPS) has regard to managing the use, development and protection of the natural and physical resources of the environment. Its aim is to achieve integrated, consistent and co-ordinated management of the Region's resources. Various key issues such as transport, energy, heritage, water and air quality, waste, water and soil conservation and the coastal environment are all discussed.

The RPS discusses the need to accommodate the continued population of the region in the foreseeable future. It states that urban development should be limited and not encroach on areas that are considered to have high amenity values, natural and cultural heritage features, prime land, vulnerable ecosystems, areas of existing environmental degradation and areas prone to the impact of natural hazards. In reflection of this, it is considered that the Stillwater area is within the Countryside Living Rural zone where high amenity value is still maintained in regards to creating sites that are still large in area. Development within that area has to be compatible to its surroundings. Development is controlled where a more open and spacious characteristic has been adopted for the area. The proposal creates an intensity within the area that will cause adverse effects on amenity values that are no more than minor. It is determined that the important aspect of the land which is the area alongside the river has significant landscape value which will be protected as a result of this application and vested into Council.

Section 104 (1) (c) Any other Matter

Relevant Council Documents

10.43 Vision Rodney is a statement of the future that outlines what the people of Rodney want, following extensive community consultation. Vision Rodney has at its core the following intents:

- We will keep our country look and feel
- We will not let our towns and villages sprawl
- We will maintain our lifestyle and look after the environment
- We will take care of ourselves while working with others
- We will be able to make our living in Rodney
- We will determine the future of our district

It is considered that change and development has to be controlled and allowed where accommodated and planned for. Development must be appropriate where the level of intensity is similar to that of the existing character and maintains the amenity value of the area. Maintaining the country look and feel means still providing open and spacious feeling which this application achieves. The application is considered to be consistent with Vision Rodney.

Other Legislation

10.44 There are no other legislations relevant to this application

Relevant Regional Documents

10.45 The Auckland Regional Growth Forum is a partnership between Auckland's local and regional authorities allowing a co-operative regional approach to growth management. Options and alternatives to accommodate future growth have been examined and adopted in the Auckland Regional Growth Strategy (hereafter referred to as ARGS) in November 1999. Where it is relevant to this application, the desired outcomes of the ARGS relates to *"providing the certainty for future regional growth, whether in new urban areas such as greenfields, satellite centres or expanded rural towns, should promote the protection and the maintenance of the character of the region's natural environment and to better non-urban and rural amenity including landscape protection, and more trees and vegetation"*. One of the principles in evaluating the regional growth alternatives is to *"take into account the values of productive soils when managing growth in rural areas"*.

In terms of this application, these proposals would see the creation of an intensity within the area that is not considered to cause adverse effects on amenity values that are no more than minor. It is considered that the important aspect of the land which is the area alongside the river has significant landscape value which will be protected as a result of this application and vested into Council.

The Integrity and Consistent Administration of the Plan

10.46 As highlighted previously this application would see the infringement of two specific elements of the Plan, the number of sites accessed off the existing JOAL and the size of the plots created. Despite these infringements it is considered that granting this application would not

compromise the integrity or the consistent administration of the Plan. This is because there have been a number of previous applications granted increasing the number of users along this JOAL which has gone significantly beyond the Plan provisions. The context and appearance of this JOAL is more akin to that of an access road. In terms of the site sizes it is considered that although they are not technically consistent with the site sizes stipulated within the Plan, given the provision of the Esplanade Reserve for all intents and purposes the sites would appear in line with the expectations of the Plan thus not compromising its integrity or its consistent administration.

Section 104 Assessment Conclusions

- 10.47 Overall it is considered that having regard to all the relevant section 104 matters that consent be granted subject to conditions.**

SECTION 104B AND 104D ASSESSMENT

- 11.0** As a non-complying activity section 104D of the Act states that the Council may only grant consent if it is satisfied that either:
- (a) the adverse effects of the activity on the environment will be minor; or
 - (b) the application is for an activity that will not be contrary to the objectives and policies of the relevant plan.
- 11.1** Based upon the section 104 assessment of actual and potential effects in Section 9 of this report, it is considered that the adverse effects on the environment will be no more than minor.
- 11.2** Based upon the section 104 assessment of the relevant objectives and policies of the Plan in Section 9 of this report, it is considered that the proposed activity will be consistent with the following objectives and policies. The reasons for this conclusion are set out in the Section 9 assessment.
- 11.3** Overall it is considered that the proposal meets both gateway tests and can be considered for the grant of consent and can be considered for the grant of consent.

PART II ASSESSMENT

- 12.0** Part II of the Resource Management Act 1991 pertains to the principles and purposes of the Act as outlined in Sections 5, 6, 7 and 8. Section 5 outlines the purpose of the Act and defines sustainable management as managing the use, development and protection of natural and physical resources in a way which enables people and communities to provide for their wellbeing. It is considered the proposal will enable people to provide for their economic wellbeing. As the impact on infrastructure will be mitigated by way of financial contributions it is considered that the proposal will not cause adverse effects on the natural and physical resources.
- 12.1** Section 6 of the Act refers to matters of national importance. Included within this are the preservation of the natural character of the coast, protection of outstanding natural features and landscapes, including significant vegetation, habitats and historical heritage and the maintenance and enhancement of public access along water bodies. It is considered the proposal is consistent with Section 6. The subject site is not located within an area considered to be of national importance.
- 12.2** Other matters are discussed in Section 7. Such matters include kaitiakitanga, maintenance and enhancement of natural and physical resources, intrinsic values of ecosystems, and the maintenance and enhancement of the quality of the environment. The proposal will not adversely affect amenity values and character of the area. For this reason it is considered the proposal is overall consistent with Section 7 of the RMA.
- 12.3** Section 8 refers to the Treaty of Waitangi. There are no known sites of archaeological interest or matters of iwi interest within or adjacent to the site. It is therefore considered that the application would be consistent with Section 8.
- 12.4** Overall it is considered this application is consistent with Part 2 matters.

RECOMMENDATION

That, pursuant to Sections 104 of the Resource Management Act 1991, the notified application for resource consent by D & G Woodside to subdivide the land at Lennon Access Road known as Lot 7 DP 176030 is granted consent.

REASONS FOR THE RECOMMENDATION

Pursuant to Section 113 of the Resource Management Act 1991, the reasons for this decision are as follows:

- (a) The proposal would result in adverse effects that are no more than minor on the environment in terms of the amenity values and character of the area. The proposed lot sizes will complement the existing density of the area and maintain the open space living environments and high amenity value within the surrounding area.
- (b) The proposal will vest a 20m esplanade strip alongside the Weiti River which will ensure that significant landscape is retained to maintain the high landscape value of the countryside living area.
- (c) The use of the existing Jointly Owned Access Road will not cause significant impact on traffic movement or safety, where existing access is used for the proposed new lots. The adverse effects are considered to be no more than minor.
- (d) The proposal is considered to be consistent with the objectives and policies of Operative Plan Change 55 and the Proposed District Plan 2000. It is also considered that the proposal is consistent with the intended outcome of the zoning under the District Plans. The proposed development is of an intensity generally envisaged within a countryside living rural site given the provision of the esplanade reserve as well.
- (e) The proposal is considered to be consistent with the objectives and policies of the Auckland Regional Policy Statement as the proposed subdivision creates an intensity within the area that will cause adverse effects on amenity values that are no more than minor. It is determined that the important aspect of the land which is the area alongside the river has significant landscape value which will be protected as a result of this application and vested with Council.
- (f) The proposal is considered to be consistent with Vision Rodney's intentions where change and development has to be controlled and allowed where accommodated and planned for. Development must be appropriate where the level of intensity is similar to that of the existing character and maintains the amenity value of the area. Maintaining the country look and feel means still providing open and spacious feeling which this application achieves.
- (g) The proposal is considered to be consistent with the Auckland Regional Growth Strategy as the proposed subdivision would see the formation of an esplanade reserve and the maintenance of the character of the immediate areas natural environment and rural amenity.
- (h) In all the circumstances the proposal is considered to meet the sustainable management purpose of Part II of the Resource Management Act 1991.
- (i) The proposal is considered to meet both of the gateway tests for non-complying activities.

LAPSING OF CONSENT

Pursuant to Section 125 of the Resource Management Act 1991, this resource consent will expire 5 years after the date of commencement of consent unless, before the consent lapses;

- (a) the consent is given effect to; or

- (b) an application is made to the Council to extend the period of consent, and the Council decides to grant an extension after taking into account the statutory considerations, set out in section 125(1)(b) of the Resource Management Act 1991.

CONDITIONS OF CONSENT:

Pursuant to Section 108 of the Resource Management Act 1991, this consent is subject to the following conditions:

General

1. (general) The subdivision shall occur in general accordance with Proposed Plan of Subdivision dated June 2008 by Stuart Fluker Ltd, Job Number 7480 Rev C, labelled Lots 1-3 being a proposed subdivision of Lot 7 DP 176030.

To be completed before issue of the s.223 certificate

2. (conditions to be shown on survey title plan) Before the Council will approve the survey plan pursuant to s.223 of the Act, the owner shall:
- (a) (local purpose reserve vesting) Lot 4 shall vest in the Rodney District Council as local purpose (esplanade) reserve.
- (b) (title amalgamation) Pursuant to s.220(1)(b)(iv) of the Act, have endorsed on the survey plan the following condition of amalgamation:

"Lot 19 & 20 DP 176030 (access lots) be held as to three undivided one forty-eighth shares by the owner of Lots 1 to 3 hereon as tenants in common in the said shares and that individual Certificates of Title be issued in accordance therewith."

To be completed before issue of the s.224(c) certificate

3. (conditions to be carried out by consent holder) Before the Council will issue a Certificate pursuant to s.224(c) of the Act, the Consent Holder shall satisfy the following conditions at their full cost:
- (a) (developer's representative) Prior to the commencement of engineering design, the Consent Holder shall nominate, in writing, its Developer's Representative in terms of Council's "Standards for Engineering Design and Construction" to be the first point of contact for all engineering matters. Any subsequent change to the nominated Developer's Representative shall be immediately notified in writing to the Consents Engineer.
- (b) (insurance and warranties for engineering works) Prior to the commencement of engineering design for the works required by these conditions, the Consent Holder and the Developer's Representative shall provide to the Council proof of Professional Indemnity Insurance and Warranties in full satisfaction of section 102 of the "Standards for Engineering Design and Construction".
- (c) (engineering plans) The engineering works required by this consent shall comply with the Council's "Standards for Engineering Design and Construction" as may be amended from time to time. Engineering Plans, as specified in the "Standards", shall be submitted to the Consents Engineer, and approval thereto received in writing, prior to the commencement of any works on the site.

Any variation or changes to the approved engineering plans shall be submitted for approval as an Amendment and approval received thereto prior to construction of the varied works.

The term 'engineering works' includes, but is not limited to:

- Earthworks,
- The formation of roads, the laying of pipes and other ancillary equipment to be vested in the Council for water supply, drainage or sewage disposal;
- Street lights, landscaping or structures on land vested, or to be vested, in the Council;
- The installation of gas, electrical or telecommunication reticulation including ancillary equipment;

- Any other works required by conditions of this consent.

Note: Structures such as retaining walls, in-ground walls and bridges will require a separate Building Consent.

Note: The plans required under this condition are separate to, and do not form part of, any Building Consent that may be required on the subject site.

- (d) (pre-construction meeting) The Developer's Representative shall give the Consents Field Supervisor named in the engineering plan approval at least 5 working days notice of the on-site pre-construction site meeting (refer section 103.15 of the "Standards for Engineering Design and Construction"). Construction work shall not commence on the site until such meeting has been held and all necessary documentation presented.

Note: Attention is drawn to the requirements of section 103.15.3 "Standards for Engineering Design and Construction" for the following documentation to be presented at the preconstruction meeting:

- Approved engineering plans and copy of approval letter;
- Health and Safety Plan;
- The relevant Resource or Subdivision Consent (and all conditions attached thereto).

- (e) (silt retention) Before commencement of any works, adequate silt retention structures as detailed in the Auckland Regional Council Technical Publication No. 90 "Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region" shall be installed. These structures shall be maintained and cleaned out as necessary until such time as complete grass cover, or other non-erodible surfacing, has been re-established over the site.

- (f) (construction of private way) The private way over parts of Lots 1, 2 and 3 and the vehicle crossing thereto shall be constructed to a rural concrete standard to the Council's "Standards for Engineering Design and Construction". Provide a "rain garden" or similar for the discharge from the private way as per the recommendation in the letter from Kibblewhite Consultants dated 9 September 2008.

- (g) (provide for electric power) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an electric supply has been made available by underground means to all saleable lots created and that all the network supplier's requirements for making such means of supply available have been met.

- (h) (provide for telephone) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of telephone services has been made available by underground means to all saleable lots created and that all the network supplier's requirements for making such services available have been met.

- (i) (financial contributions) Pursuant to Operative Plan Change 62 (Chapter 22), the financial contributions as set out in the "Schedule of Financial Contributions", RMA 54347, Sequence 001, attached to this consent shall be paid to the Council in full mitigation of the offsite effects of the activity in respect of infrastructure and community facilities.

- (j) (reassessment of contributions) Any portion of the contributions remaining unpaid on the anniversary of the date of granting the consent, shall be adjusted by applying any change in the Producer Price Index – Construction between the date of consent and the most recent anniversary of the date of consent prior to the payment of the contribution.

Any portion of the contributions remaining unpaid five years after the date of granting of the consent shall be fully reassessed in accordance with Operative Plan Change 62 immediately before the time of payment.

- (k) (timing of payment) Pursuant to Rule 22.8.3.2, all contributions shall be paid in full prior to the issue of the s.224(c) certificate, unless other arrangements satisfactory to the Council have been made pursuant to Rule 22.8.5. In the case of staged developments, the contribution payable on each stage shall be reassessed on the number of sites created in each stage.

4. Ongoing Conditions/Consent Notices

The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notices pursuant to s.221 of the Act.

- (a) (building restrictions - stormwater control) All concentrated stormwater discharges from buildings and paved areas on Lot 1, 2 & 3 shall be directed to dispersal trenches so that stormwater is not piped directly to the Weiti River. The collection and disposal system shall be installed upon the erection of any buildings and shall thereafter be maintained in perpetuity. The document "Management of Stormwater in Countryside Living (Rural and Town) Zones - A Toolbox of Methods" indicates the construction detail for dispersal trenches. Copies of the said document are held at the offices of the Council, Centreway Road, Orewa.

ATTACHMENTS

- Attachment I: Copy of S.93/94 Report and Decision**
Attachment II: Copy of the Application
Attachment III: Copies of the Submissions and Neighbour Approvals
Attachment IV: Copies of the Comments/Reports from Specialists