In the Matter of:	*The Resource Management Act 1991*
And	
In the Matter of:	*An application under Section 88 of the Resource Management Act 1991 made by Harbour Side Developments Limited*
File Reference:	*RM220059A*

Decision on Resource Consent Application

Activity

The applicant seeks a change of conditions to the approved subdivision consent (RM220059) to vary the eight-lot subdivision application. This includes varying the scheme plan, proposed covenant areas, revegetation planting areas and fencing typologies.

Location

Address: 102 Settlement Road, Kaiwaka

Legal Description:Lot 1 DP 123715, NA72A/940, RT

Kaipara District Plan (Operative 2013):

The following apply to the subject property:

Zoning:	*Rural Zone*
Overlays:	*Nil*
Activity Status:	*Discretionary Activity pursuant to Section 127 of the Act*

Determination

Pursuant to Section 104, 104B, 108 and 127 of the Resource Management Act 1991 ("the Act"), the Kaipara District Council ***grants*** *RM220059A to allow for the conditions of RM220059 to be amended as follows (showing deletions in strikethrough and additions* ***in bold and underlined****:*

General

1. The activity shall be carried out in accordance with the plans and all information submitted with the application formally received by the Kaipara District Council ("Council") on 18 March 2022 ***and as varied by the Section 127 application by Reyburn and Bryant dated April 2023***:

• Application form, and assessment of environmental effects prepared by Reyburn and Bryant, dated March 2022.

Plan title and reference	**Author**	**Rev**	**Dated**
'Proposed Subdivision of Lot 1 DP 123715', reference S16653	Reyburn and Bryant	~~J~~***L***	~~July 2022~~ ***March 2023***
Landscape Plan – Overall Plan	Evolve		~~7 July 2022~~ ***30 March 2023***
~~Proposed Revegetation and Protected Areas Plan~~	~~Rural Design~~		~~December 2021~~
Report Title and reference	**Author**	**Rev**	**Dated**
Engineering Suitability Report for Subdivision	Hawthorn Geddes	2	23 August 2022
Environmental Benefits Assessment Pertaining to a Proposed Subdivision at 102 Settlement Road, Kaiwaka Lot 1 DP 123715	Rural Design	1	December 2021
Assessment of Landscape and Visual Effects	Evolve		December 2021
Other additional information	**Author**	**Rev**	**Dated**
S92 Response	Joseph Henehan, Reyburn and Bryant		24 May 2022
Ecological Management Plan	***Rural Design***	***2***	***March 2023***
Ecology Memorandum	***Rural Design***		***28 March 2023***

Charges

2. The Consent Holder shall pay any subsequent further charges imposed under Section 36 of the Act relating to the receiving, processing, granting and monitoring of this resource consent within 20 days of receipt of notification of a requirement to pay the same, provided that, in the case of any additional charges under Section 36(5) of the Act that are subject to challenge, the Consent Holder shall pay such amount as is determined by that process to be due and owing, within 20 days of receipt of the relevant final invoice.

Section 125 - Consent Lapse Date

3. Under Section 125 of the Act, this consent lapses five years after the date it is granted unless: (a) A survey plan is submitted to Council for approval under Section 223 of the Act before the consent lapses, and that plan is deposited within three years of the approval date in accordance with Section 224 of the Act; or (b)

An application under Section 125 of the Act is made to the Council before the consent lapses (five years) to extend the period after which the consent lapses and the Council grants an extension.

Road names

4. The consent holder shall provide and install road naming signs in accordance with the Council's Engineering Standards 2011 for proposed Lot 8 (road to vest) within the subdivision. The names shall be as approved by the Council.

Advice note: Land Information New Zealand (LINZ) requires that proposed roads, private road, right of way or access lot that service six (6) or more lots are to be named. LINZ has indicated that a name for the road or private road should be in place before the survey plan of subdivision is approved by the council under section 223 of the RMA and advises that if no name is in place this could be problematic when titles are later requested. The consent holder should contact roading@kaipara.govt.nz.

Pre-Commencement Conditions

5. Prior to the commencement of any work authorised under this consent, a Construction Management Plan ("CMP") in accordance with Section 3.3 of Council's Engineering Standards 2011 shall be provided to Council's Development Engineer, or their delegated representative, for certification, and shall include:

(i) Details of the site manager including full contact details;

(ii) Construction methodology including proposed plant and machinery to be utilised;

(iii) Proposed procedures for controlling sediment runoff and dust generation;

(iv) Programme of works;

(v) Proposed hours of work on the site;

(vi) Details of the number and timing of truck movements on the access route to the site;

(vii) Details of any proposed materials storage areas;

(viii) Traffic management plans;

(ix) Proposed communication strategy to advise members of the public of the construction works;

(x) For all road construction works, the consent holder shall give Council's Asset Manager at least 10 working days' notice of commencement of any works on any Council Road.

6. Prior to the commencement of any work within the Council's road reserve, the consent holder shall submit a Corridor Access Request ("CAR") application, including a Traffic Management Plan/s, to the Northern Transportation Alliance Corridor Access Manager and obtain approval.

Prior to Section 223 Certification

7. Prior to the sealing of the Survey Plan pursuant to Section 223 of the Act the following conditions shall be complied with:

General

(a) The survey plan shall be generally in accordance with the plan of subdivision titled 'Proposed Subdivision of Lot 1 DP 123715', reference S16653, revision ~~J~~***L***, dated ~~July 2022~~***March 2023***, and prepared by Reyburn & Bryant.

Easements

(b) The survey plan shall show all necessary easements as required for servicing.

Road to vest

(c) The survey plan shall show Lot 8 as public road to vest in the Council.

Amalgamation conditions

(d) Pursuant to Section 220(1)(b)(ii) of the Act, the survey plan shall show an amalgamation condition that Lot 1 hereon and Lot 7 hereon shall be held together and one Record of Title be issued for both parcels. (LINZ Ref pending).

Utility providers

(e) The Consent Holder / Consent Holder's Surveyor shall provide evidence from the appropriate network utility supply providers that arrangements can be made for the provision of electricity and show the necessary easements on the survey plan to the approval of the Council.

Environmental Benefits/Conservation Covenants

(f) The survey plan shall show the proposed covenant(s) generally as indicated as Area's "A","B", "C","D" and "E" on the plan of subdivision titled 'Proposed Subdivision of Lot 1 DP 123715', reference S16653, revision ~~J~~***L***, dated ~~July 2022~~***March 2023***, and prepared by Reyburn & Bryant, as being land subject to conservation covenants pursuant to Section 77 of the Reserves Act, or open space covenants pursuant to the Queen Elizabeth the Second National Trust Act 1977.

(g) An Ecological Planting and Weed/Pest Control Management Plan ("EPWCMP"), generally in accordance with the recommendations of the report titled 'Environmental Benefits Assessment Pertaining to a Proposed Subdivision at 102 Settlement Road, Kaiwaka Lot 1 DP 123715' dated December 2021 and prepared by Rural Design, shall be prepared by a suitably qualified ecologist and submitted to the Council for written approval (in a certifying capacity). The purpose of the EPWCMP is to ensure long term environmental benefit objectives are achieved. The EPWCMP shall, as a minimum, contain or provide for the following:

    (i) Prior to planting, the removal or management of all invasive weed species and their replacement with native, eco-sourced species that will enhance ecological values of local habitat.

    (ii) An establishment and maintenance programme which includes recommendations on the frequency of maintenance and monitoring to be undertaken and the anticipated duration to achieve the objectives of the EPWCMP, including (as applicable):

- Watering,
- Weed control,
- Cultivation,
- Control of pests and diseases,
- Removal of litter,
- Checking of stakes and ties,
- Trimming, pruning,
- Topping up mulch
- And other works required to ensure planting maintains healthy growth and form.

(iii) The measures to be adopted to achieve, as far as is practicable:

- 90% survivorship of planted species; and
- 85% canopy cover of indigenous vegetation.

(iv) The control of pests (including but not limited to rats, mustelids, possums and freshwater pests) to ensure, as far as practicable, that the ecological gains achieved via the EPWCMP are not compromised.

(v) All plant material should be eco-sourced from the Rodney Ecological District preferably within close proximity to the site.

Landscape Covenants

(h) The survey plan shall show the proposed landscaped areas indicated as Areas "F", "G", "H", "I", "J", "K", and "L" on the plan of subdivision titled 'Proposed Subdivision of Lot 1 DP 123715', reference S16653, revision ~~J~~***L***, dated ~~July 2022~~***March 2023***, and prepared by Reyburn & Bryant for the purposes of ongoing compliance with condition 8(n)(xviii) of this consent (RM220059).

Landscaping Design – Private Land

(i) A detailed Landscape Planting and Management Plan, generally in accordance with the recommendations of the report titled 'Assessment of Landscape and Visual Effects', dated December 2021 ***and in accordance with the amended landscape plan dated 30 March 2023*** and prepared by Evolve, including an establishment and maintenance schedule, shall be prepared by a qualified landscape architect or tertiary qualified horticulturalist specialising in amenity horticulture, and shall be submitted to Council for written approval. The Landscape Planting and Management Plan shall include, but may not be limited to, the following:

(i) A description of the purpose and objectives of the planting.

(ii) A plan of the planted areas detailing proposed plant species, plant sourcing, plant sizes at time of planting, plant locations, density of planting and timing of planting, height and density upon maturity. The planting sizes for the balance of the plants shall be provided such that maturity is reached and their intended purpose (e.g. privacy) achieved within 3 year period following initial planting.

(iii) A programme of establishment and post establishment protection and maintenance, including planting method, fertilising, weed removal / spraying, replacement of dead or poorly performing plants, watering, length of maintenance programme. Management of the vegetation within the lot shall be the responsibility of the Lot owner.

(iv) Details of weed management.

(v) Details of certification process once established

Building Areas/Restrictive Covenants

(j) The survey plan shall show the identified building areas on Lots 2, 5 and 6 as indicated on the plan of subdivision, titled 'Proposed Subdivision of Lot 1 DP 123715', reference S16653, revision ~~J~~***L***, dated ~~July 2022~~***March 2023***, and prepared by Reyburn & Bryant. The survey plan is to include dimensions, areas and boundary references for accurate siting for the purposes of ongoing compliance with Condition 8(n)(iii) of this consent (RM220059).

Engineering Design

(k) The Consent Holder shall submit a detailed set of engineering plans, specifications and calculations, prepared in accordance with the Council's Engineering Standards 2011 to the Council's Development Engineer, of their delegated representative for approval.
The engineering plans, calculations and specifications shall be prepared by a suitably experienced person/s who:

(i) Have the appropriate experience in the relevant areas; and

(ii) Hold appropriate qualifications and membership of professional bodies; and

(iii) Have professional indemnity insurance to the value of at least $1,000,000.

The engineering plans, calculations and specifications shall include, but may not be limited to the following:

a. Design details of the construction of the proposed vehicle crossings on all Lots 1-6 in accordance with Section 5.2.18 of the Council's Engineering Standards 2011.

b. Engineering details for the road to vest within proposed Lot 8 must be designed in accordance with the Proposed Engineering Design by Reyburn and Bryant (Reference: E16653, Rev: H, dated: 11/08/2022), and approved by NTA (Northland Transport Alliance).

(l) All Engineering works are to be undertaken and supervised by a suitably qualified professional/engineer with relevant experience as per the approved site suitability report. Evidence shall be provided at the pre-construction meeting prior to the commencement of the physical works.

Wastewater confirmation

(m) Written evidence, including a detailed plan layout, prepared by a licensed cadastral surveyor that the existing disposal field(s) for Lot 3 and 4 are contained within the allotment boundaries and comply with Northland Regional Council requirements, noting the required separation distances to boundaries, surface water, water bores and the groundwater table, shall be provided to the satisfaction of the Council's Development Engineer, or their delegated representative.

(n) The exiting effluent disposal field servicing the existing dwelling proposed to be removed from proposed Lot 8 (road to vest) and relocated within proposed Lot 1 shall be decommissioned and/or

relocated wholly within proposed Lot 1 ensuring it meets Council's Engineering Standards 2011 and Northland Regional Council requirements before construction works are to commence on proposed Lot 8.

Prior to Section 224(c) Certification

8. Before a Certificate is issued pursuant to Section 224(c) of the Act, the following conditions are to be complied with:

Utility Connections

(a) Electricity connections shall be provided to the boundary of the net site area of Lots 2, 5 and 6. The Consent Holder shall provide confirmation from the network utility supply authority of compliance with this condition.

Easements

(b) The Consent Holder shall provide written confirmation from a Licensed Cadastral Surveyor that all services and accesses constructed under this consent are located within the appropriate easement boundaries.

Engineering

(c) All works on the engineering plans approved under Condition 5(e) of this consent are to be completed to the approval of the Council's Development Engineer, or their delegated representative. Compliance with this condition shall be determined by the following:

(i) Site inspections undertaken as agreed in Council's engineering plan approval letter for the engineering plans as required by Condition 7(k) of this consent;

(ii) Provision and approval of supporting documentation provided by the Consent Holder in support of the constructed works, including Producer Statements, completion certificates, works acceptance certificate, statement of compliance of as built works and as built plans, construction management plans, operation and maintenance plans and all other test certificates and statements and supporting information required to confirm compliance of the works as required by Section 3 of the Council's Engineering Standards 2011.

Remediation of Damages

(d) In the event of any damage to any of the Council's road carriageway formation and street berm by the works associated with this consent, the consent holder shall reinstate the formation and street berm in accordance with Section 3 of the Council's Engineering Standards 2011.

As-Built Plans

(e) The consent holder shall submit certified and dated 'As-Built' plan/s of completed works and services in accordance with Council's Engineering Standards 2011 to the satisfaction of the Council's Development Engineer, or their delegated representative. The consent holder/consent holder's contractor shall supply the required As-Built details in hard copy and electronic (AUTOCAD) format. For pdf files different assets should be marked using following colours:
Stormwater Assets – Green
Co-ordinates in New Zealand Transverse Mercator NZTM2000.

RAMM Data

(f) The consent holder shall submit certified Road Asset Maintenance Management (RAMM) data for all new/upgraded or extended vehicle crossing culverts prepared by a suitably qualified person in accordance with the Council's Engineering Standards 2011 to the satisfaction of the Council's Development Engineer, or their delegated representative.

Construction of roads to vest

(g) The consent holder shall construct the public road within proposed Lot 8 in accordance with drawing S21 of Council's Engineering Standards 2011, inclusive of the approved street / road name. The sign shall be located in a position where it is most visible for road/access users.

Landscaping Implementation

(h) All works described in the approved Landscape Planting and Management Plan submitted to Council in accordance with condition 7(h) of this consent shall be implemented within the first planting season (May to September) following the written approval of the Landscape Planting and Management Plan.

The planting shall be implemented to the satisfaction of the Council or Council's delegated representative. The consent holder shall provide a completion report from a qualified landscape architect or tertiary qualified horticulturalist specialising in amenity horticulture to the satisfaction of the Council, and the Council will undertake inspections as required to confirm compliance.

The planting shall be subject to maintenance and monitoring within the proposed lots for a period of ~~three~~***five*** (5) years following written approval from the Council that the planting has been implemented in accordance with the approved Landscape Plan.

Environmental Benefit

(i) All animal pest control works described in the approved EPWCMP shall be implemented to the satisfaction of the Council. The consent holder shall provide a completion report from a suitably qualified animal pest control professional to the satisfaction of Council.

(j) All plant pest / weed control works described in the approved EPWCMP, shall be implemented to the satisfaction of the Council. The consent holder shall provide a completion report from a suitably qualified ecologist to the satisfaction of Council, and the Council will undertake inspections as required to confirm compliance.

(k) All planting described in the approved EPWCMP, shall be implemented to the satisfaction of the Council. The consent holder shall provide a completion report from a suitably qualified ecologist to the satisfaction of Council, and the Council will undertake inspections as required to confirm compliance.

Conservation Covenant

(l) A Conservation covenant(s) in accordance with Section 77 of the Reserves Act 1977, or an open space covenant under the Queen Elizabeth the Second National Trust Act 1977, shall be prepared for registration against the titles of the land depicted on the Survey Plan as being subject to a

conservation/open space covenant. A conservation covenant shall require compliance with the provisions listed in Schedule 2 of the approved Council conservation covenant document, or an open space covenant shall require compliance with the QEII Trust.

(m) The consent holder must erect and maintain fencing in stock proof condition around the boundary of the covenant area as is necessary to prevent entry to the covenant area by grazing animals, but not closer to the bush than the drip-line of the outmost tress. The standard of that fencing is to be ***either*** a 7-wire fence with posts no more than five metres apart and with a minimum of five battens between each post and otherwise is to be as defined in paragraph 6 of the second schedule to the Fencing Act 1978***, or post and 4-rail as recommended by Rural Design in their memorandum dated March 2023, Rev 2.***

Consent Notice/On-going conditions

(n) Pursuant to Section 221 of the Act, the following conditions shall be complied with in perpetuity and shall be registered on the titles of Lots 1-7 by way of Consent Notice(s).

In regard to Lots 1-6

General

(i) Earthworks, the location of buildings, driveways, storm water disposal and wastewater disposal shall be subject to specific engineering design by a suitably qualified Chartered Professional Engineer having regard to any soil instability/saturation issues that may exist or arise as a result of the development. Design shall take into account the recommendations identified in the site suitability report prepared by Hawthorn Geddes (reference: 12610, rev: 2, dated: 23/08/2022) submitted to Council with subdivision consent RM220059.

(ii) Further geotechnical assessment shall be undertaken prior to lodgement of the building consent for development on the lot, requiring a qualified chartered engineer to assess foundation design in regard to ground stability.

(iii) All future dwellings on lots 1, 2, 5, and 6 must be located wholly within the identified building areas shown on the survey plan. Should the building sites differ from that depicted in the survey plan, then further site-specific engineering assessment, analysis and design will be required by a suitably experienced geotechnical engineering professional, acting within the bounds of their competency.

Built Development/Design Guidelines

(iv) Any accessory buildings related to the dwelling and any ancillary infrastructure shall be located within 10 metres of the dwelling. Within Lots 3 and 6, a single accessory building is permitted (excluding accessory buildings of the dwelling. Within Lots 3 and 6, a single accessory building is permitted (excluding accessory buildings of <50m^2 in GFA.) All buildings are to comply with the reduced front yard setbacks approved under resource consent RM220059, being 5 metres on Lot 1 and 3 metres on Lots 2, 4 and 5.

(v) All new buildings and structures within proposed Lots 1, 2, 3, 4, and 5 shall not exceed 6 metres in height. All new buildings and structures within proposed Lot 6 shall not exceed 5 metres in height. The height of buildings and structures shall be measured using the rolling height limit (above existing ground level).

(vi) Glazing is to be non-mirrored.

(vii) (vii) All buildings on the lots are to be finished in the colours found in BS2525 complying with the following:

a. Hue (colour) All the colours from 00-24 are acceptable

b. Reflectance Value (RV) and Greyness Groups – The predominant wall colours shall have a RV rating of no more than 30% for greyness group A, B and C. Colours within greyness groups D and E are not permitted.

c. Roofs – A RV rating of no more than 20% for greyness groups A, B and C. Colours within greyness groups D and E are not permitted.

(viii) Any fencing shall be restricted to rural fencing typology - post and rail or post and wire fencing to complement the rural character of the site (aside from safety fencing typology around pools).

(ix) The use of spotlights and floodlights are prohibited. The spill from all exterior lighting shall be controlled so illumination and glare is contained within the lot in which the light is located.

(x) Water tanks shall be situated no more than 300mm above ground if ground conditions allow and shall be screened by vegetation.

(xi) Power and telecommunication infrastructure shall be underground.

(xii) Any retaining structures or walls shall be constructed of materials or finished in dark recessive colours or screened by vegetation.

(xiii) Driveways should follow the natural contour of the land and not be situated on any prominent ridgeline. Driveways shall suit the rural character of the site and be recessive in finish. Chip seal, metal or asphalt with natural swales is preferable, if concrete is used concrete with a black oxide additive or exposed aggregate finish is required.

In Regards to Lots 1, 2, 4, 5 and 6

Ecological Planting Maintenance, Weed and Animal/Pest Control

(xiv) All ecological planting on site shall be maintained in accordance with the approved Ecological Planting and Weed/Pest Control Management Plan approved under resource consent RM220059.

Evidence of compliance with this requirement shall be provided to Council in writing from a suitably qualified ecologist five (5) years from the date of issue of the Section 224(c) certificate for RM220059.

(xv) Ongoing weed and animal/pest control shall be undertaken in accordance with the approved Ecological Planting and Weed/Pest Control Management Plan approved under resource consent RM220059.

Evidence of compliance with this requirement shall be provided to Council in writing from a suitably qualified ecologist five (5) years from the date of issue of the Section 224(c) certificate for RM 220059.

(xvi) The keeping of cats, mustelids and rodents on the lots is prohibited. (xvii) Dogs shall not be kept on the lot unless the following conditions are complied with:

1. Any dog kept on the lot shall be secured/contained at all times to ensure that they cannot roam into the covenant area on the lot. Containment shall be demonstrated to the satisfaction of the Council's Team Leader Monitoring and Compliance and may be in the form of an "electronic pet

containment fence" means a system installed or attached to the perimeter of a defined area (or wireless equivalent) which is designed to prevent dogs escaping by transmitting a digital or electronic signal to a receiver collar worn by the dog.

2. Ongoing compliance with this condition will be monitored by Council. There will be a Council charge for this monitoring payable by the lot owner.

In Regards to Lots 1, 2, 3, 5, 6 and 7:

Landscape and Amenity Planting Maintenance

(xvii) All landscape and amenity planting on site shall be maintained in perpetuity in accordance with the Landscape Planting and Management Plan approved under resource consent RM220059 ***and the revised landscape plan – dated 30 March 2023***. Diseased, dying or dangerous plants must be removed and replaced in accordance with the approved Landscape Planting and Management Plan.

Evidence of compliance with this requirement shall be provided to Council in writing from a qualified landscape architect or tertiary qualified horticulturalist specialising in amenity horticulture five (5) years from the date of issue of the Section 224(c) certificate for RM220059.

(xviii) Maintenance of planting will be monitored by Council for a period of five years from the date of issue of the Section 224(c) certificate. There will be a Council charge for this monitoring payable by the lot owner.

In Regards to Lots 2, 5 and 6:

Servicing

(xix) Future lot owners are advised that no physical telecommunication connections are provided. Kaipara District Council will not be responsible for ensuring nor providing telecommunication connections to this lot.

Advice Note: This consent notice can be deleted if a hard-wired connection is provided to the Lot.

Firefighting Water Supply

(xx) Sufficient firefighting water supply shall be provided for any single residential dwelling on the lot with a minimum volume of 10,000 litres and shall remain accessible an available all year round.

Note: This consent notice was volunteered by the applicant an accepted by Council in support of RM220059.

(xxi) Unless specifically authorised in writing by Fire and Emergency New Zealand, sufficient firefighting water supply shall be provided for any commercial or industrial land use on the lot. Sufficient firefighting water supply is deemed to mean meeting full criteria of the Code of Practice for firefighting water supplies 9SNZ PAS 4509 2008) New Zealand Fire Service Firefighting Water Supplies Code of Practice).

Note: This consent notice was volunteered by the applicant and accepted by Council in support of RM220059.

In Regards to Lots 1, 2, 5 and 6:

(xxii) At the time of building consent for a dwelling on the lot an approved Stormwater assessment accompanied by a specific stormwater design by a suitably qualified person to mitigate adverse effects of the increase impermeable surfaces must be submitted to council for approval and be approved.

(xxiii) At the time of building consent for a dwelling on Lots 1 and 2, the applicant shall demonstrate that stormwater subsoil drainage is to be installed around the footprint of the building and have discharge points provided as per the site suitability report prepared by Hawthorn Geddes (reference: 12610, rev: 2, dated: 23/08/2022) submitted to Council with subdivision consent RM220059.

Solicitors Undertaking

(o) A solicitor's undertaking shall be provided to Council confirming that all consent notices and covenants prepared for registration under the relevant conditions of this resource consent will be duly registered against the new titles to be issued for the subdivision. The solicitor must provide a post registration title and instruments. All consent notices and covenants to be prepared or registration under the relevant conditions of this resource consent shall be prepared by a Solicitor at the consent holder's expense.

Construction Maintenance Bond

(p) The consent holder shall enter into a bond as security against any defect in performance of the roading works completed under this consent. The value of the bond shall be for 25% of the total cost of the roading works based on actual construction costs.

The bond shall remain in force for at least one year after completion of the work and until any defects have been remedied to the satisfaction of the Council.

The bond shall be prepared by Council or Council's solicitor at the consent holder's expense. The bond will be released when all works associated with the bond are completed to Council's satisfaction and inspections fees are paid (or alternatively the consent holder may request that inspection fees can be deducted from the bond refund)

(Note: for the avoidance of doubt the works will be considered to be defective until the Falling Weight Deflectometer (FWD) or Benkelman Beam (BB) testing of the completed pavement in the Spring following completion of the construction works demonstrates a residual life of at least 25 years (FWD) or the minimum deflections (BB).

Financial Contributions

(q) A cash contribution in lieu of reserves shall be paid based on 5% of the assessed value of a "nominal" 4000m2 dwelling site on Lots 2, 5 and 6 of the subdivision, such value to be determined by a registered valuer appointed by Kaipara District Council, at the applicant's expense.

At the time of payment of the contribution, the valuation upon which the cash contribution is calculated shall be no more than three (3) months old.

Advice Notes

i) *The scope of this resource consent is defined by the application made to Council and all documentation supporting the application.*

ii) *If you disagree with any of the above conditions, or additional charges relating to the processing of this application, you have a right of objection pursuant to sections 357A or 357B of the Act. Any objection must be made in writing to Council within 15 working days of notification of the decision.*

Reasons for the Decision

1. A decision was made under delegated authority to process the consent on a non-notified basis as per the Council's Notification Assessment in Section 7.

2. In terms of Section 104(1)(a) of the Act, subject to compliance with conditions, the effects of the change/cancellation of conditions on the environment are considered to be acceptable because:

   - The overall effect of the change to conditions is considered to be the same as that associated with the original application.
   - There are not considered to be any discernible or perceptible effects associated with amending the conditions as requested by this proposal.
   - The changes proposed do not seek to diminish any of the responsibilities of the consent holder in terms of completing the subdivision as originally envisaged.

3. In terms of Section 104(1)(b) of the Act, subject to compliance with conditions, it is considered that the proposal is consistent with the relevant objectives and policies of the Kaipara District Plan 2013 and the Northland Regional Policy Statement as discussed in Section 10.0 of this report.

4. In terms of Section 104(1)(c) of the Act, other relevant matters, including financial and development contributions and monitoring have been considered in the determination of the application. However, none of these matters were of relevance to the change of conditions to provide for amended allotment boundaries of the approved subdivision.

5. The Council has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act and it is considered that granting this resource consent achieves the purpose of the Act as set out in Section 5.

Reporting Planner 

Alisa Neal

01/06/2023

Date

Signed:



JJ Pienaar *Date: 7/06/2023*

Resource Consents Team Leader

Kaipara District Council

Signed under delegated authority pursuant to Section 34A of the Resource Management Act 1991.

RM220059A

Section 104 of the Resource Management Act 1991 - Assessment Report

Details of Application	
Applicant	Harbour Side Developments Limited
Property to which the consent relates	102 Settlement Road, Kaiwaka, Lot 1 DP 123715, RT NA72A/940

1.0 Background

6. In October 2022, an eight-lot subdivision consent (RM220059) was approved as a Non-Complying Activity. The original decision includes consent under Rule 12.9.4 (non-complying activities), Rule 12.15.8 (Telecommunications), and Rule 12.10.7 (Setbacks). This consent was approved under delegated authority on a non-notified basis.

2.0 Description of Proposal

7. Pursuant to s127 of the Act, the Application seeks consent pursuant to Section 127 of the Resource Management Act 1991, to vary the configuration of landscaping and ecological covenant boundaries and the fencing typology on proposed lot 6 to more accurately reflect the intended use of the site. This will result in the following:

   - A change in fencing typology on proposed lot 6 to post and rail fencing along the revegetation covenant boundaries rather than post and 7 wire fencing. This change in fencing typology is supported by a revised ecological management plan which recommends a 4-rail fence to offer the same level of protection from potential stock intrusions in comparison to a 7-wire post and batten fence.
   - A change in covenant boundary position within lots 1 and 2 (shown on the scheme plan as areas 'A' and 'B'. This will result in the total covenant area having a reduction in size from 1.96ha to 1.9170ha, being a difference of approximately 500m^2. This change in covenant area is supported by a revised ecological management plan and memorandum by Rural Design.
   - The application also seeks a change in the landscape planting area (area 'F' on the scheme plan) to an alternative layout. This change has been supported by a revised landscape plan by Evolve Planning and Landscape Architecture and is reflected on the revised scheme plan.
   - The overall condition requirements for the covenant areas and landscaping areas, including ongoing maintenance requirements, will remain unchanged.

8. The amended scheme plan is detailed in the Plans by Reyburn and Bryant, referenced as Job number S16653 Revision L and dated march 2023. The proposed changes are detailed in Figure 1 below, and the proposed landscaping changes are detailed in the plans shown in Figure 2 below:



Figure 1: Proposed amendments to scheme plan

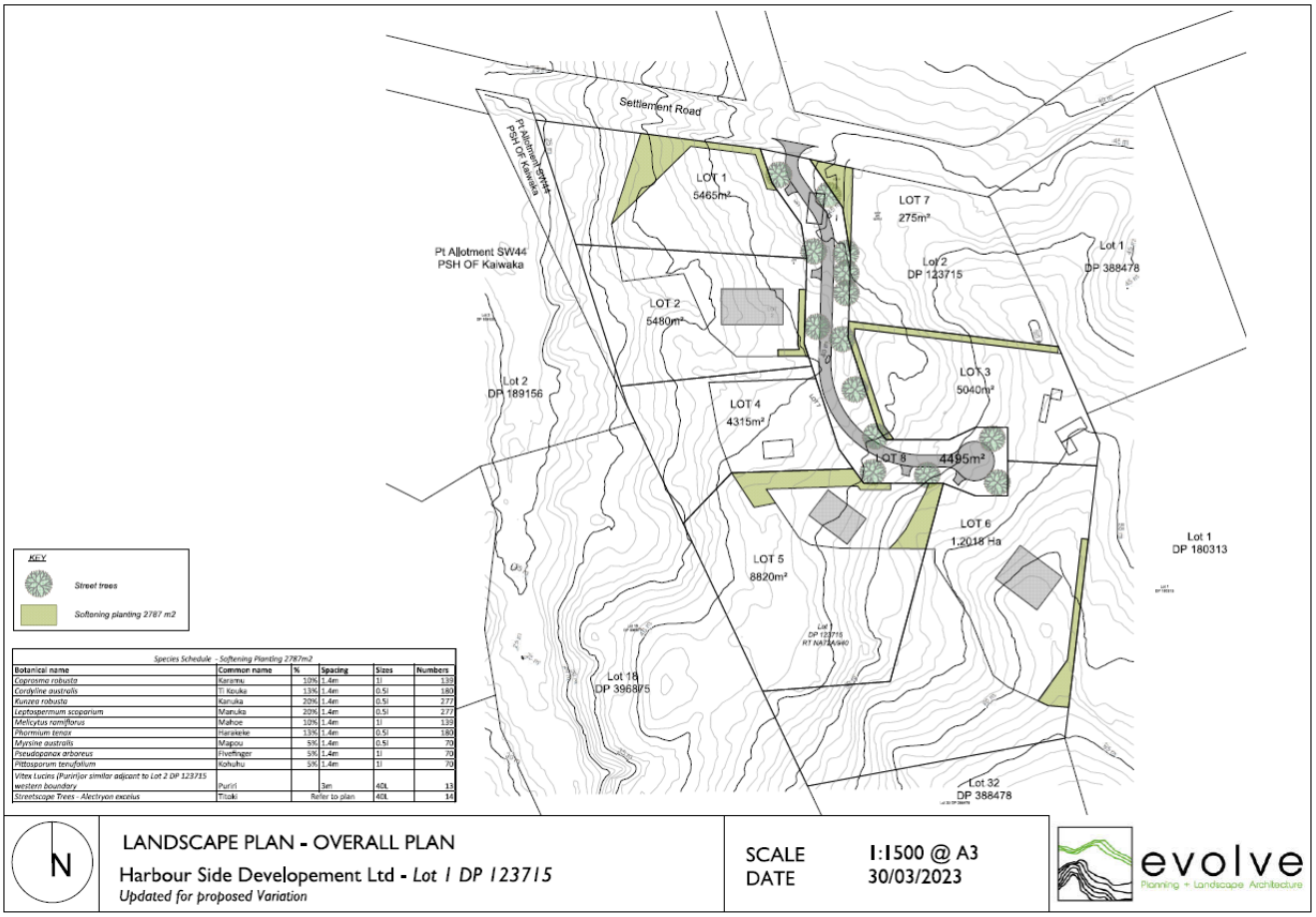


Figure 2: Proposed amendments to Landscape Plan

No changes to the original access, geotechnical considerations, earthworks or utility service arrangements are proposed as part of this application.

3.0 Site and consenting history

9. The application site legally described as Lot 1 DP 123715 was created in 1988. There are no relevant interests listed on the record of title for this lot.

10. The three established dwellings on site are lawfully established by RM160416. This land use consent was granted 19 January 2017 to allow three dwellings on the application site.

11. The site, legally described as lot 1 DP 123715 and has a total area of 4.5908ha, is located on the southern side of Settlement Road in Kaiwaka. The site is located approximately 1km east of State Highway 1 and the township of Kaiwaka. The site contains three existing dwellings, accessed by a single common driveway and is otherwise mostly in pasture. There is an existing stream running adjacent to the site's western boundary.

12. The site is irregular in shape and is varied in topography, generally from the highest points in the southeast down towards the northwest.

13. A number of wetlands that meet the definition of a 'natural wetland' in accordance with the National Policy Statement for Freshwater Management 2020 are located along the western portion of the site.

14. The application site and surrounding area have a Rural zoning and is characterised by a mixture of rural-residential / 'lifestyle' allotments and pastoral land. Surrounding allotments range in size from 0.5ha to 5ha with larger sites up to 45+ha.

15. On October 2022, an eight-lot subdivision of the application site was approved under delegated authority as a non-complying activity and on a non-notified basis. The approved application includes the protection of 1.9575ha of existing wetlands, existing and proposed vegetation, on the application site by way of conservation covenants across lots 1, 2, 4, 5 and 6.

4.0 Kaipara District Plan (Operative 2013)

16. The following apply to the subject property:

Zoning: Rural Zone

Overlays: Nil

5.0 Statutory Context – Section 127

17. Under Section 127 of the Act, a consent holder may apply to the Consent Authority for a change or cancellation of a condition of a consent. Section 127 of the Act details:

> *(1) The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent subject to the following.*
>
> *(a) the holder of a subdivision consent must apply under this section for a change or cancellation of the consent before the deposit of the survey plan (and must apply under section 221 for a variation or cancellation of a consent notice after the deposit of the survey plan); and*
>
> *(b) no holder of any consent may apply for a change or cancellation of a condition on the duration of the consent.*
>
> *(3) Sections 88 to 121 apply, with all necessary modifications, as if-*
>
> *(a) the application were an application for a resource consent for a discretionary activity; and*
>
> *(b) the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.*

18. A key point to consider when assessing whether an application should be processed as a Section 127 change/cancellation of conditions or as a new application, is whether the proposed change in conditions will result in a "fundamentally different activity" or "an activity having materially different adverse effects" to those that lawfully exist or that were assessed under the original application. In this instance, this application proposes to change conditions of RM220059 to vary the area of the approved ecological and landscape covenant boundaries and the fencing typology for lot 6, to more accurately reflect the intended use of the site. Effectively, the proposed variation will not result in an alteration to the physical works approved under the original consent (with the exception of the revegetation and fencing outcomes). The

proposed changes will ensure that each allotment can accommodate future activities that are anticipated within the Zone without adversely affecting the outcome of the original subdivision. It is considered that the variations sought by this application will not diminish any of the obligations of the consent holder to implement the conditions relating to the enhancement and ongoing maintenance of the covenant areas. On this basis, it is considered that these changes will not result in a fundamentally different activity to what was consented, nor will they have any materially different adverse effects to those that were considered under the original application. Accordingly, it is considered suitable for the proposal to be treated as a section 127 as opposed to a new application.

19. This application is therefore to be assessed as a Discretionary Activity and the assessment in this report is appropriately confined to the *effects of the changes* to the proposal only (rather than re-addressing the entire proposal as originally consented).

6.0 Notification Assessment

20. Section 127 of the Act details:

> *(4) For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who-*
>
> *(a) made a submission on the original application; and*
>
> *(b) may be affected by the change or cancellation.*

21. The above has been taken into consideration by the Council. A decision was made under delegated authority to process the consent on a non-notified basis as per the Council's Notification Assessment Report.

7.0 Statutory Acknowledgements

22. Relevant to this application, any statutory acknowledgement within the meaning of the Act specified in Schedule 11 would be contained within the Te Uri o Hau Claims Settlement Act 2002. Te Uri o Hau Settlement Trust (caretaker of Te Uri o Hau Claims Settlement Act 2002) authorised to participate in the Resource Management Act 1991 proceedings.

23. Pursuant to the Te Uri o Hau Claims Settlement Act 2002, the subject site falls within the Mangawhai Harbour Coastal Area. Under s58(1)(a) of that Act, KDC has the responsibility to forward summaries of resource consent applications to Te Uri o Hau within, adjacent to, or impacting directly on these statutory areas. A copy of the final application was forwarded to Te Uri o Hau upon receipt by the Council and they have raised no concerns.

8.0 Section 104(1)(a) - Actual & Potential Effects on the Environment

Trade Competition

24. With regard to Section 104(3)(a)(i), there are no known issues in the consent application or as a result of the submission process that raise questions of trade competition or the effects of trade competition.

Written Approvals

25. With regard to Section 104(3)(a)(ii), the Council must not have regard to the effects on those persons who have given written approval to the application. No persons/parties have provided written approval.

Permitted Baseline

26. In accordance with Section 104(2), the Council may disregard an adverse effect of an activity on the environment if the Plan or a National Environmental Standard permits an activity on the site with that effect (commonly referred to as the 'permitted baseline' test). The purpose of the permitted baseline test is to isolate and make effects of activities on the environment that are permitted by the Plan or NES, irrelevant. The baseline has been defined by case law as comprising non-fanciful (credible) activities that would be permitted as of right by the plan in question.

27. Any subdivision activity within the Rural Zone requires consent and as such there is no applicable permitted baseline that applies to the proposal.

Receiving Environment

28. The 'environment' upon which effects are to be assessed comprises the existing and reasonably foreseeable future environment. In identifying the environment, it is necessary to consider the environment as it is at the time of application, and the likelihood of change to that environment in the future, based upon the activities that could be carried out as of right or with respect to resource consents that have been granted (where it is likely that they will be given effect to). As this application is for a change/cancellation to conditions of an existing consent, the receiving environment includes any effects from implementation of the original consent.

29. In this case, the proposed variation will change the extent of the covenant boundaries and fencing typology to more accurately reflect the intended use of the site, and the intended ownership and maintenance responsibilities of the covenant areas. The proposed changes will not affect the outcome of the original subdivision. It is considered that the changes proposed will not result in a fundamentally different activity to what was consented, nor will they have any materially different adverse effects over and above those that could be implemented under the approved application (RM220059)

Assessment of Effects

Positive Effects

30. The proposal would continue to provide for 5 additional lots that would provide for the applicant's and future residents' well-being. The proposal includes the continued enhancement and permanent protection, via conservation covenant (pursuant to s.77 of the Reserves Act), of the riparian margins and associated wetlands to enhance and strengthen an upper catchment of the Kaiwaka River. It is considered that the enhancement and permanent protection of this feature would provide a positive environmental effect.

31. The above positive outcomes are considered to contribute positively to the economic, cultural and social well-being of the Kaiwaka community.

Character and Amenity and Ecological Effects

32. The original subdivision consent was approved on the basis that the effects of the proposal can be appropriately mitigated, avoided or remedied through the imposition of conditions of consent and any adverse effects will be less than minor and acceptable.

33. The only physical change to the subdivision as consented is the revised extent of planting within relocation covenant areas 'A' and 'B' and an alternative layout of landscape planting covenant area 'F' within Lots 1 and 2, as well as amended fencing standards.

34. The revised planting and protection of vegetation on the site will continue to provide/enhance ecological links and also link visually to the other areas of native vegetation on surrounding sites and will contribute to an enhancement of amenity values in this respect. The proposed vegetation will continue to help to mitigate adverse visual effects by screening development in places, softening appearances of built form in other locations and providing a level of onsite privacy and amenity between the proposed lots. The proposed planting will overall assist in integrating it into the landscape in a way that is visually appropriate to the surrounding environment.

35. Given that this application will not result in any additional consent triggers to what have already been assessed, and the changes do not affect the proposed building platforms, access or servicing associated with the original subdivision, it is considered that the proposed changes will have indiscernible physical or environmental effects.

36. Overall, the rural character of the site will continue to be maintained, and any changes to the amenity values in the wider area will be acceptable. The proposed lot sizes are consistent with the surrounding area being a transition area from the residential areas of Kaiwaka to the more rural surrounding areas. As a result of the proposed mitigation including landscaping and ecological revegetation and protection, the proposed allotments will ensure that the proposed allotments will not compromise open space and privacy experienced within the wider environment. As such, the effects of the proposed subdivision on the rural amenity and character of the surrounding environment are considered to be acceptable.

37. Conclusion

38. In summary, having assessed the effects of the change/cancellation to the consent conditions; it is considered that the proposal will result in no more than minor, and acceptable, adverse effects on the environment.

9.0 Section 104(1)(b) - Provisions of Standards, Policy Statements and Plans

National Environmental Standards

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

39. The site is not identified as being a contaminated site within the Northland Regional Council's Register of contaminated sites, nor has it previously been used for activities listed on the HAIL Register produced by the Ministry for the Environment. Whilst the proposal would retain the site's current development potential to introduce two additional dwellings to the site, there is no evidence to suggest the possibility that there have ever been HAIL activities undertaken on the site. Consent is not required under the National

Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. No other National Environmental Standards are considered to be relevant to the proposal.

National Policy Statements

New Zealand Coastal Policy Statement 2010

40. There are no other National or Regional Policy Statements relevant to this proposal.

Regional Policy Statement

Northland Regional Policy Statement 2016

41. Having regard to the proposal, and that it is not considered to give rise to an increased level of visual effects or ecological effects than those considered under RM220059, the proposed changes to the consent condition(s) will not require any greater consideration of the above listed National and Regional Policy Statements and Regional Plans of which were considered at the time the original consent was granted. The proposed changes to the consent conditions will not require any greater consideration of the relevant objectives and policies of the relevant planning documents that were considered in the original consent. The proposed changes will not involve the removal of any native vegetation within the proposed covenant areas, and will allow for the covenant areas to continue to be managed and protected on an ongoing basis.

42. The level of visual amenity associated with the change in landscape planting is still consistent with the existing environment, and will not undermine the character of the location.

Regional Plans

Regional Water and Soil Plan for Northland 2004

43. The proposal does not require any consent under the Regional Water and Soil Plan for Northland.

Proposed Regional Plan for Northland

44. The proposal does not require any consent under the Proposed Regional Plan for Northland.

Kaipara District Plan 2013

Chapter 12: Rural Zone

Objective 12.5.2 To maintain the rural character and amenity, including the:

- *Sense of openness;*
- *Low dominance of built form;*
- *Pasture and Commercial Forest Areas;*
- *Areas of indigenous vegetation and significant fauna; and*
- *Unmodified natural landforms.*

Objective 12.5.6 To provide for a range of activities in the Rural Zone which are located, designed and operated in such a way as to avoid, remedy or mitigate reverse sensitivity effects on existing land uses in the vicinity.

45. It is considered that the proposal is consistent with the relevant objectives and policies relating to subdivision in the Rural Zone. The overall intent of this chapter is to sustainably manage, protect and enhance rural character, high amenity values and biodiversity values by limiting rural subdivision and development. This requires subdivision to result in the protection of significant vegetation, wetlands and wildlife habitats, or enhancement planting, which can offset some of the adverse effects of subdivision on the environment and landscape values.

46. No clearance of native vegetation is required to facilitate earthworks for the subdivision and the proposal benefits and increases the quality of the wetland onsite and adjacent remnant bush.

47. Overall, it is considered the density of development will not compromise amenity values of the locality given the proposed lot sizes. The proposed ecological benefit area will be maintained while the proposed areas of amenity planting will provide effective mitigation for the effects of development that are associated with further subdivision and intensification of rural land.

48. The proposed subdivision creates five additional lots, and the site sizes of the proposed lots are considered appropriate and consistent with those typically found and anticipated in the surrounding locality. The proposed development will not adversely affect any existing rural land practices on neighbouring sites.

49. The disposal of stormwater and wastewater can continue to be adequately contained within the respective lot boundaries as can an adequate supply/storage of water. The proposal would therefore avoid adverse effects on sensitive receiving environments and would protect the health and safety of residents.

50. In addition, the proposal includes extensive areas of amenity planting which will ensure future development is integrated into the landscape while also providing ecological connections and corridors, to the existing conservation covenant on site. With regard to the proposed subdivision, it is considered that the activity is in keeping with the relevant objectives and policies of the ODP, specifically as the proposal maintains the existing rural residential character and amenity values of the site and surrounding environment, does not reduce the rural production potential and does not give rise to any adverse effects on the local road network.

51. For the reasons outlined above, the proposal is considered to be consistent with the relevant objectives and policies of both the Rural Zone of the Operative District Plan.

Conclusion

52. Overall, the fundamental characteristics of the original consented activity will not be altered by the changes to the consent conditions and the changes are supported by the relevant provisions of the Regional Policy Statement and the objectives and policies contained within the District Plan.

10.0 Section 104(1)(c) - Other Matters

Contributions

11.0 Section 37 Extension

53. Section 37 of the Act provides for a consent authority to extend a time period specified in the Act. Under Section 37A(4)(b) of the Act, a consent authority may extend the time period (up to no more than twice the maximum specified in the Act), where either:

(i) special circumstances apply (including special circumstances existing by reason of the scale or complexity of the matter), or

(ii) the applicant agrees to the extension; and the authority has taken into account –

(a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and

(b) the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and

(c) its duty under Section 21 to avoid unreasonable delay.

54. In this instance, a section 37 of 20 days has been applied for the following reasons:

The application includes technical reports (namely ecology) that, due to the nature and complexity of the application, require a technical review on behalf of Council to ensure that there is an adequate assessment of effects. Council does not have sufficient internal expertise to undertake the technical reviews and has therefore engaged external experts. Arrangements for, and confirmation of, these engagements, has created a delay in the processing of the application.

12.0 Part 2 of the Act

55. Whilst it is accepted that the relevant plans as detailed in the above assessment have been competently prepared in accordance with Part 2 of the Act, for completeness an assessment of Part 2 matters is included below.

Section 5 – Sustainable Management Purpose of the Act

56. Section 5(1) states that the purpose of the Act is to promote the sustainable management of natural and physical resources, with sustainable management defined in Section 5(2).

57. It is considered that the proposal will promote the sustainable management of natural and physical resources as its adverse effects are less than minor and the proposal will provide for the wellbeing of the applicant.

Section 6 – Matters of National Importance

58. Section 6 of the Act sets out matters of national importance that a consent authority must recognise and provide for. The proposal is considered to accord with Section 6 of the Act, as the site is not subject

to outstanding natural features or landscapes overlays does not contain known sites of significance to Mana Whenua and will not exacerbate natural hazard risk.

Section 7 – Other Matters

59. Section 7 of the Act sets out other matters a consent authority must have particular regard to. The following matters are considered relevant:

    (a) the efficient use and development of natural and physical resources:

    (ba) the maintenance and enhancement of amenity values:

    (b) intrinsic values of ecosystems:

    (f) maintenance and enhancement of the quality of the environment:

60. For the reasons stated previously, it is not considered that the proposal will undermine existing amenity values, nor compromise the quality of the environment.

Section 8 – Treaty of Waitangi

61. Section 8 of the RMA requires a consent authority to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). As detailed above, is considered that the existing mitigation measures which will remain unchanged will result in no more than minor effects on the environment. Additionally, the proposal is not considered that the proposal will offend Section 8 as the proposal does not relate to the principles of the Treaty of Waitangi.

13.0 Reasons for the Decision

62. A decision was made under delegated authority to process the consent on a non-notified basis as per the Council's Notification Assessment Report.

63. In terms of Section 104(1)(a) of the Act, subject to compliance with conditions, the effects of the change/cancellation of conditions on the environment are considered to be acceptable.

64. In terms of Section 104(1)(b) of the Act, subject to compliance with conditions, it is considered that the proposal is consistent with the relevant objectives and policies of the Kaipara District Plan 2013 and the Northland Regional Policy Statement as discussed in Section 10.0 of this report.

65. In terms of Section 104(1)(c) of the Act, other relevant matters have been considered in the determination of the application.

66. The Council has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act and it is considered that granting this resource consent achieves the purpose of the Act as set out in Section 5.

Reporting Planner		1/6/2023
	Alisa Neal, Consultant – Barker and Associates	Date

Signed:



JJ Pienaar *Date: 7/06/2023*

Resource Consents Team Leader

Kaipara District Council

Signed under delegated authority pursuant to Section 34A of the Resource Management Act 1991.