**DETERMINATION AS TO WHETHER A RESOURCE CONSENT APPLICATION SHOULD BE NOTIFIED OR NON NOTIFIED UNDER SECTIONS 95A-95G, OF THE RESOURCE MANAGEMENT ACT 1991**

1. **Application details**

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| --- | --- |
| Council Reference: | **2200253-RMASUB** |
| Reporting Planner: | **Consultant Planner** |
| Applicant: | **Zhann Tracey** |
| Description of Application: | **Proposed subdivision to create 4 additional lots.** |
| Property Address: | **Lot 2, Newton Road, Omapere 0210** |
| Legal Description/ CT: | **LOT 2 DP 184528 BLK VII HOKIANGA SD-SUBJ TO & INT** |
| Date Received: | **6 November 2019** |
| Site Visit: | **20 November 2019** |
| Further Information Requested: | **21 November 2019** |
| Further Information Received: | **28 July 2020** |
| Suspended pursuant to 88E: | **No** |
| Extension pursuant to section 37: | **Yes (14/10/20)** |
| Pre-Application meeting: | **No** |

1. **Distributions**

|  |  |  |
| --- | --- | --- |
| **Internal:** | **Date sent:** | **Comments Received:** |
| RC Engineer: | 20th December 2019 | 23rd January 2020 |
| IAM: | 20th December 2019 | 28th January 2020 |

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| --- | --- | --- |
| **External:** | **Date sent:** | **Comments Received:** |
| Iwi: | 20th January 2020 | Nil |
| DOC | 20th January 2020 | No comment |

1. **District Plan and other notations of relevance**

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| --- | --- | --- | --- |
| **Zone:** | Rural Production | **Notations:** | DOC Kiwi Zone – Kiwi Present |

1. **Description of site**

The site is as described in the application documents.

In addition to the site descried in the application documents, the following is noted:

* The site is 33.5320ha in area and is accessed from the end of Newton Road.
* The site is currently vegetated with bush along both the northern and southern parts of the site with a rolling contour leading from the south of the site to the north of the site.
* The site was in existence prior to 38 April 2000. The record of title is dated 09 December 1997.



*Figure 1. Subject site (marked in yellow).*

1. **Full Description of proposed activity**

The proposed activity is to carry out a subdivision to create four additional lifestyle allotments in the Rural Production Zone. The proposed allotments are anticipated to contain residential units in the future, while still be able to remain in productive use. The proposed allotment configuration is:

|  |  |  |
| --- | --- | --- |
| **Lot** | **Size** | **Description** |
| Proposed Lot 1 | 2.0610ha | Shed with attached caravan |
| Proposed Lot 2 | 3.8000ha | Existing buildings |
| Proposed Lot 3 | 6.1930ha | Vacant |
| Proposed Lot 4 | 2.2940ha | Vacant |
| Proposed Lot 5 | 19.1840ha | Vacant |

The subject site is not within an area of benefit for Councils Reticulated Systems. all future development will need to provide on-site wastewater disposal, stormwater attenuation and water supply.

The site will accommodate access to the vacant lots via an access right of way as indicated on the Subdivision Plans.

Specialist Reports provided:

* Slope Stability Analysis of Access Road Newton Road Omapere – Prepared by Project Reference: 17850, dated 17 July 2020.

1. **Reasons for the application**

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| --- | --- | --- |
| **Rule # & Name** | **Non Compliance Aspect** | **Activity Status** |
| 13.8 – Restricted Discretionary Subdivision | A maximum of 5 lots in a subdivision (including the parent lot) where the minimum size of the lots is 2ha, and provided further that the subdivision is of site which existed at or prior to 28 April 2000, or which are amalgamated from titles existing at or prior to 28 April 2000. | Restricted Discretionary |

1. **Status of the Application**

The overall application is a Restricted Discretionary Activity.

1. **National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NES Contaminated Soils)**

The Resource Management NES Contaminated Soils was gazetted on 13th October 2011 and took effect on 1st January 2012. Council is required by law to implement this NES in accordance with the Resource Management Act 1991 (RMA). The standards are applicable if the land in question is, or has been, or is more likely than not to have been used for a hazardous activity or industry and the applicant proposes to subdivide or change the use of the land, or disturb the soil, or remove or replace a fuel storage system.

The person who wants to do the activities needs to determine if the NESCS applies. Regulation 6 of the NESCS sets out 2 methods to be used to establish whether the land has had hazardous activities or industries conducted on it:  The applicant shall review information about the land that is held and is accessible by the Council or conduct a Preliminary Site Investigation (PSI).

In this instance, the activity is permitted under the NES Regulation 2011 as the proposed subdivision does not result in any HAIL site to stop being production land and therefore complies and not subject to sub clause (8) below.

“8 *Permitted activities*

*“(4) Subdividing land or changing the use of the piece of land is a permitted activity while the following requirements are met:*

1. *a preliminary site investigation of the land or piece of land must exist:*
2. *the report on the preliminary site investigation must state that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land:*
3. *the report must be accompanied by a relevant site plan to which the report is referenced:*
4. *the consent authority must have the report and the plan.”*
5. **Request for further information**

Council hasrequested further information or a report pursuant to section 92 of the Act (Section 95C).

Further information was sought relating to the site stability of the access and the vacant lots resultant of the proposed subdivision.

The request for further information was received on 29th July 2020.

# Public Notification assessment (sections 95A, 95C-95D)

Section 95A specifies the steps the Council is to follow to determine whether an application is to be publicly notified. These steps are addressed in the statutory order below.

**Step 1: Mandatory public notification in certain circumstances**

Pursuant to s95A(2) an application must be publicly notified if;

* + *The applicant has requested Public Notification (s95A(3)(a))*
  + *Council has requested further information and the applicant has not provided it within the stated timeframe or refuses to provide it. (s95C(2))*
  + *Council has notified the applicant of its intention to commission a report and the applicant has not responded within the stated timeframe or does not agree to the commissioning of a report. (s95C(3))*
  + *The application has been made jointly with an application to exchange recreation reserve land under s15AA of the Reserves Act 1977*

None of the above are relevant to this application, as such mandatory public notification is not required.

**Step 2: Public notification precluded in certain circumstances**

Pursuant to s95A(5) an application must not be publicly notified if;

* *the application is for a resource consent for 1 or more activities and each activity is subject to a rule or national environmental standard that precludes public notification.*
  + *It is a controlled activity.*
  + *The application is for a Restricted Discretionary or Discretionary Activity and is for a subdivision and/or “residential activity”1.*
  + *The application is a Restricted Discretionary, Discretionary, or Non-Complying activity, but only if the activity is a “boundary activity”2.*
  + *An activity prescribed under regulations made under s360H(1)(a)(i) by the governor general which precludes public notification.*

*1 “Residential Activity” means an activity which requires resource consent that is associated with the construction, alteration or use of 1 or more dwelling houses on land that under the District Plan is intended to be used solely or principally for residential purposes.*

*2* “*Boundary activity means an activity which requires a resource consent because of the application of 1 or more boundary rules, but no other district rules, to the activity; and no infringed boundary is a public boundary.*

The proposal is for a restricted discretionary subdivision and therefore public notification is precluded.

**Step 3: Public notification required in certain circumstances:**

An application must be publicly notified if one of the following circumstances are met;

* + *There is a rule in the District Plan or a National Environmental Standard requiring public notification of the application (s95A(8)(a)).*
  + *The activity has or is likely to have effects on the environment that are more than minor in accordance with s95D (see section 10).*

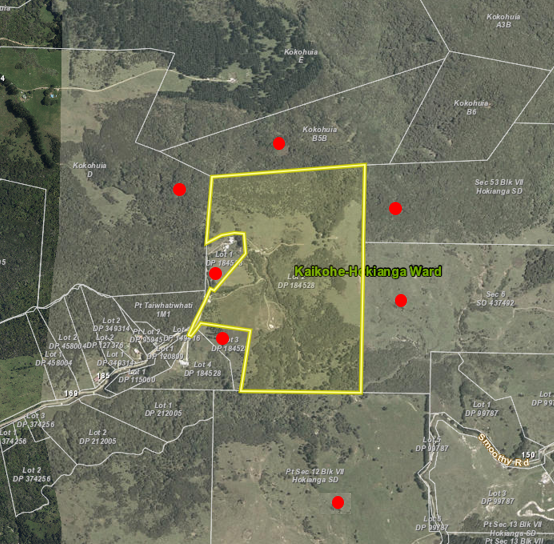
There is no rule in the District Plan or National Environmental Standard that requires public notification.

1. **Adverse effects assessment (sections 95A(8)(b) and 95D)**

**Effects that must be disregarded**

Effects on person who are owners and occupiers of the land in, on or over which the application relates, or of land adjacent to that land.

The Council must disregard any effects on the land in, on, or over which the activity will occur, and on persons who own or occupy any adjacent land (s95D(a)). The land adjacent to the subject site is shown below in Figure 2.



*Figure 2. Subject site (marked in yellow) and adjacent sites (marked in red)*

|  |  |  |
| --- | --- | --- |
| **Address** | **Legal Description** | **Owner/Occupier** |
| Kokohuia B5B Kokohuia Road Omapere 0473 | KOKOHUIA B5B BLK VII HOKIANGA SD | Suzi Bayne  Maryann Carson  Ramarihi Matiu  Maureen Muller  Jim Penehio |
| Lot 1 Newton Road Omapere 0473 | Lot 1 DP 184528 | Bouty B Joy Tracey |
| Lot 3 Newton Road Omapere 0473 | Lot 3 DP 184528 | Campbell Jay Fraser |
| 154 Kokohuia Road, Omapere, Far North | KOKOHUIA D | Colleen Patricia Booth |
| 546 Waiotemarama Gorge Road  Waimamaku  Far North | Pt Sec 12 Blk VII Hokianga SD | Hokianga Holdings Limited |
| 546 Waiotemarama Gorge Road  Opononi 0473 | Section 6 SO 437492 | Hokianga Holdings Limited |
| 546 Waiotemarama Gorge Road Opononi 0473 | Section 53 Blk VII Hokianga SD | Hokianga Holdings Limited |

Any effect on a person who has given written approval to the application

In this instance, no written approvals have been provided.

**Assessment of Environmental Effects**

The application has been assessed as a Restricted Discretionary activity as such Council can only take into account relevant matters within its restricted discretion. The table below provides an assessment of the relevant matters of discretion.

**Adverse effects**

|  |  |
| --- | --- |
| **Assessment** | |
| *Property Access* | The site is currently accessed from the end of Newton Road and the existing dwelling is accessed off a private driveway extending approximately 500m from Newton Road.  Access to all Lots will be via the existing access point with new right of way easements proposed across Lot 5 to accommodate access. It is noted that the driveway is currently in poor condition and is to be upgraded as part of this application.  Councils Development Engineer has reviewed the application and the proposed new vehicle crossings are required to be constructed to FNDC/S/6 and 6B standards (double width for shared crossings). Sight distances at the crossing locations are to comply with the requirements of the FNDC Engineering Standards and Guidelines 2004- Revised 2009. |
| *Natural and Other Hazards* | The site is not subject to Natural Hazards according to Far North District Maps. However it is noted that the site is located within Erosion Prone Land of the Northland Regional Council Natural Hazard Maps along the northern boundary of Lot 5 and the southern boundary of Lots 2 and 3 respectively. As such, Council’s development engineer Mr Ross Green, considered that the site may be subject to large scale geotechnical stability.    Mr Green has reviewed the Slope Stability Analysis by LDE Limited, which include the results of a geotechnical site investigation which identified areas with erosion including some failures on steep gullies, wet areas and slumping at the base of the gullies, and the presence of clays. The Slope Stability Analysis has recommended that access road should be realigned to the north as shown on the appended Scheme Plan (dated 28.04.20) and cut into the batter slope approximately 3m above the current elevation to divert surface runoff away from the headscarp.  With reference to Figure 1 above in Section 4 of this report, the site contains slopes that are approximately 1:4 outside of the NRC erosion prone area. Of note is the building platform for Lot 5 which may be up to 1:4 as such Mr Green has recommended a consent notice requiring geotechnical assessments for future buildings to ensure site stability for the resultant sites.  I rely Mr Green’s assessment in relation to the natural hazard of the site, and consider that the effects are less than minor. |
| *Water supply* | The subject site is unable to connect to Councils reticulated water supply due to the rural location.  Potable water supply to the proposed allotments will be collected from the roof and stored in water tanks. This water supply will be used for potable use. Mr Ross, Council’s Consultant Engineer, has raised no issue with potable water supply.  A condition of consent will be imposed to ensure there is sufficient water supply available for fire fighting purposes. |
| *Stormwater Disposal* | The subject site is unable to connect to Councils reticulated stormwater network.  Councils development Engineer Mr Ross Green. has advised that all runoff from future buildings and associated impermeable surface areas on the proposed Lots are to be collected in rainwater tanks with overflows piped to suitable outlet points and discharged in a dispersive manner. |
| *Sanitary Sewage Disposal* | The existing house on proposed Lot 2 has its own on-site effluent disposal system.  Councils Resource Consent engineer considered the soils and topography, and determined that proposed Lots 1,3,4 and 5 are sufficient in size to accommodate on-site effluent disposal within their boundaries. |
| *Energy Supply & Telecommunications* | The proposed allotments can be adequately serviced with power and telecommunications. Existing telecommunications and power infrastructure are located at the end of Newton Road. |
| *Easements for any purpose* | Currently, three existing easements on the property which consists of; an easement in gross to convey water in favour of Far North District Council, one for the legal access for Lots 1, 3 and 4 DP 184528 containing Right of Way, Electricity and Telecommunications rights, and the third being a water easement for Lot 2 DP 100455.  Additional easements are proposed for access, electricity and telecommunications are proposed to service the new lots. |
| *Preservation of Heritage Resources, Vegetation, Fauna, and Landscape and Land Set aside for Conservation Purposes* | There are no significant areas of native vegetation on the property in relation to the Far North Maps.  However, the northern part of proposed Lot 5 is classified as Waiotemarama Gorge Forest, survey number O06/013, and the southern part of proposed Lots 2, 3 and 5 is classified as Waiwhatwhata Bush, survey number O06/014. Both these areas of vegetation are large in area being 421.2ha and (O06/014) being slightly smaller at 384.6ha.  It is noted that no vegetation is proposed to be removed within the Waiotemarama Gorge Forest, survey number O06/013, and the Waiwhatwhata Bush, survey number O06/014 for the purposes of the subdivision, and the proposed building platforms are sufficiently distances from the bush edge. |
| *Access to Reserves and Waterways* | There is no requirement to provide any type of public access as part of this proposal. |
| *Land use Compatibility* | The surrounding land consists of large rural blocks utilised for pastoral grazing, and smaller residential lifestyle sections. The proposal is considered to be compatible with the surrounding landuse. |
| *Proximity to Airports* | Not applicable |
| *Natural Character of the Coastal Environment* | The subject site is not located in close proximity to the Coastal Environment. |

**Adverse effects conclusions**

In conclusion, it is considered that the proposal will have no more than minor adverse effects on the wider environment.

**Step 4: Public notification in special circumstances**

If an application has not been publicly notified as a result of any of the previous steps, then the Council is required to determine whether special circumstances exist that warrant it being publicly notified (s95A(9)).

Special circumstances are those that are:

* Exceptional or unusual, but something less than extraordinary;
* Outside of the common run of applications of this natures, or;
* Circumstances which makes notification desirable, notwithstanding the conclusion that the adverse effects will be no more than minor.

In this instance I have turned my mind specifically to the existence of any special circumstances and conclude that there is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary run of things to suggest that public notification should occur.

**Recommendation as to Public Notification or Non-Notification?**

It is recommended that, pursuant to s95A of the Resource Management Act 1991, this application **does not require public notification** for reasons as assessed above and in summary that:

* Under step 1, public notification is not mandatory.
* Under step 2, there is no rule or NES that specifically precludes public notification of the activities, and the application is for an activity other than those specified in s95A(5)(b).
* Under step 3, public notification is not required as the application is for an activity that is not subject to a rule that specifically requires it, and it is considered that the activity will have or is likely to have adverse effects on the environment that are less than minor.
* Under step 4, there are no special circumstances that warrant the application being publicly notified.

# Limited Notification (sections 95B, 95E-95G)

**Step 1: Certain affected groups and affected persons must be notified**

Pursuant to s95B the application must be limited notified to the relevant persons if the following are determined:

(2) *Determine whether there are any-*

1. *affected protected customary rights groups; or*

*(b) affected customary marine title groups (ín the case of an application for a resource consent for on accommodated activity).*

*(c) whether the proposed activity is on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement mode in accordance with an Act specified in Schedule 11; and*

*(d) whether the person to whom the statutory acknowledgement is made is an affected person under section 95E.*

There are no protected customary rights groups or customary marine title groups or statutory acknowledgement areas that are relevant to this application. Therefore Step 1 does not apply and Step 2 must be considered.

**Step 2: Limited notification precluded in certain circumstances**

Pursuant to s95B(6) in the following circumstances an application must be limited notified to the relevant persons:

1. *the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or National Environmental Standard that precludes limited notification:*
2. *the application is for a resource consent for either or both of the following, but no other, activities:*
   1. *a Controlled activity that requires consent under a District Plan (other than a subdivision of land):*
   2. *a prescribed activity (see section 360H(1)(a)(ii)).*

There is no rule in the District Plan or National Environmental Standard that precludes notification. The application is neither for a Controlled activity nor a prescribed activity. Therefore Step 2 does not apply and Step 3 must be considered.

**Step 3: Certain other affected persons must be notified**

Other affected persons must be notified in the following circumstances:

1. *Determine whether, in accordance with section 95E, the following persons are affected persons:*
2. *in the case of a boundary activity, an owner of an allotment with an infringed boundary; and*
3. *in the case of any activity prescribed under section 360H (1) (b), a prescribed person in respect of the proposed activity.*
4. *In the case of any other activity, determine whether a person is an affected person in accordance with section 95E.*

The proposal is not for a boundary activity nor is it a prescribed activity.

# Adversely Affected Persons Assessment (s95B(8) and s95E)

In deciding who is an affected person under section 95E, a council:

* *may disregard an adverse effect of an activity on a person if a rule or national environmental standard permits an activity with that effect (i.e. council may consider the "permitted baseline");*
* *must disregard an adverse effect that does not relate to a matter for which a rule or environmental standard reserves control or restricts discretion; and*
* *must have regard to every relevant statutory acknowledgement made in accordance with a statute set out in Schedule 11 of the Act.*

**Assessment of Localised Effects**

The assessment of wider effects is also applicable to the localised environment. In addition, it is noted:

* The application proposes the subdivision of the site, the level of development is compatible with that in the receiving environment.
* The application proposes the creation of 5 rural lifestyle/ small scale rural production lots 2ha – 20ha in area. This is compatible with the land use of the localised environment which consists of rural production and rural lifestyle lots.
* Any future development will be subject to compliance with the bulk and location rules of the District Plan.
* The application has been assessed by Council’s Infrastructure Engineer and Consultant Development Engineer who have concluded that all lots are able to be adequately serviced with less than minor effects on adjoining properties.

**Step 4: Further Notification in Special Circumstances**

In addition to the findings of the previous steps, the Council is also required to determine whether special circumstances exist in relation to the application that warrant it being notified to any other persons not already determined as eligible for limited notification.

Special circumstances are those that are:

* exceptional or unusual, but something less than extraordinary;
* outside of the common run of applications of this nature; or
* circumstances which make limited notification to any other person desirable, notwithstanding the conclusion that no other person has been considered eligible.

In this instance the proposal has nothing out of the ordinary to suggest that notification to any other persons should occur.

1. **Limited notification conclusion**

It is recommended that, pursuant to s95A-95G of the Resource Management Act 1991, this application **does not require** **limited notification** for reasons as assessed above and in summary that:

* Under step1, limited notification is not mandatory.
* Under step 2, there is no rule or NES that specifically precludes limited notification of the activities, and the application is for an activity other than those specified in s95B(6)(b).
* Under step 3, limited notification is not required as it is considered that the activity will not result in any adversely affected persons.
* Under step 4, there are no special circumstances that warrant the application being limited notified to any person.

It is therefore recommended that this application be processes without limited notification.

1. **Notification Recommendation:**

For the above reasons under section 95A this application may be processed without public notification.

In addition under section 95B limited notification is not required.

Accordingly I recommend that thisapplication is processed non notified.

**Alvin Jung Date: 18 October 2020**

Consultant Planner

1. **Notification determination**

Acting under delegated authority, and for the reasons set out in the above assessment and recommendation, under sections 95A and 95C to 95D, and 95B and 95E to 95G of the RMA this application shall be processes on a non-notified basis.

**Pat Killalea Date: xx October 2020**

**Principal Planner**