

BEFORE THE PROPOSED DISTRICT PLAN HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER the Proposed Thames Coromandel
District Plan: Biodiversity, Subdivision
and Earthworks Hearing

STATEMENT OF EVIDENCE OF Peter Raymond Hall

On behalf of Northern Land Property Limited (Submitter Number 821)

30 January 2015

1.0 SUMMARY OF EVIDENCE

- 1.1 This statement of planning evidence addresses the matters raised in the submission and further submissions to the Proposed District Plan by Northern Land Property Limited (“NLPL”).
- 1.2 My evidence concludes that the Hearings Panel does not have sufficient analysis before it to justify the inclusion of a new policy and rule requiring an esplanade reserve or strip on subdivision of sites to greater than 4 hectares as sought in the Council’s own submission on the Plan. In any event it is my opinion that the new policy and rule sought is unlikely to be the most appropriate way to achieve the Plan objectives. The costs will likely outweigh the benefits and, relying on subdivision of the coastal environment as it does, it will not achieve the objective of enhancing public access to the coast.
- 1.3 My evidence also concludes that a number of changes are required to the Conservation Lot Subdivision and Boundary Adjustment provisions to ensure these are the most appropriate way to achieve the relevant objectives of the Proposed Plan, including their efficiency and effectiveness in achieving these objectives.

2.0 QUALIFICATIONS AND EXPERTISE

- 2.1 My name is Peter Raymond Hall. I am a Planner and Partner at Boffa Miskell Limited, a national firm of consulting planners, ecologists and landscape architects.
- 2.2 I hold the qualifications of Bachelor of Planning (Auckland) and am a full member of the New Zealand Planning Institute. I have over 20 years’ planning experience. During this time I have had positions in both local government and as a consultant planner.
- 2.3 I have undertaken a wide range of consenting and planning policy work throughout New Zealand, with a particular emphasis on Auckland and Northland.

- 2.4 I have a wide range of experience in planning policy matters and appeared before Council hearings, Environment Court hearings and two Boards of Inquiry.
- 2.5 I have been engaged by NLPL to present this planning evidence. I have provided planning advice to NLPL in relation to its landholdings at Te Punga north of Whangapoua since 2011. During this time I have prepared and overseen the preparation by others in my team of subdivision and land use applications, as well as assisting the Company in achieving title on its existing 5 lot subdivision consent.

3.0 CODE OF CONDUCT

- 3.1 I have read the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the code and am satisfied the matters I address in my evidence are within my expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.
- 3.2 I have also read the 16 January direction of the Hearing Chairperson. I can confirm that the matters addressed in this evidence are within the scope of the submission and further submissions made by my client, and my evidence is limited to those matters where change is sought to the Proposed Plan with reasons provided.
- 3.3 I have read the relevant Council Section 42A Hearing and Section 32AA Further Evaluations reports (“Officer’s reports”).

4.0 NORTHERN LAND PROPERTY LIMITED

- 4.1 A description of NLPL’s landholding is set out in its submission. In summary, the Company owns the property known as Te Pungapunga Station which is to the north of Whangapoua and to the south and inland of Wainuiototo (New Chums) Beach. The

property comprises several titles and has a total area of 366 hectares in farming use with areas of bush.

- 4.2 The Proposed Plan applies a Rural zoning to this land and Outstanding Landscape, Natural Character and Coastal Environment overlays. Priority Areas for Protection (highest priority at 2ha identified in red to the north and lowest priority at 14ha to the south) are identified on the property (refer map at **Attachment 1**)
- 4.3 NLPL's submission seeks a number of changes to the Proposed Plan.
- 4.4 The Subdivision Rules and in particular the Conservation Lot subdivision approach is generally supported; however amendments are sought to make the provisions more workable and enable sustainable and comprehensive management of natural and physical resources to be achieved. In particular, amendments to the Section 38 Subdivision Rules are sought to provide for the following outcomes:
- The transfer of lots to other titles in the same ownership and general configuration of lots to allow Conservation Lots to be best located on large landholdings comprising multiple titles as part of a comprehensive subdivision proposal.
 - Removal of reference to previous conservation lot subdivisions and removing the two conservation lot maximum.
 - Areas of bush not identified on as priority areas on Figure 1, Section 38 to also qualify for Conservation Lots through a consent process and site by site assessment.
 - Amendments to the boundary adjustments provisions to provide for greater flexibility.
- 4.5 NLPL is also a further submitter opposing the Council's submission which seeks a new esplanade reserve/strip policy and rule.

- 4.6 NLPL is also a further submitter opposing Council's submission which seeks to amend the definition of "Lot".
- 4.7 This evidence addresses these matters.
- 4.8 I understand the April hearing will deal with submissions to the Outstanding Landscape Overlays including land use, subdivision and earthworks on land subject to this overlay. NLPL is also a submitter on these provisions.
- 4.9 I will be presenting evidence on these in support of these parts of NLPL's submission to the April hearing. NLPL have sought that a comprehensive Structure Plan approach applies to the property. That may include alternative provisions for subdivision and density that relate specifically to this property and will be presented to the April hearing.
- 4.10 By way of background, NLPL holds a subdivision consent for five lots on its landholdings at Te Punga and has also lodged subdivision consents under the Operative Plan that use that Plan's Conservation Lot Subdivision provisions.

5.0 ESPLANADE RESERVE/STRIPS

- 5.1 The Council's own submission on the Proposed Plan seeks new provisions to require esplanade reserves/strips to be established in the rural area for an allotment of any size, including lots in rural areas greater than 4ha.
- 5.2 As noted in the Officer's report¹, under Section 230(5) of the RMA the Council is able to require an esplanade reserve on the subdivision of lots greater than 4ha but only where a rule in a District Plan requires it.
- 5.3 In response to this submission, the Officer's Report recommends a new Policy 8aa and new rules. These policies and rules require the

¹ Para 17, Officers Report on Section 38 Subdivision, Section 42A Report and Section 32AA Further Evaluations

- provision of an esplanade reserve or esplanade strip to be set aside where allotments of 4ha or more are created along the mark of mean high water springs or along the bank of any river.
- 5.4 Requiring esplanade reserves and strips to be provided on lots created greater than 4ha is a significant policy change in the Proposed Plan that has only been introduced by way of a submission, with implications for land owners and agencies that have an interest in coastal resources.
- 5.5 In my opinion there is insufficient justification for the introduction of this new policy and associated rules and as I read, no analysis under Section 32AA of the RMA.
- 5.6 The costs of the policy approach for both the Council and landowners are potentially significant and the benefits and effectiveness questionable. There is however no analysis of these factors as required by Section 32AA. This is a major shortcoming given the significant implications of the new policy, leaving the Hearing Panel with insufficient evidential base to undertake its own Section 32AA analysis and make a balanced decision on the new policy and rules.
- 5.7 This new policy has only been introduced by way of a submission to the Plan by the Council. In my opinion, if it was contemplated by the Council at the time of notification it should have been included in the Proposed Plan as notified thereby allowing submitters the opportunity to submit on this point, rather than the current situation whereby only further submitters such as my client have scope on the matter.
- 5.8 Section 32(1)(b) of the RMA requires that an evaluation be made as to whether the provisions (in this case the new policy and rules) are the most appropriate way to achieve the objectives.
- 5.9 Section 32(2) of the RMA specifies that an assessment must identify the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the provisions, including opportunities for opportunities growth and employment. If

practical it must quantify these benefits and costs. It must assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter.

5.10 Under Section 32(1)(c) of the RMA, the Section 32 report must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

5.11 I would anticipate that a proper Section 32 evaluation of the new esplanade reserve/strip provision sought would evaluate (and where practical quantify) as a minimum factors such as the following:

- The anticipated costs to landowners in vesting esplanade reserves or foregoing use of esplanade reserves;
- The effectiveness of the regime for determining compensation to landowners and what that regime is;
- The costs to the Council anticipated in the maintenance of new esplanade reserves, including over what might be a reasonable time period before gaps in coastal esplanades are joined if they are at all and during which time access is limited;
- An analysis of whether other coastal resources including those of significance to tangata whenua and those of heritage and conservation values are able to be adequately protected with either esplanade reserves or strips and the potential costs and benefits to such resources;
- The overall effectiveness and efficiency of the new policy in achieving the objective of enhancing public access to and along the coastline, particularly where as a general statement, there are limited opportunities for subdivision in the coastal rural environment under the Proposed Plan as notified.

- An analysis of the effectiveness of other methods to achieve the objectives, including acquisition or access by way of negotiation with landowners.

5.12 In the absence of the analysis and information above, NLPL opposes the introduction of the esplanade reserve/strip provisions. They are costly, unnecessary and do not achieve the purpose or principles of the Act.

6.0 SECTION 38 RULE 8 CONSERVATION LOT SUBDIVISION

6.1 I have made amendments to the revised rule 8 as attached to the Officer's report that would satisfy the relief sought by NLPL in its submission (my changes are shaded and numbered⁽¹⁾ for reference):

" Rule 8 Subdivision creating one or more conservation lots

1. *Subdivision creating one or more conservation lots in the Rural Zone is a **restricted discretionary activity** provided:*

- The ~~lot to be subdivided~~ site site⁽¹⁾ has not been the subject or result of a previous subdivision under this rule ~~or any previous conservation lot provisions since the date of the Proposed District Plan Decision Version dated 7 October 1998~~; and*
- The ~~lot~~ site site⁽¹⁾ ~~to be subdivided~~ contains a priority ~~is within an area identified on Figure 1 Priority Areas Locations for Indigenous Ecosystem Restoration or and Enhancement, and Protection by Conservation Lot or is an area outside a priority area⁽²⁾~~; and*
- The priority area identified on Figure ~~Map 1~~ or area outside a priority area⁽²⁾ to be restored or enhanced, and protected, set aside for protection meets the following standards; and*

....

d) *The application is accompanied by a report by a suitably qualified ecologists that:*

....

e) *No more than two conservation lots are created per lot; and⁽⁴⁾.*

f) *Where an allotment of 4ha or more is created along the mark of mean high water springs of the sea or along the bank of any river an esplanade reserve or esplanade strip is set aside.*⁽⁴⁾

2. *The Council restricts its discretion to all matters in table 5 at the Section 39.*

3. *Subdivision creating one or more conservation lots in the Rural Zone that does not meet the standards in Rule 8.1 b or c) or f)⁽⁴⁾ is a **discretionary activity**. Subdivision creating up to two conservation lots that does not meet the standards in Rule 8.1 a), ~~b~~, d) or e) is a **non-complying activity**".*

4. *Conservation lot subdivision that includes both the creation of one or more additional lots under Rule 9 and the creation of one or more conservation lots under Rule 8 as part of a single comprehensive application shall be a **restricted discretionary activity***⁽³⁾.

Change (1): "Lot" / "Site"

6.2 Although apparently a simple revision, the change from 'site' to 'lot' recommended in the Officer's report significantly limits the effectiveness of the conservation lot subdivision rule to achieve the relevant objectives².

² Including Section 16 Subdivision Objective 1 and Biodiversity Objective 1c (as proposed to be revised in the Officer's report):

"Subdivision Objective 1: Subdivision benefits the District by being 'the right thing in the right place' located and designed to provide for activities anticipated in the zone while, maintainings and enhances the amenity values, biodiversity and

6.3 Site is defined in the Proposed Plan as:

“Site means the area of land clearly related to a particular development, application, proposal or activity. A site contains at least one complete lot. Included in this definition are:

- *All buildings and land use that relate to a particular development, application, proposal or activity;*
- *The site can include more than one lot; however lots must be adjoining”.*

6.4 My changes recommend the retention in part a) and b) of the rule of ‘site’ rather than ‘lot’.

6.5 The concept of allowing consideration of a wider ‘site’ (“...*the area of land clearly related to a particular... proposal...*”) at the time of subdivision as opposed to the narrower ‘lot’ (either a single allotment or title) is very important for conservation lot subdivisions. It allows for a comprehensive approach to subdivision of sites comprised of separate titles and/or lots.

6.6 Using ‘site’ as the basis for the application allows for the ‘transfer’ of entitlements from lots or sites containing the Priority Areas to less sensitive parts of a wider application site – ie to arrive at an appropriate configuration of conservation lots and protected/enhanced vegetation.

6.7 NLPL landholdings are a case in point (refer **Attachment A**). Here the red priority area is located over the northern areas of the property. The overall landholding comprises several titles, some in multiple allotments. A subdivision proposal may achieve the best integrated resource management outcomes by incorporating in the

natural character and fits within its of the surrounding landscape landscape and surroundings”.

Biodiversity Objective 1c: Subdivision resulting in ~~for~~ restoration or enhancement of indigenous biodiversity shall be considered in the Rural Area where indigenous biodiversity is increased, and protected in legal perpetuity, by one or more of the following:...”

application site several titles, and for example transferring the subdivision entitlements achieved by the protection of the red priority areas to less sensitive areas to the south – part of the same ‘site’ but on an adjoining ‘lot’.

- 6.8 It is important that the rule retains the ability for conservation subdivision entitlements generated by the priority area to be located outside of its immediate lot or site. In fact where the entire lot is identified as a priority area, it may be highly desirable to do so. A requirement that the ‘lot’ only contains the priority area does not achieve this.
- 6.9 I note the Council have a submission to amend the definition of ‘lot’. NLPL are a further submitter opposing this definition change and I understand that definitions are to be considered in a later hearing. The revisions sought in the Council’s submission effectively expand the definition to include all adjoining allotments held in one certificate of title. My conclusions remain the same even if this change sought by the Council was accepted. The concept of being able to transfer entitlements across multiple sites or lots (as per the definition sought to be amended by the Council) where presented as part of the same subdivision application would still only be allowed with the revisions I have recommended.

Change 2: Conservation Lot Subdivision for Areas Outside of Priority Areas

- 6.10 The submission by NLPL sought to provide opportunities for subdivision of areas outside of identified priority areas as a restricted discretionary activity.
- 6.11 The Officer’s report recommends changing the activity status for such applications from non-complying to discretionary and I consider this a step in the right direction.
- 6.12 Notwithstanding the process which the Council has undertaken to identify these priority areas (as explained in the Officer’s reports), in my opinion a consent path should still be made available to ensure the protection of areas not yet identified. This allows for the opportunity for site by site assessment of the values and benefits of

protection of non-identified areas, at the same time as the subdivision.

- 6.13 The protection of the priority areas identified relies on the assumption that such areas can in fact be subdivided. There are a range of factors including access, suitability etc that of course mean that they may not be able to be. In my opinion, a more effective way to achieve the subdivision and biodiversity objectives of the Plan is to also provide for the protection of areas not identified.
- 6.14 A restricted discretionary consent status is appropriate to achieve this outcome. Section 6 Biodiversity Policy 1c matters b) – i) sets out a clear prescription of the circumstances where subdivision resulting in the restoration or enhancement of indigenous biodiversity shall be considered in Rural areas. In doing so the outcomes sought to be achieved are clear and limited and do not warrant a full range of discretion for other matters (for example such areas in policy 1c f) must maintain or enhance habitat of nationally threatened or at risk indigenous species and at h) establish self-sustaining pest free areas). This sets the assessment bar high. In the changes I have recommended I have proposed to convert these matters into Table 5 assessment criteria for the assessment of areas outside of priority.
- 6.15 This approach recognises the reality of subdivision that opportunities for protecting areas of biodiversity significance through Conservation Lots should be able to be taken up where subdivision is proposed, which may not necessarily be in the identified priority areas. It also recognises that it is through the very process of site specific analysis of constraints and opportunities that occur with subdivision that can identify further areas of biodiversity value that may not be already identified on Figure 1 as a priority area.

Change 3: Comprehensive Subdivision as a Restricted
Discretionary Application

- 6.16 The Proposed Plan subdivision provisions require a two-step subdivision process for Rural Zoned land where that land is identified as a priority area and where subdivision yield is sought to be maximised.
- 6.17 The first step would see subdivision under Rule 9 “Subdivision Creating One or More Additional Lots”, potentially down to the 20 ha minimum average lot size - as a discretionary activity. The second step would see the subdivision of the titles thus created using Rule 8 “Subdivision Creating One or More Conservation Lots” as a restricted discretionary activity.
- 6.18 The net effect is a two-step process requiring titles to be obtained for the first step 20ha average subdivision application before an application for the second application can be made to re-subdivide these lots under the conservation lot provisions. The end outcome however is the same.
- 6.19 The Proposed Plan as notified provided for a bypass of this two-step process, although perhaps inadvertently, by way of its definition of ‘lot’. This referenced the RMA definition of allotment as set out in section 218 of the RMA. The section 218(2) definition of ‘allotment’ means any parcel of land under the Land Transfer Act 1952 that is a continuous area and whose boundaries are shown separately on a survey plan. It does not require titles to be issued for land to qualify as an allotment. This meant that to comply with rules 8 and 9 as in the notified version of the Plan, titles did not have to be issued for a subdivision under rule 9 before a second conservation lot application could be made under rule 8. In effect providing for a single step application.
- 6.20 The Council’s submission seeks to change the definition of ‘lot’ by removing the reference to the RMA section 218(2) definition and therefore removes the ability for this single step approach.

- 6.21 As I have noted above, NLPL have further submitted against this Council submission, principally for the reason of retaining the ability to do a single step conservation lot application.
- 6.22 In my opinion, it is better that the Plan directly deals with the matter rather than relying on the nuance of definition interpretation and provides a course for a single step restricted discretionary application (the same activity status as the ultimate conservation lot consent stage). The new rule 4 I have recommended above addresses this by allowing for comprehensive applications to be considered under rules 8 and 9 together.
- 6.23 As noted above, the ultimate effect in terms of subdivision yield is the same. The new rule 4 I have recommended is a more efficient approach in RMA Section 32 terms and reduces costs (time and money) to the applicant, and the Council, by providing a course for a single step application rather than two steps to achieve the same subdivision outcome as would otherwise be allowed under the conservation lot provisions.

Change (4) Esplanade Reserve/Strips

- 6.24 This matter is discussed in my evidence above, with changes required to delete the requirement elsewhere also.

7.0 SECTION 38 RULE 2 BOUNDARY ADJUSTMENTS

- 7.1 NLPL sought several change to the boundary adjustment rule. The Officer's report accepts a number of these and I support these changes. In particular the Officer's report recommends a revision to Rule 2 allow the adjustment of a common boundary between two "or more" contiguous lots which was a relief sought in the NLPL to recognise that boundary adjustments often involvement multiple lots.
- 7.2 The Officer's Report also removes the limitation that boundary adjustments are contained within the same overlay. Again this aligns with the relief sought in the NLPL submission and provides

for the fact that overlays cross cadastral boundaries and apply regardless.

7.3 One further change sought in the NLPL submission that has not been recommended in the Officer's report is the recognition that while boundary adjustments must be between contiguous boundaries, contiguous boundaries within the same title may in fact be separated by roads, rivers and other natural features. The NLPL landholding provides some examples of land within the same title that is divided by such features (Refer the map at Attachment One) Title SA29D/773 is divided by a paper road, while Title SA64D/338 is divided by the Pungapunga River.

7.4 I have set out below a revision to Rule 2 d) to provide for such circumstances that may occur in Rural environments:

“d) The adjustment involves a common boundary between two or more contiguous lots (land shall be regarded as being contiguous where it is separated from other land only by a road, drain, water race, river or stream); and ...”

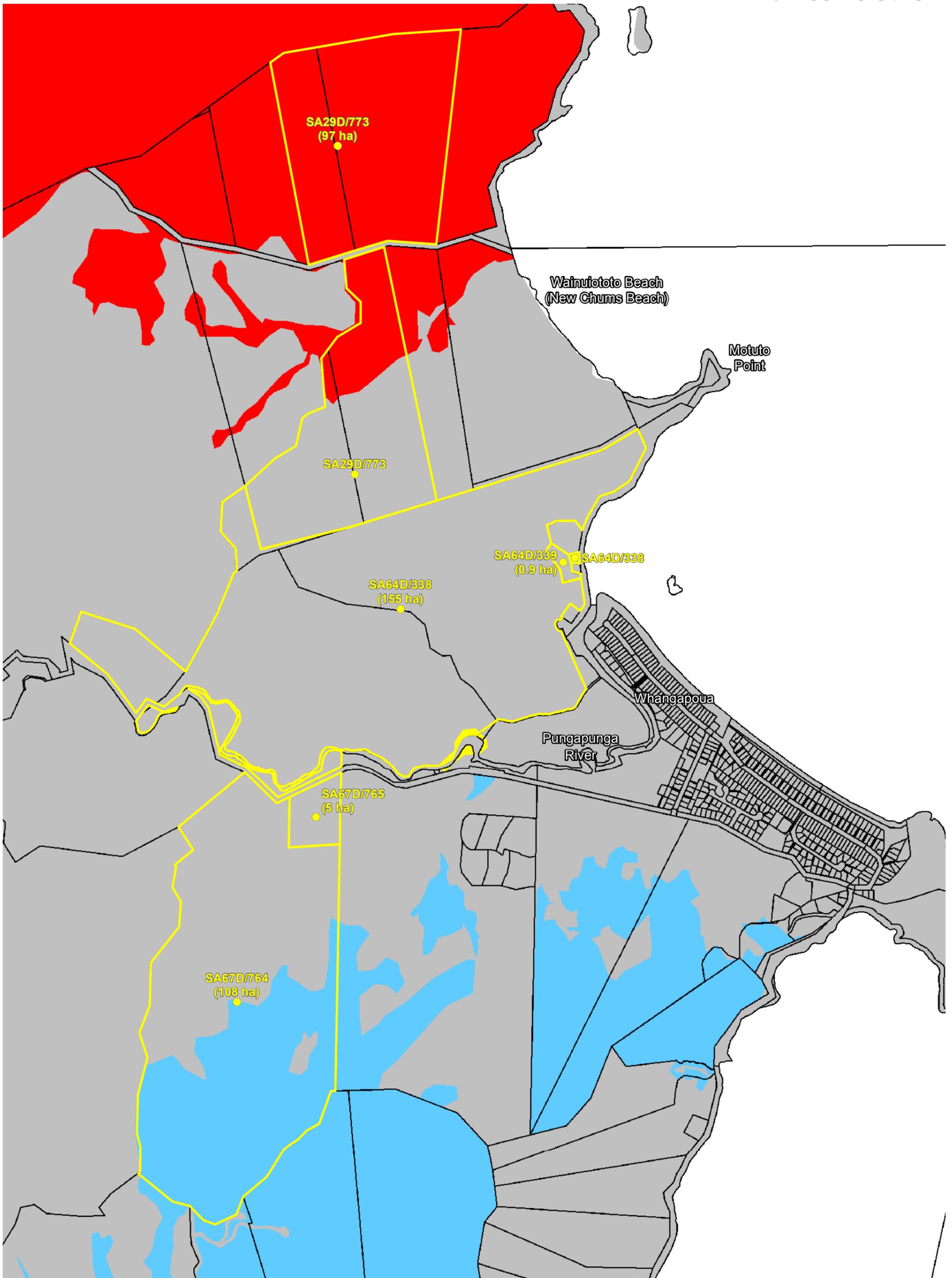
Peter Raymond Hall

On behalf of Northern Land Property Limited

30 January 2015

Attachment One: Location Map

This graphic has been prepared by Boffa Miskell Limited on the specific instructions of our Client. It is solely for our Clients use in accordance with the agreed scope of work. Any use or reliance by a third party is at that party's own risk. Where information has been supplied by the Client or obtained from other external sources, it has been assumed that it is accurate. No liability or responsibility is accepted by Boffa Miskell Limited for any errors or omissions to the extent that they arise from inaccurate information provided by the Client or any external source.



**Attachment Two: Revisions to Table 5 Restricted Discretionary
Activity Matters (shown underlined):**

Matter	Assessment Criteria
11. Ecosystem restoration and enhancement	a) Whether the part of the area/feature that has been identified for protection on a site will provide the greatest biodiversity gains for the site.
	b) Whether the area/feature is part of a larger natural area that is not protected and whether the area to be protected is able to be successfully managed to ensure its ability to be ecologically functional and self-sustaining.
	c) Whether the management plan is adequate to: ii) ensure the restoration or enhancement of the area/feature; and iii) Ensure ongoing management requirements are identified and able to be achieved.
	d) Whether the protected area/feature can be successfully monitored to ensure that the management requirements are being met.
	e) Whether the dwelling platforms and vehicle access are located outside of the area to be protected.
	f) Whether rural amenity values and character are maintained and able to be enhanced.
	g) Whether the method of legal protection is appropriate.
	h) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 would lead to the restoration or enhancement of rare, under represented or threatened ecosystems.</u>
	i) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 will establish or enhance mountain to sea corridors of terrestrial and aquatic ecosystems.</u>
	j) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 would reconnect fragmented ecosystems (on land and via waterways).</u>
	k) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 creates an ecological stepping stone or corridor linking indigenous vegetation.</u>
	l) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 maintains or enhances habitat for nationally at risk and threatened flora and fauna.</u>
	m) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 restores or enhances indigenous habitats adjoining wetlands, rivers, springs, coastal cliffs, dunes, estuaries and fragmented forests.</u>
	n) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 would establish self-sustaining pest free areas.</u>