

# **SUB20130059 - 25 Christine Terrace - Planners Report**

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<b>TO</b>	Judicial Committee
<b>FROM</b>	Karl Baldwin - Planner
<b>DATE</b>	16 October 2014
<b>SUBJECT</b>	<b>SUB20130059 - 25 Christine Terrace - Planners Report</b>

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## **THAMES COROMANDEL DISTRICT COUNCIL REPORT FOR JUDICIAL COMMITTEE**

<b>APPLICATION REFERENCE:</b>	SUB 2013/0059
<b>HEARING DATE:</b>	13 November 2014
<b>PLACE:</b>	Mercury Bay Community Board Meeting Room Whitianga
<b>APPLICANT:</b>	Coyote Developments Ltd
<b>LOCATION:</b>	25 Christine Terrace, Hahei
<b>LEGAL DESCRIPTION:</b>	Lot 3 DP 422974 CT 489664
<b>LOT AREA:</b>	Approximately 9ha
<b>ZONING:</b>	Coastal Zone (Outside All Policy Areas) Rural Zone (Outside All Policy Areas)
<b>PROPOSAL:</b>	Two lot subdivision and retaining wall within Coastal Zone (Outside All Policy Areas) and Rural Zone (Outside All Policy Areas)
<b>ATTACHMENTS:</b>	A Resource Consent Application B Submissions C Recommended conditions
<b>RECOMMENDATION:</b>	<b>Grant subject to conditions</b>

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Karl Baldwin from KTB Planning Consultants Limited has prepared this report under section 42A of the Resource Management Act 1991 for the Thames-Coromandel District Council. The report has been prepared to assist the Judicial Committee in its consideration of the resource consent application. The report and recommendation has no status other than as a report on the application. The conclusions and recommendation in this report are not binding and it should not be assumed that the Committee will reach the same conclusions

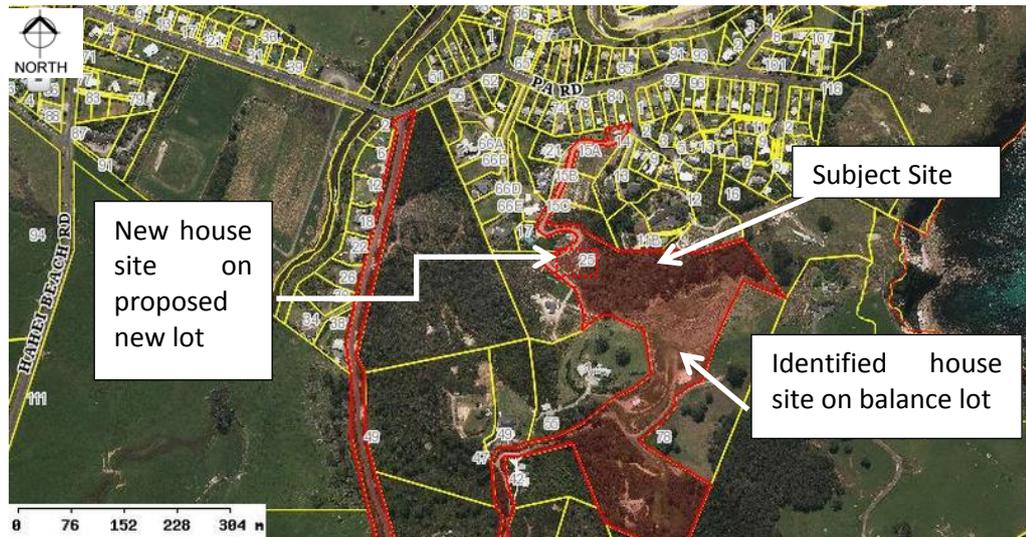
and make the same decision after having considered all the evidence presented at the hearing.

## 1.0 THE APPLICATION

- 1.1 The application is for a subdivision consent to create two lots which includes slope stability enhancement and the construction of a retaining wall providing stability for a proposed building site within Lot 1. The proposed subdivision scheme plan can be found in appendix A.
- 1.2 Lot 1 will comprise 0.58ha and the balance of the land, Lot 2, will comprise 8.5ha.
- 1.3 The application includes two engineering reports from Grant Crook and Tonkin & Taylor which discuss different retaining wall requirements for the building platform. The applicant should be asked to clarify the likely extent of the retaining wall as there are significant differences between the two commentaries. Both reports conclude that a suitable building platform is available on proposed Lot 1.
- 1.4 The applicant also provides a number of indicative sizes for the proposed building platform from 3,000m<sup>2</sup> (in the initial application document) to 1,000m<sup>2</sup> (in the planting plan) and then 300m<sup>2</sup> as stated in the Tonkin and Taylor report. The applicant should be asked to clarify the extent of the likely building platform at the Hearing. The applicant does confirm that any future dwelling should be subject of a maximum building height of five metres.
- 1.5 The applicant proposes to carry out landscaping as shown on the landscape plan (appendix A) and as detailed in the letter from Mr. Sims dated 24 August 2013. This includes planting various species below the proposed retaining wall; Pohutukawa trees to the north-west of the proposed house site along the existing driveway; as well as further native planting within the gully that runs north and east of the proposed house site.
- 1.6 A detailed description of the proposal can be found in the application and supporting documents prepared by Coyote Development Ltd. The application includes the following documents:
  - Resource Consent Application prepared by Alistair Sims
  - Preliminary Report on Proposed Subdivision of Lot 2 DP 422974 prepared by Grant Crook and dated 28 February 2011
  - Subdivision Scheme Plan titled 'Proposed Subdivision of Lot 2 DP 422974' prepared by Dunwoodie & Green Surveyors Ltd (file reference 5956)
  - Site Plans and Affected Parties Map prepared by Alistair Sims
- 1.7 An informal request for further information was sent on 21 August 2013. Further information was provided as follows:
  - Letter addressing earthwork requirements prepared by Alastair Sims and dated 21 August 2013
  - Landscape Plan prepared by Alastair Sims and dated 24 August 2013
  - Grant Crook Report named 'Proposed Subdivision Lots 1-4 25 Christine Terrace, Hahei' and dated 29 May 2006 (reference 4341)
  - Grant Crook Report named 'Proposed Subdivision Judian Holdings Ltd, Christine Terrace, Hahei' and dated 24 April 2007 (reference 4341)
  - Geotechnical Assessment by Tonkin & Taylor dated September 2014.

## 2.0 SITE AND LOCALITY

### 2.1 Location Plan



**Figure 1:** Location Plan

- 2.2 Hahei is a small coastal settlement with a mixture of permanent residences, holiday homes and a number of visitor accommodation facilities. Hahei is relatively contained by two major ridgelines to the east and west of the settlement.
- 2.3 Development is predominantly located on the gentle contours of the 'valley' between the enclosing ridgelines. There are, however, an increasing number of houses and structures (e.g. retaining walls) being constructed on the more elevated slopes of the ridgelines both to the south east, in the area of the subject property, and to the western ridgeline towards Cathedral Cove.
- 2.4 The subject site straddles part of the eastern ridgeline to the south-south-east of the settlement. When viewed from below, the subject site sits approximately two thirds of the way up the hillside, as can be seen in the photo below (refer Figure 2).
- 2.5 There are low to medium density residential properties to the north of the subject site (down slope) which are within the Coastal Zone - Coastal Village Policy Area. The land adjoining to the south is within the Coastal Zone – Outside All Policy Areas. From Hahei village two existing residential dwellings are visible to the south of the proposed Lot 1 building site at 17a Christine Terrace and 55 Sarah's Hill.
- 2.6 The moderate to steep slopes of this area contain a number of significant retaining wall structures associated with building platforms and vehicle access undertaken as part of previous development. The steeper slopes, some of which are within the subject property, contain a mixture of regenerating bush/scrub, large mature native trees such as Pohutukawa and numerous wilding pine trees. The understory comprises regenerating bush including ferns, manuka, kanuka, sedges and flaxes.
- 2.7 On the eastern flank of the site there is a steep gully and slip that runs down to the north and collects and discharges water onto the neighbouring property.



**Figure 2:** Photo showing location of proposed Lot 1 building platform taken looking south-east from the Hahei Beach Road carpark.

- 2.8 The proposed Lot 1 site is accessed by an existing concrete right-of-way that was constructed as part of a previous subdivision (refer to consent no. SUB2006/113). This previous subdivision created four lots and these lots share the existing right-of-way.
- 2.9 There are a number of Pohutukawa trees which have been planted along the boundary of the right-of-way which are 2 – 3m in height. This right-of-way has been designed and constructed to include a reticulated stormwater system.
- 2.10 The area within proposed Lot 1 that will accommodate the proposed building platform and retaining wall comprises some low scrub including bracken fern, grasses, manuka, gorse and pine tree stumps. It looks to have been cleared of vegetation some time ago (refer Figure 3).
- 2.11 There is a historical slip just below (north of) the proposed Lot 1 building site which is experiencing ongoing instability. This slip has been described in detail in both the Grant Crook and Tonkin & Taylor reports found in attachment A.
- 2.12 A four-bedroom dwelling and separate shed are currently being constructed in the eastern half of the site (proposed Lot 2), please refer to building consent ABA2013/913 and resource consent RMA2013/0091.



**Figure 3:** This photo was taken looking east from the existing right-of-way with pohutukawa trees and proposed Lot 1 building site in the foreground and regenerating bush and wilding pines in the background.

### 3.0 SITE HISTORY

3.1 There is a relatively complicated subdivision history associated with the subject property and neighbouring properties, with a number of resource consent applications having been granted and implemented.

3.2 The most relevant of these applications is subdivision consent SUB 2006/113, a non-complying activity application for four residential allotments. A copy of the consent decision is attached in Appendix D. This application created the subject property, being Lot 3 DP 422974.

3.3 This subdivision consent was later subject to a variation of the conditions relating to staging; please refer to the decision for SUB2007/141.

3.4 Application SUB2006/113 included a Landscape Report and Visual Assessment prepared by DJ Scott Associates Ltd. This report assessed the visual impact of the proposed development in the context of the existing landscape. It concluded that:

*‘Because of the nature of the landscape context and the minimal nature of the proposed development, it is anticipated that the overall visual effects will be no more than minor, and with time the proposed building platforms will be well integrated into the surrounding landscape’.*

3.5 The DJ Scott report further included a landscape management plan aiming to:

- Enhance the ecological integrity of the site by providing for ecological corridors and the integration of fragmented native vegetation;
- Enhance site stability, soil conservation and catchment protection,
- Ensure that proposed building platforms integrate with the surrounding landscape by utilizing planting to provide for visual softening; and
- Provide a suitable native species list and implementation and maintenance strategies.

- 3.6 The Council arranged for the DJ Scott report to be independently reviewed by Boffa Miskell Ltd. On account of recommendations made in that review, additional visual mitigation measures were incorporated into the plan by DJ Scott (please refer to amended plans dated November 2006). These included a planted bund behind the Lot 3 building site and amenity shelter planting below the Lot 4 building site.
- 3.7 Application SUB2006/113 was notified on 25th January 2007. A total of 28 submissions were received in response to notification. Seventeen of these were in support and eleven were in opposition to the proposed subdivision. Five of the submissions in opposition were subsequently withdrawn after the applicant carried out further consultation. The submissions were withdrawn on the condition that if consent were to be granted, the plans for an upgrade of the existing right-of-way from Christine Terrace would be approved.
- 3.8 The application went to a hearing on the 17th August 2007 and it is noted that the s42A staff report recommended that consent be refused on the basis that the proposal was considered to be contrary to the objectives and policies of the Proposed District Plan, the Waikato Regional Policy Statement and the New Zealand Coastal Policy Statement. It was further considered that granting consent would undermine the integrity of the District Plan by setting a precedent for non-complying subdivisions in the coastal zone (OAPA).
- 3.9 The Judicial Committee granted consent to the application as it considered that the potential or actual adverse visual effects of the subdivision would be minor on the proviso that the Landscape Management Plan (LMP) prepared by D.J Scott Associates was implemented.
- 3.10 With regards to the consideration of potential visual effects, the decision states that:
- 'The Committee had particular concerns of the ability of the proposed landscape planting to adequately mitigate the potential visual effects associated with the proposed house sites. As a means to ensure that the landscape planting is carried out in the manner proposed, the planting would be required to be completed and certified prior to the release of the new titles. The payment of a bond for the ongoing maintenance of the planting is also required to ensure that the plants establish and continue to be maintained in a healthy and thriving state. Overall, the Committee concludes that providing the conditions pertaining to landscape planting are satisfied, the potential or actual adverse visual effects will be effectively mitigated'.*
- 3.11 Under the 'Reasons for Decision' it is further recorded that:
- '...the Landscape Management Plan is considered to be a vital component of this application to ensure the adverse effects will be no more than minor'<sup>1</sup>.*
- 3.12 The conditions of resource consent SUB 2006/113 (as later modified by Variation SUB2007/141) pertaining to landscape management may be summarized as follows:
- Condition 11 requires the submission of detailed landscape management plan and an existing vegetation management plan; the preparation, implementation, management and ongoing maintenance programme for

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<sup>1</sup> Judicial Committee Report SUB 2006/113 - P4314.25

these plans; the types, sizes and numbers of plants; and an estimate of costs; all to be prepared by a suitably qualified landscape specialist;

- Condition 12 gives the Council a right to request a peer review of the plans required under Condition 11;
- Condition 13 requires the plans approved under Condition 11 to be implemented;
- Condition 14 requires the planting to be independently certified and issued with a planting completion certificate;
- Condition 15 requires a further inspection to establish planting mortality rates;
- Condition 16 requires further assessments and remedies to be undertaken if the mortality rate found under Condition 15 exceeds 5%;
- Condition 17 requires a bond to be paid at the rate of 150% of the cost of the works;
- Condition 18 requires the submission of annual maintenance reports for the whole of the five year maintenance period; and
- Condition 24(c) provides for a consent notice requiring that any buildings to be constructed on the lots to be in accordance with the amended DJ Scott LMP in terms of their architectural form, materials and colours.

- 3.13 In June 2009 the applicant (Mr Sims) submitted a detailed LMP for Lot 3 (the subject property) as required by Condition 11. This plan was written by Mr Sims as he considered himself to be suitably qualified to provide this plan. The plan was accepted by Council despite it not being entirely consistent with the D.J Scott Report.
- 3.14 The most obvious inconsistency relates to the proposed species mix. The DJ Scott report recommended a total of 15 different native plant species to be utilized for the infill planting in Lot 3. Mr Sims' LMP utilizes just three species, being kanuka, pittosporum and pohutukawa.
- 3.15 Notwithstanding these inconsistencies, the LMP provided by Mr Sims was approved by Council and a completion certificate for the planting works (dated 1st November 2010) was provided to Council by Max Johnston of Peninsula Environmental Practice.
- 3.16 The history outlined above is of significance to the current proposal as the proposed Lot 1 building site is located within an area that, on both the DJ Scott report and the detailed LMP prepared by Mr. Sims and approved by Council, is shown as an area of existing vegetation and infill planting.
- 3.17 Having undertaken a site visit it is evident that the infill planting shown on the approved LMP has never been undertaken in the western corner of the subject site where the Lot 1 building site is now proposed. (The only exception is the pohutukawa trees that have been planted along the existing right-of-way).
- 3.18 It is noted that the documents submitted with the current application do not provide any reasons as to why the proposed house site of proposed Lot 1 is located within a planting area identified in the LMP.

3.19 The above history has been provided because it is considered important for the Committee to be aware of the fact that a completion certificate has been issued for planting that has not been completed in accordance with the approved LMP.

3.20 It is also relevant as the Committee must be aware that this current application can only be assessed in terms of the effects on the existing environment.

#### **4.0 NOTIFICATION AND SUBMISSIONS**

4.1 The application was publicly notified on the 18<sup>th</sup> October 2013. Submissions closed on the 18<sup>th</sup> November 2013.

4.2 In total thirty one submissions were received in response to public notification. Of these submissions, seven were in opposition and twenty four were in support.

4.3 In summary the issues raised in opposition to the proposal include:

- Stormwater management
- Lack of engineering plans
- Land stability
- Visual effects
- Application is well short of the standard lot size of 20ha and proposed house site does not comply with front and side yard rules
- Previous subdivision consent (SUB 2005/67) that was declined
- Lot within a Landscape Management Plan (SUB 2006/13) – this LMP was vital in mitigating the visual effects of the subdivision
- ROW access
- Traffic
- Contrary to objectives and policies of the District Plan
- Precedent effects and integrity of the District Plan

4.4 The issues raised in support may be summarized as follows:

- Improvements in stormwater management
- Reduce possibility of damage to lower properties and reduction of silt run-off into the Wigmore stream

4.5 A copy of the submissions are provided as appendix B.

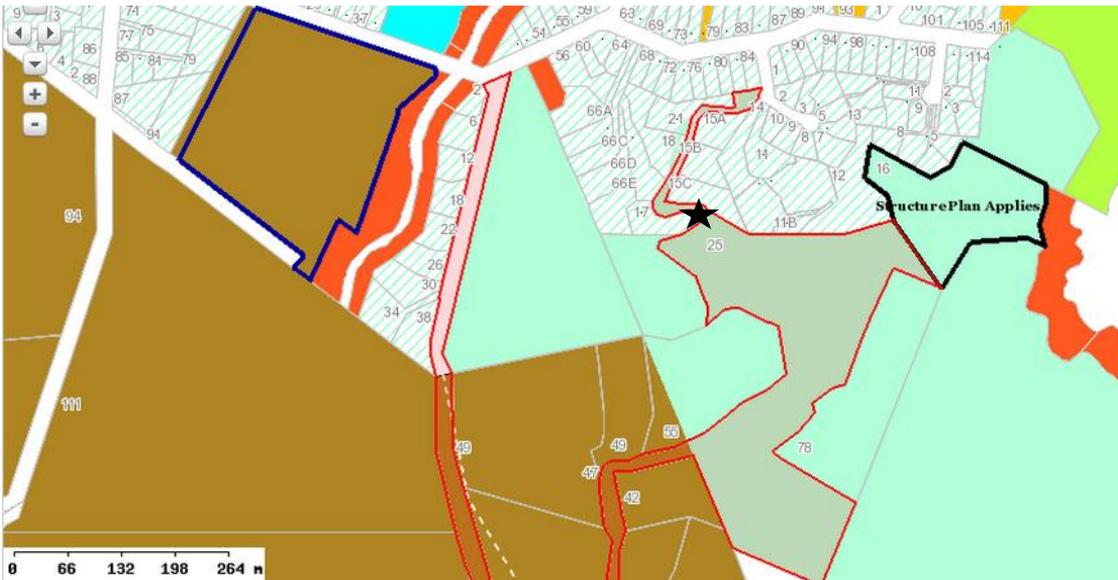
#### **5.0 DISTRICT PLAN PROVISIONS**

##### **5.1 Planning Framework**

##### **5.2 Zoning**

5.3 The site is zoned Coastal Zone (Outside All Policy Areas) and Rural Zone (Outside All Policy Areas) in the TCDC District Plan.

5.4 As can be seen in the image below, the majority of the property, including the proposed additional allotment, is within the Coastal Zone (OAPA).



## 5.5 Designation and Limitations

5.6 The site is not affected by any designations. There are two consent notices registered on the title. These relate to vehicle crossings, foundation design, effluent disposal, stormwater disposal, access way, turning area construction and the submission of a detailed landscape management plan prior to the lodgment of a building consent application on Lot 3 (the subject site).

5.7 There is an encumbrance (BO56142.4) registered on the title. This affects the part formerly comprised in CT 132900 and relates to covenants for the protection of native vegetation. Upon further investigation it appears that this encumbrance does not relate to the land subject to this application.

## 5.8 Reasons for Consent

5.9 Rule 751.3 of the TCDC Operative District Plan states that a minimum 20ha average lot size is required within the Coastal Zone (OAPA). The proposal fails to meet this rule as the average lot size resulting from the subdivision would be 4.5ha.

5.10 The proposal is therefore a **non-complying activity**.

## 6.0 STATUTORY PROVISIONS

6.1 A subdivision consent for a non-complying activity is determined pursuant to Sections 104, 104B, 104D(1), 106 and Part II of the Resource Management Act 1991.

### 6.2 *Section 104D(1)- Particular restrictions for non-complying activities*

6.3 As a non-complying activity, pursuant to Section 104D(1) of the RMA, Council must first be satisfied that:

- (a) Any adverse environmental effects of the proposed activity are likely to be minor, **or**
- (b) The proposal is not contrary to the objectives and policies of the District Plan.

6.4 If either one of these two tests is passed Council is then able to consider the application on its merits pursuant to Section 104 of the RMA. This test is known as the threshold test. It is understood that neither of these two tests have primacy.

### **6.5 Section 104 – Consideration of an application**

6.6 Section 104 sets out the matters that the Council shall have regard to in assessing the proposal. Briefly, the relevant matters are:

- (a) Any actual or potential effects on the environment of allowing the activity.
- (b) Any relevant provisions of
  - (i) a national policy statement;
  - (ii) a New Zealand coastal policy statement;
  - (iii) a regional policy statement or proposed regional policy statement;
  - (iv) a plan or proposed plan;
- (c) Any other matters the consent authority considers relevant and reasonably necessary to determine the application.

### **6.7 Section 104B of the Act**

6.8 For a non-complying activity, section 104B of the Act states that Council may grant or refuse the consent, and (if granted) may impose conditions under section 108 of the Act.

6.9 Consideration of these matters is subject to Part II of the Act (refer below).

### **6.10 Section 106 of the Act**

6.11 Section 106 states that a consent authority shall not grant a subdivision consent if it considers that either:

- (a) Any land or structure on the land is likely to be subject to material damage by erosion, subsidence, slippage, or inundation from any source.
- (b) Any subsequent use that is likely to be made on the land is likely to accelerate, worsen, or result in material damage to that land, other land, or structure, by erosion, subsidence, slippage, or inundation from any source.

6.12 Council may grant the subdivision consent if it is satisfied that the effects described above will be avoided or mitigated by rules in the District Plan and conditions of consent.

### **6.11 Part II of the Act**

6.12 Part II of the Act embodies the purpose and principles of the Act. Part II has primacy in considering applications. Part II of the Act encompasses:

- Section 5 - Purpose and Principles of the Act:
- Section 6 – Matters of National Importance:
- Section 7 – Other Matters: and
- Section 8 – Treaty of Waitangi.

### **6.13 Conditions of consent**

- 6.14 If consent is granted, conditions may be imposed on the consent pursuant to Section 108 of the Act.

## **7.0 RMA SECTION 104D(1) ASSESSMENT**

### **7.1 Section 104D(1)(a) - Consideration of Environmental Effects**

#### ***7.1.1 Landscape and Visual Effects***

- 7.1.2 The applicant has prepared a visual assessment as part of the subdivision consent application. It is noted that the previous subdivision at 25 Christine Terrace (SUB 2006/13) was subject to a landscape and visual assessment prepared by a suitably qualified landscape specialist (D.J Scott Associates) which was independently peer-reviewed by Boffa Miskell Ltd. The applicant is not a qualified landscape architect, however, it is considered that the visual assessment submitted is appropriate given there has already been previous visual assessments carried out and that the subdivision is only creating one additional lot.

- 7.1.2 With regards to visual effects, it is noted that the proposed building site is located on a hillside which already features several existing dwellings that are visible from the Hahei village below (refer Figure 2). The most prominent of these are the dwellings at 55 Sarahs Hill (visible on the skyline) and 17a Christine Terrace.

- 7.1.3 The proposed subdivision would enable the construction of a further dwelling just below the existing dwelling at 17a Christine Terrace.

- 7.1.4 Any dwelling in the proposed Lot 1 building area would be subject to a 5m height limit as volunteered by the applicant. The proposed vegetation above and below the retaining wall, alongside the existing right-of-way and to the east of the proposed building platform would provide for visual softening of any buildings in this location.

- 7.1.5 In the context of the existing houses and given the proposed planting it is considered that an additional dwelling in this location would have no more than minor adverse visual effects and would be consistent with the character of the area.

- 7.1.6 Two submitters have raised concerns about the visual effects of the proposal. A submission states that *"the subdivision proposal will lead to another building being erected in the sensitive coastal margin which will have a detrimental effect on the landscape and natural character of the area"*.

- 7.1.7 With respect to this comment it is noted that whilst the subject site is not within a sensitive coastal margin, the site is considered to have inherent landscape values due to the prominent nature of the hillside, the drama provided by the steep slopes and the sense of physical enclosure they provide to the Hahei village.

- 7.1.8 It is considered that the proposed development would be compatible with this landscape character as the proposal seeks to minimize any modification to the natural landform, sets a limit to building height and provides for landscape planting. Furthermore a dwelling in this location would not appear overly prominent or unique in the context of the development that has already taken place.

- 7.1.9 The hillside in question has not been identified as being of a high natural character. Although visible from the village and coast the hillside has over the years been

subject to change from rural farming to low density residential settlement and any sense of pristine natural character has therefore been lost. That is not to say that no natural character remains, as the hillside is dominated by existing vegetation and from some vantage points is visually contiguous with the Pa Hill headland to the north. This headland has been identified as an outstanding natural landscape in the TCDC Proposed District Plan.

- 7.1.10 One of the submission received raises concerns over the implementation of the SUB 2006/113 Landscape Management Plan and the fact that the house site shown within proposed Lot 1 is entirely within an area that was identified for infill planting.
- 7.1.11 It is correct that infill planting appears not to have been completed. The part of proposed Lot 1 in vicinity of the proposed building site is currently only sparsely vegetated with gorse and scrub. However, this non-compliance in itself is not considered to lead to adverse visual effects in terms of the development that may take place on the building platform. It is further noted that additional planting is proposed as part of the current application.
- 7.1.12 It is concluded that in the context of the existing environment the proposal would have no more than minor adverse visual effects.

#### **7.1.13 Character and Amenity Effects**

- 7.1.14 The subject site is located to the south of the Coastal Zone - Village Policy Area. The surrounding area consists of low to medium density residential development and areas of vegetation predominantly on the steeper slopes.
- 7.1.15 In terms of amenity values it is considered that the area has already been substantially developed. The additional lot is consistent with the existing residential character of the surrounding area.
- 7.1.16 When considering residential amenity values and the privacy enjoyed by neighbouring properties it is considered that the majority of views from dwellings in the area are focused towards the north and looking towards the coast, instead of looking east or west towards the subject site. It is considered that the proposed subdivision will create only minor effects on existing residential amenity.
- 7.1.17 It is also considered that the proposed additional lot will be consistent with the existing low density residential character that has developed within this environment. Based on this consistency it is considered that any potential or actual adverse effects on the character of the surrounding landscape and residential amenity values enjoyed by neighbouring properties will be minor.

#### **7.1.18 Biodiversity effects**

- 7.1.19 The existing vegetation on site is not considered to have any significant biodiversity values. However, with protection from further development it is considered that the regenerating bush beneath the existing wilding pines will perform a valuable ecological function in terms of catchment cover, soil stability and habitat, whilst also making a positive contribution to the character of the area in visual terms.
- 7.1.20 Whilst the planting that is proposed as part of this application will go some way in providing for enhancement of the biodiversity values of the site, it is considered that robust conditions of consent are required to ensure the on-going retention and protection of the areas of native vegetation throughout the site.

- 7.1.21 To this end draft conditions have been prepared requiring the submission, approval and implementation of a detailed vegetation management plan which is to be prepared by an independent and suitably qualified person. The condition recommends separating the planting and associated works that can be carried out immediately (prior to s224 certification) and those that will be done after the building platform is created (via a s221 consent notice condition).
- 7.1.22 Subject to compliance with the recommended conditions of consent, it is considered that the existing indigenous biodiversity of the site would be protected and maintained.
- 7.1.23 *Development Suitability and Section 106 Matters***
- 7.1.24 Section 106 of the Resource Management Act deals with matters such as erosion, falling debris, subsidence, slippage or inundation from any source.
- 7.1.25 The application in its original form was accompanied by a preliminary engineering assessment undertaken by Grant Crook Consulting Engineers Ltd.
- 7.1.26 A number of the submissions received raised concerns regarding the stability of the land, based on the presence of existing slips and geotechnical reporting undertaken for previous subdivision applications in the area. Other submissions raised concerns regarding the potential for adverse stormwater effects.
- 7.1.27 Subject to Section 92 of the RMA, Council requested that a detailed site suitability assessment be undertaken by a qualified geotechnical engineer.
- 7.1.28 The applicant consequently engaged Tonkin & Taylor to prepare a geotechnical assessment of the site. This finds that the risk of instability at the proposed building platform on proposed Lot 1 is considered to be low and that the land is considered suitable for residential development provided the following engineering recommendations are followed:
- Construction of a suitably designed building platform for proposed Lot 1;
  - Installation of a suitably sized stormwater detention tank upstream of the existing concrete right-of-way stormwater pipe to ensure that post development stormwater flows are less than pre-development flows. This will be achieved by conveying all the runoff from the development site to a stormwater detention tank; and
  - Stabilisation of the headscarp of the historic landslip below the building site, probably by re-grading the scarp, installation of soil nails and erosion protection matting and planting of selected shrubs.
- 7.1.29 Furthermore the applicant proposes to construct a substantial retaining wall below the proposed building site which is discussed in both the Grant Crook report and the Tonkin & Taylor Report. As mentioned previously the applicant should be asked to clarify the likely extent of the retaining wall as there are significant differences between the two commentaries.
- 7.1.30 The site will require specific onsite treatment and disposal of wastewater. The previous Grant Crook report for SUB 2006/13 has indicated that the area is suitable for on-site treatment and disposal of wastewater and specific design and assessment will be required at the time of building consent.
- 7.1.31 The Thames-Coromandel District Council's Development Engineer Jeff Hopping has reviewed the geotechnical information provided and is satisfied that the

engineering matters can be addressed subject to detailed design and compliance with a number of recommended conditions.

- 7.1.32 Subject to compliance with these conditions it is considered that any adverse effects in terms of Section 106 matters would be no more than minor.

### **7.1.33 *Traffic and Rooding***

- 7.1.34 The proposed additional lot will result in an increase in traffic volumes onto Christine Terrace and the private right-of-way.

- 7.1.35 Council's Development Engineer has reviewed the formation and dimensions of the existing right of way and has not raised any traffic safety concerns.

- 7.1.36 Overall it is considered that any increase in traffic volume resulting from the proposal would be negligible and would not create a more than minor adverse effect on the safety of right-of-way users or the wider rooding environment.

### **7.1.37 *Cumulative Effects***

- 7.1.38 Cumulative effects include the combination of effects of other existing activities and effects which are likely to arise over time as a result of new activities.

- 7.1.39 In this case it is considered that there are a number of potential cumulative effects to be considered.

- 7.1.40 The proposal will result in an additional lot and therefore the potential for additional buildings to be constructed (albeit subject to Council control over external colours and cladding materials to suit the coastal environment).

- 7.1.41 A potential adverse cumulative effect in terms of visual amenity and landscape character may arise as the proposal will result in a higher density of built form when considered cumulatively with the existing houses in the area.

- 7.1.42 In this case it is considered that any such cumulative effects would be no more than minor. The proposed building site is sufficiently separated from nearby house sites and there remains substantial open vegetated areas between the houses which retain the open and secluded character of this part of Hahei, and which allow for a gradual transition from medium density development in the village, to low density development on the hillside and little to no development on the skyline.

- 7.1.43 However, it is considered that the hillside is approaching a limit in terms of the number of buildings that can be accommodated without a substantial change in character.

- 7.1.44 The mitigation of this cumulative effect also hinges on the successful implementation and retention of planting proposed under the current application as well as that proposed under historic applications, in particular SUB2006/113.

- 7.1.45 To ensure that cumulative effects are managed, it is recommended that conditions of consent are included which seek to protect from further development the existing regenerating vegetation within the subject site.

- 7.1.46 Further potential cumulative effects relate to the additional stormwater and wastewater discharges that will arise from a future dwelling on proposed Lot 1. In light of the engineering assessments that have been prepared by the applicant and

subject to compliance with the conditions of consent, it is considered that these effects can be managed so as to be no more than minor.

## 7.2 **Section 104D(1)(b) – Consideration of District Plan Objectives and Policies**

1. 7.2.1 In this case both the operative and proposed district plans are considered. The objectives and policies of the Operative District Plan relevant to the current application are considered to be those relating to Biodiversity, Landscape & Natural Character, Settlements and Amenity Values and Transportation. These are set out as follows:

2. 7.2.2 211 Biodiversity

### 3. 211.3 Objectives

4. .1 *To protect and enhance the quality, extent and biological diversity of significant indigenous vegetation or fauna in the District.*
5. .2 *To safeguard the life-supporting capacity of ecosystems.*
6. .3 *To promote the sustainable management of natural resources.*

### 7. 211.4 Policies

8. .2 *To recognise the quality and intrinsic values of ecosystems, indigenous vegetation and fauna habitat and enhance these values where appropriate.*
9. .3 *To ensure areas of significant indigenous vegetation and fauna habitat are protected in perpetuity and linkages, buffering and corridors are provided, where appropriate to further enhance these ecosystems.*
10. .4 *To ensure the biological diversity, extent and quality of significant indigenous vegetation or abundance and distribution of significant indigenous fauna are not adversely affected by subdivision, use or development.*
11. .6 *To gain additional or long term protection and enhancement of areas of significant indigenous vegetation or fauna habitat by enabling limited subdivision or development.*
12. .7 *To ensure natural resources are managed sustainably and that sustainability is not adversely affected by subdivision, use or development.*
- 13.

14. 7.2.3 It is considered that the proposal would not safeguard the life-supporting capacity of existing vegetation and would fail to sustainably manage the coastal land resource as it would result in the further fragmentation of land in this zone. The proposal does not recognise or enhance the intrinsic value of the existing regenerating indigenous vegetation within the site.

15.

16. 7.2.4 However, conditions of consent are proposed which would ensure that the remaining vegetation is protected in perpetuity. Subject to compliance with these conditions it is considered that the proposal would be in accordance with the biodiversity objectives and policies.

17.

18. 7.2.5 212 Landscape and Natural Character

### 19. 212.3 Objectives

20. .1 *To recognise, protect or where appropriate enhance the outstanding natural features and landscapes of the District.*

21. .2 *To recognise, protect or where appropriate enhance the outstanding natural character of the District.*
22. 212.4Policies
23. .1 *To ensure the outstanding natural features and landscapes of the District are protected from inappropriate subdivision, use and development, particularly where significant landscape change may result.*
24. .2 *To protect existing landscape values within the coastal environment and to encourage and provide for appropriate development, which will remedy the adverse effects of past land uses and enhance the natural character and amenity values of the coastal environment.*
25. .3 *To promote the restoration and enhancement of existing degraded landscapes and ecosystems.*
26. .4 *To ensure activities or development reinforce or enhance the landscape character of an area.*
27. .5 *To recognise the landscape values within the natural, cultural and built environments of the District's towns, villages and countryside.*
- 28.
29. 7.2.6 The 'Coromandel Peninsula Landscape Assessment' commissioned by the Thames-Coromandel District Council does not identify the subject site as being within an 'Outstanding Landscape' or an 'Amenity Landscape'.
- 30.
31. 7.2.7 The hillside within which the subject site is located has been subject to previous development and therefore does not contain any pristine natural character values. However, the landform and existing vegetation do contribute to a moderate level of natural character.
- 32.
33. 7.2.8 Furthermore, the site is in close proximity to the Pa Hill headland at the southern end of Hahei Beach and this is considered to be an outstanding landscape with high natural character. Any proliferation of development on the subject site has the potential to detract from the more significant natural character areas in the vicinity.
- 34.
35. 7.2.9 Whilst the proposal does provide some mitigation planting around the proposed building site, this would not ensure the protection or enhancement of the existing regenerating bush ecosystem within the site.
- 36.
37. 7.2.10 However, subject to compliance with the recommended conditions of consent requiring a covenant to be imposed to ensure protection and management of the vegetation in perpetuity, it is considered that the biodiversity of the site would be protected and retained.
- 38.
39. 7.2.11 213 *Settlements and Amenity Values*
- 40.
41. 213.3Objectives
42. .1 *To maintain and enhance the amenity values, landscape character and coherence of the District towns and settlements.*
43. .2 *To protect sensitive coastal and natural environments from the adverse effects of new settlement and settlement expansion.*
- 44.
45. 213.4Policies
46. .1 *To ensure the character of the built environment, including commercial, housing and subdivision design, is coherent with the landscape character and amenity values of the immediate and surrounding area.*

47. .3 *To contain the expansion of settlements so that the District's natural areas, rural areas and coastline margins are protected.*
48. 3.2 *Development will be concentrated in appropriate form and scale...in the Coastal Village Policy Areas... the form and scale of development will be in accordance with the landscape character of the area.*
49. .5 *To ensure the amenity values associated with open space, recreation, coastal and ecological areas are not degraded.*
50. .6 *To recognise the remoteness, tranquillity and ruggedness of the District's countryside, especially in the mountains and along the coast.*
- 51.

7.2.12 The proposed subdivision would not contain the expansion of the Hahei Village and would instead promote urban creep into the coastal and rural hinterland. However, it is considered that a precedent has already been set in this regard by approval of the previous subdivision and that the proposal is consistent with the resulting character of the area.

7.2.13 In summary it is considered that although the proposal would be contrary to Objective 213.3.2, it would be in keeping with the existing character and amenity values of the immediate and surrounding area.

7.2.14 216 *Transportation*

216.3 *Objectives*

- .1 *Maintain an efficient and safe road and air transportation network that meets the needs of the District's community.*
- .4 *Ensure the potential adverse effects that activities may have on the safe and efficient operation of the transportation network are avoided, remedied or mitigated.*

7.2.15 It is considered that the creation of one additional lot would not have an adverse effect on the safe functioning of the existing right-of-way or the surrounding road network. As such the proposal would not be contrary to the relevant transportation objectives and policies.

7.3 Proposed District Plan Objective and Policies

7.3.1 The PDP was notified on 13<sup>th</sup> December 2013 and is, at the time of writing, entering the hearing stage. Hearings are not expected to conclude until April 2015. The objectives and policies of the PDP therefore carry little weight in the consideration of this application.

7.3.2 Under the PDP the site would be located within the Rural Zone. It would not be within any overlay areas.

7.3.3 The following objectives and policies would be relevant to the proposal:

7.3.4 *Objective 6.3.1 - Biodiversity*

*Indigenous biodiversity is maintained, restored or enhanced at the time of subdivision, use and development.*

*Policy 6.3.1a*

*Subdivision, use and development shall:*

- a) *Retain the ecological sustainability and natural characteristics of indigenous vegetation; and*

- b) *Minimise earthworks within and adjacent to areas of indigenous vegetation; and*
- c) *Locate buildings, structures and accesses outside of areas of indigenous vegetation; and*
- d) *Apply buffers around land use activities to minimise adverse effects on areas of indigenous vegetation; and*
- e) *Avoid the introduction of pest species and introduced predators into habitats where nationally threatened and at risk fauna and flora live; and*
- f) *Maintain, enhance or restore the functioning of ecological corridors and linkages, wetlands and dune systems; and*
- g) *Consider on-going management of priority locations mapped in Section 38 Subdivision, including legal protection, restoration, enhancement, pest control and stock exclusion.*

7.3.5 Subject to compliance with the recommended conditions of consent, existing areas of vegetation would be protected from further development. The proposal will therefore maintain the existing indigenous biodiversity on the subject site.

7.3.6 *Objective 15.5 - Settlement Development and Growth*  
*Settlement development and growth maintains and enhances amenity values, character, historic heritage, transport connectivity, environmental sustainability and the vitality of individual settlements and their centres.*

*Policy 15.5a*

*Settlement development and growth including commercial, housing and subdivision design should be consistent with the existing character and context of the built environment and with the landscape character, historic heritage and amenity values of the area.*

*Policy 5b*

*Settlement development and growth should integrate and connect with other areas of employment, residences, open space, community focus points, existing infrastructure and the surrounding road network including pedestrian, and bicycle and mobility scooter traffic.*

*Policy 5c*

*Settlement development and growth shall not add to existing road safety risks and where possible should reduce such risks through incorporating network infrastructure improvements and upgrades.*

*Policy 15.5d*

*Settlement development and growth should be designed to:*

- a) *Minimise the need for large-scale excavation and erosion mitigation measures; and*
- b) *Avoid an increase in stormwater runoff e.g. detention ponds, permeable surfaces; and*
- c) *Encourage natural ventilation and sunlight into buildings and outdoor spaces; and*
- d) *Increase water and energy efficiency e.g. rainwater harvesting and solar panels; and*
- e) *Enhance indigenous biodiversity e.g. through the choice of landscape and garden plantings; and*

- f) *Reduce the level of contaminants in water, air and soil e.g. non-toxic building materials; and*
- g) *Encourage multi-modal transport options e.g. walking and cycling infrastructure.*

7.3.7 The proposal is consistent with the existing amenity and character of the area. Minor enhancement of the existing indigenous biodiversity is proposed by way of additional planting. A recommended condition of consent provides for the ongoing protection of existing vegetation from further development.

7.3.8 *Objective 15.10*

*The unique characteristics of each settlement are recognized and guide settlement development and growth in the District.*

*Policy 10d – Hahei*

*Hahei should retain the existing rural and natural character backdrops and the low-key, beach-village built form. Development and growth should not occur where it increases demand for additional water, wastewater, stormwater and roading network infrastructure.*

7.3.9 The proposal is considered to retain the character of the village and will be self-sufficient in terms of services.

7.3.10 *Objective 16.3.1*

*Subdivision benefits the District by being ‘the right thing in the right place’, maintains and enhances amenity, biodiversity and natural character and fits within its landscape and surroundings.*

*Policy 16.3.1a*

*Subdivision shall not adversely affect the character and amenity of the surrounding built and natural environment (including Historic Heritage Areas and sites with a Historic Heritage Item).*

*Policy 16.3.1b*

*Subdivision design shall be consistent with the relevant principles in Appendix 4 Subdivision Design Principles.*

*Policy 16.3.1e*

*Subdivision in the Rural Zone shall retain the open space character of the Rural Area.*

*Objective 16.3.6*

*Indigenous biodiversity is enhanced or restored, and protected, at the time of subdivision*

7.3.11 The proposal is consistent with the character of existing development in the area. Conditions have been recommended that would protect and retain existing indigenous biodiversity.

#### **7.4 Conclusion to RMA section 104(D)1 assessment**

7.4.1 The proposal passes the first gateway test in terms of 104(D) 1(a) RMA where the adverse effects of the proposal are considered to be minor. The proposal is considered to fail the second gateway test 104(D)1(b)RMA as the proposal is considered to be contrary to both operative and proposed District Plan policies which aim for the consolidation of existing settlements.

## **8.2 New Zealand Coastal Policy Statement s104(1)(b)(ii)**

- 8.2.1 One of the principal objectives of the NZCPS is to preserve the natural character of the coastal environment and to protect natural features and landscape values by (inter alia) identifying those areas where various forms of subdivision, use and development would be inappropriate and protecting them from such activities.
- 8.2.2 Natural character means the qualities of the coastal environment that together give the coast of New Zealand recognisable character. These qualities may be ecological, physical, spiritual, cultural or aesthetic in nature, whether modified or managed or not.
- 8.2.3 In this case it is considered that the hillside, on which the subject site is located, has already been modified by existing development. The proposed subdivision is considered to be consistent with the remaining moderate physical and aesthetic landscape values of the site.
- 8.3.3 The proposed conditions relating to the protection of remaining vegetation within the subject site would ensure that the ecological qualities of the site would also be retained.
- 8.3.4 Subject to compliance with these conditions it is considered that the proposal would be consistent with the objectives of the NZCPS.

## **8.3 Waikato Regional Policy Statement**

- 8.3.1 The RPS provides an overview of the resource management issues in the Waikato Region and policies and methods to achieve integrated management of the natural and physical resources of the whole Region.
- 8.3.2 The objectives and policies that are considered to be relevant to this proposal are those relating to natural character and biodiversity and are set out below.

### **8.3.3 3.5.4: Natural Character and Coastal Processes**

*Objective: Preservation of the natural character of the coastal environment including the physical and ecological processes which ensure its dynamic stability.*

#### *Policy Two: Recognition of Natural Processes*

*Ensure that the subdivision, use and/or development of the coastal environment are undertaken in a way, or at a rate which recognises and provides for the unique processes operating in this environment.*

#### **3.11.4: Maintenance of Biodiversity**

*Objective: Biodiversity within the region is maintained or enhanced.*

#### *Policy One: Avoid, Remedy or Mitigate Adverse Effects on Biodiversity*

*Allow the use and development of natural and physical resources while avoiding, remedying or mitigating adverse effects on biodiversity in the Region.*

- 8.3.4 The proposal provides for planting around the proposed building site and will therefore improve the biodiversity of the site. However, it is considered that conditions of consent should be included to protect the existing vegetation on site from further development. Subject to compliance with these conditions it is

considered that both the physical and ecological processes that contribute to the natural character of the area would be provided for.

#### **8.4 Other matters s104(1)(c) – Precedent and District Plan Integrity**

- 8.4.1 As a non-complying activity the Council should have regard to the potential for the creation of a precedent if consent is granted to this application. It would be reasonable to assume that other similar applications, on the same or similar sites, should be considered on the same basis as this application.
- 8.4.2 The risk in this case is setting a precedent whereby others will also seek subdivision consent for lots well below the minimum average lot size within the Coastal Zone (OAPA).
- 8.4.3 In this case it is my opinion that, with regards to visual and natural character effects, a precedent for this part of Hahei has already been set in granting consent to the previous four lot subdivision at Christine Terrace (SUB 2006/113). That consent allowed for the fragmentation of land within the Coastal Zone (Outside All Policy Areas).
- 8.4.4 Taken in the context of the development that has already been permitted in the area, the proposed subdivision is not considered to result in any additional significant adverse visual or natural character effects.
- 8.4.5 In addition, there are aspects of the application that make it so unique that the potential for a precedent effect to arise is further reduced and this relates to the proposed slope stabilization works in the area of the slip below the proposed building area and the requirement for ongoing vegetation protection.
- 8.4.6 The proposed stability works respond to a historical slip that if left unchecked threatens continued ground movement with potential adverse effects on the adjacent properties in terms of instability and flooding.
- 8.4.7 The other potential precedent effect that could be set is one of ignoring the intrinsic ecological values associated with the existing indigenous vegetation by allowing for a building site within an area previously identified for infill planting in a Landscape Management Plan.
- 8.4.8 However the proposed recommended conditions will circumvent this potential precedent by requiring the legal protection of all remaining indigenous vegetation on the site. This will allow for the continued regeneration of the existing indigenous vegetation thereby promoting its ecological functions including soil stability, catchment cover and habitat.
- 8.4.9 The slope stabilisation and vegetation protection opportunities associated with this application offer unique circumstances that differentiate this application from other similar rural/coastal subdivisions proposals that might be received by Council. Subject to compliance with the recommended conditions of consent, these benefits are considered to outweigh the potential adverse precedent effects that may be created by granting consent to this application.

## **9.0 PART II RMA ASSESSMENT**

### **9.1 Section 5**

This section of the RMA sets out the purpose of the Act as being to promote the sustainable management of natural and physical resources. “Sustainable management” is defined to mean:

*“... managing the use, development and protection of natural and physical resources in way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for the 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 eco-systems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

## **9.2 Section 6**

Section 6 of the Act sets out that all persons exercising functions and powers under the Act, **shall** recognise and provide for matters of national importance, which include the following:

- (a) The preservation of the natural character of the coastal environment (including the Coastal Marine Area)..., and protect them from inappropriate subdivision, use and development.*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;*

## **9.3 Section 7**

In achieving the purpose of the Act, Section 7(b), (c) and (f) direct the Council to have particular regard to:

- (b) The efficient use and development of natural and physical resources.*
- (c) The maintenance and enhancement of amenity values.*
- (f) Maintenance and enhancement of the quality of the environment”*

## **9.4 Section 8**

Section 8 also states that the Council shall take into account the principles of the Treaty of Waitangi.

## **9.5 Comment**

9.5.1 With regards to Part II of the Act it is considered that the proposal would, subject to compliance with the recommended conditions of consent, avoid and mitigate adverse effects and provide for the maintenance and enhancement of amenity values and the quality of the environment by:

- providing additional planting;
- protecting existing vegetation on site;
- the provision of on-site services; and
- undertaking slope stabilization works.

9.5.2 As such it is considered that the proposal would be consistent with the purpose of the Act.

## 10.0 SUMMARY

- 10.1 The proposed two-lot subdivision, although well below the minimum average lot size required in the Coastal Zone (Outside All Policy Areas), subject to compliance with the recommended conditions of consent, will be undertaken in a manner that will avoid adverse effects on the environment.
- 10.2 The proposal will allow for an additional dwelling which, in the context of existing development in the area and given the proposed planting and building site height limit, would not be visually dominant or detract from the natural character of the coast, the surrounding landscape or the village feel of Hahei.
- 10.3 The proposal includes measures to provide stabilisation for a historic landslip which will have benefits for surrounding properties in terms of ground stability and flood hazard management.
- 10.4 Recommended conditions of consent require the legal protection of remaining areas of native vegetation which will ensure that the biodiversity of the site and its ecological functions are maintained.
- 10.5 Notwithstanding the fact that the proposal is contrary to the Operative District Plan objectives and policies relating to the Settlement Strategy, on balance it is considered that the positive aspects of the proposal outweigh the negative and that the potential for a precedent to be set by granting this application is very low by virtue of the unique characteristics of the proposal.

## 11.0 CONCLUSION

- 11.1 Given the above considerations it is concluded that the proposal is consistent with the relevant provisions of the Resource Management Act and that consent should be granted subject to recommended conditions.

## 12.0 RECOMMENDATION

- 12.1 It is recommended that the Thames-Coromandel District Council **RESOLVE** pursuant to Sections 104, 104B, 104D, 106 and 108 of the Resource Management Act 1991, **TO GRANT SUBDIVISION CONSENT** to create 2 lots.
- 12.2 Should the Committee give consideration to granting consent to the proposed development, a set of recommended conditions are provided in attachment C.

**Attachment A**

[Attachment A - SUB20130059 - Application](#)

[Attachment B - SUB20130059 - Further Information](#)

**Attachment C - SUB20130059 - Submissions**

**Attachment C**  
**Attachment C - SUB20130059 - Recommended conditions**