

## Decision following the hearing of an application for resource consent under the Resource Management Act 1991

### Proposal

Resource consent to subdivide Lot 42 DP 39204 for the create of two lots (proposed Lot 1 – 430sqm and proposed lot 2 – 564sqm), with a new dwelling on proposed lot 2.

These resource consents **GRANTED**. The reasons are set out below:

<b>Application number(s):</b>	RM 200153
<b>Site address:</b>	13 Wood Street, Mangawhai
<b>Applicant:</b>	J Harrison-Tubb
<b>Application Type</b>	Non-Complying (land use and subdivision)
<b>Hearing commenced:</b>	Thursday 27 May 2021, 9.30 a.m.
<b>Hearing panel:</b>	Dr Lee Beattie Supported by Ms Angela Mellsop, Council's Planning Technical Support Officer
<b>Appearances:</b>	<p><u>For the Applicant:</u> Mr Julian Harrison-Tubb, applicant Mr Simon Cocker, Landscape Architecture</p> <p><u>For the Submitters:</u> Mr David Foster (retired architect) Mr Russel Thomson Ms Shelley Veltman</p> <p><u>For Council:</u> Mr Dwayne Daly (Senior Planner) Ms Nikki Honan (Resource Consents Team Leader) Ms Kylie Mclaughlin-Brown (Landscape Architect)</p>
<b>Hearing</b>	27 May 2021
<b>Commissioners' site visit</b>	24 April and 27 May 2021
<b>Hearing Closed:</b>	1 June 2021

## Introduction

1. This decision is made on behalf of the Kaipara District Council (“the Council”) by Independent Hearing Commissioner Dr Lee Beattie acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (“the RMA”).
2. This decision contains the findings from my deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The applications were limited notified on 2 March 2021. A total of 20 submissions were received, three in support, one neutral and 16 opposed.
4. In reaching our decision we have considered:
  - The application, its AEE and all its supporting documents and plans;
  - The Council officer’s (Mr Dwayne Daly, senior planner) s.42A report, with supporting reports attached to his s.42A report, including Ms Kylie Mclaughlin-Brown (Landscape Architect) assessment;
  - Mr Daly’s amend s.42A report;
  - The pre-circulated Evidence in Chief from the applicant;
  - The written submission and correspondence from the submitters;
  - The open statements and submissions from Mr Julian Harrison-Tubb;
  - The evidence provided at the hearing by Mr Simon Cocker, Landscape Architect;
  - The responses to our questions from the parties during the hearing process, including the submitters Mr David Foster, Mr Russel Thomson and Ms Shelley Veltman;
  - The Applicant’s right of reply received by the Council on 31 May 2021;
  - Relevant sections of the Kaipara District Plan (District Plan);
  - Mangawhai Spatial Plan;
  - National Policy Statement: Urban Development; and
  - The matters I identified during my site visits on 24 April and 27 May 2021.
5. Finally, I would like to thank all the parties for the professional and courteous way that the hearing was undertaken.

## Summary of proposal and activity status

6. The proposal, consent history and the required resource consents are set out in detail within Section 4 of Mr Daly’s s.42A report. There was no disagreement between the parties present at the hearing regarding the consents required and as a result, these are confirmed for my decision, save for the issue of manoeuvring area on Lot 2, a point I shall return to below.
7. In essence, the applicant seeks resource consent to subdivide Lot 42 DP 39204 for the creation of two lots (proposed Lot 1 – 430sqm and proposed lot 2 – 564sqm), with a new dwelling (relocated dwelling) on proposed Lot 2. For completeness I note that the following District Plan consents are required:
  - a. Rule 13.11.1 – General Residential Subdivision – The terms of subdivision require lots to meet the minimum lot size of 1000m<sup>2</sup> in the Mangawhai Harbour Overlay in order to be a Controlled Activity. The proposal does not meet this requirement. Consequently, resource consent is required as a **Non-Complying Activity**;

- b. Rule 13.10.7 – Setbacks – The gatehouses over the fences for Lots 1 and 2 would be over 2m in height. Consequently, resource consent is required as a **Restricted Discretionary Activity**;
  - c. Rule 13.10.8 – Separation Distance – The dwelling on proposed Lot 2 would be within 300m of a commercial activity. Consequently, resource consent is required as a **Restricted Discretionary Activity**;
  - d. Rule 13.10.10 – Relocation of Buildings – The proposed relocatable dwelling on Lot 2 does not comply with the relevant performance standards of Section 13.10 (in this case Rule 13.10.8). Consequently, resource consent is required as a **Restricted Discretionary Activity**; and
  - e. Rule 13.10.25 – Vehicle Access and Driveways – The proposed vehicle manoeuvring area on Lot 2 does not contain an 8m turning arc. Consequently, resource consent is required as a **Restricted Discretionary Activity** (Noting there was disagreement between the Council officers and the applicant over this issue).
8. Overall the proposal has been considered as a **Non-Complying Activity**.
9. Finally, I note for completeness that no procedural matters were raised by any of the parties at the beginning, save for the issues surrounding the service of a submission to the Council and the decision by Mr Thomson to speak to his submission.
10. However, there was no disagreement between any of the parties that these issues could not be addressed, as the applicant had received the submission in question and its contents do not prejudice the Council’s assessment of the application. Nor, in my view would enabling Mr Thomson to speak to his submission prejudice the applicant, a point agreed to by Mr Julian Harrison-Tubb.

### **Relevant statutory provisions considered**

11. In accordance with section 104 and 104D of the RMA, I have had regard to the relevant statutory provisions including the relevant sections of Part 2 and section(s) 104, 104D, 106, and (for conditions) 108, 108AA and 220.
12. As a Non-complying Activity I may grant resource consent only if I am satisfied that either the adverse effects of the activity on the environment (other than any effect to which s.104(3)(a)(ii) applies) will be minor, or the application is for an activity that will not be contrary to the objectives and policies of (relevantly in this case) the operative District Plan. If the application passes either of the thresholds in s.104D, I may proceed to assess the application under s.104.
13. In terms of the first legal test, case law has confirmed the meaning of minor. In Saddle Views,<sup>1</sup> the Environment Court found the meaning of minor to be:

*Turning to the dictionaries we find that the adjective “minor” is defined in the New Zealand Oxford dictionary as “lessor or comparatively small in size or importance”. According to the Shorter Oxford English Dictionary “minor” means “...lesser...opposite to major...comparatively small or unimportant”. We hold that those meanings are what is*

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<sup>1</sup> Saddle Views Estate Limited v Dunedin City Council [2014] NZEnvC243[78]

*intended in section 104D (1)(a). The reference to comparatively emphasizes that what is minor depends on context - and at least all the authorities agree on that."*

14. Under the second test of s.104D(1)(b), in order to be 'contrary to' the objectives and policies of the relevant plans, an activity must be 'opposed to' or 'repugnant to' the objectives and policies. The RMA does not require me to take account of the provisions of the regional policy statement at this stage of the assessment, as those documents do not fall within the definition of a 'regional plan or district plan' as defined in s.43AA of the RMA. The Northland Regional Policy statement would require assessment under s.104 should the proposal pass one of the s.104D thresholds, if relevant. So would, for completeness, any national policy statement, such as the NPS: Urban Development. A point I shall return to below.
15. In saying this, I will undertake my assessment in accordance with the Environment Court's directions in *SKP Incorporated v. Auckland Council [2018] ENvC81* when considering the adverse effects. That is, I will take a holistic approach, looking over the entire application and its range of adverse effects and policy frameworks. Noting, that I can also take into consideration aspects of mitigation and the outcomes of imposing conditions of consent to mitigate those adverse effects.

### **Relevant standards, policy statements and plan provisions considered**

16. In accordance with section 104(1)(b)(i)-(vi) of the RMA, I have had regard to the relevant policy statements and plan provisions of the following documents.
  - District Plan; and
  - NPS: Urban Development
17. There are no other national environmental standards, policy statements, regulations, plans or legislation relevant to this application. I note for completeness that the Mangawhai Spatial Plan was also referred to. However, there was no disagreement between the parties that this would be s.104(1)(c) matter.

### **Summary of evidence heard**

18. The Council senior planning officer's (Mr Daly's) s.42A report was circulated prior to the hearing and taken as read. Mr Daly's report recommended approval, subject to appropriate conditions of consent.
19. Expert evidence from the applicant was pre-circulated and read before the hearing. I note that the following is a summary of the key issues raised and must be read in conjunction with the actual submissions, pre-circulated evidence and evidence presented at or after the hearing. To reduce repetition, I concentrate on matters relating to the areas of contention between the parties as all the information/evidence/submissions are available on the Council's internet site using the resource consent references/site addresses listed above.
20. The evidence presented by the applicant at the hearing is summarised below.

### **Applicant**

21. **Mr Harrison-Tubb** (applicant) spoke to his submission on the application (which was taken as read) and provided me with an overview of the application, what he was seeking to achieve, its amendments through time and then advised me about constructive discussions the Council had undertaken seeking to resolve the outstanding issues surrounding potential conditions of consent. These included the question of timing for the relocation of the dwelling for proposed Lot 2, the colour schemes and the service connections.
22. He also raised the issue of the compliance of the vehicle manoeuvring area for proposed Lot 2 and how in his view the proposal complied with this requirement and consent was not required. However, as it became clear during the hearing, the Council, while not agreeing with this and that consent was still required, were of the view that the proposed vehicle arrangements for this lot would not have an adverse traffic impact. Mr Daly's advice on this matter was based on the latest engineering advice he had received from Council's Engineering Department (Mr Sappa).
23. As a result, in my view it is almost immaterial whether consent is required, firstly as the application is for a Non-Complying Activity the application is considered as an integrated package of consents, secondly there is no disagreement between any of the parties over the impacts this potential infringement would create on the environment. Therefore I find that the proposal does not raise any traffic engineering effects, including on-site vehicle manoeuvring, which could be considered to be minor.
24. **Mr Simon Cocker**, Landscape Architecture, spoke to his evidence in chief (which was taken as read) then walked us through the plans and his design decisions for the landscaping for the proposal. This included the separation planting between the dwellings on site and along the external common boundaries.
25. I also asked questions about the proposed location for the Pohutukawa, its likely heights and potential traffic safety issues. He advised that the Maori Princess variety did not reach the 'normal' heights and widths and was the reason for its location on site, to provide a street presence without dominating the corner. I then explored the fence height and the opportunity for a second gate house structure to balance the site from both street frontages. He advised this would not be an inappropriate design response from a landscape point of view. Finally, he discussed the amended conditions of consent, which were acceptable and that consent could be granted.

### **Submitters**

26. **Ms Shelley Veltman** (14 Margaret Street) spoke to her written submission and advised that she drafted the written submission attached to a number of the submissions the Council had received. She walked me through the key elements of this submission highlighting her, and a number of adjacent neighbours, concerns surrounding the proposal. This included the use of the property of the site for rental purposes, which I advised, while understanding her concerns was not a relevant matter I could consider.
27. We also explored the issue of residential character and how she felt the proposed form of relocated dwelling, being a 1920's bungalow, with the associated fencing arrangements, at the densities proposed would not contribute to the existing residential character of the area. I asked her what the character in this part of Mangawhai was, to which she advised the settlement had grown from a beach 'bach' style housing to more modern residential dwellings

over the time she has lived in the district and this represented a more modern housing stock, as opposed to that older stock you would find in places like Ponsonby or Parnell in Auckland.

28. **Mr Russel Thomson** (12 Margaret Street) a long-time resident spoke to his submission and also raised the issue of character and how he considered that both the level of density and style of dwelling would compromise the local residential character. He also had a similar view to Ms Veltman as to what the local residential character was.
29. **Mr David Foster** (retired architect of 18 Holiday Cres) spoke to his submission and provided a supplementary submission where he considered the “Gateway” nature of the site to the residential area from the commercial area in Wood Street, the failure of the proposal to effectively engage with Margaret Street and how the proposal should provide an ‘exemplar’ form of development.
30. I also explored the issue of character with Mr Foster, who did not share the other submitters views and was of the view that that there was no coherent character in the local residential environment. However, he also saw merit to the second gate house structure to provide a form of balance between the two road frontages. I found Mr Foster’s comments helpful and insightful, especially relating to the character and appearance of the proposal in the streetscene.
31. I would like to thank all the submitters for their answers to my questions and their involvement in the hearing process.

## **Council**

32. **Mr Dwayne Daly** (Senior Planner) provided an update to his report and addressed a number of issues including staging of consent, colour, building height and vehicle manoeuvring and services arrangements. I asked him if he maintained the view expressed in his s.42 report, which he confirmed. However, he raised issues around the proposed conditions of consent, an issue I will return to below.
33. I asked him about the residential character of the area, to which he advised, in a similar way to Mr Foster, there was no coherent residential character for the area, nor were there any district plan provisions which sought to protect or encourage a particular residential style etc. I then considered the issue of the Mangawhai Residential Guidelines, to which Mr Daly agreed with Mr Cocker that these were predominately aimed at greenfield developments and not relevant in the current context.
34. Then we discussed the Mangawhai Spatial Plan and I was advised this would be a s.104(1)(c) issue at best and the District Plan would take precedent. I agree with this approach and have given it little weight. We then discussed the issue of the NPS:UD in light of the recent Council decision on Plan Change 78, commonly referred to as ‘Mangawhai Central’, it was his view that the Mangawhai area could now be considered an urban environment. However, as a Tier 3 Council, he advised that NPS:UD would have an impact as part of the next plan review. I agree with this approach and find that the NPS:UD, while technically relevant has little weighting on this application. Noting, it would only apply in any event if both s.104D gateway tests were met, given an NPS is not a plan under s.43AA and not a relevant consideration for a s.104D assessment.
35. We also discussed the issue of height and the rationale for the condition limited height to 5 metres and whether he now supports 5.6 metres proposed by the applicant, given the site’s

topography, to which he said he did. I was of the view that any outstanding issues around this issue could be addressed through the appropriate use of conditions of consent.

36. Finally, he confirmed that in his opinion the proposal meets both gateway tests under s.104D and it was open to me to consider the application under s.104.
37. **Ms Kylie McLaughlin-Brown** (Landscape Architect) report was taken as read and I asked Ms McLaughlin-Brown, if her concerns had now been addressed by the applicant or could be through the appropriate conditions of consent, which she confirmed.

### **Adjournment**

38. It was agreed by all the parties at the close of the formal presentations that before the applicant's right of reply, the council and the applicant would meet to see if an agreed set of conditions could be agreed. It was also agreed that a draft set of conditions of consent would be approved between the parties, and where agreement could not be reached, an explanation for the disagreement would be supplied as part of the applicant's right of reply.
39. The hearing was adjourned until 4 June 2021 to enable these discussions to take place.

### **Right of Reply**

40. The applicant's right of reply (from Mr Harrison-Tubb) was received by Monday 31 May 2021 and addressed a range of matters, including:
  - a. The issues raised by Ms Veltman regarding character and how he supported Mr Foster's, Mr Cocker's and Mr Daly's views on this matter;
  - b. A draft agreed set of conditions with the council, save for two issues relating to the second gateway and the staging of the relocation of the dwelling on to proposed Lot 2;
  - c. Removing the condition requiring the removal of the second gatehouse structure, based on the evidence of Mr Cocker and the suggestion of Mr Foster; and
  - d. The staging of the relocation of the dwelling to proposed Lot 2, seeking to have this occur before the issue of the s224c certificate as part of the subdivision process;
41. These issues will be considered as part of consideration of the principal issues in contention below.

### **Principal issues in contention**

42. After analysis of the application and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council planning officer's recommendation report, reviewing the submissions and concluding the hearing process, the proposed activity raises a number of issues for consideration. The principal issues in contention are.
  - The issues of residential character, including the impact on the streetscene;

- Landscaping issues;
- Staging; and
- Planning (District Plan) policy.

43. I note for completeness that we find that the other matters raised by the application can be appropriately addressed through the use of conditions of consent, including site works and provision of services.

### **Main findings on the principal issues in contention**

44. My main findings on the principal issues that were in contention are set out as follows. I note that I will be considering the relevant District Plan policy frameworks (objectives and policies) as part of the consideration for each area in contention.

#### *The issues of residential character, including the impact on the streetscene*

45. While I understand the submitters concern about the level of density, the type of house to be re-located onto the site and the impact this could create, I agree with the professional evidence in this regard, including from Mr Daly and Mr Cocker and the lay submission of Mr Foster. It is clear to me that, with the greatest respect, there is no underlying cohesive character that underpins this part of Mangawhai, save to say it's a product of its evolution through time.

46. I found Mr Daly's detailed morphological study of the local environment very helpful to confirm that the introduction of two dwellings, at the densities proposed, with the associated subdivision, would not have an adverse impact on the residential amenity of the local environment, nor would be an inconsistent form of urban development in this location. I also agree that the introduction of the second dwelling of this type would not have an adverse effect on the existing residential amenity in this location.

47. However, I do agree with Mr Foster's and Mr Harrison-Tubb view, supported by the opinions of Mr Cockers and Ms McLaughlin-Brown from a technical landscape architecture point of view, that the retention of the second gatehouse structure, with the fencing and landscaping proposed would create a far better streetscene appearance to both street frontages, being on the corner of Wood and Margaret Streets, than only having one on Margaret Street. I agree with Mr Foster, it would provide 'balance' to this site and while I do not completely agree about his 'gateway' concept, the corner needs to be addressed appropriately and this would achieve a better environmental outcome for the site. As a result, I find that the intention of the second gate house, with the associated landscaping and fencing will provide a better environmental outcome for this site. I also find that the proposed two dwellings, including the type proposed, would not have an adverse impact on the streetscene.

48. I agree with Mr Daly's planning evidence, as amended through the hearing process (for height) when it comes to the likely impacts in terms of height, bulk, mass, visual privacy, sunlight and daylight on the adjoining properties. As a result I find that the proposal will not have an adverse impact on the adjacent (and adjoining) properties which could not be considered to be more than minor.



49. Finally, turning to the issue of colour; the applicant has amended their application to include this matter and has agreed to this as a condition of consent. As a result, I will leave this issue to the conditions of consent.

#### Landscaping

50. Again, while I understand the submitters concern about landscaping and visual privacy. I agree with the detailed analysis of Mr Cocker as set out in his evidence, especially taking into consideration the issues of topography for the site and the relationship with the adjacent properties. At the end of the hearing it was clear that any issues between Mr Cocker and Ms McLaughlin-Brown had been addressed and Ms McLaughlin-Brown did not raise any concerns that could not be addressed through the appropriate conditions of consents.
51. I initially had some concerns about the likely impact of the proposed location for the Pohutukawa, its likely height and potential traffic safety issues. However, Mr Cocker addressed my concerns and I agree that this tree, over time will also add some presence to the corner in the streetscene. As a result, I find that any adverse landscaping issues are minor and I believe the landscaping proposed, with fencing and gatehouses will provide a positive outcome for the site and the local environment.

#### Staging

52. There was initially some concerns about the timing of the re-location of the dwelling on site. I agree with Mr Harrison-Tubb that this should only happen once and that works required to this dwelling could be undertaken while the formal subdivision process is undertaken. As a result, these issues can be addressed through use of conditions.

#### Planning Policy

53. The evidence of Mr Daly (the only planning witness I formally heard from) supported the proposal in land use (District Plan) policy terms. I agree with his assessment, noting that the potential and actual effects of the proposal have been adequately addressed through the amended conditions of consent. In order to save time I do not propose a 'line by line' assessment of the relevant objectives and policies as this is not necessary and I have adopted Mr Daly's assessment in this regard and find that the proposal is not contrary to the relevant objectives and policies stated in the District Plan.
54. Finally, I agree with Mr Daly that there is no need to seek recourse to Part 2 of the RMA as the issues are covered within the District Plan provisions and the NPS:UD (noting that little weight has been given to the NPS:UD).

### **S.104D Determination**

55. Based on my assessment above, I have concluded that the proposed activity will have no more than minor adverse effects and that the proposal is not contrary to the objectives and policies of the District Plan. Accordingly, I have the jurisdiction to undertake a s.104 assessment.

### **S.104 Assessment**

56. My assessment under sections 104(1)(a) and (b) requires me to consider any actual and potential effects on the environment of allowing the activity and the relevant provisions of the regional and planning instruments. I have addressed these issues above, where I have found that the potential and actual effects on the environment are appropriate and acceptable for an activity of this nature. I also note the positive benefits (effects) this will provide in terms of housing provision for the district.
57. In terms of planning policy, I have found that the proposal is consistent with the objectives and policies of the District Plan.
58. Finally, I note for completeness that no s.104(1)(c) matters were brought to my attention for this application, save for the Mangawhai Spatial Plan, to which I have given very little weight as the issues have been addressed through my effects and District Plan policy assessment.

### Decision

59. In exercising my delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104D, 106 and Part 2 of the RMA, I determine that resource consents to subdivide Lot 42 DP 39204 for the creation of two lots (proposed Lot 1 – 430sqm and proposed Lot 2 – 564sqm), with a new (relocated) dwelling on proposed Lot 2 is **GRANTED** consent subject to the conditions set out below.
60. The reasons for this decision have been set out in the sections above.
61. Under section 108, 108AA, 220 and Part 2 of the RMA, this consent is subject to the conditions attached as Appendix One:



Dr Lee Beattie

Independent Commissioner for Kaipara District Council

Date: 21 June 2021