



**RESOURCE MANAGEMENT
COMMITTEE**

**(To Consider A Combined
Land Use & Subdivision
Consent Application for SP
Beach Ltd & Wine Country
Properties Ltd)**

TUESDAY

09 DECEMBER 2008

02.00PM

WAIROA DISTRICT COUNCIL

**RESOURCE MANAGEMENT COMMITTEE
(To Consider A combined Land Use & Subdivision Consent
Application for SP Beach Ltd & Wine Country Properties Ltd)**

to be held in the Council Chambers,
Coronation Square, Wairoa

ON TUESDAY 9 DECEMBER 2008 AT 2.00PM

A G E N D A

CHAIRMAN: Mr B McKinnon

COUNCILLORS

His Worship the Mayor, Mr L Probert, B Cairns, D Caves, D A Eaglesome, J Heron, J Petersen, T W Wilson

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CIVIC PRAYER

APOLOGIES

General Items

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APPLICATION FOR SP BEACH LTD & WINE COUNTRY PROPERTIES LTD**

ATTACHMENTS – Under Separate Cover

Attachment 1 – Application & Further Information

Attachment 2 - Submission

REPORT TO:	RESOURCE MANAGEMENT COMMITTEE, WAIROA DISTRICT COUNCIL	
DATE:	9TH DECEMBER 2008	
SUBJECT:	COMBINED LAND USE AND SUBDIVISION CONSENT APPLICATION – SP BEACH LIMITED AND WINE COUNTRY PROPERTIES LIMITED	FILE REF: RM070004
AUTHOR:	EMMA FRANCE PLANNER, MWH NEW ZEALAND LIMITED	ATTACHMENTS: ➤ <i>Application and Further Information</i> ➤ <i>Submission</i>
RELATED COMMUNITY OUTCOME: An environment that is appreciated, protected and sustained for future generations.	RELATED COUNCIL ACTIVITY: Resource Planning	

1.0 INTRODUCTION

- 1.1 SP Beach Limited and Wine Country Properties Limited (“the applicant”) seek subdivision and land use consents to subdivide and develop 24 residential allotments on a site located on the western side of Pukenui Road, Mahanga. The subject sites are legally described as Lot 1 and 2 DP 359131 and have a total area of 4.5613 hectares.
- 1.2 Notice of the application was served on two parties and one submission was received.
- 1.3 A full copy of the application and the submission received are included as **Attachments 1 and 2** respectively to this report.
- 1.4 This report assesses the application in accordance with the requirements of the Resource Management Act 1991 (RMA). The RMA requires that, when considering an application for a resource consent and any submissions received, the consent authority shall have regard to the environmental effects of the proposed activity, together with any relevant objectives, policies and rules of any relevant policy statement or plan, and any other matter that the Council considers appropriate. The main resource management issues raised by this proposal are:
- Matters of importance to tangata whenua;
 - Provision of site services;
 - Natural hazards;
 - Character and density of development;
 - Permitted baseline;
 - Staging of the consent.
- 1.5 Subject to consideration of any evidence presented at the hearing, and subject to clarification and acceptability of the location of the whare/house sites and other identified occupation sites described in the agreement reached following the cultural audit undertaken as a condition of the previous subdivision, it is my recommendation that the application be granted subject to conditions. In my opinion, the proposal is consistent with the objectives and policies of the relevant statutory documents. The proposal is also in keeping with the purposes and principles contained in Part 2 of the RMA and is unlikely to result in adverse effects on the environment that are more than minor.

2.0 DESCRIPTION OF THE SITE

- 1.6 A detailed description of the site and the surrounding area is contained in the application.
- 1.7 In summary, the subject site is located on the western side of Pukenui Road, and on the southern side of Blakes Approach, Mahanga. To the west of the site is a rural property containing an avocado orchard. To the south of the site is another rural lifestyle property that was created as part of the original Mahanga Beach Limited subdivision that created the subject sites. The site located on the opposite side of Pukenui Road has consent for a residential subdivision for 9 lots. The site is currently vacant and the contour is undulating. The wider area, with the exception of the Mahanga Beach settlement itself, typically has a coastal pastoral or production forestry land use.

2.0 SUMMARY OF THE PROPOSAL

Residential Lots

- 3.1 The applicant proposes to create 24 residential allotments. The proposed allotments range in area from 930m² to 2890m².

Access

- 3.2 The proposed residential allotments will be accessed via a new road to be constructed by the applicant and vested in the Council, private Rights of Way or directly from Blake's Approach or Pukenui Road, as shown on the subdivision plan.

Stormwater Disposal

- 3.3 Each residential allotment will dispose of stormwater on site by way of ground soakage. The proposed road will be constructed with a flush nib and grass berms falling away from the carriageway, which will allow for stormwater drainage and soakage.

Wastewater Disposal

- 3.4 Individual onsite wastewater treatment plants will be installed on each of the proposed allotments. Wastewater will then be pumped to a communal wastewater storage and treatment facility where it will receive further treatment before being discharged to land. The communal storage, treatment and disposal facility will be located on proposed Lot 26 and/or 25. The communal schemes will also serve potential future subdivisions of other lots in the area. This outcome is proposed to be secured by easements over these lots.

Potable Water Supply

- 3.5 Potable water supply to each of the proposed residential allotments can be provided by roof collection and onsite storage. A minimum storage volume of 22,000 litres will be provided per site.

Fire Fighting Water Supply

- 3.6 Fire fighting water supply will be provided for each proposed allotment through the provision of 45,000 litres of water storage for fire fighting purposes in the locations labelled K and L on the subdivision plan, within a 135m distance of each allotment. The tanks will be fitted with valves and fittings and suitably positioned to enable access for fire-fighting purposes.

Site Services

- 3.7 The appropriate service providers have confirmed that each lot can be provided with power and telephone services.

Natural Hazards

- 3.8 The applicant has demonstrated that a stable building platform can be achieved that will not be subject to natural hazards within each proposed allotment.

- 3.9 Provided certain mitigation measures are implemented, the applicant has demonstrated that the proposed lots will be mostly risk free from the coastal hazards of erosion and flooding from storm tides this century.

Earthworks

- 3.10 Earthworks totalling 3000m³ will be undertaken in order to complete the site development. This will generally involve taking the cut material removed to form the proposed road and placing it in the lowest areas of proposed Lots 8 to 14. The volume and area of the earthworks proposed do not achieve the performance standards for earthworks contained in the Wairoa District Plan and therefore the applicant seeks land use consent for the proposed development.

Landscaping and Building Controls

- 3.11 The applicant proposes to mitigate the potential for adverse effects on landscape, natural character and visual amenity values through controls on building height, yard setbacks, planting and retaining the existing cabbage trees on the site.

Staging

- 3.12 The applicant has indicated that it is possible that the development will be undertaken in up to five stages. Essentially this would enable the consent holder to develop part of the subdivision and have titles issued before starting on the next part of the subdivision.

Amalgamation

- 3.13 Proposed Lots 24 and 28 will be held on the same Certificate of Title. Proposed Lot 28 currently contains a water tank associated with the Mahanga Public Water Supply. The tank is protected by the easement labelled Q on the subdivision plan.

4.0 SUBMISSIONS

- 4.1 Notice of the application was served on two parties being Hawke's Bay Regional Council and Monica Watson on behalf of the Mahanga Marae Trust. The Mahanga Marae Trust has made a submission on the application. The matters raised in the submission are:

1. How many of the original lot boundaries and house locations have been moved and re-numbered from the original Mahanga Beach proposal?
2. How many houses will be built on each lot?
3. In relation to water storage, will this be above ground or below ground?
4. That a cultural audit for the proposed 24 residential allotments be undertaken by John Hovell.
5. That a full archaeological assessment be completed by Gordon Jackman, registered archaeologist.
6. Noted that the applicant appears to have ignored several of the agreements made following the cultural audit undertaken as a condition of the previous subdivision that created the subject sites, namely:
 - That no development shall be undertaken on the immediate location of whare/house sites identified on Lots 1 and 2.
 - That other identified occupation sites be marked with markers.
 - That the swamp/lake area on Lot 7 of the original plan that has been identified be protected and allowed to regenerate to its former self.

- That Mahanga Beach Limited will look favourably on future restoration, fencing and signage of the ancient urupa bordering on Lot 3.
7. No consultation regarding the proposal has been undertaken with tangata whenua.
 8. The wastewater system is opposed until consultation is undertaken.

5.0 WAIROA DISTRICT PLAN AND ACTIVITY STATUS

District Plan Status

- 5.1 The Wairoa District Plan ("the District Plan") became operative on 25th June 2005. Therefore, the application needs to be considered and a decision issued under this planning document.
- 5.2 The Council notified Plan Change 1 (now superseded by Plan Change 1B) in 2006. The general intent of the Plan Change as it relates to the current application, is to implement the objectives of the Wairoa Coastal Strategy, and the Mahia Beach and Mahia Isthmus Communities Structure Plans. It also aims to provide for appropriate development within the Mahia Coastal Environment, while also providing for its preservation and protection. This is intended to be achieved by introducing rules to provide support for the existing objectives and policies, and new objectives, policies and rules for coastal hazards.
- 5.3 The Council has issued decisions in respect to the proposed Plan Change, and although there are some unresolved appeals, none of the provisions that affect the current proposal are under appeal. As such, for the purposes of this application, proposed Plan Change 1B is operative in accordance with section 19 of the RMA.

Activity Status

- 5.4 The subject site is located within the Residential (Mahia) Zone.
- 5.5 Subdivision within the Residential (Mahia) Zone that cannot meet the specific performance standards for subdivision and development contained in Chapters 27.10 and 18A.8 respectively, are provided for as Non-Complying Activities in accordance with Rule 27.9.6.
- 5.6 The development of the site for residential activities is a Discretionary Activity where compliance with the Performance Standards for the Residential (Mahia) Zone cannot be achieved in accordance with Rule 18A.7.2.
- 5.7 The proposal cannot achieve compliance with all of the standards in Section 18A.8 for the Residential (Mahia) Zone. Performance Standard 18A.8.17A in respect to earthworks, sets limits of 150m³ maximum volume over any 12 month period, and a maximum of 320m² maximum work area, however the proposal involves 3000m³ of earthworks over a large area of the site.
- 5.8 The proposed subdivision is therefore a Non-Complying Activity in accordance with Rule 27.9.6. The proposed development of the site is a Discretionary Activity in accordance with Rule 18A.7.2.
- 5.9 Therefore, the overall status is Non-Complying

6.0 STATUTORY CONSIDERATIONS

Matters to be Considered

- 6.1 Section 104 of the RMA details the statutory requirements for the assessment of the application, and sets out those matters the Council must have regard to when considering the application and any submissions received.

6.2 Subject to Part 2 of the RMA, I believe the relevant matters for consideration of the application are:

- The actual and potential effects on the environment of allowing the activity;
- The relevant provisions of the Operative Regional Resource Management Plan, Proposed Plan Change 1 to the Operative Regional Resource Management Plan and the Proposed Regional Coastal Environment Plan;
- The relevant provisions of the Wairoa District Plan;
- The relevant non-statutory documents including the Wairoa Coastal Strategy and the Wairoa District Council Engineering Code of Practice; and
- The permitted baseline set by the Wairoa District Plan.

Determination of applications

6.3 Section 104D of the RMA, after consideration of an application for a Non-Complying Activity, restricts the Council to only granting approval to the application if either, the actual and potential effects on the environment are minor or the proposal is not contrary to the objectives and policies of the relevant plans. If the Council grants consent to the application, it may impose conditions in accordance with section 108 and 220.

7.0 PART 2 RMA MATTERS

Purpose of the RMA

7.1 Section 5 of the RMA sets out the purpose of the RMA as follows:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –*
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

7.2 The purpose of the RMA is to promote the sustainable management of natural and physical resources. There are no qualifications or exceptions. Any exercise of discretionary judgement must promote the statutory purpose of the RMA.

7.3 The underlying philosophy of the RMA is 'enabling' in nature, so that people should be able to meet their needs as long as they do not compromise the ability of others to meet their needs now and in the future. Appropriate protection is to be afforded to the environment from any potential adverse effects.

Matters of National Importance

7.4 Section 6 sets out the matters of national importance, that in achieving the purpose of the RMA, all persons exercising functions and powers under it must recognise and provide for. Two of these matters are considered to be relevant to the proposal:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development.*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

Other Matters

7.5 Section 7 sets out other matters of importance, that in achieving the purpose of the RMA, all persons exercising functions and powers must have particular regard to. The following section 7 matters are considered to be relevant to the assessment of the application:

- (a) *Kaitiakitanga*
- (aa) *The ethic of stewardship*
- (b) *The efficient use and development of natural and physical resources.*
- (c) *The maintenance and enhancement of amenity values.*

Treaty of Waitangi

7.6 The principles of the Treaty of Waitangi should also be taken into account in accordance with section 8 of the RMA.¹

Summary Part 2

7.7 I have addressed the relevant Part 2 matters throughout this report. The outcome of these considerations is summarised in Section 13 below. Overall I consider that the proposal will represent a sustainable use of the land resource.

8.0 PERMITTED BASELINE

Description of the Permitted Baseline

8.1 Section 104(2) of the RMA provides that:

When forming an opinion [regarding the actual or potential adverse effects on the environment of an activity], a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

¹The Treaty itself does not specify any 'principles', however principles have been derived from various Court decisions as follows:

- The nature and object of consultation must be related to the circumstances.
- Adequate information of a proposal is to be given in a timely manner so that those consulted know what is proposed.
- Those consulted must be given a reasonable opportunity to state their views.
- While those consulted cannot be forced to state their views they cannot complain, if having had both time and opportunity, they fail to avail themselves of the opportunity.
- Consultation is never to be treated perfunctorily or as a mere formality.
- The parties are to approach consultation with an open mind.
- Consultation is an intermediate situation involving meaningful discussions and does not necessarily involve resolution by agreement.
- Neither party is entitled to make demands.
- There is no universal requirement as to form or duration.
- The whole process is to be underlain by fairness.

8.2 This concept is known as the permitted baseline and its application in the consideration of proposals is discretionary. Recent case law has suggested tests that could be useful in determining whether it is appropriate to apply the permitted baseline to the consideration of an application. In *Lyttleton Harbour Landscape Protection Association v. Christchurch City Council*² the Environment Court stated:

“(21) *Drawing from the different fact situations in finding in cases that have arisen before this Court, questions along the following lines (while by no means exhaustive) may be useful according to the circumstances:*

- *Does the plan provide for a permitted activity or activity from which a reasonable comparison of adverse effect can conceivably be drawn?*
- *Is the case before the Court supported with cogent reasons to indicate whether the permitted baseline should or should not be invoked?*
- *If the parties consider that application of the baseline test will assist, are they agreed on the permitted activity or activities to be compared as to adverse effect, and if not, where do the merits lie over the area of disagreement?*
- *Is the evidence regarding the proposal, and regarding the hypothetical (non-fanciful) development under the permitted activity, sufficient to allow for an adequate comparison of adverse effect?*
- *Is a permitted activity with which the proposal might be compared as to adverse effect nevertheless so different in kind and purpose within the plan’s framework that permitted baseline ought not be invoked?*
- *Might application of the baseline have the effect of overriding Part 2 of the RMA?”*

8.3 The following assessment is undertaken in accordance with the tests suggested above, where relevant.

8.4 The District Plan contains a relevant permitted baseline in that a number of dwellings could be constructed on the site, as of right, without the requirement to obtain resource consent. It is noted that the District Plan performance standards in respect of earthworks, yard setbacks and car parking, as well as the consent notice registered on the Certificate of Title requiring a minimum building platform level of 3.5 metres above mean sea level are significant controlling factors that would limit the number of dwellings that could be constructed as of right.

8.5 The applicant has not put forward an assessment as to what the permitted baseline comparison might be. However, I consider it possible that 24 dwellings (one on each proposed residential allotment) could be constructed on the site without the requirement to obtain land use consent. Such a development would likely need to involve a combination of minimal earthworks, dwellings with pole foundations and sited close to the road boundaries in order to achieve all of the relevant permitted activity standards.

Application of the Permitted Baseline

8.6 It is considered possible that under the current rules of the District Plan, 24 dwellings could be constructed on the subject site as a permitted activity. If this were shown to be possible it would allow the Council to disregard the actual and potential effects of such development in the consideration of the consent.

Is there reasonable comparability?

8.7 I consider that the proposed activity and the comparable permitted activity are somewhat similar in both purpose and effect. Each of the proposals would result in the construction of dwellings on the subject site, the effects of which are likely to be the same or similar.

Is there sufficient evidence?

² [2006] NZRMA 559

- 8.8 As discussed the applicant has not put forward a case for a permitted baseline comparison. In my opinion it is possible that the applicant would be able to construct 24 dwellings on the site without the requirement to obtain resource consent, however careful site design would be required in order to achieve the performance standards for Permitted Activities. This scenario has not been proven and as such, it is recommended that the Council take a conservative approach in the application of the permitted baseline.

Is the comparable activity fanciful?

- 8.9 I consider that it is somewhat fanciful to suggest that the construction of 24 residential dwellings on a site without any subdivision would realistically occur at Mahanga. In particular, such a scenario may not provide for normal vehicle access to residential dwellings.

Will the application of the permitted baseline serve the overall purpose of the RMA?

- 8.10 I consider that the application of the permitted baseline will serve the overall purpose of the RMA, in that the types of effects generated by the proposed subdivision and development could occur without the requirement to obtain resource consent. However, it is a question of scale, as to how many dwellings could be constructed as of right and whether or not 24 dwellings would realistically be constructed without any subdivision of the site. Therefore, it is recommended that the Committee adopt a conservative approach in the application of the permitted baseline to the assessment of this proposal.

9.0 ASSESSMENT OF EFFECTS ON THE ENVIRONMENT

Overview

- 9.1 The relevant resource consent assessment matters for subdivision, visual amenity, natural character, natural hazards, access and parking, site servicing and vehicle access specifically relate to, and provide guidance for, the assessment of effects on the environment. I have therefore addressed these assessment matters throughout my considerations below. The assessment of effects on the environment provided with the application and the submissions received to the application also provide guidance for the assessment of the actual and potential effects associated with the proposal.

Amenity Values

- 9.2 Amenity values are those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes. Amenity values are therefore strongly linked to landscape and visual and natural character issues. Visual amenity considerations are different from many other environmental effects, as their assessment requires information on people's perception of the change to the landscape, which is often difficult. The RMA requires the Committee to have particular regard to the maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment as a key matter in achieving its purpose.

Density

- 9.3 I do not consider the potential for adverse effects arising specifically from the proposed density of development to be significant. Each of the proposed residential allotments achieves the minimum site area of 800m² for serviced sites. The applicant has demonstrated that the potential for effects on amenity values is minor and such effects can be further mitigated through controls on building height and yard setbacks, and implementing planting on proposed Lot 25. Furthermore, the proposed density of development is similar to that of the nearby, existing Mahanga Beach settlement and is specifically provided for in the Residential (Mahia) Zone. In fact, this level of development could possibly be achieved as of right without the requirement to obtain resource consent approval.

Noise and Dust

- 9.4 The proposed earthworks required to form the proposed road and accessways have the potential to give rise to adverse effects in respect of noise and dust. However, I do not consider that the potential for such effects is significant. The earthworks period would be of a relatively short duration and the hours of operation could be restricted. Should the Committee determine to grant consent to the application, dust and noise effects could be adequately addressed by way of conditions imposed on the consent.

Landscape, Natural Character and Visual Effects

- 9.5 The term landscape has been defined in case law as including both physical and aesthetic or perceptual qualities. Landscape and visual effects result from a change in landscape character and can occur through alteration to landform, construction of new buildings, provision of infrastructure and new activities. These types of activities result in physical impacts on the landscape (earthworks, vegetation clearance) and visual impacts (what can be seen of the changes). The key visual effects of the proposal would be the increased density of development (buildings, ancillary structures and roads) on a site currently characterised by coastal sand dunes.
- 9.6 Natural character can be described as being one aspect of the broader concept of landscape character. It encompasses those elements that have specifically been brought into being by nature and are, more importantly, subject to ecological processes. Therefore, natural character is landscape elements, patterns and processes that are a product of nature. The term “natural” does not necessarily mean naturally occurring, pristine or native; it relates to elements that are distinct from “manmade” elements, so can include pasture and exotic species.
- 9.7 The RMA sets out the preservation and protection of natural character of the coastal environment and outstanding natural landscapes from inappropriate subdivision, use and development as matters of national importance in achieving sustainable management in accordance with Section 6(a) of the RMA. The relevant statutory and non-statutory documents discussed later in this report bring these matters through into a policy framework.
- 9.8 The applicant has provided a *Landscape, Natural Character and Visual Effects Assessment* prepared by Hudson Associates Landscape Architects with the application. The report finds that the effects of the development on residential amenity and the natural character of the coastal environment will be reduced by the large lot sizes, building coverage controls, controls on the reflectivity of materials, yard setbacks and restrictions on earthworks, which are all requirements of the District Plan. However, in addition to these controls, the report recommends additional controls in order to reduce adverse landscape and visual effects arising from the proposed earthworks and development. These relate to specific building height controls yard setbacks and planting. The recommended additional controls are:
- A 7 metre building height limit from existing ground level including foundations on each of proposed Lots 1 to 4, 15 to 24 and 28.
 - A 12 metre front yard for proposed Lots 2, 3 and 4 fronting onto Blake’s Approach.
 - Establish appropriate native planting within proposed Lot 25.
 - Retain the existing cabbage trees within the subdivision.
- 9.9 Provided these controls are imposed as consent notice conditions, I agree that the potential for adverse effects on landscape values, natural character and visual amenity will be insignificant. In particular, the site is zoned for residential purposes and as such, the landscape character anticipated for the area is an extension to the existing coastal settlement.

Archaeological, Historical and Cultural Values

- 9.10 The proposal involves earthworks and land development in an area traditionally occupied by Maori, and as such, there is the potential for adverse effects in respect of archaeological,

historical and cultural values to arise. In considering this matter, it should be noted that the provisions of Sections 6(e) and (f) of the RMA require the Committee to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga and the protection of historic heritage from inappropriate subdivision, use and development as matters of national importance in achieving the purpose of the RMA. There are also objectives and policies contained in the statutory documents outlined later in this report that are relevant to this matter.

Archaeological and Historical Values

9.11 An *Archaeological Survey and Assessment of Effects* prepared by Ken Phillips in 2001 is included with the application. This report was submitted to the Council in support of the previous subdivision that created the sites now being subdivided, however it is noted that the report relates to an earlier proposal of a higher density of development than actually occurred. The survey did not identify any archaeological features on the subject site; however the author notes that the survey involved a visual inspection and limited subsurface testing of land within and in the general vicinity of the site and this would not necessarily provide evidence for the presence of subsurface archaeology. This could only be achieved by extensive topsoil removal. However, given the proximity of the subject site to three previously recorded archaeological sites (within 100 to 500 metres), and the historical occupation of the general area, the author considers that additional subsurface archaeological features may be encountered during ground disturbance. Therefore, the Archaeological Survey includes the following recommendations for the sites subject to the current subdivision application:

- That a precautionary authority to modify, damage or destroy any unrecorded archaeological sites encountered during the site development is sought under the Historic Places Act 1993 and obtained prior to the commencement of ground disturbance.
- That the conditions of a NZ Historic Places Trust authority should require:
 - a) detailed recording, sampling and analysis of deflated midden deposits;
 - b) test trenching of consolidated back dunes in order to determine the presence or absence of cultural layers and modified soils;
 - c) investigation, recording, sampling and analysis of any archaeological features, deposits or modified soils identified during test trenching of back dunes.
- That if koiwi tangata (human remains) are encountered, no further modification of the immediate area shall occur until tangata whenua and the Trust have been advised and their responses received.

9.12 As a result of this report, and other matters under consideration, the Council granted the previous subdivision consent subject to the following conditions:

18. *A representative of the tangata whenua shall be given one weeks notice in advance of the commencement of earthworks or excavation associated with these works and shall be given permission to enter and remain of the site (during daylight hours) during these works for the purpose of monitoring these works. (Note: the Council's iwi liaison officer should be consulted to identify who the appropriate tangata whenua representative is in the regard and in regard to Conditions 19 and 20).*
19. *A qualified archaeologist shall be present on the site at the time of removal of the initial layer of topsoil to monitor for any possible archaeological site(s). Upon removal of the first layer of topsoil/grass cover in the earthworks excavation and filling areas the archaeologist shall carry out a site inspection for the purpose of assessing the likelihood of the presence of archaeological sites or urupa in the substrata. In the event that any urupa, middens, hangi pits, or any other archaeological remains or artefacts or soil structures indicating historical occupation are unearthed during site excavation, all work within the immediate vicinity of the site shall cease forthwith and a site meeting shall be held with representatives of tangata whenua and the New Zealand Historic Places Trust at which time the appropriate course of action shall be determined.*

- 9.13 The submission from the Mahanga Marae Trustees raises concerns with the fact that no archaeological survey has been undertaken in respect to the current proposal. It is my opinion that to carry out a further archaeological survey would be unlikely to provide any new information that would be of assistance in assessing the potential for adverse effects on the environment. In my opinion the potential for adverse effects in relation to archaeological and historical values are well known and it is noted that the recent Plan Change 1B process did not highlight any major concerns in this respect. I consider the potential for adverse effects would be better addressed through conditions of consent, similar to the conditions above, which would address how earthworks are to be monitored and the protocol that should be followed in the event that archaeological remains are discovered. Provided tangata whenua are agreeable to such conditions, and such conditions are imposed on this consent, I consider that the potential for adverse effects on subsurface archaeological features will be no more than minor.

Cultural Values

- 9.14 A cultural audit of the previous subdivision was undertaken to meet a condition of subdivision consent. Following the cultural audit, an agreement was reached between the applicant and the Mahanga Marae Trustees regarding the matters raised by the audit. Some of these matters are relevant to Lots 1 and 2, which are the subject sites for the current subdivision proposal. In relation to Lots 1 and 2, the following agreements were made:
1. *That appropriate markers such as Pohutukawa trees or boulders be used to mark culturally significant sites in perpetuity. These sites should be attached to titles as conditions of further sales as per B, C, D on the existing title.*
 2. *No developments will take place on the immediate location of whare/house sites identified on Lots 1 and 2 and that of other identified occupation sites be marked with markers.*
- 9.15 Other agreements made that related to the whole subdivision are also relevant:
4. *That there be a tangata whenua representative in place at all times during excavation.*
 5. *Understand that for all or any findings found during the development, that the tangata whenua representatives will be consulted and that for significant finds, tangata whenua and the Mahanga Marae Trust will proceed with a Maoritanga process.*
- 9.16 The site marked D has been identified on the subdivision plan and physically identified on the site with boulders (sites B and C are not located on the site subject to the current application). However, there is no map or plan of the site that identifies the location of the whare/house sites or the other occupation sites referred to in the agreement, or whether these are in fact, sites B, C, and D referred to in 1 above. It is understood that the cultural audit itself was recorded on video which may be able to provide some clarity as to the location of the sites. It is recommended that the Council satisfies itself that the appropriate sites have been identified correctly on the plans and on the site, and that the conditions of consent ensure protection of the sites. The applicant and submitter may wish to comment on this further at the hearing.
- 9.17 The submission received from the Mahanga Marae Trustees states that a new cultural audit for the current proposal should be undertaken. However, it is my opinion that undertaking a new cultural audit for the subject site would not provide any new information additional to that provided by the previous cultural audit. I do consider, however, that consent notice conditions ensuring the ongoing protection of the cultural markers and cabbage trees identified in the previous cultural audit are necessary to mitigate the potential for adverse effects on cultural values. Provided such conditions are imposed on the consent and secured by consent notice, I consider the potential for adverse effects in respect to cultural values will be no more than minor, provided that the location of the whare/house sites and other occupation sites as detailed in the previous cultural audit are confirmed and afforded appropriate protection by conditions of consent.

Natural Hazards

Land Instability Hazards

- 9.18 The applicant has submitted a geotechnical engineering report that assesses the potential for land instability hazards that may affect development on the subject site. The report concludes that the site is suitable for buildings with shallow foundations in accordance with NZS3604, however building specific geotechnical investigations will be required for each site to confirm the available bearing capacity. Therefore, provided that a condition of consent securing the requirement for building specific geotechnical investigations is imposed on the consent, I do not consider the potential for adverse land instability effects to be significant.

Coastal Hazards

- 9.19 The subject site is not located within the Coastal Hazard Zones identified in plan Change 1B. However, over half of the site is located within Coastal Hazard Zone 3 under the Proposed Regional Coastal Environment Plan. Coastal Hazard Zone 3 is described as land assessed as being potentially at risk of sea water inundation in a 1 in 50 year combined tide and storm-surge event, and includes allowance for sea level rise.
- 9.20 The applicant has commissioned a report from Coastal Management Consultancy Limited to assess the potential for coastal hazards to affect the proposed development. The report concludes that the subject land is unlikely to be subject to coastal erosion hazards, but that up to half the proposed residential allotments (proposed Lots 1 to 14) may be subject to flooding as a result of tsunami or storm tides. To mitigate the potential for adverse effects, Coastal Management Consultancy Limited recommends that building platforms should be a minimum height of 3.5m above mean sea level (MSL) for buildings with a specified intended life of less than 50 years and 4.0m above MSL for buildings with a specified intended live exceeding 50 years. Therefore, it is recommended that a consent notice condition is imposed on the consent requiring that these building platform levels are achieved at the time buildings are constructed on the lots. Provided this occurs, I consider the potential for adverse coastal hazard effects to be no more than minor.
- 9.21 The requirement to raise building platform levels should only affect proposed Lots 1 to 14 as these sites have areas below 3.5m above mean high water springs. The earthworks proposed as part of the initial site development will not raise all of the land to a sufficiently high level to meet the 3.5m level requirement. Therefore, the future lot owners will be required to undertake earthworks to raise building platforms which may require a land use consent at the time the detailed site development is finalised. This will be the responsibility of the future lot owners. It is noted that the Landscape, Natural Character and Visual Effects Assessment prepared on behalf of the applicant has taken into account the requirement to raise building platform levels.

Site Servicing

Wastewater Disposal

- 9.22 The applicant proposes that individual onsite wastewater treatment plants will be installed on each of the proposed allotments. Wastewater will then be pumped to a communal wastewater storage and treatment facility where it will receive further treatment before being discharged to land. The communal storage and treatment facility will be located on proposed Lot 26, and may also serve other subdivisions in the area. A discharge permit has been issued by the Hawke's Bay Regional Council for the wastewater system, however it is understood that currently a change to this consent under section 127 of the RMA is being considered by HBRC. It is proposed that the wastewater scheme will be owned, managed and maintained by an incorporated society (the Mahanga Beach Management Society Incorporated), which the owners of the lots serviced by the scheme will be required to be a member of. The Mahanga Beach Management Society Incorporated will also own, manage and maintain proposed Lot 25, which will be retained as an alternative disposal field should it be required in the future.

- 9.23 It is recommended that a condition be imposed on this consent requiring that the communal scheme is constructed and available for the individual lots to connect to prior to the issue of a section 224 certificate. This will ensure that the proposed method of wastewater treatment and disposal is implemented for this subdivision. It is also proposed that easements in favour of each of the lots be registered to give the legal right to convey and dispose of sewage. It is recommended that these easements be secured by way of conditions of consent, and in addition, that the easements contain a clause that they cannot be surrendered without the agreement of the Council. This will ensure that each land owner is responsible for the treatment and disposal of wastewater, and that they will have an ongoing legal right to dispose of wastewater on proposed Lots 26 and/or 25. Provided such conditions are imposed on the consent, I consider that the potential for adverse effects in respect to wastewater is no more than minor. This approach to the ownership, management and maintenance of wastewater infrastructure was recommended by the Council's solicitor.

Stormwater Disposal

- 9.24 The applicant proposes that the discharge of stormwater from the proposed road and shared private accesses will be by way of ground soakage, facilitated by constructed swales adjacent to the carriageways. Each individual lot will be required to provide for stormwater disposal within the boundaries of the lot. Typically this would be by way of the installation of an individual infiltration system to capture water tank overflow and runoff from hardstand areas. It is anticipated that each system will require site specific design based on the size of the site and impervious areas. The Council's Engineering Manager has reviewed the proposal and has not raised any concerns in respect to the proposal for stormwater disposal. It is recommended that conditions of consent be imposed that require stormwater disposal infrastructure to be designed and constructed in accordance with the Council's Engineering Code of Practice. Provided such conditions are imposed on the consent I consider the potential for adverse effects on the environment in relation to stormwater disposal to be insignificant.

Water Supply

- 9.25 The Council's Environmental Health Officer has advised that the proposal would need to comply with the Council's policy on private rural water supply. As potable water is to be supplied by roof water stored on each site, it is anticipated that an adequate water supply could be provided. Treatment may be required to ensure potability and compliance with the relevant standards. If the supply of roof water was inadequate to provide sufficient supply, additional storage capacity could be added or water trucked in, as is not uncommon in the District. This is a matter that could be dealt with when building consent is sought for each proposed lot.

Fire Fighting Water Supply

- 9.26 The subject site is subject to a consent notice which requires the owners of each allotment to ensure that sufficient fire-fighting water storage is provided to meet the requirements of the Fire Service Act 1975, to the satisfaction of the Council in consultation with the District Fire Commander. This consent notice will attach to the new Certificates of Title of each proposed allotment in the event that the subdivision is approved.
- 9.27 The Council's Rural Fire Officer has advised that in order to achieve compliance with this consent notice, the applicant's proposal of 45,000 litres of water storage for fire fighting, within 135 metres from the dwellings to be serviced is acceptable. The Rural Fire Officer also recommends that the appropriate fittings are installed to enable the Rural Fire Brigade to easily use the tank and that the fittings are located so there is easy access to the tank in the event of a fire.

Roading and Access

- 9.28 The applicant proposes to construct one road to be vested in the Council and two shared private vehicle accesses to afford legal and physical access to each of the proposed allotments. The Council's Roading and Engineering Managers have requested that several conditions be imposed on the consent in respect to roading. Firstly, it is recommended that a condition requiring that a concrete footpath be constructed adjacent to the proposed road. This will be in line with the Council's Engineering Code of Practice and the Council's policy to provide a footpath on one side of the road in urban areas. Secondly, streetlights will be

required to be provided in accordance with the Council's Engineering Code of Practice. Conditions are recommended to ensure that streetlights and a footpath are constructed.

- 9.29 The third issue raised by the engineers is in relation to the applicant's proposal to locate private sewerage reticulation within the proposed road to be vested in the Council. The engineers have requested a condition requiring a management plan for opening the road when the reticulation needs maintenance or repairs. In order for the applicant to locate private infrastructure within a public road, the Council would need to approve a licence to occupy legal road under the Local Government Act. Conditions can be applied to a licence in relation to the concerns raised by the engineers. It is considered that this is the appropriate manner to ensure that issues associated with the location of this infrastructure is appropriately managed. In fact, it would not be possible to impose a condition to achieve this outcome through this resource consent process, because the Council will own the proposed road once it is vested.

Staging

- 9.30 The applicant has requested that the subdivision be allowed to be implemented in stages. Provided that the conditions of consent are appropriately structured, it is not anticipated that there is any potential for adverse effects on the environment arising from the staging of the consent. To ensure this outcome, the applicant has agreed to provide a revised subdivision plan that includes a notation of the stages on the face of the subdivision plan with a further reference to the retention of the balance area of each stage as a balance allotment. It is considered that the inclusion of this plan in the consent application, and the requirement to undertake all design of the subdivision prior to any stage commencing will make the requirements of the consent holder very clear.

10.0 STATUTORY DOCUMENTS

New Zealand Coastal Policy Statement

- 10.1 The purpose of the New Zealand Coastal Policy Statement 1994 (NZCPS) is to state policies in order to achieve the purpose of the RMA in relation to the Coastal Environment. I do not consider the NZCPS to be particularly relevant to the proposal because the subject sites have recently been rezoned for residential purposes and the new zoning provides for residential development of the density and character proposed. The NZCPS would have been considered in rezoning the site. However, it is worth noting that the proposal is consistent with the NZCPS in that it is providing for residential development in an area zoned for that purpose, and is therefore relieving pressure on other areas of the coastal environment for subdivision and development.

Hawke's Bay Regional Resource Management Plan

- 10.2 The Hawke's Bay Regional Resource Management Plan (RRMP) became operative on 28th August 2006 and provides an overview of the resource management issues for the region, and allows for the integrated management of its natural and physical resources. The Regional Policy Statement is incorporated within this document.
- 10.3 HBRC notified Proposed Plan Change 1 to the RRMP on the 30th August 2006. This plan change is subject to one appeal and is not yet operative. Proposed Plan Change 1 seeks to amend the RRMP so that it will not apply within the coastal environment, because the Proposed Regional Coastal Environment Plan (PRCEP) has been notified and is intended to incorporate the regional planning provisions for both the coastal marine area and the coastal margin. This is primarily achieved by introducing the following definition for coastal environment to the RRMP:

Coastal environment means an environment in which the coast is a significant element or part, and includes:

- (a) the coastal marine area;
- (b) any areas identified as being affected by, or potentially affected by, coastal flooding or coastal erosion;

- (c) *any of the following*
- (i) *tidal waters and the land above mean high water springs;*
 - (ii) *dunes;*
 - (iii) *beaches;*
 - (iv) *areas of coastal vegetation and coastal associated fauna;*
 - (v) *coastal cliffs;*
 - (vi) *salt marshes;*
 - (vii) *coastal wetlands, including estuaries; and*
 - (viii) *areas where activities occur or may occur which have direct physical connection with, or impact on, the coast.*

For the purposes of this Plan, the coastal environment comprises all of the coastal marine area of Hawke's Bay and the coastal margin. The inland boundary of the coastal margin and coastal environment is as shown on the planning maps in Volume 2 of the Hawke's Bay Regional Coastal Environment Plan.

- 10.4 Other changes to the RRMP are of relevance to this application, but only insofar as parts of the operative RRMP would no longer apply to the subject site once Proposed Plan Change 1 becomes operative. Until such time as the plan change becomes operative, the operative provisions of the RRMP apply to the subject site and are relevant to the consideration of this application.
- 10.5 The following objectives and policies contained in the RRMP are considered particularly relevant to the assessment of the application:

The Sustainable Management of Coastal Resources

- OBJ 4** *Promotion of the preservation of the natural character of the coastal environment and its protection from inappropriate subdivision use and development*
- OBJ 5** *The maintenance and where practicable and in the public interest, the enhancement of public access to and along the coast.*
- OBJ 8** *The avoidance of further permanent development in areas prone to coastal erosion or inundation, taking into account the risk associated with global sea level rise and any protection afforded by natural coastal features.*

Ground Water Quality

POL 18 *Decision Making Criteria – Onsite Sewage Discharges*

- **Connections to Reticulated Systems**
 - (ii) *To require any new sewage discharge from a property which is zoned for residential activity to be serviced by a community reticulated sewerage scheme, provided a community scheme is available or can economically be made available, unless it can be demonstrated that individual onsite disposal is the best practicable option.*

Natural Hazards

- OBJ 31** *The avoidance or mitigation of the adverse effects of natural hazards on people's safety, property, and economic livelihood.*

POL 56 *To use non-regulatory methods set out in Chapter 4, as the principal means of addressing hazard avoidance and mitigation, in particular:*

- (a) *liaison with territorial authorities – to provide information on natural hazard risk to territorial authorities, and advocate that future development is managed in such a way that the risk of exposure to natural hazards is avoided, remedied or mitigated.*

Comment

- 10.6 I do not consider that the proposal is contrary to the provisions of the RRMP. Section 9 of this report sets out the potential for adverse effects on the environment in relation to above objectives and identifies that conditions can be imposed on the consent to ensure that the potential for adverse effects is avoided or mitigated (although it is recommended that the Council satisfies itself of this at the hearing in respect of coastal hazards). The proposal is consistent with Policy 18 above in that future dwellings on each lot will be required to connect to a communal wastewater scheme, which is identified as being preferable to individual onsite wastewater disposal.

Proposed Regional Coastal Environment Plan

- 10.7 HBRC notified the PRCEP on 30th August 2006. The PRCEP seeks to manage the use, development and protection of the region's coastal environment resources. This proposed plan is subject to a number of appeals, including one that seeks the withdrawal of the plan in its entirety, and therefore it is not operative.
- 10.8 As previously discussed, the subject site is within the Coastal Hazard 3 Zone of the PRCEP.
- 10.9 The following objectives and policies contained in the PRCEP are considered particularly relevant to the assessment of the application:

Part B – Matters of National Importance

2 Natural Character

Obj 2-1 Preservation of the natural character of the coastal environment, and the protection of the coastal environment from inappropriate subdivision, use and development.

Policy 2-1 To ensure any adverse effects on the natural character of the coastal environment arising from inappropriate use and development within the coastal marine area are avoided.

Policy 2-3 To promote the location of future use and development in areas of the coastal environment which are already significantly modified by similar activities, provided the adverse effects of the new use and development are avoided, remedied or mitigated.

Policy 2-4 To recognise and provide for appropriate use and development provided any adverse effects on the coastal environment's natural character arising from such use and development are avoided, remedied or mitigated.

5 Public Access to and Along the Coast

Obj 5-1 Maintenance and enhancement of public access to and along the coastal marine area while recognising the need to protect certain areas ecological, cultural, historic heritage, health, safety, or security (including biosecurity) reasons.

Policy 5-1 To promote appropriate public access to and along the coastal marine area so that public access is restricted only where necessary.

6 Relationship of Maori and the Coast

Obj 6-1 The protection of the characteristics of the coastal environment of special spiritual, heritage, historical and cultural significance to tangata whenua.

Policy 6-1 To recognise and support the role of tangata whenua of Hawke's Bay as kaitiaki of the region's coastal resources.

Policy 6-2 To recognise and provide for the protection of sites within the coastal environment of spiritual, heritage, historical or cultural significance to Maori identified in accordance with tikanga Maori, including waahi tapu, nga toka, tauranga waka, mahinga mataitai, taiapure and taonga raranga.

Policy 6-2A To promote the protection of sites within the Coastal Margin of spiritual, heritage, historical or cultural significance to Maori identified in accordance with Tikanga Maori.

Policy 6-3 To ensure adverse effects of activities on sites and areas of significant cultural value to tangata whenua are avoided, remedied or mitigated.

7 Historic Heritage

Obj 7-1 Protection of historic heritage within the coastal environment from inappropriate subdivision, use and development.

Policy 7-1 To ensure that historic heritage of significance to coastal hapu are protected from inappropriate subdivision use and development.

Part C - Use and Development: Coastal Margin

15 Coastal Hazards

Obj 15-1 Risks posed by coastal hazards to people and property are avoided or mitigated.

Obj 15-2 The avoidance of new and further inappropriate development in areas identified as being currently at risk of coastal erosion or inundation during the next 100 years (ie: those areas within Coastal Hazard Zone 2 or Coastal Hazard Zone 3), taking into account the risk associated with global sea level rise and the level of protection afforded by natural coastal features and lawfully established coastal protection structures.

Policy 15-1 To manage coastal erosion and inundation risks in accordance with the environmental guidelines set out in Table 9.

Table 9: Environmental Guidelines – Coastal Hazards

Issue	Guideline
1. Management approach	<p>Coastal hazards will be proactively managed in the following prioritised ways:</p> <ul style="list-style-type: none"> i) avoidance of new developments in areas that are, or have potential to be, subject to coastal erosion or inundation ii) maintaining and enhancing natural values and features that provide a buffer against coastal erosion and inundation iii) evaluating the feasibility of relocation and/or retreat of, existing uses and development iv) evaluating, then implementing if appropriate, activities which mitigate coastal hazards (for example, sea walls, groynes, artificial reefs) to mitigate coastal hazards
2. Identification of coastal hazard areas	<p>With the availability of new or updated information, areas subject to, or likely to be subject to, short and long-term coastal erosion, sea water inundation, and cliff shoreline instability should be reviewed, identified and managed in an integrated manner. The most recent mid-range IPCC sea level rise scenario should be taken into account in these reviews.</p>
3. Precautionary Approach	<ul style="list-style-type: none"> a) A precautionary approach will be adopted in the assessment of: <ul style="list-style-type: none"> i) areas at risk from short, medium and long-term coastal erosion and inundation hazards and ii) potential adverse effects of subdivision, use and development in the coastal environment. b) Where a district plan gives effect to a more precautionary approach to the assessment and management of coastal hazard areas and controls on subdivision, use and development of land within those hazard areas than this Plan, then coastal hazard zones will not be identified in this Plan for those areas.
7. New use and development	<p>New uses and development, (in particular, buildings and infrastructure) should not be located in areas that are, or have potential to be, subject to coastal erosion or inundation, unless:</p> <ul style="list-style-type: none"> i) it is for a temporary activity and/or ii) it protects or enhances natural features (for example dunes, wetlands, gravel barriers, intertidal rock platforms) between existing development and the sea and iii) it presents a less than a minor risk of

Issue	Guideline
	<p><i>exacerbating coastal hazards.</i></p> <p>iv) <i>Council is satisfied that risks from coastal hazards are not increased.</i></p>
<p>8. New subdivision and district plan rezoning</p>	<p>a) <i>New and further subdivision shall be strongly discouraged within areas subject to, or likely to be subject to, coastal erosion or inundation hazards.</i></p> <p>b) <i>District plans should restrict new and further subdivision of land and rezoning of land within coastal hazard zones so subdivision and zoning of land presents less than a minor risk of exacerbating coastal hazards.</i></p>

Comment

- 10.10 I consider that the proposed development is generally consistent with the objectives and policies of the PRCEP. The proposal provides for the preservation of the natural character of the coastal environment by providing for residential development within a residential zone and thereby relieving the pressure for subdivision and development within other parts of the coastal environment. Although the site is located within the Coastal Hazard 3 Zone, the applicant has provided technical reports that demonstrate that the proposal will not be at significant risk from coastal hazards, provided certain mitigation measures are implemented. It is also noted that HBRC have not submitted on this proposal and this may be an indication that it does not have any concerns in respect to coastal hazards.
- 10.11 In respect to policies regarding the relationship of Maori with the Coast, I consider that the previous cultural audit and archaeological assessment undertaken provide sufficient information for the Council to assess this matter. I consider that the proposal is consistent with the PRCEP objectives and policies provided that that consent notice conditions ensuring the ongoing protection of the cultural markers and cabbage trees identified in the previous cultural audit are used to mitigate the potential for adverse effects on cultural values.

WAIROA DISTRICT PLAN

- 10.12 As discussed in Section 5 of this report, the District Plan became operative in June 2005. The provisions of Plan Change 1B that relate to this proposal are operative in accordance with section 19 of the RMA. The relevant objectives and policies of the District Plan are set out below, along with comments as to the consistency of the proposal with these objectives and policies:

Chapter 4 – Tangata Whenua Issues

- 4.3.1 *To promote, including recognising and providing for, the relationship of tangata whenua with their ancestral land, water, sites, waahi tapu and other taonga.*
- 4.3.3 *To enable tangata whenua to provide for their social, economic and cultural well-being and for their health and safety, while promoting sustainable management of the environment.*
- 4.3.4 *To promote sustainable management of natural and physical resources including the ancestral lands of tangata whenua, taking into account the principles of the Treaty of Waitangi so as to enable tangata whenua to provide for their social, economic and cultural well-being.*
- 4.4.3 *Promote the protection and sustainable management of all cultural heritage places, mahinga kai, and other taonga of Maori.*

Comment

- 10.13 A cultural audit and archaeological assessment were carried out as part of the previous subdivision consent process. I do not consider that this proposal will prevent tangata whenua from providing for their social, economic or cultural well-being. The cultural audit identified some areas that should be physically identified on the site and protected. It is recommended that the location of these areas are clarified and identified on the sites and subdivision plans, conditions of consent are imposed that ensure these sites have ongoing protection and a condition ensuring an appropriate protocol is followed in the event any archaeological features or koiwi are encountered during site development is imposed on the consent. Provided these matters can be clarified, and conditions are imposed on the consent, I consider the proposal to be consistent with these objectives and policies.

Chapter 5 – Recognising and Providing for Natural and Physical Resources of Significance

- 5.4.4 *To identify and protect areas, sites and structures of importance to Maori culture and traditions.*
- 5.5.1 *Identify and protect outstanding natural features and landscapes, so as to avoid, remedy or mitigate any adverse effects of activities, which may lead to the degradation or loss of values associated with these natural areas.*
- 5.5.7 *Identify and protect areas, sites and structures or archaeological, cultural or historic significance including sites listed in the New Zealand Historic Places Trust Register, New Zealand Archaeological Association Recorded Sites Index and tangata whenua databases and in Schedule 1 – Historic Structures, Sites, Waahi Tapu and Notable Trees so as to avoid, remedy or mitigate any adverse effects of activities which may lead to the degradation or loss of the values associated with these areas, sites and structures. In carrying out methods to protect cultural and historic resources, the rights of landowners to use their land should also be recognised and provided for where possible.*
- 5.5.8 *Identify and protect, in a manner appropriate to tangata whenua, cultural heritage resources of importance to tangata whenua.*

Comment

- 10.14 No sites of archaeological significance have been identified on the subject site; however conditions can be imposed on this consent to ensure that any sites discovered through site development are appropriately dealt with. In respect to features identified through the previous cultural audit carried out on the site, conditions of consent can also be imposed on the consent requiring that these sites are marked in perpetuity and/or that development does not occur on the identified areas. Provided that such conditions are imposed on the consent, I consider the proposal will achieve these objectives and policies.

Chapter 8 – Managing the Effects of Natural Hazards

- 8.4.1 *To minimise the vulnerability of the community to the effects of natural hazards on people, property, and community services and infrastructure.*
- 8.4.2 *To adequately inform the community of potential risks.*
- 8.4.3 *To ensure land use, development and subdivision does not increase the risk (probability and potential effect) from natural hazard events on communities and the environment, and where possible, reduces risk.*
- 8.4.4 *To protect the district's natural and physical resources from the adverse effects of earthworks and land disturbance.*
- 8.5.1 *Prevent land use, development and subdivision activities in areas where the adverse effects of natural hazards cannot be avoided, remedied or mitigated.*

- 8.5.2 *Ensure the potential effects of natural hazards are taken into account when considering resource consents and require measures to mitigate risk to land, property and residents.*
- 8.5.3 *Ensure that all activities requiring the approval of the Council, including building consent, are undertaken having regard to, and are in accordance with, the provisions of the District Plan.*
- 8.5.4 *Ensure that the adverse effects of earthworks and land disturbance activities are avoided, remedied or mitigated.*

Comment

- 10.15 The proposal is consistent with these objectives and policies. The applicant proposes that building platforms will be set at a minimum of 3.5m above mean sea level, to mitigate the potential for coastal inundation hazards. Furthermore, the applicant has also demonstrated that land instability hazards can be adequately avoided or mitigated. Conditions are recommended to ensure that the risk of natural hazards is minimised.

Chapter 10 - Safeguarding Amenity Values

Dust/Discharges to Air

- 10.4.3 *To contribute to the maintenance and enhancement of air quality.*
- 10.4.4 *Control where appropriate the detrimental impacts of activities producing dust emissions to the environment to protect the amenity values of neighbouring activities, and the health and safety of the community.*

Privacy Shading and Visual Amenity

- 10.6.10 *To avoid, remedy or mitigate the loss of privacy and shading effects resulting from the bulk and location of buildings and the planting of vegetation*
- 10.6.12 *To protect the natural character and visual amenity of the district from the adverse effects of earthworks.*
- 10.6.13 *Maintain a reasonable level of privacy for occupiers of residential buildings.*
- 10.6.15 *Encourage appropriate screening of activities that adversely affect the amenity values of neighbouring properties (particularly at the industrial/residential zone boundaries).*

Access and Parking

- 10.8.10 *To protect the safe, efficient and sustainable operation of the roading network by avoiding, remedying or mitigating any adverse effects of developments and activities undertaken on the adjacent land.*
- 10.8.12 *Ensure that all sites have practicable and legal vehicle access to a public road to maintain the safe, efficient and sustainable operation of the roading network.*
- 10.8.14 *Ensure vehicle access to roads is designed and located to prevent traffic hazards and to maintain the efficiency of the roading network.*
- 10.8.16 *Ensure intersections are designed and located appropriately to avoid compromising road safety.*

Comment

- 10.16 The assessment undertaken in Section 9 of this report, as well as the AEE submitted with the application concerned find that the potential for adverse effects associated with dust, privacy, shading and visual amenity, and access and roading is insignificant, or can be appropriately managed through conditions of consent. Therefore, the proposal is considered to be consistent with these objectives and policies.

Chapter 18A – Residential (Mahia) Zone

- 18A.2.1 *To maintain and enhance residential amenity values.*
- 18A.2.3 *To develop residential areas that avoid or limit the effects of natural hazards.*
- 18A.3.1 *Enable a mixture of housing and lifestyles in Mahia including Mahia Beach, Waikokopu, Opoutama, Mahanga, Te Mahia and Oraka.*
- 18A.3.2 *Ensure the design and siting of development maintains residential amenity values and will not reduce sunlight, daylight and privacy to neighbouring properties, and will not generate unacceptable levels of noise, glare, odour or dust.*
- 18A.3.4 *Ensure that the design and construction of new activities that establish on land subject to known natural hazard events take into account the potential threat of the hazard event(s).*
- 18A.3.5 *Require the treatment and disposal of sewage, wastewater, solid waste and stormwater in a manner that avoids, remedies or mitigates any adverse effects on the environment.*
- 18A.3.7 *Ensure site services (wastewater, stormwater, water, electricity) are provided either through connection to existing services or through the provision of new services.*
- 18A.3.8 *Ensure access to each site is provided in accordance with Council standards.*

Comment

- 10.18 I consider the proposal to be consistent with these objectives and policies. The proposal is for residential development that will be similar in character and density to that which already exists at Mahanga. The site can also be appropriately accessed and serviced.

Chapter 27 - Subdivision

- 27.3.1 *To ensure that the process of the subdivision promotes the integrated management of the effects of the use, development and protection of natural and physical resources.*
- 27.3.2 *To ensure that the subdivision of land occurs in a manner that does not adversely affect the function or capacity of roads and infrastructure services within the district.*
- 27.4.3 *Require that each allotment created is suitable for a permitted activity or an activity that has been provided for through a consent process.*
- 27.4.4 *Require the potential effects of a subdivision to be avoided, remedied or mitigated.*
- 27.4.5 *Provide within the subdivision process, consideration of the protection of significant natural resources and heritage resources, and public access to the coast, rivers and lakes.*
- 27.4.6 *Ensure the provision of roads and utility services (water supply, waste disposal, stormwater runoff facilities, power and telecommunication facilities) do not generate adverse effects on the environment resulting in the costs of such services being met by the wider community.*

Comment

- 10.19 The proposal is considered to be consistent with these objectives and policies. The proposal can achieve all of the subdivision performance standards of the District Plan.

Summary – Operative Wairoa District Plan

- 10.20 Overall I consider the proposal to be consistent with the general intent of the policy direction set by the Operative District Plan.

11 OTHER MATTERS**Wairoa Coastal Strategy**

- 11.1 The Wairoa Coastal Strategy does not form part of the District Plan. It is a non-statutory document but has been adopted by the Council. The Strategy seeks to put in place mechanisms to balance social needs and environmental protection against the need for economic development and growth. As a strategic document, the Wairoa Coastal Strategy is a matter that can be considered in the assessment of this application as 'Other Matters' under Section 104 of the RMA.

- 11.2 For the purposes of the Wairoa Coastal Strategy the 'coastal environment' is defined as:

'The Wairoa coastal environment is defined as extending up to the first dominant ridgeline behind the coast and includes the whole of the Mahia Peninsula and communities reliant and related to the coastal area.'

- 11.3 The application site is therefore within the area considered by the Wairoa Coastal Strategy.

Vision

- 11.4 The strategy identifies a Vision of "*Protecting the spirit of our precious coastline.*" *Key Statements* are included to interpret the *Wairoa Coastal Strategy Vision*. Statements of relevance to this application include:

- *Protection and enhancement of our valued natural, cultural and heritage environment on the coast.*
- *Preserving and enhancing opportunities to experience wilderness and solitude in the coastal environment and the importance of the natural environment.*
- *Managed growth enabling economic and social development that acknowledges the natural, social and cultural limits of the coastal environment.*

- 11.5 The 20 Year Vision includes the whole of the Mahia Peninsula "Providing opportunities for sustainable economic development whilst protecting the significant values of Mahia Mai Tawhiti".

Themes

- 11.6 The Strategy identifies a number of themes. Objectives and policies are identified for each theme. The relevant themes and the relevant objectives and policies within these themes are set out below.

Natural Hazards / Ngaa Moorearea o Tea o Tuuturu

NHO1 *Proactively reduce the level of risk on coastal communities from coastal hazards to an acceptable level.*

NHP2 *Protect, maintain and enhance natural buffers that defend against the adverse effects of coastal hazards.*

NHP6 *Discourage new and further subdivision and development within areas identified as being subject to natural hazards.*

Tangata Whenua / The Indigenous People

TWO1 Recognise and provide for the relationship of Tangata Whenua with their ancestral lands and taonga (including within the coastal waters) particularly where this conflicts with other values whilst ensuring sustainable management.

TWO4 Protect the values important to Tangata Whenua for future generations.

TWO5 Recognise and protect sites of significance to Tangata Whenua both on land and within the coastal waters.

TWP1 Encourage and support investigation and documentation of cultural heritage of the Wairoa coast, including the cultural landscape.

TWP2 Encourage and support programmes to increase people's knowledge and appreciation of Tangata Whenua values.

Landscape and Ecology / Ngaa Momo Ahuaote Whenua

LEO1 Protect and enhance the outstanding landscape and ecological values of the Wairoa coastal environment.

LEO2 Retain and protect areas of high biodiversity, landscape and/or natural character value.

LEP1 Manage development and activities to minimise their negative impacts and maximise their positive effects on landscape, ecological and natural character values.

Social and Community Values /Uar a Paapori;Uara-a-Haaporl

SCVO1 Maintain and enhance the diversity of communities along the Wairoa coastal environment.

SCVO2 Recognise and protect the 'sense of place' and special character of the Wairoa coast and its diverse communities while providing appropriate opportunities for social and economic growth.

SCVP2 Promote the concept of clustered 'coastal communities' with individual identities rather than sporadic and/or ribbon development.

Recreation and Access / Te Putanga i te Taakaro Puuangi

RAO3 Improve opportunities for public access to the coast where appropriate and protect sensitive areas from inappropriate forms of access.

RAP2 Improve recreation and pedestrian access to the coastal environment by formalising unformed roads and informal access and/or reserves where appropriate, where access will not adversely impact on significant ecological values.

Land Use and Development / Tewhanaketangamete

LUDO1 Provide for clustered growth and avoid sporadic and ribbon development.

LUDO4 Adopt a long-term strategic approach to subdivision and changes in land use and development in the Wairoa coastal environment.

LUDP1 Avoid sprawling, sporadic and ribbon subdivision, use and development in the coastal environment.

Infrastructure / Te Tino Tuahiwi Kooiwi

IO2 Provide a suitable level of services and infrastructure for the social well-being, health and safety of existing and future communities and for environmental well being

IP2 *Limit development to those areas where suitable infrastructure can be efficiently provided whilst avoiding or minimising the impacts on the environment.*

Local Community Areas

- 11.7 The Strategy identifies individual settlements within the Wairoa District's Coastal Environment as being distinctive in terms of communities, resources, values and existing and potential conflicts and defines them as Local Community Areas. The subject site is within the Mahanga Beach Local Community Areas. The community statement for this area is "*Sensitive growth that protects the natural and cultural environment.*"
- 11.8 The Strategy sets out key issues and facts, objectives and actions for the management of the Mahanga Beach Local Community Area. Those of relevance are set out below:

Key Issues and Facts

- *Mahanga Beach is an isolated, but growing community that is spreading along undeveloped foreshore.*
- *There is existing pressure for lifestyle block developments and subdivision within the coastal environment.*
- *Protection of the cultural identity, including waahi tapu, urupa and pa sites along the coastline is important. There is a likelihood of unrecorded sites elsewhere that need to be identified.*
- *There are potential risks from coastal erosion on existing land, resources and property that need to be identified and provided for with appropriate management.*
- *Protection of the landscape, including wetlands, sand dunes and ecology, from adverse impacts from land use.*

Objectives

- *Protect, restore and enhance the natural environment, including wetlands, lagoons, native forest and dune systems.*
- *Maintain and enhance the natural, cultural and social values and sense of place unique to Mahanga Beach.*
- *Recognise the importance of appropriate infrastructure so the community can function effectively and the impacts on the environment are limited.*
- *Locate any development away from natural hazards, areas of high ecological values and areas of cultural significance and the coastal edge in order to avoid dynamic coastal processes.*

Comment

- 11.9 I consider the proposal to be generally consistent with the objectives, policies and overall vision of the Wairoa Coastal Strategy. The rezoning of the site through Plan Change 1B was in response to the vision set by this strategy. This has resulted in the sited being zoned for residential purposes. The proposal is to provide for residential development consistent with the intent established in the strategy and now brought through into the District Plan.

Wairoa District Council Engineering Code of Practice

- 11.10 The Council's Engineering Code of Practice aims to assist developers to determine the engineering design standards and performance targets that must be achieved for subdivision and land development in the district.
- 11.11 The Council's Engineering and Operations Managers have not raised any concerns regarding compliance with the Engineering Code of Practice, although it is noted that approval of details may be required at the time building consent is sought.

- 11.12 Should the application be granted, it is recommended that conditions be imposed to require compliance with the Engineering Code of Practice, or an alternative design standard as may be approved by Council, to ensure that satisfactory engineering design and construction is achieved.
- 11.13 The Council resolved at a meeting in September 2005 to adopt New Zealand Standard 4404:2004 'Land Development and Subdivision Engineering' as the basis for its Engineering Code of Practice subject to modification for local variations and requirements. Should the Committee grant consent to the application, an advisory note should be appended to the decision advising the consent holder of this.

12 RMA SECTION 104D

- 12.1 As discussed, Section 104D of the RMA provides an additional test for Non-Complying Activities, in that in order to grant consent, the Council must be satisfied that either the effects of the proposal on the environment are minor, or the proposal is not contrary to the objectives and policies of the District Plan.

Effects on the Environment

- 12.2 In my opinion, the potential for adverse effects on the environment is minor, provided that the mitigation measures discussed in this report are secured by way of consent conditions. In particular the applicant has demonstrated that the potential for adverse effects in respect to coastal hazards, residential amenity and character, archaeological values and visual amenity will be minor, or can be appropriately managed through the mitigation proposed. In respect to cultural values, provided it can be clarified where the exact locations of the whare/house sites and other occupation sites referred to in the cultural audit undertaken as part of the previous subdivision are, the potential for adverse effects on cultural values can be mitigated through conditions of consent.

Objectives and Policies of the District Plan

- 12.3 I do not consider the proposal to be contrary to the objectives and policies of the District Plan. Case law has found the term "contrary" to mean opposed to or repugnant to. In the case of Non-Complying Activities, it is inevitable that proposals will not find direct support in every objective and policy. However, when viewed in an overall way, I consider that the proposal is not contrary to the overall intent of the objective and policy framework of the District Plan.

Overall Assessment

- 12.4 In my opinion, the proposal meets both tests of section 104D, and as such, the Council may grant consent to the proposal.

13 SUSTAINABLE MANAGEMENT

Section 5 of the Resource Management Act 1991

- 13.1 The purpose of the RMA is to promote the sustainable management of natural and physical resources. The overall consistency of the proposal with the objectives and policies and other provisions of the various statutory and non-statutory documents reflect the extent to which the proposal promotes the sustainable management of natural and physical resources. I consider the proposal to be a sustainable use of the land resource.
- 13.2 The applicant has demonstrated, subject to the imposition of appropriate conditions, how the actual or potential adverse effects on the environment can be satisfactorily avoided, remedied or mitigated.

Section 6 of the Resource Management Act 1991

- 13.3 It has been demonstrated that the proposal can provide for those relevant matters of national importance contained in Section 6. In particular, the potential for adverse effects on landscape, natural character and visual amenity values is considered to be minor, and this matter in relation to this site has already been considered thoroughly through the plan change process that has resulted in this site being zoned for residential development.
- 13.4 Matters associated with cultural values and historic heritage values have also been considered in this assessment. Provided that clarification of location of the whare/house sites and other occupation sites referred to in the cultural audit undertaken in relation to the previous subdivision can be obtained, I consider that these matters have been adequately provided for in the application or can be addressed through the conditions of consent.

Section 7 of the Resource Management Act 1991

- 13.5 The applicant has demonstrated that the proposal will have particular regard to those relevant other matters contained in Section 7.

Section 8 of the Resource Management Act 1991

- 13.6 I do not consider that the proposed subdivision and development offends the principles of the Treaty of Waitangi. The site has been subject to a cultural audit and archaeological survey as part of a previous subdivision. The potential for adverse effects in relation to the matters of cultural importance identified in the cultural audit can be protected by imposing conditions on the consent. Consent conditions can also ensure that an appropriate protocol is followed in the event that any subsurface archaeological features or koiwi are uncovered through the site development process.

14.0 SUMMARY AND CONCLUSION

- 14.1 The applicant proposes to subdivide and develop 24 residential allotments on a site located on the western side of Pukenui Road, Mahanga Beach. The proposal is a Non-Complying Activity in accordance with the Operative District Plan.
- 14.2 Provided that clarification as to the location of the areas of importance identified in the cultural audit undertaken as part of the previous subdivision can be obtained, it is my opinion that the actual or potential effects of the proposed activity are likely to be minor, provided that the intended mitigation measures, and additional mitigation measures recommended, are implemented at the time of development. In accordance with Sections 106, 108 and 220 of the Resource Management Act 1991, appropriate conditions can be imposed on the granting of the consent to avoid, remedy or mitigate any potential adverse effects that the proposed subdivision and development of the site may have on the environment.
- 14.3 The proposed development is considered to be generally consistent with the objectives and policies of the Operative District Plan the Hawke's Bay Regional Resource Management Plan and the Proposed Regional Coastal Environment Plan. The proposed development is also considered to be consistent with the direction provided in the New Zealand Coastal Policy Statement and the Wairoa Coastal Strategy.
- 14.4 The proposed development of the site can be implemented generally in accordance with the Council's Engineering Code of Practice. Compliance with the Council's Engineering Code of Practice can be assured through the imposition of appropriate conditions of consent.
- 14.5 The application is consistent with the principle of sustainable management as promoted by the RMA. In particular the proposal represents a sustainable use of the existing land and infrastructure resources.
- 14.6 Therefore, it is recommended that consent be granted, subject to the recommended conditions necessary to avoid, remedy or mitigate adverse effects on the environment. It is noted that additional conditions may be recommended depending upon evidence presented at the hearing.

15.0 RECOMMENDATION

A. Subdivision Consent Application

Pursuant to Sections 104D, 106, 108 and 220 of the Resource Management Act 1991 the Wairoa District Council grants subdivision consent to SP Beach Limited and Wine Country Properties Limited to subdivide Lots 1 and 2 DP 359131 to create 24 residential allotments, 2 allotments for wastewater treatment and disposal and one lot to vest in the Wairoa District Council as road, as shown on the subdivision and development plans (Reference 2189/18, *Proposed Subdivision of Lots 1 and 2 DP 359131*, dated July 2008, prepared by Surveying the Bay) subject to the following conditions.

General

1. The subdivision and development of the site shall proceed generally in accordance with the information, further information, assessment of effects, statements of intent, mitigation measures, technical reports, drawings, specifications and plans provided with the application. Where a conflict arises between the conditions of the consent and the application the conditions of this consent shall prevail.
2. The consent holder shall be responsible for all costs associated with compliance with the conditions of the consent including any fees and charges required by the Council, any legal expenses and the cost of construction works. In the event of non-compliance being detected, the costs to the Council of any monitoring shall be paid by the consent holder in accordance with the Council's schedule of fees.
3. The consent holder shall ensure that all works and structures are designed by a Chartered Professional Engineer, and constructed and approved in accordance with the Council's Engineering Code of Practice unless the Engineering Manager approves a variation to the design standards and performance targets contained in the Council's Engineering Code of Practice.

Conditions to be Met Prior to the Commencement of Any Stage

4. Prior to approval pursuant to Section 223 of the Resource Management Act 1991 and the commencement of construction works for any stage of the subdivision the consent holder shall submit engineering design plans for the road, footpath, stormwater drainage system, wastewater disposal system, sewerage reticulation, power services, telephone services, street-lighting, traffic signage and street name signs prepared by a Chartered Professional Engineer in accordance with the requirements of the Council's Engineering Code of Practice for the approval of the Engineering Manager. The engineering design plans shall detail which infrastructure is to be constructed at each stage. The engineering design plans shall detail the ways in which design and construction will comply with the Council's Engineering Code of Practice.
5. Prior to approval pursuant to Section 223 of the Resource Management Act 1991 the existing cabbage trees on Lots 1 and 9, and the cultural marker on Lot 17 shall be identified on the Land Transfer Title Plan.
6. Prior to approval pursuant to section 224 of the Resource Management Act 1991 for any stage the consent holder shall submit a detailed planting plan for Lot 25 to the satisfaction of the Wairoa District Council. The planting plan shall show planting for the purpose of screening the lower parts of the buildings located on the upper terrace, reducing the adverse effects of earthworks and roading, enhancing the landscape setting and contributing to the natural character of the coastal environment, in accordance with the recommendations of the report *Mahanga: Proposed Subdivision, Lots 1 and 2: Landscape, Natural Character and Visual Effects Assessment* dated 4/06/2008, prepared by Hudson Associates Landscape Architects, submitted with the application. The planting plan shall also include:
 - a) The timing of planting

- b) An implementation and ongoing management and maintenance programme which shall detail the measures to ensure post establishment growth, weed and pest control and replacement of plants that are dead or in poor health.
7. Prior to approval pursuant to Section 224 of the Resource Management Act 1991 for any stage the consent holder shall implement the approved landscape and planting plan.

Conditions to be Met for Each Stage

8. Prior to approval under Section 224 of the Resource Management Act 1991 for each stage the consent holder shall construct the road, footpath, stormwater drainage system, wastewater disposal system, sewerage reticulation, power services, telephone services, street-lighting, traffic signage and street name signs necessary to service the respective stage in accordance with the approved design plans and the Council's Engineering Code of Practice, unless the Engineering Manager approves a variation to the design standards contained in the Council's Engineering Code of Practice. The construction of the road shall not commence until the Engineering Manager has approved the engineering design plans required in accordance with condition 4.
9. Prior to approval pursuant to Section 224 of the Resource Management Act 1991 for each stage the consent holder shall provide quality assurance, as built plans and qualified professional person certification as required under the Engineering Code of Practice on completion of the construction of the road, footpath, stormwater drainage system, sewerage reticulation, power services, telephone services, street-lighting, traffic signage and street name signs necessary to service the respective stage for the review and approval of the Engineering Manager.
10. Prior to approval pursuant to Section 224 of the Resource Management Act 1991 for the respective stages the consent holder shall provide separate underground electricity connections to the boundary of Lots 1 to 24 within the respective stage to the satisfaction of the District Planner.
11. Prior to approval pursuant to Section 224 of the Resource Management Act 1991 for each stage the consent holder shall ensure that each of Lots 1 to 24 within the respective stage is able to connect to an operational wastewater treatment and disposal system which is in accordance with the requirements of the Hawke's Bay Regional Council.
12. Prior to approval pursuant to Section 223 of the Resource Management Act 1991 for each stage where any pipes or infrastructure associated with wastewater treatment and disposal system are required to cross from one lot to another or from the road to another lot the appropriate easements shall be identified on the title plan within each stage and shown in a memorandum of easements to the satisfaction of the District Planner. Such easements shall be duly granted and reserved upon deposit and issue of the Certificates of Title. The consent holder shall be responsible for all costs associated with the creation of easements.
13. Prior to approval pursuant to Section 223 of the Resource Management Act 1991 for each stage easements to protect the use and maintenance of power, telecommunications, wastewater, water and stormwater services within the stage shall be identified on the title plan for the respective stage and shown in a memorandum of easements. The Engineering Manager may require other easements to protect the use and maintenance of services. Such easements shall be duly granted and reserved upon deposit and issue of the Certificates of Title. The consent holder shall be responsible for all costs associated with the creation of easements.
14. All easements for the right to convey, store, treat or dispose of wastewater shall be created with an additional clause that prohibits the easements from being surrendered without the agreement of the Wairoa District Council.

Conditions Specific to Stage 3

15. Prior to approval under Section 223 of the Resource Management Act 1991 for stage 3 the Land Transfer Title Plan shall be drawn such that Lot 27 shall be vested in the Wairoa District Council as road.

16. That Lots 24 and 28 hereon be held in the same Computer Freehold Register.

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Consent Notices

17. A consent notice pursuant to Section 221 of the Resource Management Act 1991 shall be registered on the Certificate of Title for Lots 1 to 24 advising the owner(s) and subsequent owner(s) of the requirement to comply with the following conditions on a continuing basis. The consent notice shall be prepared and registered at the expense of the consent holder.
- (a) All building platform(s) on the lot(s) shall be a minimum height of 3.5m above mean sea level for buildings with a specified intended life of less than 50 years 5 metres above mean sea level for buildings with a specified intended life exceeding 50 years.
 - (b) Prior to the construction of any buildings on the Lot(s) the owner(s) of the Lot(s) shall submit a geotechnical report prepared by a Chartered Professional Engineer experienced in geotechnical assessment to the satisfaction of the Wairoa District Council. The report shall include a statement of professional opinion as to the suitability of the intended building platform for construction and any recommendations in respect of the intended building platform and building works (including site specific foundation design).
 - (c) The land shall not be built on unless the Council is satisfied that:
 - i. the recommendations in the geotechnical report required by (b) above have been adopted in the building platform design; and
 - ii. any risk from erosion, falling debris, subsidence, slippage, or inundation from any source can be satisfactorily addressed through issue of building consent and placement of a memorandum on the title in accordance with sections 71-74 the Building Act 1991.
 - iii. a geotechnical completion certificate prepared in accordance with Schedule 2A of *NZS 4404:2004 Land Development and Subdivision Engineering* by a Chartered Professional Engineer experienced in geotechnical assessment has been provided to confirm (a) and (b) above and the following:
 - the position of all building platforms and building restriction lines (where applicable).
 - recommendations for the disposal of stormwater and wastewater have been adopted (where applicable).
 - recommendations for the development of the land have been adopted (where applicable).
 - any earth-fill and / or building platforms have been constructed to comply in all respects with the requirements set down in the New Zealand Building Code.
 - (d) Prior to the construction of any building(s) on the Lot the owner(s) of the Lot shall submit detailed engineering design plans for the stormwater drainage system prepared by a Chartered Professional Engineer experienced in stormwater drainage system design and construction for the approval of the Wairoa District Council in accordance with the requirements of the Council's Engineering Code of Practice.
 - (e) Prior to the construction of any building(s) on the Lot the owner(s) of the Lot shall construct the stormwater drainage system as detailed in the approved design plans and in accordance with the Council's Engineering Code of Practice. The construction of the stormwater drainage system shall not commence on the site until the Wairoa District Council has approved the engineering design plans.

- (f) The owner(s) of the Lot(s) for the time being shall ensure that the stormwater drainage systems are operated and maintained in accordance with the approved design plans on an ongoing basis to the satisfaction of the Wairoa District Council.
- (g) The owner(s) of the Lot(s) for the time being shall ensure that the wastewater treatment and disposal system is managed and maintained in accordance with the requirements of the Hawke's Bay Regional Council.
- (h) In the event that any Koiwi (human remains) or artefacts which may be of historic or cultural importance are discovered, all work in the vicinity shall cease immediately and tangata whenua, the New Zealand Historic Places Trust and the Wairoa District Council shall be immediately notified to determine any necessary protection, remediation or mitigation.
18. A consent notice pursuant to Section 221 of the Resource Management Act 1991 shall be registered on the Certificate of Title for Lots 1 to 4, 15 to 24 and 28 advising the owner(s) and subsequent owner(s) of the requirement to comply with the following conditions on a continuing basis. The consent notice shall be prepared and registered at the expense of the consent holder.
- (a) Any building(s) on the lot(s) shall not exceed a height of 7 metres above the existing ground level as shown on the on the plan 2189/18, *Proposed Subdivision of Lots 1 and 2 DP 359131*, dated July 2008, prepared by Surveying the Bay submitted with the subdivision application (Reference RM070004).
19. A consent notice pursuant to Section 221 of the Resource Management Act 1991 shall be registered on the Certificate of Title for Lots 2, 3 and 4 advising the owner(s) and subsequent owner(s) of the requirement to comply with the following conditions on a continuing basis. The consent notice shall be prepared and registered at the expense of the consent holder.
- (a) Any building(s) on the lot(s) shall be constructed a minimum of 12 metres from the Judges Parade road reserve boundary.
20. A consent notice pursuant to Section 221 of the Resource Management Act 1991 shall be registered on the Certificate of Title for Lots 1 and 9 advising the owner(s) and subsequent owner(s) of the requirement to comply with the following conditions on a continuing basis. The consent notice shall be prepared and registered at the expense of the consent holder.
- (a) The cabbage tree(s) (*Cordyline australis*) shown on the Land Transfer Title Plan shall be retained on the site. Should the tree(s) die or become diseased, they shall be replaced within the next available planting season.
21. A consent notice pursuant to Section 221 of the Resource Management Act 1991 shall be registered on the Certificate of Title for Lot 17 advising the owner(s) and subsequent owner(s) of the requirement to comply with the following conditions on a continuing basis. The consent notice shall be prepared and registered at the expense of the consent holder.
- (a) The cultural marker identified on the Land Transfer Title Plan shall be retained on the site. No buildings shall be constructed or ground disturbance take place on the site of the cultural marker.
22. A consent notice pursuant to Section 221 of the Resource Management Act 1991 shall be registered on the Certificate of Title for Lot 25 advising the owner(s) and subsequent owner(s) of the requirement to comply with the following conditions on a continuing basis. The consent notice shall be prepared and registered at the expense of the consent holder.
- (a) The owner(s) of the Lot(s) for the time being shall maintain the planted areas contained within the lots in accordance with the approved landscape and planting plan required by condition 6 of subdivision consent RM070004 at all times. Planting undertaken as part of the approved landscape and planting plan shall not be removed, destroyed or intentionally damaged unless approved in writing by the District Planner, Wairoa District Council. Any plant specimens that are dead or diseased shall be replaced in accordance with the approved landscape and planting plan.

B. LANDUSE CONSENT APPLICATION (EARTHWORKS)

Pursuant to Sections 104B and 108 of the Resource Management Act 1991 the Wairoa District Council grant land use consent to SP Beach Limited and Wine Country Properties Limited to undertake 3000m³ of earthworks for the purpose constructing roads, vehicle access and filling residential lots as shown on the subdivision and development plans Reference 2189/18, *Proposed Subdivision of Lots 1 and 2 DP 359131*, dated July 2008, prepared by Surveying the Bay) subject to the following conditions.

General

1. The earthworks shall be undertaken generally in accordance with the information, further information, assessment of effects, statements of intent, mitigation measures, technical reports, drawings, specifications and plans submitted with the application. Where conflict arises between the conditions of the consent and the application the conditions of the consent shall prevail.
2. The consent holder shall be responsible for all costs associated with compliance with the conditions of the consent including any fees and charges required by the Council, any legal expenses and the cost of construction works. In the event of non-compliance being detected, the costs to the Council of any monitoring shall be paid by the consent holder in accordance with the Council's schedule of fees.
3. The consent holder shall ensure that all earthworks are designed by a Chartered Professional Engineer, and carried out and approved in accordance with the Council's Engineering Code of Practice to the satisfaction of the Engineering Manager unless the Engineering Manager approves a variation to the design standards and performance targets contained in the Council's Engineering Code of Practice.

Construction Works

4. The consent holder shall implement erosion and sediment control measures to ensure that there is no deposit of sediment or detritus into watercourses, wetlands, stormwater drains or the coastal marine area or beyond the boundary of the property. Any deposit of sediment or detritus onto Council road shall be removed within 24 hours.
5. The consent holder shall ensure that the construction works do not cause any offensive or objectionable discharge of dust beyond the boundary of the site.
6. The works shall be conducted so as to comply with the provisions of New Zealand Standard NZS 6803P 'Measurement and Assessment of Noise from Construction, Maintenance and Development Work'.
7. The works shall only be carried out between 7:30am and 5:30pm Monday to Saturday and shall not be carried out on a Sunday or a public holiday.
8. Prior to the commencement of any works on the site the consent holder shall submit a Construction Management Plan prepared by a suitably qualified and experienced person(s) that details the ways in which construction works will be managed to ensure compliance with conditions 4 to 7 above to the satisfaction of the Engineering Manager. The construction management plan shall include but not be limited to:
 - a. Timing and staging of construction works;
 - b. Reporting and auditing;
 - c. Complaints handling and reporting procedure;
 - d. All measures that will be undertaken to mitigate potential erosion and sedimentation effects to ensure compliance with condition 4;
 - e. All measures that will be undertaken to mitigate potential dust effects to ensure compliance with condition 5;
 - f. All measures that will be undertaken to mitigate potential noise effects to ensure compliance with condition 6;
 - g. Any other measures that will be undertaken to mitigate potential nuisance effects on nearby residents;
 - h. The contact details for the site manager.

9. The consent holder shall ensure that the works on the site are carried out in accordance with the approved construction management plan at all times to the satisfaction of the Engineering Manager.
10. The consent holder shall provide the Engineering Manager at least one weeks notice of the commencement of works on the site.

Landscape and Visual

11. The consent holder shall ensure that the cut and fill areas are re-grassed or planted with suitable species to ensure that complete coverage of the cut and fill areas is achieved as soon as practical and no later than the autumn immediately following the completion of the construction works.

Archaeological, Historical and Cultural

12. In the event that any Koiwi (human remains) or artefacts which may be of historic or cultural importance are discovered, all work in the vicinity shall cease immediately and tangata whenua, the New Zealand Historic Places Trust and the Wairoa District Council shall be immediately notified to determine any necessary protection, remediation or mitigation.
13. A representative of the tangata whenua shall be given one weeks notice in advance of the commencement of earthworks or excavation associated with these works and shall be given permission to enter and remain of the site (during daylight hours) during these works for the purpose of monitoring these works. (Note: the Council's iwi liaison officer should be consulted to identify who the appropriate tangata whenua representative is in regard to the Mahanga Area).
14. A qualified archaeologist shall be present on the site at the time of removal of the initial layer of topsoil to monitor for any possible archaeological site(s). Upon removal of the first layer of topsoil/grass cover in the earthworks excavation and filling areas the archaeologist shall carry out a site inspection for the purpose of assessing the likelihood of the presence of archaeological sites or urupa in the substrata. In the event that any urupa, middens, hangi pits, or any other archaeological remains or artefacts or soil structures indicating historical occupation are unearthed during site excavation, all work within the immediate vicinity of the site shall cease forthwith and a site meeting shall be held with representatives of tangata whenua and the New Zealand Historic Places Trust and the Wairoa District Council at which time the appropriate course of action shall be determined.

Review

15. The Wairoa District Council may initiate a review of the conditions of the consent in accordance with Section 128 of the Resource Management Act 1991 at any time by serving notice of the intention to do so under Section 128 of the Resource Management Act 1991. The purpose of the review will be to address any adverse effect on the environment that may arise from the exercise of the consent in relation to tangata whenua, sediment laden run off, dust and noise, success and degree of grass and plant growth and landscape and visual impacts.

WITH THE REASONS FOR THE RECOMMENDATION BEING:

1. The proposed activity is generally consistent with the relevant assessment matters of the Wairoa District Plan for the following reasons:
 - The site can be adequately accessed and serviced.
 - The potential for adverse effects on residential character and amenity values can be adequately mitigated.
 - The potential for adverse effects on archaeological, cultural and historical values will be no more than minor.
 - The potential for adverse effects associated with natural hazards can be adequately avoided or mitigated.

2. The proposal is considered to be consistent with the relevant objectives and policies of the Wairoa District Plan.
3. The proposal is considered to be consistent with the intent of the relevant provisions of the New Zealand Coastal Policy Statement, the Hawke's Bay Regional Resource Management Plan, the Proposed Hawke's Bay Regional Coastal Environment Plan and the Wairoa Coastal Strategy.
4. The proposal can be implemented generally in accordance with the Council's Engineering Code of Practice and as such any potential for adverse effects can be satisfactorily avoided, remedied or mitigated.
5. The proposal can avoid adverse effects associated with natural hazards of the type referred to in Section 106 of the Resource Management Act 1991.
6. The proposal is considered to be consistent with the principle of sustainable management and is considered to be an efficient and effective use of the existing land resource.

WITH THE REASONS FOR THE RECOMMENDED CONDITIONS BEING:

General

1. To ensure that measures required to avoid, remedy or mitigate actual or potential effects on the environment associated with the subdivision and development of the site are implemented.

Subdivision Consent

2. Condition 1 ensures the subdivision is completed in accordance with the approved plans.
3. Condition 2 ensures that the applicant meets the costs associated with compliance with conditions of consent, including compliance monitoring.
4. Condition 3 ensures the subdivision is completed to an appropriate standard.
5. Conditions 4 to 7 sets out the matters that must be complied with prior to any work commencing on the site. This will ensure that the subdivision is designed to an appropriate standard and that the potential for adverse landscape, natural character and visual amenity effects are mitigated.
6. Conditions 8 to 16 ensure that the lots can be adequately accessed and serviced on an ongoing basis.
11. Condition 17 to 22 ensure that the future owner(s) of the lots are required to avoid, remedy or mitigate the potential for adverse effects on an ongoing basis.

Land Use Consent (Earthworks)

1. Condition 1 ensures the activity is completed in accordance with the approved plans and conditions of consent.
2. Condition 2 ensures that the applicant meets the costs associated with compliance with conditions of consent.
3. Condition 3 ensures that the works are appropriately designed and constructed in accordance with the Council's Engineering Code of Practice.
4. Conditions 4 to 7 ensure that any potential adverse effects arising from construction works are mitigated.
5. Conditions 8 and 9 ensure that there are measures in place for ensuring compliance with conditions 4 to 7.

8. Conditions 10 ensures that construction works are able to be monitored by the Council
7. Condition 11 ensures that there are no significant landscape and visual effects.
8. Conditions 12 to 14 ensure that any potential for adverse effects on archaeological or cultural values are avoided or mitigated.
9. Condition 15 enables Council to address adverse effects that may arise from implementation of the consent.

Emma France
MWH New Zealand Limited
Planning Consultant for the Wairoa District Council

28th November 2008



Linda Cook
DISTRICT PLANNER



Peter Freeman
CHIEF EXECUTIVE OFFICER

ADVICE NOTES

1. The consent holder should be aware that all necessary approvals required for building works under the Building Act 1991 must be obtained prior to the building works being carried out. The consent holder should contact the Council's Building Inspector to confirm requirements for building consents under the Building Act 1991.
2. The decision does not constitute land use consent approval for any additional earthworks associated with the construction of dwellings. The actual land use consent requirements for these activities should be confirmed with the District Planner once the design and location for the proposed dwellings and any associated land stability mitigation measures have been finalised.
3. The decision does not constitute approval to undertake works within road reserve. Prior approval for any works within road reserve must be obtained from Council, in addition to any requirement imposed by conditions of this consent. Contact the Council's Engineering Manager for further details. Traffic management plans will be required.
4. The Council has resolved to adopt New Zealand Standard 4404:2004 'Land Development and Subdivision Engineering' as the basis for its Engineering Code of Practice subject to modification for local variations and requirements. In preparing detailed design plans for the subdivision and land development, the consent holder should contact the Council's Engineering Manager to confirm design requirements.
5. Under the Historic Places Act 1993 it is an offence to destroy, modify or remove any site of archaeological significance. Should any such site or artefacts or cultural material be discovered during earthworks the work should cease immediately and the Historic Places Trust contacted to determine the appropriate course of action. For further information contact New Zealand Historic Places Trust, PO Box 2629, Wellington, Telephone (04) 472 4341.
6. For the purpose of consent conditions, reference is made to approvals required by the Engineering Manager. The Engineering Manager may delegate some of these approvals to other appropriate Officers.
7. A list of indicative inspection or hold points is available from Council's Engineering Department and these will form part of Engineering Approval for the works. Contact the Engineering Manager for a copy of these hold points.
8. Where conditions of consent require the approval by Council of plans, reports, specifications or other information prior to the commencement of works, this approval must be obtained in writing prior the commencement of construction works.
9. Plans, reports, specifications or other information required to be submitted to the Council for approval need to be submitted in advance of the commencement of construction works to allow for adequate review. As a guide, the consent holder should allow for 10 working days for initial review of submitted information. Additional information or clarification may be required, which could extend this timeframe.
10. Engineering design plans shall be submitted with a cover page/index stating title of plan, plan number and revision number. This shall be updated in full in the event the consent holder needs to revise plans so the Council always has a current master list of what plans are the most recent. Design plans (along with all supporting calculations, design reports, producer statements (where applicable)) shall be submitted at one time for the whole development.
11. No vehicle exceeding Class 1 weights and requirements may be used on the local roading network without first obtaining the relevant approval from Council. Tracked or other construction vehicles not designed for use on public roads must not be used on the local roading network.