

3.2 Status of the application

3.2.1 Overall, the application is considered to be a **Discretionary** activity

4.0 NOTIFICATION ASSESSMENT (SECTIONS 95A, 95C-95D)

4.1 Public Notification Assessment

4.1.1 Statutory Considerations

A consent authority has the discretion whether to publicly notify an application unless a rule or NES precludes public notification (in which case the consent authority must not publicly notify) or section 95A(2) applies, which states that an application **must be** publicly notified if:

- (a) the activity will have, or is likely to have, adverse effects on the environment that are more than minor;
- (b) the applicant requests public notification of the application; or
- (c) a rule in a plan or a national environment standard requires public notification.

Section 95D requires that in determining whether an activity will have, or is likely to have, adverse effects on the environment that are more than minor, the consent authority must disregard the following matters:

- Effects on persons who own and occupy the land in, on or over which the application relates, or land adjacent to that land.
- Any effect on a person who has given written approval to the application.
- Trade competition and the effects of trade competition.

The consent authority may also disregard an adverse effect of the activity on the environment if a rule or NES permits an activity with that effect.

Notwithstanding all the above, including whether a rule or NES precludes public notification or the applicant has not requested notification, a consent authority has the discretion to publicly notify an application if it decides there are special circumstances in relation to the application.

An application must also be publicly notified if the consent authority has not made a determination in regards to either limited or full notification and information requested under section 92 has not been provided within the statutory and/or agreed timeframe or the applicant has refused to provide the information.

The following is noted in the notification assessment:

- The applicant has not requested that the application be publicly notified.
- There are no rules in the Auckland Council District Plan (Waitakere Section) which either preclude or require public notification of the application.

5.0 ADVERSE EFFECTS ON THE ENVIRONMENT (Section 95A Assessment)

5.1 Effects that must be disregarded

A) Effects on persons who own and occupy the land in, on or over which the application relates, or land adjacent to that land

In this case, it is considered that adjacent land includes the following properties because they either adjoin the application site. The effects on these owners and occupiers have been disregarded.



- No. 520 West Coast Road
- No. 522 West Coast Road
- No. 516 West Coast Road
- No. 532 West Coast Road
- No. 534 West Coast Road
- No. 18A Maynell Court
- No. 18F Maynell Court
- No. 306B Glengarry Road

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

No written approvals accompany the application.

In this case, the permitted baseline would enable the establishment of 10 individual dwellings on the site based on the area of the parent site. However, it is considered that to establish a shared driveway and to create building platforms, vehicle parking and manoeuvring would probably require a land use consent.

This constitutes the permitted baseline and these adverse effects may be discounted as the level of adverse effect arising from those permitted activities is deemed to be acceptable. It is only any other or further adverse effects arising from the proposal over and above the permitted baseline which are to be assessed.

5.3 Adverse Effects Assessment

Having regard to the above and after an analysis of the application, including any proposed mitigation measures and specialist reports, the following assessment addresses the adverse effects of the activity on the environment. As a discretionary activity the full range of adverse effects must be considered.

Site Works (Temporary) Adverse Effects

In the first instance the proposal will involve earthworks to establish the shared driveway. It is considered that the effects associated with the earthworks will relate to noise and visual effects. However, it is considered that these effects will be temporary. The effects of the earthworks will be further controlled by imposing conditions of consent that restrict the noise levels associated with this activity to certain times during the day and certain days of the week.

Overall, it is considered that the proposed site works and construction will have a less than minor adverse effect on the residential amenity of neighbouring and surrounding occupiers.

Visual Amenities Effects

The visual effects of the site works and construction have been addressed above. However, a consideration of the visual affects relating to the establishment of eight additional dwellings on the vacant sites created by the subdivision is considered appropriate.

With regard to the visual effect on surrounding existing residential sites and the users of public spaces the following is noted; it is considered that the subject site is within its own valley and aside from the immediately adjoining sites (addressed in section 6.3) the proposed development will not be visible to the wider community and public spaces. This is due to the body of the site being set back approximately 50m from the West Coast Road boundary and the existing dwelling and riparian margin vegetation obscuring views of the site from this public area.

Overall, it is considered that the scale of the proposed site works and the proposed dwellings are consistent with the scale of site works and dwellings that has occurred in the surrounding area. It is considered that the proposed development / subdivision will have a less than minor adverse effect on the residential amenity of the occupiers of sites located beyond those that share a common boundary with the subject site and the amenity of users of public spaces i.e. users of the West Coast Road reserve.

The 10 proposed lots will achieve access from West Coast Road via a shared driveway. There will be two additional shared driveway that will lead off the main shared driveway, where one will serve lots 5 and 6, and another will serve lots 8 and 9. Although the proposed sites are relatively steep in places i.e. 1 in 5, it is considered and has been stated by the applicant that the proposed lots can be successfully designed and the appropriate site works performed so that the required parking and manoeuvring gradients are established.

West Coast Road is categorised as a Collector road under the District Plan. Mr. John Carroll (Council Roading and Traffic Engineer) has reviewed the vehicle entry / egress points onto West Coast Road and the position, alignment, and gradient of the shared driveway. Mr. Carroll has determined that the entry / egress points onto West Coast Road are adequate. Mr. Carroll does however require that the condition of the shared driveway be constructed in an all weather concrete finish. Mr. Carroll further concludes that the adverse effect of cars entering and leaving the site will have a less than minor adverse effect on the movement of vehicles and pedestrians along the road and pedestrian network.

Fauna and Flora

There are aspects of the development that have the ability to adversely affect the fauna and flora of the site and that which is present downstream. These aspects of the proposed development are the proposed tree removal and the works within and stormwater effects on the Riparian Margin.

The proposed tree removal involves the removal of a number of exotic and native tree species that are protected by virtue of their size (detailed in the 'Arboricultural Assessment' prepared by Peers Brown Miller Ltd and dated 5 April 2012). However, the applicant has proposed replacement planting for these protected trees to be removed. In addition, the applicant has proposed replacement planting for the containment weed species to be removed with the Riparian Margin.

Mr. Martin Sharp (Council Ecologist) and Mr. Zeke Fiske (Council Arborist) have reviewed the proposed tree removal and replacement planting and have determined that the replacement trees will satisfactorily mitigate the effects of the proposed trees to be removed. Therefore, it is considered that the proposed tree removal will have a less than minor adverse effect on the fauna and flora of the subject site and surrounding areas.

With regard to the earthworks within the 1 in 100 year flood plain, Mr. Ravinesh Chand (Councils Development Engineer), Mr. Martin Sharpe (Council Ecologist), and Mr. Bruce Bonita (Council Earthworks Engineer) have reviewed the location, area and volume of proposed earthworks within the flood plain area. These specialists have determined that 60m³ cut earthworks is appropriate to maintain balance to the flood plain storage resulting from the 60m³ fill that will take placed within the flood plain. These individuals have determined that the proposed earthworks will not increase or disturb the flow of the water moving through the Kaurimu Stream environment. They also consider that these earthworks will have a less than minor adverse effect on the quality of water moving through this environment.

With regard to stormwater disposal and its effect on the Kaurimu Stream environment and downstream environments, this aspect is covered in the section below titled 'Water Quality and Quantity Adverse Effects'.

Overall, it is considered that the proposed development / subdivision will have a less than minor adverse effect on the fauna and flora of the subject site and surrounding and downstream areas.

General Public Amenity

The proposed development involves providing an Esplanade Reserve along the Eastern bank of the Kaurimu Stream. However, due to the narrowing of the site at the Northern portion of the property the applicant has applied to reduce the 20m requirement to 16m wide. It is considered that this reduction could have a potential affect on the general public recreation opportunities by limiting or restricting the recreational space available to the general public.

Council's Parks representative Ms. Pam Walker has reviewed the proposed reduction and considers that the reduction to the Esplanade Reserve is warranted in order to facilitate the proposed development and subdivision. In mitigation the applicant has proposed a right of way easement for the general public over the first portion of the shared driveway in order to facilitate pedestrian and cycle access for the general public. This right of way easement will enable the general public to move onto the Esplanade Reserve where it widens to the requisite 20m width.

It is considered that the proposed Esplanade Reserve width reduction and proposed mitigation is acceptable to Council. It is considered that the reduction in width will have a less than minor adverse effect on the recreational opportunities available to the general public.

Landform Stability

The site is not identified on the Council Hazard register as being a site that is subject to instability. However, the site has steeper areas that are approximately 1 in 4 or 1 in 5 in grade. Council Geotechnical and Earthworks specialist Mr. Bruce Bonita has reviewed the proposed development and the Geotechnical Report prepared by P & P Consulting Engineers Ltd, and concurs with the findings of the Geotechnical Report. Mr. Bonita considers that the alignment and design of the proposed shared driveway will not result in landform subsidence or failure.

Further, Mr. Bonita considers that it is important to place consent notices on the vacant lots (lots 3 – 10) that requires any dwelling or retaining structure to be constructed on these lots to be designed and certified by a suitably qualified person experienced in geotechnical issues. This would ensure that the future development of the vacant sites would not lead to site instability issues.

On this basis, it is considered that the proposed subdivision will have less than minor adverse effects on the landform stability and stability of neighbouring properties.

Water Quality and Quantity Adverse Effects

The site will be connected to the Council wastewater system. Mr. Ravi Chand (Council Drainage Engineer) has reviewed the proposed wastewater connection point and has determined with regard to wastewater disposal the proposed development as presented will have less than minor adverse effects on the quantity and quality of water in the downstream catchment.

The proposed development will dispose of stormwater via planted swales. The applicant also envisages that the future dwellings constructed within the proposed lots will utilise rain water tanks to capture and mitigate peak flows rates and also reduce the volume of runoff through partial reuse within dwellings. Mr. Ravinesh Chand has reviewed the proposed disposal methods and concludes that the proposed methods are adequate and will have less than minor adverse effects on the quantity and quality of water in the downstream catchment.

Aside from the drainage aspect of the development, the proposal involves building the level of the shared driveway up so that it will be above the 1 in 100 year flood plain. This involves some 60m³ of fill along the alignment of the shared driveway. In order to preserve the existing flood

plain storage it is proposed to undertake an equal volume cut at another point along the Riparian Margin. Council's Development Engineers Mr. Ravinesh Chand and Mr. Bruce Bonita have reviewed the proposed earthworks and flood plain effects and have determined that the proposed methodology is appropriate and will have a less than minor adverse effect on the water quality and quantity in the lower catchment.

Conclusion

In summary, having assessed the adverse effects of the activity on the environment it is considered that the activity will have less than minor adverse effects on the environment.

5.4 Special Circumstances (Section 95A(4))

Section 95A(4) states that a council may publicly notify an application for resource consent if it considers that special circumstances exist, notwithstanding that a rule or NES precludes notification and the application has not requested notification.

"Special circumstances" have been defined by the Court of Appeal as those that are unusual or exceptional, but they may be less than extraordinary or unique (*Peninsula Watchdog Group (Inc) v Minister of Energy* [1996] 2 NZLR 529). With regards to what may constitute an unusual or exceptional circumstance, Salmon J commented in *Bayley v Manukau CC* [1998] NZRMA 396 that if the district plan specifically envisages what is proposed, it cannot be described as being out of the ordinary and giving rise to special circumstances.

In *Murray v Whakatane DC* [1997] NZRMA 433, Elias J stated that circumstances which are "special" will be those which make notification desirable, notwithstanding the general provisions excluding the need for notification. In determining what may amount to "special circumstances" it is necessary to consider the matters relevant to the merits of the application as a whole, not merely those considerations stipulated in the tests for notification and service.

There are no special circumstances surrounding this application.

5.5 Public Notification Assessment Conclusion

It is considered that this application can be processed without public notification for the following reasons:

- The adverse effects on the environment of the activity for which consent is sought will be less than minor because of the reasons expressed in Section 5 of this report.
- There are no special circumstances that would act as a basis for Council to exercise its discretion under section 95A(4).

6.1 Statutory Considerations

As concluded above the application does not need to be publicly notified. The consent authority must decide if there are any affected persons in relation to the proposed activity.

A person is considered to be an affected person if the adverse effects of the activity on the person are minor or more than minor (but are not less than minor).

In considering whether a person is an affected person in relation to an activity, the consent authority in its assessment:

- may disregard an adverse effect on a person if a rule or NES permits an activity with that effect;
- must have regard to every statutory acknowledgement made in accordance with the RMA specified in Schedule 11;
- must disregard those persons who have provided their written approval (and this has not been withdrawn in writing at the point of this decision); and
- must disregard persons, if it is unreasonable in the circumstances to seek that person's written approval.

If the consent authority decides that there are affected persons in relation to the proposed activity, then the application requires limited notification to those affected persons unless a rule or NES precludes limited notification of the application.

6.2 Requirements of a Rule or National Environmental Standard

There are no rules in the Auckland Council District Plan (Waitakere Section) that would preclude limited notification of the application.

6.3 Limited Notification / Adversely Affected Persons Assessment

No persons are considered to be adversely affected by the activity because:

- The proposed density is comparable with the density of sites in the immediately surrounding area and is in accordance with the density specified for Greenfields subdivision in the Living Environment.

There is a mixture of site sizes in the surrounding area with sites located to the East and South being considerably larger than those proposed and those located to the West and Northeast being comparable to those proposed.

It is considered that the proposed density is in accordance with the permitted density standard detailed in the District Plan for the Living Environment. Therefore, it is considered that the affects associated with the proposed density is in accordance with that which is envisaged by the District Plan.

- The visual appearance of the proposed development will be comparable to the visual appearance of sites with similar density in the area that contain one and two storey

dwellings. The visual effects of the proposed development on the neighbouring sites that share a common boundary are addressed as follows:

The sites located to the East are of a larger size to those proposed and are elevated with their topography sloping down away from the ridgeline that makes up the Eastern boundary of the subject site. The dwellings located within Nos. 18A and 18F Maynell Crescent and No. 516 West Coast Road are located a sufficient distance from the shared boundary with the subject site. It is considered that future dwellings constructed on the proposed lots will not appear visually dominant to these neighbouring properties along the Eastern boundary.

The site to the South is of a larger size to those proposed and the dwelling within this property is located a considerable distance from the shared boundary with the subject site. It is considered that the proposed development and future dwellings will have a less than minor adverse effect on the outlook of the dwelling located on this property.

The sites located to the West are separated from the proposed lots by the Kaurimu Stream Riparian Margin that will be vested in Council as Esplanade Reserve. The applicant proposes to carry out some planting within the Esplanade Reserve. It is considered that the proposed planting and existing vegetation will effectively screen the proposed development and future development of the site. It is also considered that the separation provided by the future Esplanade Reserve is considerable and therefore it is considered that there will be less than minor adverse effects on the established sites to the West of the site.

- The height in relation to boundary infringement is internalised within the proposed subdivision.

The height in relation to boundary infringement relates to the Southern boundary of proposed Lot 2 and the existing dwelling located within this site. The Southern boundary of proposed Lot 2 is located at a considerably lower level to the eave of the existing dwelling located within this lot.

It is considered that this height in relation to boundary infringement does not affect any other boundary except for this internalised Southern boundary of proposed Lot 2. It is also considered that this infringement does not affect any neighbouring property in terms of sunlight and daylight availability or visually with regard to dominance.

- The site works required are deemed necessary and are of a scale that is appropriate to the scale of the proposed subdivision.

The area and volume of site works required is detailed above. It is considered that the amount of site works is necessary to establish the shared vehicle access. It is considered that conditions relating to the times of day when earthworks can be carried out and the establishment of sediment and erosion control measures will ensure that the effects on neighbouring occupiers and properties are less than minor.

- The tree removal and works within the dripline of protected trees is considered necessary and adequately mitigated by the replanting of replacement tree stock.

The tree removal and subsequent planting detailed in the Peers Brown Miller Ltd arboricultural report and the ecological report prepared by Thomas Civil and Environmental Consultants Ltd will successfully mitigate the amenity values associated with the trees to be removed.

6.4 Limited Notification Assessment Conclusion

It is considered that this application may be processed without limited notification because there are no adversely affected persons.

7.0 NOTIFICATION RECOMMENDATION

Non –Notification

Pursuant to section 95A of the RMA, this application may be processed without public notification because:

- The activity will have adverse effects on the environment that are less than minor.
- There are no persons considered to be adversely affected by the activity as discussed in section 6 of this report.
- There are no special circumstances that would act as a basis for Council to exercise its discretion under section 95A(4).

Report Prepared by: N M Eagleson
Title: Resource Consents Planner

Signed: _____

Date: _____

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31/8/2012

8.0 SECTION 95A AND 95B NOTIFICATION DETERMINATION

Acting under delegated authority, and for the reasons set out in the above assessment and recommendation, this application shall be processed on a non-notified basis.

Team Leader: S J Mckenzie
Title: Team Leader- Resource Consents

Signed: _____

Date: _____

SJM
31/08/2012