

THAMES COROMANDEL DISTRICT COUNCIL

BAYLEY DEVELOPMENTS LIMITED 35B CAPTAIN COOK ROAD, COOKS BEACH

RMA 2005/433

The proposal seeks land use consent to construct a building comprising three commercial units and six residential apartments with associated car parking.

BACKGROUND

The proposed development comprises a building over three storeys. It contains three commercial units on the ground floor and six residential units at the second and third levels. Car parking is provided at the rear of the ground floor, accessed off the existing service lane. There are 10 car park spaces in the building and a further 4 car park spaces external to it.

The subject site comprises three small sections each of area 182sqm so that the development site has a total area of 546sqm. The proposal is to build entirely across the site apart from an area at the rear of it, which serves as access to the internal car parking and provides for the parking external to the building. The site is part of the commercial area at Cooks Beach. There is a slip road across the front of the site and its neighbours, separate to the main carriageway of Captain Cook Road, which provides for one-way vehicle passage and car parking.

The zoning of the site in the Proposed Thames Coromandel District Plan is Coastal (Village Policy Area) and there is an Identified Commercial Site notation upon it that applies to all the sites within the commercial area. The proposal is a non-complying activity because it seeks to provide more than one residential unit per lot, each of those lots not being able to be otherwise subdivided as a controlled activity. In this case the total lot, or application site, does not meet the 600sqm average lot size required. The proposal does not meet the district plan standards relating to day lighting, site coverage, side yard and privacy circles for housing activities in the zone. It does not include a loading bay for delivery vehicles, is 4 car parks short of the standards and includes 4 car parks partly on the service lane. (It is noted that the application was subsequently changed in order to relocate these car parks onto the application site.)

The Council officer's report states that the development standards are matters of non-compliance that overall are to be assessed as a non-complying activity while the matters relating to car parking require assessment as a restricted discretionary activity. Overall, the application requires assessment as a non-complying activity.

SUBMISSIONS

Following public notification of the application 19 submissions were received. Two of these submissions, being from SH, ED, R and M Heron received on 24 January 2006 and from John Guthrie and family on 25 January 2006, were received following the closing date for the receipt of submissions. I was accordingly called upon to decide whether these late submissions should be accepted or not pursuant to section 37A of the Resource Management Act 1991 (“the RMA”). The applicant did not oppose acceptance of the submissions; the Council’s reporting planner recommended acceptance; and, neither of the two parties were present at the hearing to speak to this matter.

I resolved pursuant to section 37A of the RMA to accept the late submissions for the following reasons:

- (a) The interests of no persons in my opinion may be directly affected by the extension of the time limit to receive the submissions because both submissions raise similar matter to other submissions made on the application.
- (b) The extension of the time limit to receive the submissions does not cause any unreasonable delay in the resource consent process.

Accordingly, the time limit for the receipt of submissions is extended to provide for these submissions to be accepted as valid submissions as part of the consideration of the application.

THE DECISION

PURSUANT TO Sections 104, 104B and 104D of the Resource Management Act 1991, the notified application for resource consent for a development comprising 3 commercial units and 6 residential apartments at 35B Captain Cook Road, Cooks Beach, being Lots 185, 186 and 187 DPS 900, is **refused consent** for the reasons below.

REASONS FOR THE DECISION

PURSUANT TO Section 113 of the Resource Management Act 1991, the reasons for this decision are as follows:

1. The adverse effects of the activity on the environment will be more than minor. Consideration has been given to a range of effects relating to the amenity and character of the locality, being effects associated with density, noise, loss of privacy and building design and further, to the effects related to the service lane to the rear of the application site, being effects associated with traffic, parking, congestion, pedestrian/cyclist safety and dust.

The adverse effects of the activity on the environment which will be more than minor are associated with the proposal seeking to provide too much upon the application site. The residential activities exceed the number of residential units that could be expected upon the site in accordance with the district plan controls but more particularly, too many as evidenced by the resultant car parking and servicing situation and the amount of open space available to residents. There are also considerations relating to day lighting, site coverage and side yards although, in the context of a commercial site, these are not of the same concern.

I accept that non-compliance with district plan standards does not of necessity mean a development proposal will result in an adverse effects but, they do serve to signal a potential difficulty which, an examination of the proposal, shows to be real.

The proposal is for vehicle access to the 14 car park spaces to be from the service lane. It is proposed however, in a manner that excludes, or makes unattractive, servicing of the commercial space from the service lane. This is the very reason for having a service lane at the rear so that commercial space can be serviced from it without causing any disruption to pedestrian or vehicular traffic movements along the site frontage. The servicing of the commercial space is not provided for at all in the application details other than on the basis that some arrangement for a loading space on-street can, in the future, be made with the Council. The lack of servicing to the commercial space by way of the service lane will result in adverse effects by virtue of that servicing having to be arranged in another, indeterminate manner, that impacts upon pedestrian and vehicular traffic movements along the site frontage.

A pragmatic approach to the district plan standards in relation to car parking is 2 car parks for each of the five 2 and 3-bedroom units and one for the 1-bedroom unit resulting in a total requirement of 11 car parks. That leaves 3 car parks potentially available for use in association with the commercial space, which would appear to be sufficient. Submitters expressed concern regarding access to the car parking spaces by way of the service lane on the basis that there would be conflicts with service traffic operating within it. I was led to understand from information presented that the service lane was formed, although not sealed, to a width of 6m and had a total legal width of 10m. It was stated that within a formed 6m width there is space for service vehicles to be operated allowing sufficient room for cars to pass by. A visit to the site however showed the formed width of the service lane to be between 4m and 5m. Although that does not prevent vehicles operating over a wider area that inspection, late on a Friday afternoon, showed the service lane to be impassable at the western end as the commercial facilities there were serviced from a truck and trailer combination blocking the service lane.

Proposals for greater use of the service lane can be expected to see the need for sealing or similar of the surface of the service lane in order to limit localised impacts associated with dust and the potential for material to be carried off the land in times of inclement weather. The applicant sought to address these matters with an offer to seal part of the service lane. That would assist that situation.

In terms of open space or amenity space available to residents of the proposed residential units, it is reasonable to adopt the standards otherwise used in the district plan for comprehensive developments. The open space is arranged at the second and third levels of the building proposal by way of deck space. The north facing decks at both levels for Units 4, 5 and 6 provide sufficient amenity space but those on the southern side of the building proposal, associated with Units 1, 2 and 3, are clearly inadequate and well short of any reasonable standards to be applied to them.

Otherwise the overall form of the building proposed is not unexpected and the building form and design is appropriate for the site and locality. Within a commercial area the site coverage would normally be more than provided for by the district plan, as evidenced by existing development. Similarly in relation to the daylight and side yard controls, development would be expected to extend to the side boundaries, again in order to maximise the available space for building upon commercial sites. However in this case, it is the overall density of residential accommodation proposed upon the site that contributes to my forming the view that the applicant is simply seeking to put too much upon the site, which will result in adverse effects in a number of areas. That may not be the case if a smaller number of residential units was considered.

2. The application is for an activity that will be contrary to objectives and policies of the district plan. The district plan has objectives and policies relating to “Settlements and Amenity Values” which are relevant to the consideration of this application. The objectives seek to maintain and enhance the amenity values and coherence of the District’s towns and settlements. Policies that seek to achieve that objective include ensuring the character of the built environment is coherent with the amenity values of the immediate and surrounding area and, in the Coastal Village Policy Areas, ensuring that the form and scale of development will be in accordance with the landscape character of the area.

The proposal is to intensively develop this site is different in terms of the density and scale of development provided for in the surrounding residential area and in terms of that which is provided for in the district plan for development upon this site. This has to be considered in terms of it being stated in the district plan (at Section 338, Identified Commercial Sites) that because these commercial sites are located in residential areas, activities which are located in them must meet standards to ensure that the activities are compatible with the surrounding residential area.

This proposal does not align with this statement which is reflected in the objectives and policies to be applied to its consideration. It needs to be borne in mind that the various development standards of the district plan are those by which the Council seeks to implement its objectives and policies. Whilst it is acknowledged that it is the objectives and policies to be given particular regard, as opposed to the development standards themselves, in a consideration of section 104D(1)(b) of the RMA, I find that this is a proposal that is contrary to relevant objectives and policies of the district plan.

3. In relation to this non-complying activity I find, from all the information made available, that I am not satisfied that either the adverse effects of the activity on the environment will be minor or that the application is for an activity that will not be contrary to the objectives and policies of the district plan. The application does not therefore meet either of the gateway tests of section 104D of the RMA to be applied to non-complying activities. On that basis, resource consent is unable to be granted to it.

I do however provide further reasons for my decision in relation to this application, based on the section 104 considerations of the RMA, in order to be of assistance to the parties to this application in considering future proposals upon this site or within this locality.

4. Submissions and evidence were presented relating to the New Zealand Coastal Policy Statement, the Hauraki Gulf Marine Park Act 2000 and to the Waikato Regional Policy Statement. In relation to the first named two documents, I had some difficulty understanding why I was receiving a description of those documents and how they may apply to this proposed development. It is of course relevant to have regard to these documents in terms of an assessment of a resource consent application, but they seem to be of little relevance in the context of a site that was zoned for development within an existing settlement and removed from the immediate coastal location. I concur with Mr D Lamason, in evidence for the applicant, that "*The proposal would have little to no effects on the HGMPA or the NZCPS.*" It is reasonable to assume that those wider considerations will have been taken into account in the preparation of that district plan that determines the nature of buildings and activities on this site.

I accept the relevance and need to refer to the regional document but again it is important to do so in the context of a site that is zoned for development in the district planning document.

From the evidence, and having had regard to the provisions of the national and regional planning documents presented, the proposed development does not raise any concerns.

5. In relation to the consideration of this non-complying activity, the submissions and evidence for the applicant sought to establish what was referred to as "*unusual of unique qualities*". These related to the Identified Commercial Site notation restricting the type of activity upon it; the very small size of the three individual lots that make up the overall application site; and the service lane adjacent to the site. I am unable to concur on the basis of the submissions and supporting evidence that these are qualities of such a nature that they would distinguish this application from others that may be made and, in this respect, provide support to the grant of consent to a non-complying activity. Mr Lamason did point out that the location of the site between the service lane and a grassed reserve area of some 40m on its southern side does provide an opportunity that "*enables higher site coverage and density without compromising the open space character and amenity of the area.*" I concur that is a feature that does support a relaxation of the site coverage and density controls but not to the extent that it would provide for this particular development which, as stated above, seeks a

density of development whereby there are resultant potential difficulties, or adverse effects, with car parking, servicing and amenity space for residents of the proposed residential units.

Related to these considerations of uniqueness or otherwise, I also received submissions and evidence relating to precedent effects and effects on the integrity of the district plan. From all of that analysis, which is helpful to the decision maker, I find, in agreement with Ms R Burt in her submissions for the applicant, that *“The most that can be said is that the granting of one consent may well have an influence on how another application should be dealt with. The extent of that influence will obviously depend on the extent of the similarities.”*

I find that to be relevant to my considerations of this application but further, I also concur with Ms N Williams, planner for the Council, that this proposal does have the potential to question the integrity of the district plan if a consent is granted to it as a non-complying activity. There are clearly a number of potential impacts associated with it that need to be addressed. Perhaps these may only be satisfactorily resolved with a proposal for a lesser intensity of residential development upon the site.

6. In all the circumstances the proposal is inconsistent with the sustainable management purpose of the Resource Management Act and with its principles, as included at Part 2 of it. In relation to sustainable management, apart from a concern for the health and safety of the community, this is a proposal that does not sufficiently avoid, remedy or mitigate the adverse effects upon the environment that will arise from it.

There are no matters of national importance (section 6 RMA) that are directly applicable to it. In relation to other matters (section 7 RMA), the proposal does not result in the efficient use and development of the physical resource of this commercially zoned land, nor does it maintain and enhance the local amenity values or the quality of the environment. There were no issues raised relating to Maori interests (sections 6 and 8 RMA) in relation to the application.

THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED

Overall this application was considered to be a non-complying activity and was assessed in terms of Sections 104, 104B, 104D and Part 2 of the RMA.

OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED

The provisions of the following documents were considered by the Commissioner in reaching this decision:

National Policy Statement Provisions

None applicable

New Zealand Coastal Policy Statement Provisions

Policies 1.1.1., 3.2.1 and 3.2.4.

Waikato Regional Policy Statement Provisions

The objective and policies pertaining to the coast.

Other Waikato Regional Plan Documents

None applicable.

District Plan Provisions, Thames Coromandel Proposed District Plan

The objectives at 212.2 and the associated policies at 212.4

The objectives at 213.3 and the associated policies at 213.4

The objectives at 214.3 and the associated policies at 214.4

Section 332.5, Coastal Village Policy Area, Description and Purpose

Section 338, Commercial Sites, Description and Purpose

The Relevant Development Standards relating to density, day lighting, site coverage, site yard and privacy circle, servicing and car parking.

Other Legislation

Hauraki Gulf Marine Park Act 2000.

THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:

The principal issues that were in contention were:

1. Whether the section 104D tests of the RMA can be met in relation to the adverse effects of the activity on the environment being minor and, the application being for an activity that will not be contrary to the objectives and policies of the district plan.
2. Whether the proposal would be able to operate from the application site in a manner that did not impact adversely upon the locality, with particular regard to the amenity and character of the locality, with this relating to density, noise, privacy and building design and to the effects associated with the service lane, these effects relating to traffic, parking, congestion, pedestrian safety, cyclist safety and dust.
3. Whether the proposed activity would impact adversely upon pedestrian and vehicle movements in the area.
4. Whether the site and proposed activity have features relating to them that distinguish this application from others that may arise.

SUMMARY OF THE EVIDENCE HEARD

Evidence on behalf of the applicant was introduced by legal Counsel, Ms Rebecca Burt, and presented by:

- Giles Bayley, Applicant.
- David Lamason, Resource Consents and Planning Consultant
- Mark Owens, Architect
- John Burgess, Consultant Traffic Engineer
- Tim Gisler, Architect
- Brian Duncan, Civil Engineer.

A letter was presented from Mr Tony Windner, Noise Consultant.

Mr Bayley, provided background to the proposal and his reasons for advancing the proposal.

Mr Lamason, described the proposal, future proposals on neighbouring land, the site and surrounds, the district plan and statutory provisions of relevance to the application. He provided a comprehensive assessment of the potential effects of the proposed development highlighting matters including the separation distance of the site from the neighbouring residential developed properties; the advantages of the existing service lane; and, the contribution of the proposal to the Cooks Beach settlement. This commentary led to his conclusion that the proposal would result in effects on the surrounding environment that will be minor. He commented on the suitability of the site for development in terms of infrastructure. He then considered the objectives and policies of the proposed district plan concluding with an opinion that the proposal will not be contrary to them. Mr Lamason commented on submissions pointing out that account had been taken of them in the submissions and evidence presented at the hearing.

Mr Owens, described the brief for the project as being to design a combined commercial and residential building of a high quality that will enhance the central area of the Cooks Beach township. He described details of the site and locality and the manner in which the building had been designed to essentially fit within in this context and to fit also with the development standards of the district plan. Mr Owens went on to consider the potential impacts of the building stating that they too had been taken into account in the building design. He commented on this being the first stage of five in this area and the opportunity there was to work alongside the local authority to assist it in considerations of roading, car parking, landscaping and pedestrian/cycle access in a manner that has due regard to maintaining and enhancing community amenity.

Mr Owens also presented written information from a Fire Engineer and from a plant nursery in relation to fire fighting and landscaping details.

Mr Burgess, provided comment on the traffic planning aspects of the proposal based upon the work he had earlier carried out in providing a traffic planning report with the application. He believed a rate of 2 spaces per residential unit is the normal standard adopted in most district plans for apartments, although 1 space per unit is often adopted for smaller, 1-bedroom units. Mr Burgess commented, from a traffic engineering point of view, that a one-way road that is 6m wide will enable a single lane for moving vehicles and a lane for parking and loading activities to be formed, and there is sufficient width within the legal width to enable a footpath to be included should that be considered necessary. He pointed out he did not see the service road as

any different from any other road insofar as the safety of cyclists is concerned, other than the fact in this case that traffic volumes are lower, vehicle speeds are lower, and the number of cyclists actually using the service lane is likely to be lower. He saw issues of congestion only relating to peak periods but that otherwise the one-way service lane as proposed, properly designed to accommodate the mix of users, will serve the developing centre safely and efficiently. He saw the lack of loading bays for small deliveries in front of the shops being a matter that could be addressed at the detailed design stage. Mr Burgess went on to comment on a number of points raised in the Council's planning report concluding that he did not agree that any of these matters are reasonable cause for concern that leads to the proposed development being recommended for decline on traffic planning grounds.

Mr Windner, did not attend the hearing but his letter dated 15 March 2006 was presented on behalf of the applicant. He saw the noise standards in the district plan as being unreasonably strict and unlikely to be enforceable. He identified two noise sources being that from vehicle movements and that from people conversing on balconies. In relation to the former, he referred to the construction of a 2m high close boarded timber fence to reduce noise from commercial vehicles and unloading operations. In relation to the latter he referred to the large separation distance to residential properties as the main mitigation measure.

Mr Duncan, provided oral evidence addressing the stormwater/water supply situation stating that stormwater collection could be arranged on-site with only an overflow pipe from the soakage pit, now to be on-site, being to the service lane. He confirmed in this engineering evidence that this was a satisfactory arrangement and that sufficient fire fighting capacity was provided and was only dependent on pump designs.

Evidence on behalf of the submitters was given by, or received from:

- NZ Fire Service
- Mr Grant Lilly
- Joan Patty, for Joan Jillian Patty Trust
- Mr Andrew Griffith for AR and FM Griffith
- Mr John Guthrie for the Guthrie family
- Mr Dal Minogue, for the Mercury Bay Community Board
- Mr Toby Morcom, for the Mercury Bay South Residents and Ratepayers Assn
- Mrs Alison Henry for Mr Alan Henry.

The below is a summary of the presentations at the hearing. It is in addition to the material presented in the written submissions received to the application, those submissions having also been given regard by me in this decision. Those written submissions are in many cases comprehensive and clear in the concerns.

The New Zealand Fire Service, had a letter tabled from its consultants referring to its concern with the adequacy of the water supply and pressure to the mixed-use commercial/residential development. It opposed the application but pointed out that if approval was to be granted then there should be a condition to be added that sprinkler systems be included in the design of the building and that the minimum standards for

water supply and pressure meet the NZFS fire fighting water suppliers code of practice. SNZPAS 4509:2003.

Mr Lilly, spoke in opposition to the application. He expressed concerns for changes having been made to the application concerns and whilst he supported a tidying up of the application site, he did not see the proposal as the way to do it. He referred to points in his submission relating to the number of dwellings/units proposed for the site, pedestrian and vehicular traffic impacts, stormwater and drainage plans, and site coverage. He saw the proposal as being in excess of what was allowed by the district plan, being out of character with the locality and having adverse impacts in relation to visual and privacy considerations. The number of car parks and the lack of a loading dock were concerns in relation to the current service lane. He was concerned with the proposed arrangements for stormwater disposal to the service lane and local flooding that had occurred. The excess site coverage he saw as not only contributing to stormwater difficulties, but also being outside the character and amenity of the surrounding area.

Joan Patty, spoke in opposition. Her written statement at the hearing was accompanied by photographs and she pointed out her concerns in relation to dust, condition, noise, congestion, parking, and people safety in relation to the service lane. She saw the need for the whole of the service lane to be formed and sealed before any development is undertaken and the need for arrangements to be put in place to provide for commercial/retail car parking now. The proposed car parking and loading bay facility and shop access were considered to be insufficient.

Mr Griffith, presented a written statement in support of opposition to the proposal pointing out that he was a co-owner of the hardware business located in proximity and serviced from the service lane. He saw the density of development as being beyond what the district plan provides for in this location, this increase in density resulting in extra loadings on existing infrastructure and in particular, traffic utilising the service lane, wastewater disposal, stormwater disposal, and water supply. He had concerns for loss of privacy, the lack of open space for residents and on-site amenity areas all contributing to a view that this increase in scale and style of development was “alien” to Cooks Beach. Mr Griffith was concerned with the non-compliance of a number of development standards that he considered had been put in place to protect amenity values for both the general public as well as for developers. He supported the recommendation by the Council’s planner to refuse consent.

Mr Minogue, stated as part of initial comments, that this proposal was not wanted by the residents due to its overall size, scale and scope and its impacts on the character of the locality. He presented a comprehensive statement pointing out the decision that was sought by the Community Board in relation to each of the matters of concern, these including size and scale, access, car parking, roading layout and utility services.

The Board was happy that the applicant had addressed a mix of commercial activity and residential activity therefore meeting some of the objectives of the Coastal Village Policy Area but it is the overall size, scale and scope of the development, and the associated impact it would have on traffic and utility services, that are a primary concern that have led to the Community Board opposing the development. Concerns included the reliance to service commercial activities from the front of the shops,

there being inadequate parking for both residential activity and commercial activity on the site, and, a concern that development upon this site needs to be seen in the context of the plans by the Council and the Board to realign Captain Cook Road adjacent to the commercial area to create a larger car park.

Lesley McCormick, appeared with Mr Minogue in support of the Board's submission.

Mr Morcom, provided a written statement expressing concern for the small size of the three commercial units and the difficulties associated with service access and a concern that the applicant had plans to provide similar building developments in this zoned area. He was concerned for precedent and the use of the service lane concluding with the view that the proposal included an attempt to turn commercial land into high density residential development removing the opportunity for the community to have a user friendly, well serviced, varied local shopping centre.

Alison Henry, concurred with the Council planner's report and its recommendation to decline the application. She commented further that emphasis was being given by the applicant on apartment development despite this being commercially zoned land; that the applicant had plans to expand in a similar style onto other neighbouring land and the associated concern for precedent; the need to ensure development reflects the commercial nature of the space; the community opposition to it; and, the use of the service lane in relation to residential development. Mrs Henry stated that with one owner in control of a number of sites in this location it should be that the owner and the Council can co-operate to ensure the best possible solution from all points of view can be achieved in relation to this land. She hoped for some encouragement from the Council in this respect or the initiative to be taken for such an integrated approach.

Evidence on behalf of the Council as the consent authority was provided by:

- Ms Nicki Williams, Senior Planner
- Mr Alex Finn, Council's Roading Manager/Engineer
- Mr Supi Maheswaran, Development Engineer.

Ms Williams, had provided a comprehensive report upon the application concluding with a recommendation that consent be refused to the application. Her report covers all the relevant considerations. It was circulated prior to the hearing and was therefore taken as read. Ms Williams otherwise pointed out that the Coastal Village Settlement provisions in the district plan were directed towards accommodating smaller commercial activity in those locations rather than residential growth and, development of such commercial sites for commercial activities needed to be in line with the controls of the district plan. She saw the development standards being "pushed" and had a concern that there were not distinguishing circumstances sufficient, in relation to the proposal and/or the site, to distinguish it from similar development proposals that may be advanced on other commercial zoned sites.

Mr Finn, highlighted the nature of service lanes being to provide for loading/unloading away from site frontages in a manner that is not achieved by the proposal and, whilst use of the service lane to access car parking is fine, it needs to primarily accommodate the servicing activities required for activities off it.

Mr Maheswaran, provided a written statement addressing car parking and stormwater disposal. He pointed out all necessary car parking is required to be located within the site, this being a matter that had been addressed by the applicant. Similarly he was concerned that overflow from the stormwater storage tank would be discharged to a new soak hole constructed in the service lane. He stated the Council would not permit such a soakage structure to be located in the service lane and that was unacceptable. This was a matter too that had been addressed by the applicant since the original lodging of the application.

THE MAIN FINDINGS OF FACT

The main finding of fact that have led to the above decision and the reasons for that decision are as follows. They have been reached after considering the application, the submissions, the evidence and submissions from the hearing, the report by the Council's reporting planner, the relevant statutory and planning provisions, and the principal issues that were in contention along with a site visit. As the Commissioner I find that:

1. The change to the application to move the building forward on the site to accommodate the car parks at the rear on the application site is acceptable. It was made to address concerns of submitters and it did not prejudice the interests of any party.
2. The adverse effects of the activity on the environment will be more than minor for the reasons described in the above reasons for the decision.
3. The application is for an activity that will be contrary to relevant objectives and policies of the district plan, as explained in the above reasons for the decision. I find that as a consequence the non-complying activity application is unable to meet the gateway tests of section 104D of the RMA and further, that there are insufficient circumstances to distinguish it from other proposals that may be advanced for similar sites in a manner that would support the grant of resource consent for a proposal that sits well outside the district plan provisions and standards. This is again for the reasons explained in the above reasons for the decision.
4. On the face of it this is a commendable proposal but, examination shows it is endeavouring to provide too much upon the site. This is a site of just 546sqm. Points advanced by the applicant in submissions and evidence supporting a relaxation of the district plan standards in relation to day lighting, site coverage and side yard standards, do find some measure of support. This is because there is a need to maximise commercial building development on these sites and the nature of development upon them is likely to be such that buildings sit immediately adjacent to each other in a manner whereby some of these standards are not directly relevant in terms of the amenity for the owners of adjoining sites. However, the proposal is found to result in potential adverse effects in terms of the proposed servicing and amenity space indicating that there is more on the site than can be reasonably accommodated upon it.

5. Future development of these Commercial zoned sites cannot, in practical terms, be totally in line with the low density scale and character of the surrounding residential neighbourhoods but, be that as it may, a proposal that more fully meets the concerns that this proposal has in relation to servicing and open space for residents would be more likely to be seen favourably by the parties considering it.
6. There are a number of reasons supporting the provision of the proposed commercial activities in this location, and indeed the residential activities, to the degree that development should not be discouraged by the inability to meet all the district plan standards. However, from an examination of this proposal a development of a lesser intensity is more likely to be favoured by the parties considering it.
7. The points stated in evidence by the applicant's planner and traffic engineer are acknowledged but, I conclude from that evidence and from points raised by submitters, that in order to avoid adverse effects of a more than minor nature, a lesser intensity of development would be needed upon the development site.
8. The architect has achieved a commendable form and design for the proposal but, has followed a brief that results in an intensity of density upon the site that is more than can reasonably be expected both in absolute terms and having regard to the district plan provisions.
9. Matters of infrastructure can be suitably provided for as part of a development upon this site.
10. Submitters in opposition have raised relevant considerations in relation to effects, some of which are not sufficiently dealt with in the context of this proposal. Having said that I find that the use of the service lane for access to car parking should not necessarily be denied but, that such access needs to be accommodated whilst recognising the primary purpose of the service lane is to provide for servicing of these sites/buildings in a manner that avoids the need to service them from the road frontage.
11. Submitters in opposition have provided detailed written submissions, followed up by clarification and further explanation of those submissions at the hearing in a manner which serves to highlight and confirm the fact that too much development is being proposed upon the site by this proposal.
12. Some of the concerns expressed by submitters in relation to loss of privacy and noise are somewhat overstated in the context of their properties lying adjacent to a service lane and a Commercial zoned area where they can reasonably be expected to experience some effects from activities accordingly.
13. The interests of pedestrians and cyclists who may use the service lane for access, including to the beach, would not be seriously compromised by this proposal.

14. The strong interest from the local community and community groups in the development of this site and the Commercial zoned sites are such that the applicant would be well advised to confer directly with those groups. This is because they do have common interests which are more likely to be fulfilled in working together rather than through the adversarial process of resource consent hearings. That is not to say that those community groups dictate what should happen upon these sites but that they are able to provide useful input regarding the local community's requirements and point of view.
15. This is a proposal that, in all the circumstances, is found to be inconsistent with the sustainable management purpose and principles of the RMA.

AR Watson
Independent Commissioner
10 April 2006