



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

HEARINGS COMMITTEE

I hereby give notice that a Meeting of the Hearings Committee will be held on:-

DATE: **Thursday, 24 August 2006** **TIME:** **9.30 am**

VENUE: **Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere**

to consider the business as set out herein and to take any necessary action connected therewith.

15 August 2006

Owena Schuster
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8864

MEMBERSHIP:

Councillors	DQ	Battersby, JP (Chairman)	
	WW	Flaunty, QSM, JP (Deputy Chairman)	
	PA	Hulse	
	JP	Lawley	
	VS	Neeson, JP	
	CA	Stone	
Alternate Council Representative	LA	Cooper	

Ward Representative	Mr	GE	Barnard	(Massey Community Board)
Alternate Ward Representative	Mr	AE	Davies, JP	(Massey Community Board)

(Quorum 4 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A MEETING OF THE HEARINGS COMMITTEE TO BE HELD AT
WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON THURSDAY, 24 AUGUST 2006,
COMMENCING AT 9.30 AM.**

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WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
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1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Committee by resolution so decides; and
- (ii) the Chairman has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



3 CONFIRMATION OF MINUTES

Meeting Minutes - Tuesday, 18 April 2006
Meeting Minutes - Monday, 1 May 2006

RECOMMENDATION

That the minutes of the Meeting of the Hearings Committee held on Tuesday, 18 April 2006 and Monday 1 May 2006, as circulated, be taken as read and now be confirmed.



4 **NOTIFIED APPLICATION FOR RESOURCE CONSENT UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 BY THE POHUTUKAWA TRUST TO REINSTATE THE RESIDENTIAL USE OF THE ORIGINAL DWELLING AND TO UNDERTAKE A TWO LOT SUBDIVISION AT 26-32 POHUTUKAWA ROAD, WHENUAPAI.**

MASSEY WARD

RMA 20050706

N.B. This report sets out the advice of Consent Services to the Hearings Committee on the environmental issues raised by the application for resource consent. It is not the decision of the Council. The decision will be made after consideration of the application by the Hearings Committee.

APPLICATION DETAILS

Planner:	Steven McKenzie
Site Address:	26-32 Pohutukawa Road, Whenuapai
Applicant:	The Pohutukawa Trust
Date Received:	14 April 2004
Resource Consent No:	RMA20050706 SPW22432
Massey	Waitakere
Legal Description:	Lot 5 DP 8224 and Lot 1 DP 46183
Address for Service:	Cato Bolam Consultants PO Box 21 355 Henderson
Site Area:	4097m ²
Proposed Lot Areas:	Lot 1 = 1388m ² Lot 2 = 2587m ²
District Plan:	
Human Environment:	Rural Villages
Natural Area:	General
Landscape Elements:	5 metre coastal edge
Hazards:	Nil
Roading Hierarchy:	Local
Further Information Required:	Options regarding notification / esplanade reserve issues
Date Requested:	28 June 2005, 31 January 2006
Date Received:	14 October 2004, 10 July 2006

RECOMMENDATIONS

That pursuant to Sections 104, 105 and 108 of the Resource Management Act 1991, consent be approved to the application by the Pohutukawa Trust to subdivide a 4097m² property at 26-32 Pohutukawa Road being Lots 5 DP 8224 for the following reasons:

- (i) The proposed subdivision would have no more than minor adverse environmental effects. The proposal would not detract from the amenity and character of the surrounding area. It is appropriate to have regard to the permitted baseline for the subject site which is two existing buildings on site. No changes in the permitted baseline would result and both buildings are fully serviced and traffic effects would be reduced as a result of the change of use.
- (ii) The proposed subdivision would be generally consistent with the relevant objectives and policies of the District Plan. As such, the proposal would not challenge the integrity of the Plan, or undermine public confidence in its consistent administration.
- (iii) The proposal is considered sufficiently unusual by reason that no additional development is proposed by the application, the site contains two existing buildings and associated infrastructure, and that the premises have been used legitimately as a business for an extended period of time to be confident that no precedent would be established through the granting of consent, and there is not a high probability of other similar applications following and being difficult to resist.
- (iv) Whilst the proposed esplanade reserve of between 1.75 and 5 metres in width is less than the 20 metres normally required upon subdivisions of sites less than 4 hectares in areas adjoining the coastal area, the location of the more recent dwelling on site effectively prohibits the provision of a 20 metre reserve. Public access along this part of the coastal area is provided and the potential future linkages around the peninsula safeguarded by the provision of a reserve.

1.0 INTRODUCTION

1.1 Nature of the Application

Consent is sought to reinstate the residential use of the original dwelling on site (currently being used as an office) and to undertake a two lot subdivision resulting in lots with net site areas of 1249m² and 2587m² respectively.

Under the District Plan, the site falls within the Rural Villages Environment. A minimum lot size of 4000m² is required for all subdivision of non-sewered sites within this environment therefore the status of this application under the Rural Villages rules is non-complying.

Overall the application must be assessed as a Non-Complying activity.

Public Notification of the application attracted 4 submissions, all of which were in support of the application.

Further details regarding the submissions are contained later in the report.

1.2 Resource Management Issues Raised

The Resource Management Act 1991 requires that, when considering an application for resource consent, a consent authority shall have regard to the environmental effects of the proposed activity, together with any relevant objectives, policies and rules of the District Plan.

Firstly, the proposal requires consideration against the relevant objectives and policies of the District Plan instruments together with those of the Regional Policy Statement. If the proposed development is contrary to the objectives and policies of these plans and statements, then the granting of consent may compromise the integrity of the District Plan and Regional Policy Statement, and erode public confidence in their consistent administration.

Finally, there is a need to ensure that the proposal is not inconsistent with the overarching purpose and principles of the Resource Management Act 1991.

1.3 Planner's Recommendation

The planner who has prepared this report recommends that **consent be approved** to the application to reinstate the original use of the residential dwelling and to undertake a 2 lot subdivision.

It is considered that the actual and potential adverse effects of the subdivision on the environment would be no more than minor. The application would generally be consistent with the relevant objectives and policies of the District Plan and would not compromise the integrity of the Plan. There are sufficiently unusual circumstances relating to the application to conclude that no precedent would be established through granting this consent. Jurisdiction to grant consent has therefore been established.

2.0 LOCATION PLAN



Figure 1: Location of 26-32 Pohutukawa Road, Whenuapai

3.0 PROPOSAL

The proposal involves reinstating the residential use of the original dwelling and to undertake a two lot subdivision.

The original dwelling (currently being used as an office) will be contained within proposed lot 1, with a net site area of 1249m². The site would be delineated by the existing boundary fencing and would include a 3.0m wide strip to the east of the site which would provide access to the coast. The newer, existing dwelling would be contained within proposed lot 2, and would have a net site area of 2587m².

An esplanade reserve (shown as Lot 4 on submitted scheme plan) which in practical terms would be 5.0m in width (legally would be 1.75m at the narrowest point) would be vested to Council and would equate to an area of 164m².

Lot 5 (5m²) and Lot 6 (22m²) fall outside the area occupied by the existing retaining wall and therefore effectively forms part of the coastal marine area. This land will be vested to the Crown under Section 237(A)(1)(b) of the Resource Management Act.

It is also proposed to carry out a boundary adjustment with Lot 1 DP 46183 (to the east of the site) to realign the northern boundary of this lot to reflect the existing fence line. It is also proposed to rationalise access to the coast by combining the access strip to be held with proposed lot 1. The adjusted Lot 1 DP 46183 (being proposed Lot 3) will have a pedestrian easement over the new access strip.

The application also seeks to vary condition (5) of RMA 20010895 to allow for the removal of the encumbrance on the certificate of title, and to utilise the original dwelling for residential purposes.

4.0 REASONS FOR THE APPLICATION

Consent is required under the following provisions of the District Plan for the following reasons:

Non-Complying Activity for a Subdivision creating lots less than 4000m² in a non-sewered area within the Rural Villages Environment (Rule 8.3 Rural Villages Environment). Proposed lot 1 would have a net site area of 1249m² and proposed lot 2 would have a net site area of 2587m².

Discretionary Activity consent is required for the provision of an esplanade reserve less than 20 metres in width (Rule 2.3 General Subdivision). The proposed esplanade reserve would have a width of 5 metres.

Overall, the application is considered to be a Non-Complying Activity. The proposal complies with all other development controls under the District Plan.

4.1 History of Site

RMA 20010895 To utilise the existing dwelling as a home occupation for an architectural office and to construct a new dwelling on the lower portion of the site with associated car parking, landscaping and infrastructure.

The infringements related to impermeable surfaces and traffic generation associated with a non-residential activity.

Approved 22 August 2001

5.0 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The subject site is located on the northern side of Pohutukawa Road, Whenuapai and has a net site area of 4276m². The site contains two main buildings. At the southern end of the site is a single storey dwelling, which was converted into an office approximately three years ago. A driveway is located parallel to the eastern boundary leading to a single garage and single carport attached to the building, and sealed parking areas. This building has a floor area of 159m².

The northern part of the site is developed for residential purposes. A second driveway enters the site parallel to the western boundary and leads to a recently constructed two storey dwelling, guest house and garage. The driveway continues between the guest house and main dwelling down to a boat ramp in the north-eastern corner of the site.

The site contains mixed vegetation along the property boundaries and within the site. The office and surrounding area is delineated by a timber fence to the west and a concrete block wall and timber fence to the north. This concrete block and timber fence continues down the eastern side of the dwelling to the coastline, creating a 2.0m wide strip between the fence and the eastern boundary.

The site is predominantly screened from view from Pohutukawa Road, with mixed vegetation screening the office.

The surrounding neighbourhood is characterised by large scale dwellings on a range of site sizes. The subject site is one of the largest land holdings in Pohutukawa Road.

6.0 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

A68-A82

The application was publicly notified on 4 November 2005. The period for submissions closed on 5 December 2005 and 4 submissions were received in support of the proposal. Attached at pages A70 to A82 are copies of the submissions that were received. A map showing the location of the submitters as attached at pages A68 to A69.

6.1 Submissions

	Submitter	Address	Support / Oppose
1	Lew & Gail Johns	46 Pohutukawa Road, Whenuapai	Support
2	Zita Horsley	18 Pohutukawa Road, Whenuapai	Support
3	RD Haines	38 Pohutukawa Road, Whenuapai	Support
4	Mr & Mrs Hahn	24 Pohutukawa Road, Whenuapai	Support

6.1.1 Support of Proposal

Submissions supporting the subdivision considered the subdivision appropriate as it would be consistent with the size of existing properties within Pohutukawa Road, and no additional infrastructure is required.

6.1.3 Written Consents Accompanying the Application

The submitted report indicates that a number of adjoining properties have provided their written approval to the proposal however these did not accompany the application and therefore cannot be considered.

7.0 STATUTORY REQUIREMENTS

7.1 Non-Complying Activities

A1-A67

The relevant policies and criteria which apply under the District Plan and the Resource Management Act 1991 are set out in more detail attached at pages A1 to A67. This should be referred to as the legal framework within which the application should be addressed.

As noted, the proposal requires consideration as a non-complying activity under the provisions of the Resource Management Act 1991. Section 104D of the Resource Management Act 1991 sets a threshold test which all resource consent applications for non-complying activities must first pass before a consent authority has jurisdiction to grant consent, having regard to the matters specified in Section 104. In short, the proposal must be able to establish and operate without generating more than minor adverse effects on the environment, or must not be contrary to the relevant objectives and policies of the District Plan. Under the statutory permitted baseline Council may disregard an adverse effect of an activity on the environment if the operative rules permits an activity with that effect.

The matters to be considered when assessing an application for resource consent are set out in Section 104 of the Resource Management Act 1991. Amongst other things, these matters require consideration of any actual and potential effects on the environment arising from the proposal, together with an assessment as to whether the application is consistent with relevant objectives, policies and rules of the District Plan instruments. All considerations are subject to the provisions of Part II of the Resource Management Act 1991, which sets out the purpose and principles that guide this legislation.

However it should be noted that for council to grant consent to a non-complying activity application, there should generally be some exceptional or unusual element to the proposal. If such unusual circumstances do not exist, then the proposal would effectively compromise the integrity of the District Plan and public confidence in the consistent administration of the plan may be undermined.

Council also has discretion to consider any precedent issues that may arise for a non-complying activity. According to the Court of Appeal decision in *Dye v Rodney District Council*, an adverse precedent effect can arise where the grant of a non-complying consent would influence the approach taken by Council to similar consent applications.

The District Plan has been prepared with an "effects based" emphasis, in keeping with the Resource Management Act 1991. As such, consideration of the application in relation to each of the assessment criteria relating to the various infringements would ensure that a number of the relevant matters contained in Section 104 of the Resource Management Act 1991 would have been addressed. In addition, a brief summary is presented below of the main effects on the environment generated by the application.

8.0 EVALUATION IN ACCORDANCE WITH SECTION 104 OF THE RESOURCE MANAGEMENT ACT 1991

In order to make a decision in terms of Section 104B of the Act it is necessary to undertake an analysis and assessment to determine whether the purpose and principles of the Act are being met (Part II) having regard to the matters set out in Sections 104, 104A - 104D as relevant, the Fourth Schedule and any other statutory considerations.

Section 104(1) of the Act requires that Council have regard to any actual or potential effects on the environment, any relevant objectives, policies, rules or other provisions of a plan or proposed plan and any relevant regional policy statement and regional plan or proposed plan, and any other matters the consent authority considers relevant and reasonably necessary to determine the application.

When considering an application Council must not have regard to any effect on a person who has given their written approval to the application (Section 104 (3)(b)) and may disregard an adverse effect of an activity on the environment if the Operative Plan permits and activity with that effect (Section 104(2)).

8.1.1 Permitted Baseline

In terms of determining adverse effects on the environment and whether a person would be adversely affected by the proposed activity, Section 94A and 94B gives Council the discretion to make permitted baseline comparisons ie. a comparison between the environment as it exists at the time the application is considered and (the effects) of activities that are permitted by the Operative Plan even if hypothetical, as compared with the effects of the proposed activity. Case law has established that any such hypothetical developments must be not be “fanciful” in terms of what could reasonably be expected to establish there.

Section 104D confers discretion on Council; to consider what activities may take place as of right under the District Plan. In this case a dwelling and an associated home occupation are permitted as of right under the District Plan provisions. Whilst resource consent has been obtained to *‘utilise the existing dwelling as a home occupation for an architectural office....and..... to construct a new dwelling on the lower portion of the site with associated car parking, landscaping and architecture’*, the matters to which discretion was limited related to traffic generation for non-residential activities and impermeable surfaces exceeding 15% for non-reticulated sites. The existing situation therefore represents the permitted baseline for the site.

There is no permitted subdivision allowed for as of right on the subject site under the District Plan. Thus the lot sizes for the proposed additional lot are significantly in excess of the permitted baseline. In addition, no additional dwellings are allowed for as of right under District Plan, meaning the effects of one additional dwelling also exceeds the permitted baseline. It is appropriate to have regard to the permitted baseline, in evaluating this application.

8.2 Assessment of Environmental Effects (104(1)(a)): Actual and Potential Effects on the Environment.

8.2.1 Water Quality and Quantity

8.2.1.1 Stormwater

A stormwater discharge consent has been approved from the Auckland Regional Council in 2001 (reference 25727) and appended to the submitted application which also encompasses a coastal permit in relation to the occupation of the coastal marine area by the stormwater outlet.

As no additional development is proposed, the proposal would not result in any additional stormwater discharge. Resource Consent Reference RMA 20010895 which was approved on 22 August 2001 included an impermeable surfaces infringement of 19.4% above the 15% permitted for non-reticulated sites in the Rural Villages area. The total impermeable surfaces coverage over the site equates to 34.4%. This is therefore represents the level of infringement which has been allowed to establish through a lawfully granted land use consent.

Councils Water and Drainage Engineer, Lucy Lunevich has assessed the application and supports the recommendation to approve the application subject to appropriate conditions. A plan prepared by a Licensed Cadastral Surveyor is required to be submitted identifying the existing areas of impermeable area to confirm that this is consistent with what has been previously approved.

The effects of the proposal with regard to stormwater would be no more than minor.

8.2.1.2 Wastewater

Each site currently contains a separate approved wastewater disposal system designed to cater for the needs of each building. The proposal which would involve reverting the existing architectural practice (that has operated on site as a home occupation) back into a dwelling is not envisaged to place extra demand on the existing system. Under the definition of home occupation, no more than five people are to be engaged in the activity which is greater or equal to the average family size. Whilst the use of the building as a dwelling would have different usage patterns (ie. likely to be inhabited more during the evening rather than the day), the anticipated wastewater output is not likely to increase. Instead, factoring into the equation visitors to the premises for business purposes in addition to those working on site, using the building as a dwelling may in fact reduce the pressure on the existing wastewater disposal system.

Councils Plumbing and Drainage Inspector, Mr Glen Moser has assessed the application and has imposed conditions. These conditions refer to ensuring that lot 1 has sufficient area to install a new wastewater treatment system when upgrade of the existing system is required, in compliance with Auckland Regional Council standards. It is also required to demonstrate that the effluent disposal field on proposed lot 2 is contained wholly within that lot and does not cross the proposed internal boundaries.

It is considered that subject to compliance with the conditions of consent, the effects of the proposal with regard to wastewater treatment and disposal would be no more than minor.

8.2.2 Native Vegetation, Vegetation and Fauna Habitat

The proposal would not facilitate the removal of any vegetation on site. Significant landscaping planting has been carried out over the site which positively contributes to the amenity of the site.

8.2.3 Land / Soil

No earthworks are required to facilitate the proposed development. There would be no adverse effects in terms of soil disturbance / earthworks.

8.2.4 Air

The proposed activity does not include air emissions of any kind, there would be no adverse effects on air quality.

8.2.5 Ecosystem Stability

As the site is within the urban area and the existing environment is already modified there would be de minimis adverse effects on the stability of ecosystems as a result of the proposal.

8.2.6 Outstanding Natural Features; Landforms, Geological Sites

The subject site is not identified in the District Plan as being within an area identified as containing "outstanding natural features" within the City (refer Maps 3.5D & E) and therefore the proposed activity would not adversely affect any identified outstanding natural features.

8.2.7 Natural Character of Coast and Margins of Lakes, Rivers and Wetlands

The approval of RMA 20010895 on 22 August 2001 facilitated the construction of a new dwelling to the north of the site, and within 7 metres from the edge of the Waitemata Harbour, as defined by an existing wooden timber retaining wall along the waters edge. An esplanade reserve which is officially only approximately 1.75 metres in width at the narrowest point (although practically is 5 metres in width, discussed in more detail in Section 8.3.3 below) is proposed on the basis that the relatively new, existing dwelling and guest house have been located so as to comply with the 5 metre Coastal Edge requirement of the District Plan. The location of these buildings effectively prohibits the taking of a 20 metre wide reserve as required by Section 230 of the Resource Management Act 199, upon the subsequent proposed subdivision of the site.

This situation has arisen as a result of the existing District Plans Coastal Edge controls in combination with the fact that the above-mentioned resource consent has consented to two buildings being constructed on site, prior to any subdivision being applied for. In this instance, the reduction of the esplanade reserve from 20 metres to between 1.75 and 5 metres is considered the most practical option for ensuring that some public access is guaranteed along the water frontage of the site. Whilst the proposed esplanade reserve would maintain the opportunity for continuous public access around the peninsula in the future, the existence of other esplanade areas within the vicinity is fragmented and linkage opportunities would not be greatly improved as a result of this application.

A letter has been received from the Auckland Regional Council, outlining their concerns with regard to the current Coastal Edge provisions of the District Plan, with respect to ensuring that similar applications do not threaten the viability of providing esplanade reserves in the future. The esplanade provisions only apply as a result of the proposed subdivision and not from the existence of two buildings on the site.

It is considered that in this instance, the reduction in the esplanade reserve from 20 to between 1.75 and 5 metres is appropriate, and will ensure that opportunities for public access along this portion of the foreshore are provided.

With respect to all other matters with regard the existing natural character of the coast, the proposal would not result in any physical changes along the foreshore of the site. Consent has been obtained from the Regional Council dated 12 September 2001 (Permit No's 25726 and 25727) to occupy part of the coastal marine area with the new seawall and for the discharge of residential stormwater. The proposal would not increase the volume of stormwater discharged from the site.

The proposal would have a no more than minor effect on the natural character of the coastal area to which the site adjoins.

8.2.8 Outstanding Landscapes

The subject site is not identified in the District Plan as being within an area identified as "outstanding landscape" within the City (refer Map 3.6B). The proposed activity would not adversely affect any identified outstanding landscapes.

8.2.9 Amenity Values - Health and Safety, Landscapes, Local Areas and Neighbourhood Character

The Resource Management Act defines the term “amenity value” to mean “those natural or physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence, cultural and recreational attributes”.

Section 5.11 of the Objectives, Policies and Methods Section of the District Plan states:

“The City’s local areas and villages can be affected by intensification of settlement and, to a degree, changing uses, such that some of the key elements and characteristics that make these areas unique can be adversely affected. The key factors affecting local areas are changes in section size and the style of housing...”

The amenity of the area is characterised by residential development, a variety of site sizes ranging from 897m² to 5059m² which typically contain large scale dwellings. The existence of a non-residential activity such as the architectural practice is somewhat of an anomaly within this area. Councils District Plan sets a density threshold of 4000m² for non-sewered sites such as the subject property; however the majority of the properties along the peninsula are somewhat smaller than this. The existence of smaller sites was a result of development prior to the current District Plan; however this has impacted upon the existing character of the area. Whilst the proposal has implications on what may occur within all areas zoned ‘Rural Villages’ (discussed in more detail in Section 8.2.11 below), in this instance it is more important to assess how the proposal would impact upon the character of the immediately adjoining area, which in this case is the peninsula on which the site is located (being 1 - 56 Pohutukawa Road and shown in [Figure 1](#)).

The proposed subdivision and conversion of the existing architectural practice to a residential dwelling would change the habitation pattern of proposed lot 1. The existing use of the building on this site is primarily during normal business hours with associated visitor and traffic movements during this period. Once converted to a dwelling, the predominant usage will be during the evening and morning periods consistent with normal residential use. This also has implications on traffic generation which will be discussed in more detail in Section 8.2.9.1 below. The proposal would not result in any changes in the external physical appearance of either building on site and proposed property boundaries would correspond with existing development patterns on site delineated by existing fence lines.

The character of the immediately adjoining area was changed through the construction of the most recent dwelling on proposed lot 2, which was consented by reason that that the original dwelling was to be used as a home occupation. This has led to their currently being two buildings on the site, which comprises the permitted base line for the site. It is considered that the proposed density of development would be reasonably consistent with what exists within the immediately adjoining area, and the proposal would not detract from the amenity of the surrounding area. In saying this, if this application were to set a precedent (discussed in Section 8.2.12 below), that led to all sites of a similar size to the subject property being developed to a higher density, this would in turn impact upon the character of the area.

The amenity of the area would be altered if the proposal established a precedent which encouraged the approval of similar applications, ultimately resulting in the construction of additional buildings within the area. It is concluded that the proposal is sufficiently unusual to ensure that no precedent is set, therefore the cumulative effects associated with the proposal would be no more than minor (discussed in more detail in Section 8.2.11 below). No further development is proposed and the proposal does not result in a new vacant site.

The proposal would have a no more than minor effect upon the amenity of the site, and immediately adjoining area.

8.2.9.1 Rooding and Traffic

The Assessment of Environmental Effects submitted with the application states that the proposed subdivision would result in a reduction in potential adverse traffic effects in relation to the permitted baseline. The reason for this is that the existing office currently contains five staff members and would generate up to 24 vehicle traffic movements per day. By comparison, the residential use of this building would generate 9 vehicle movements per day (as per Waitakere City Councils Parking and Driveway Guidelines). I would concur with these findings. The change of the premises from a business to residential is also likely to change the timing of traffic movements in line with what could be anticipated by residential occupation.

Each site is provided with separate vehicle access of 3.2m in width for lot 1 and 3.0 for lot 2. On site manoeuvring is provided from the parking spaces on both lots and the proposal is consistent with the District Plan requirements for the Rural Villages Environment.

It is considered that the proposed subdivision and associated change of use would have a no more than minor adverse effect in terms of roading and traffic and on-site parking/manoeuvring when assessed against the permitted baseline for this site.

8.2.10 Heritage

This is considered to be no heritage matters affected by this proposal.

8.2.11 Cumulative Effects

Section 3 of the Resource Management Act states that the term 'effect' includes:

"Any cumulative effect which arises over time or in combination with other effects, regardless of scale, intensity, duration or frequency of the effect, and also includes:

Any potential effect of high probability; and
Any potential effect of low probability which has a high potential impact".

An effect is generally taken to mean the result or consequence of an activity. Cumulative effect is a broad term, which may cover a single effect which grows over time, or to which other effects are added. It is not only the effects in the immediate term which must be taken into account but also those which will arise in the future from the activity under consideration and in combination with other existing activities.

The concept of cumulative effect presupposes the setting of environmental thresholds. In other words, there is an environmental limit up to which development will be allowed. Thresholds may be absolute, such as Environmental Bottom Lines beyond which the effects of an activity would cause irreparable or irreversible damage to the environment. On the other hand, many environmental thresholds will be those determined by community preference, eg. thresholds of amenity values. In determining the cumulative effect of an activity, the effects of the activity itself, combined with the effects of existing and future activities should be taken into account. Each subsequent activity should be evaluated with respect to its own effects on the environment, together with the effects of existing and future activities, and a determination made whether an acceptable threshold has been exceeded.

In this instance, the effects on the localised environment of allowing the creation of one additional lot and associated dwelling is relatively small in isolation (as outlined in the previous environmental assessment). However, when looked at in the context of this occurring on surrounding properties the effects are magnified.

It is relevant to consider the issue of cumulative effects. There would potentially be cumulative effects on the amenity of the area as a result of granting this consent if it were to be concluded that the proposal would set a precedent which would encourage similar applications to be lodged and subsequently approved. As outlined in more detail in Section 8.2.12 below, it is considered that the proposal is sufficiently unusual to conclude that no precedent would be established through granting this consent.

By not establishing a precedent which would encourage the approval of similar applications and the construction of further dwellings, the cumulative effects with regard to loss of amenity within the vicinity would be no more than minor.

8.2.12 Precedent Effect

According to the Court of Appeal decision in *Dye* a 'precedent effect' is concerned with the influence that granting approval to this application may have on future applicants, and on Council, as consent authority, to grant approval to similar applications. Precedent effect is a relevant consideration under both Section 104B and Section 104(1)(c) of this Act. If an applicant can demonstrate that its proposal has evident unusual qualities then it may be able to demonstrate that no precedent effect arises.

Consent was granted for the use of the original dwelling as an architectural practice as the proposal was deemed to be a home occupation in accordance with Rule 10.1 of the Rural Villages Environment (Non-Residential Activities). The matters of non-compliance in which Councils discretion was limited, included matters of impermeable surfaces associated with both the existing building and proposed dwelling; and traffic generation associated with using the premises as a non-residential activity. Condition 5 of RMA 20010895 required the kitchen facilities to be removed from the original dwelling and an encumbrance registered on the title to ensure that this condition was complied with on an on-going basis. It can therefore be concluded that the processing officer did not envisage this building being used as a dwelling in the future. The applicant has cited personal reasons for the non-viability of continuing to run these premises as an architectural practice, namely that they have out grown these premises. Whilst personal matters are not strictly a planning consideration, practicably it factors into whether there are sufficiently unusual qualities pertaining to the application that would separate this application from future hypothetical applications. If there are not sufficiently unusual qualities, the granting of consent would indeed set a precedent that would encourage the approval of similar applications.

The peninsula on which the property is located, (consisting of 1-53 Pohutukawa Road) contains a total of 32 sites, 7 of which have a similar or greater density than the subject property (ie. greater than 4000m²). The remaining sites vary in size, the minimum site size being 897m². These sites were created prior to the current District Plan provisions. Excluding the subject application, if this application were to set a precedent, potentially another 7 dwellings could be constructed within the vicinity of the site. In my professional experience, the presence of two existing buildings on a site is often cited as a case in which it is argued that there would be no additional effects associated with subsequent subdivision and issuing of separate titles.

The architectural practice has been operating (apparently very successfully) for more than three years, therefore it can be concluded that the change from a dwelling to an architectural practice was a legitimate use of the building. The applicant has stated that they have outgrown the current premises and will be looking for alternative premises. It is my opinion that the fact that no additional development is proposed by the application, the site contains two existing buildings and associated infrastructure, and that the premises have been used legitimately as a complying home occupation for an extended period of time are sufficiently unusual (whilst not unique), to be confident that there is not a high probability of other similar applications following and being difficult to resist. Each and every application stands alone and will be assessed on its merits. It is therefore considered that the granting of this consent would not establish a precedent.

8.2.13 Plan Integrity

Plan integrity is a relevant consideration under Section 104B and 104(1) requiring consideration as to whether the proposal would challenge public confidence in the integrity of the Plan and the process involved in its formation.

The relevant objectives and policies of the District Plan are outlined in Section 8.3.1 below.

It is considered that the proposal would be consistent with the current relevant objectives and policies of the District Plan however it should be noted that the proposal would deviate slightly from the policies and objectives with respect to the provision of a reduced esplanade reserve which is discussed in more detail in Section 8.2.7 above. It is considered that no adverse effect on the integrity of the Plan would arise.

8.2.14 Summary

It is considered that the actual and potential adverse effects of the proposed activity are no more than minor and can be mitigated through appropriate conditions of consent as the proposal would not involve any additional development or affect the amenity or character of the area.

8.3 Any Relevant Provisions of the District Plan 104(1)(b)(iv):

8.3.1 District Plan Policies and Objectives

The relevant objectives and policies in relation to this proposal are:

Policy 1.20

Where possible, an esplanade reserve or esplanade strip of 20m in width should be taken on all subdivision which adjoins the coast, a stream 3m wide or greater, a wetland or lake, to protect and enhance the water quality or quantity of the water body. There will be no grazing of stock on these esplanade areas.

Policy 2.13

Subdivision design should:

- provide a level of protection of significant and outstanding native vegetation and fauna habitat, and restoration areas, that, where possible avoids clearance of, and damage to, this resource;
- minimise adverse effects arising from subsequent placement of structures, roads, and other infrastructure, on the overall resilience, biodiversity and integrity of the Green Network;
- minimise adverse effects during the course of establishing the subdivision, including those arising from surveying;
- provide for the recognition of the natural values of native vegetation and fauna habitat and linkages between these areas;
- provide for an esplanade reserve or esplanade strip of 20m in width where subdivision of sites adjacent to the coast, river or lake occurs and it is considered that the protection of native vegetation and fauna habitat would benefit from public ownership or a legal protection covenant.

Discussion

The proposed subdivision involves the creation of sites that are less than 4 hectares in area, adjoining the coastal area. Accordingly, an esplanade reserve of 20 metres in width would usually be required to be vested to Council. In this case, given that a dwelling on site has legitimately been constructed within 7 metres of the coastal edge, it is not possible to provide a 20 metre wide esplanade reserve in this instance. The means in which this situation has come about is discussed in more detail above, but in essence Council has already granted consent for the construction of two buildings on site, which comply with the majority of the District Plan requirements, most appropriately, set back from the designated 5 metre coastal edge. Whilst there are mitigating circumstances, the proposal is in essence contrary to the above policies.

Policy 10.17

Settlement in all parts of the City should be at a density that is within the capacity of water supply, stormwater, wastewater and solid waste infrastructure to safely absorb the effects of that settlement, and to provide for the health of all residents, visitors and workers.

Discussion

The proposal would not involve any further development on site therefore the capacity of the existing services would not be placed under threat. RMA 20010895 which was granted on 22 August 2001 gave consent for an impermeable surfaces infringement of 19.4% over and above the 15% permitted for non-reticulated sites. The total impermeable surfaces coverage of 34.4% now represents the permitted baseline for the site. Councils Water and Drainage Engineer, Lucy Lunevich, has assessed the application and has imposed appropriate conditions with regard to providing certified plans from a registered surveyor, confirming the existing impermeable areas on site.

Councils Plumbing and Drainage Inspector, Mr Glen Moser has assessed the application with regard to the ability of the site to dispose of wastewater. Each site has an existing wastewater treatment system and it is required to demonstrate that these are confined to within the boundaries of each proposed lot.

It is considered that the proposal would be consistent with the above policy.

Policy 10.20

Subdivisions should be designed and adequate public access set aside so that:

- potential demand for public access between areas of public land; and
- potential demand for public access to and along the City's waterways and coast; and,
- potential for recreational use of the adjacent sea, harbour, river or lake; can be provided for, where that use or access is compatible with protection of conservation values.

Discussion

The provision of an esplanade reserve which varies in width from 1.75 - 5 metres along the sites coastal frontage would ensure that the opportunity for public access along this piece of coast line is protected. The opportunity for the public to currently enjoy continuous pedestrian access around the coast is limited by the fact that there are other properties for which no esplanade reserve or strip is provided. Access is therefore fragmented. The opportunity to provide potential future access must however, be taken when offered. The proposal is considered consistent with the above policy.

Policy 11.1

Settlement should be of a type and a density that protects amenity values, including neighbourhood character of different parts of the City, by:

Providing for a pattern of settlement in the Foothills Environment that is in keeping with (the) complex, varied and overall natural character of the area.

Policy 11.13

Buildings and structures should be located so that they maintain the neighbourhood character, visual amenity of the surrounding area and the characteristic streetscape of the area, including providing for:

- the overlooking of streets by buildings;
- maintaining characteristic links between private and public space arising from the orientation of houses and the way they face the street;
- the setback of buildings from the road boundary;
- planting of section frontages; in a way that gives particular regard to variations in amenity values, and neighbourhood character.

Discussion

As discussed in more detail in Section 8.2.9 of this report, the proposal is not considered to adversely impact upon the amenity or character of the surrounding area as no additional development is proposed. The change of use would be consistent with the existing residential character and the area and the proposed site areas would be consistent with other properties in the vicinity. The proposal is considered consistent with the above policy.

8.3.2 Auckland Regional Policy Statement, Plan or Proposed Regional Plan (104(1)(b)(iii) and (iv))

No resource consents would be required from the Auckland Regional Council. A stormwater discharge consent has been approved from the Auckland Regional Council in 2001 (reference 25727) and appended to the submitted application which also encompasses a coastal permit in relation to the occupation of the coastal marine area by the stormwater outlet.

8.3.3 Any Other Matters the Consent Authority considers relevant and reasonably necessary to determine the Application (Section 104(1)(c))

Esplanade Reserve

The proposed usable esplanade reserve forms an area which is delineated by a line 5 meters back from the existing seawall. Consent for the existing seawall has been obtained from the Regional Council dated September 2001 (Permit No 25726). The scheme plan submitted with the application shows the natural mean high water springs mark as extending within the area on the southern side of the retaining wall, occupied and reclaimed as a result of the construction of the retaining wall. This area would officially be Crown land.

As stated in the applicant's letter dated 10 July 2006 *"In terms of determining MHWS, common sense prevails and the usual practice is to survey a practical boundary between the land and sea - ie. a seawall (this forms a meaningful and recognizable boundary capable of quick definition rather than an imaginary line subject to continual or even daily change)"*. For the purpose of this application I this is a practical approach however when assessing this application it is important to acknowledge that Council would not administer land that is owned by the Crown. The land that forms part of the esplanade reserve that would be vested to Council, would be that above the MHWS mark, as depicted on the scheme plan as the natural coastline, and not by the existing retaining wall. This consists of an area of 164m².

In practice however, a full 5 meter width will be available for public access.

The amended scheme plan Revision R1/S3/H16784 also shows Lots 5 and 6 to be vested to the Crown under Section 237A(1)(b) of the RMA. These areas fall outside the existing authorized retaining wall and are located within the coastal marine area.

A certificate of title can be issued for the land that has been reclaimed as a result of the construction of the retaining wall, but still officially forms part of the coastal marine area, by applying for reclamation consent from the Auckland Regional Council. If this were to be done, this area could be vested to Council as Esplanade Reserve in order to maintain a full legal width of 5 meters for the full length of the site. This does not form part of this consent.

8.3.4 Bonds/Reserve Contributions/Development Levy/Financial Contributions

It is noted that the proposed two lot subdivision is proposed around two existing buildings and because no additional growth is occurring, the proposal does not attract a development contribution in accordance with the Waitakere City Council Long Term Council Community Plan.

The development does attract a reserve contribution in accordance with the Resource Management Act 1991. The sum to be paid in lieu of reserves will be computed from the gross realization value of Lot 2 (supplied by QV Valuations), as shown on the plans submitted with the application at the time of survey plan approval. A condition requiring payment of this contribution is recommended.

9.0 PART II OF THE RESOURCE MANAGEMENT ACT 1991

It is considered that the proposal would be consistent with relevant provisions in Sections 5, 6 and 7 of the Resource Management Act 1991.

The purpose and principles of the Resource Management Act 1991 have primacy over all other considerations that are set out in Section 104 of the legislation. In summary, Sections 5, 6 and 7 require that resources must be sustainably managed in such a way that any adverse effects on the environment can be avoided, remedied or mitigated. Furthermore, the Resource Management Act 1991 requires that amenity values and the quality of the environment are to be maintained and enhanced.

It is considered that the granting of this application would be consistent with the purpose of the Act. The effects of the proposal are considered no more than minor and the proposal would be consistent with the amenity and character of the surrounding area.

10.0 EVALUATION IN ACCORDANCE WITH SECTION 104D OF THE RESOURCE MANAGEMENT ACT 1991

The threshold test in Section 104D of the Resource Management Act 1991 states that a consent authority must not grant consent to a non-complying activity unless it is satisfied that the adverse effects on the environment will be minor (104D(a)) or the activity will not be contrary to the objectives and policies of a plan or proposed plan (104D(b)).

It is considered that the threshold test for a non-complying activity has been met as the proposal would satisfy Section 104D, the adverse effects on the environment of the proposal will be no more than minor and the proposal is consistent with the relevant objectives and policies of the District Plan. Jurisdiction to grant consent has therefore been established.

11.0 CONCLUSION

It is considered that the proposal meets the criteria for granting consent as the potential adverse environmental effects are no more than minor and will not lead to a decline in the current amenity values or neighbourhood character of the area.

With the exception of the policies relating to the provision of a 20 metre esplanade reserve, the proposal is considered to be generally consistent with the objectives and policies of the District Plan

RECOMMENDATION

That Subdivision Consent Application Plan No SPW22432 (RMA20050706) being a Non-Complying activity and being a 2 lot subdivision of Lot 5 8224 comprised in CT NA246/205 situated at 26-32 Pohutukawa Road, Whenuapai by the Pohutukawa Trust be granted subdivision consent pursuant to Sections 104, 104B, 108 and 220 of the Resource Management Act 1991, and that:

Pursuant to Section 113 of the Resource Management Act, the reasons for granting consent are as follows -

1. The proposed subdivision would have no more than minor adverse environmental effects. The proposal would not detract from the amenity and character of the surrounding area. It is appropriate to have regard to the permitted baseline for the subject site which is two existing buildings on site. No changes in the permitted baseline would result and both buildings are fully serviced and traffic effects would be reduced as a result of the change of use.
2. The proposed subdivision would be generally consistent with the relevant objectives and policies of the District Plan. As such, the proposal would not challenge the integrity of the Plan, or undermine public confidence in its consistent administration.
3. The proposal is considered sufficiently unusual by reason that no additional development is proposed by the application, the site contains two existing buildings and associated infrastructure, and that the premises have been used legitimately as a business for an extended period of time to be confident that no precedent would be established through the granting of consent, and there is not a high probability of other similar applications following and being difficult to resist.

4. Whilst the proposed esplanade reserve of between 1.75 and 5 metres in width is less than the 20 metres normally required upon subdivisions of sites less than 4 hectares in areas adjoining the coastal area, the location of the more recent dwelling on site effectively prohibits the provision of a 20 metre reserve. Public access along this part of the coastal area is provided and the potential future linkages around the peninsula are safeguarded by the provision of an esplanade reserve.

Conditions imposed on this consent are as follows:

1: SECTION 223 REQUIREMENTS

A survey plan of the subdivision will be approved pursuant to Section 223 of the Act provided that the survey plan signing fee has been paid and that the following conditions have been complied with to the satisfaction of Council.

- (a) Provide drainage easements (for the services through Lot 2 to Lot 1 to protect the existing or proposed connections) in a Memorandum of Easements endorsed on the survey plan. Include in the Section 223 approval on the plan, "subject to the granting or reserving of the easement(s) set out in the Memorandum hereon".
- (b) Take note that Lots 5 and 6 shall vest to the Crown pursuant to Section 237A(1)(b) of the Act.
- (c) Take note that street numbers for the lots on the survey plan will be allocated by Council subsequent to Section 223 approval, and these numbers must be used for future applications for building consent. A copy of the survey plan with the Council allocated numbers will be provided.

2: SECTION 224C REQUIREMENTS

Prior to the release by the Council of the Section 224(c) compliance certificate for this subdivision the applicant shall comply with the following conditions to the satisfaction of Council:

Note: The application requesting the 224 release shall be in writing, shall include the advertised processing fee, shall address how each of the following conditions have been satisfied, and shall be accompanied with Compliance Certificates from each of Council section(s) named below.

ECOWATER CONDITIONS (PUBLIC DRAINAGE)

- (EW1) Mitigate storm-water runoff from the site to the levels consented to by RMA 20010895 (34.4%), and a storm-water discharge consent approved by the Auckland Regional Council in 2001 ref: No 25726 & 25727 and associated coastal permit in relation to occupation of the coastal marine area by the storm-water outlet.
- (i) Separate systems are to be provided from each Lot to the point of connection to the public drain.
 - (ii) A Licensed Cadastral Surveyor is required to certify the private drainage has been laid within the easements provided.

- (iii) The site is served by shared private storm-water drainage to the point of the discharge. It is responsibility of each owner to maintain and repair these shared private drains in a working order.
- (iv) A Consent notice pursuant to Section 221 of the Act is required to be issued and registered on the new titles requiring the sharing maintenance of these drains in working order.

(EW2) Provide 2 copies of a plan prepared and certified by a Licensed Cadastral Surveyor identifying all existing impermeable areas on LOT 5 DP 8224 to EcoWater's satisfaction. The plan is to be to scale and include any driveways, parking areas etc. The purpose of the plan is to demonstrate the extent of existing impermeable area on the Lots for the current development situation for advice to the consent notice in (EW 1) above, and for Council's property records.

(EW3) Liaise with the Water Assets Engineer regarding the location of the existing water meter and arrange for its relocation or substitution and pay all fees applicable. Note: Council require that an existing water meter serving an existing house remain the meter serving that house.

- (i) All Lots are to be individually metered at the road reserve boundary.

(EW4) Provide an As-Built drainage plan for the property, prepared by a registered drain layer, showing the separate private drains from the existing buildings/new Lot(s) to the point of connection. Provide a plan prepared by a registered surveyor, showing lid and invert levels in terms of LINZ datum.

Provide a private drainage plan of the storm-water.

(EW5) Advice Note: Prior to applying for the 224c certificate, ensure that the drainage test / field check has been applied for.

PLUMBING AND DRAINAGE

Please contact the Call Centre on 839-0400 to book an inspection. Alternatively if you are booking a Drainage inspection under your building consent, notify the staff of this so that they can inform the Plumbing and Drainage Surveyor to inspect both consents.

(PD1) A Wastewater Engineer is to investigate and confirm that lot 1 has sufficient area to install a waste water treatment system, when upgrade of the existing system is required and will comply with the Third Edition of the Auckland Regional Council Technical Publication No. 58 and Permitted Activity for Wastewater Disposal.

(PD2) Demonstrate that the effluent disposal field for lot 2 is confined to lot 2.

DRIVEWAY & ON-SITE PARKING CONDITIONS

Please contact the Field Advisor on 836-8000 (extension 8725) to book an inspection (At least 48 hours prior to the inspection being required).

(SD1) Pedestrian access Lot 1 lettered A, must be in a condition which is safe for pedestrian access to Councils satisfaction. Inspection of this will occur at the end of the subdivision.

PARKS CONDITIONS

Please contact the Parks Assets Planning Co-ordinator on 836 8000 (extension 8768) to book an inspection.

- (PK1) Enter into a registerable fencing agreement with Council in regard to Lots 2 to the effect that the Council will not be liable to contribute toward the cost of creating or maintaining any dividing fence between any reserve or other land vested in or administered by the Council. Furthermore, that any fences facing the reserve shall be of visually permeable construction, in order to ensure good surveillance of the adjacent reserve, and to reduce the chance of graffiti.
- (PK2) Provide Council with As Built drawings of project showing all services, levels, inverts, features and facilities as per the following requirements:
- A scaled tracing of the construction plan is to be updated showing all finished asset locations and types.
 - All underground services are to be shown on the plan with sizes, types, depth to invert and invert levels based on site datum on plan and new assets scheduled on an Asset Sheet (Client to provide format of Asset Sheet).
 - Any planted areas to be shown to scale on the copy of the construction plan with areas sq. metres of planting, numbers of plants and type and assets schedule on Asset Sheet.
- (PK3) Take note that Lot 4 Shall vest in the Waitakere City Council as Local Purpose (Esplanade) Reserve pursuant to Section 239 of the Act and the owner shall supply Council with a Certificate of Title for the reserve. A solicitors undertaking to order and forward the certificate of title to Council will be required.

LEGAL DOCUMENTATION

These conditions will be signed off by Consent Services.

- (LD1) The Consent Notice required by Condition (EW 1) above will be prepared by the City Solicitor at the applicants cost when the following information has been received:
- a. All necessary technical information;
 - b. A copy of the Land Transfer plan showing the Deposited Plan and Certificate(s) of Title numbers allocated by Land Information New Zealand; and
 - c. The name and address of the solicitor acting for the owner.
- (LD2) Where any condition imposed upon this consent to subdivision is to be complied with on an ongoing basis by the subdividing owner and subsequent owners after the deposit of a survey plan (not being a condition in respect of which a Bond is required to be entered into by the subdividing owner of a completion certificate is capable of being or has been issued) the subdividing owner shall pay the Council's Solicitors legal costs and disbursements relating to the preparation and registration of a Consent Notice pursuant to Section 221 of the Resource Management Act 1991, and shall do all acts and things necessary to enable registration of such Notice to be completed.

FEES, BONDS & CONTRIBUTIONS

Invoices will be prepared by Consent Services. If paying by personal/company cheque the standard 5 days clearance will apply. If you require the 224C certificate immediately, you must provide a bank cheque.

(FC2) Pay to the Council a financial contribution equal to 6% (plus GST at 12.5%) of Quotable New Zealand's market values, to be obtained for Lot 2 as of the date of issue of this subdivision consent.

GENERAL

These conditions are to be signed off by Consent Services, fees will be charged on an hourly basis.

(GL1) Pursuant to Section 125 of the Resource Management Act 1991, if not given affect to earlier this consent shall lapse after a period of three (3) years after the grant date of the consent

Note: The above time frame would be extended by the application and approval of the survey plan pursuant to Section 223 of the Act. However, work required for the completion of the subdivision that is subject to the land use consent above is subject to the timeframe specified in that consent. Should that time period lapse/expire prior to the completion of such works, then a new consent will be required before such work may (re)commence".

Advice Note: Prior to the issue of the 224(c) Certificate, Council will issue a certificate removing the encumbrance from the Certificate of Title.

Report prepared by: Steven McKenzie, Senior Resource Planner: Subdivisions.

