MINUTES

TITLE:	**Environment and Planning Subcommittee**
DATE:	**Monday 6 December 2010, Tuesday 7 December 2010, Wednesday 8 December 2010**
TIME:	**10.30 am**
VENUE:	**Council Chamber, 189 Queen Street, Richmond.**
PRESENT:	Mr David Collins, Mr Derek Todd
IN ATTENDANCE:	Principal Resource Consents Advisor (J Butler), Co-ordinator – Subdivision Consents (M Morris), Consent Planner, Natural Resources (M Mackiggan), Resource Scientist - Rivers & Coast (E Verstappen), Development Engineer (D Ley), Consent Planner (R Squire), Executive Assistant (V M Gribble)

1 CARTER HOLT HARVEY HBU LTD, KINA PENINSULA ROAD, TASMAN – APPLICATION NO RM100173, RM100174, RM100178

RM100173 Subdivision Consent	A subdivision consent to subdivide an existing 10.7 hectare title (CFR NL9C/707) to create the following allotments: • Lots 1 – 8 as residential allotments with areas between 2100 square metres and 0.65 hectares; • Lots 9 – 11 with areas between 100 and 300 square metres to vest in Council as accessways; • Lots 12, 14 and 15 to vest in the Council has esplanade reserves with areas between 1500 square metres and 2.85 hectares; • Lot 13 of 3.41 hectares to vest in Council as Local Purpose Reserve (Recreation).
RM100174 Land Use Consent	A land use consent to erect a single dwelling within the Coastal Environment Area on each of the proposed Lots 1 – 8.
RM100178 Land Disturbance Consent	A land disturbance consent to carry out earthworks totalling 4530 cubic metres as part of construction of access roads and establishing building platforms. The site is zoned Rural 2 and contained within the Coastal Environment Area under the Tasman Resource Management Plan. The application site is located at 311 Kina Peninsula Road, Tasman, being legally described as Pt Lot 76 DP 427, Computer Freehold Register (CF) NL9C/707.

The Commissioners proceeded to hear the application, presentation of submissions and staff reports as detailed in the following report and decision.

Report and Decision of the Tasman District Council through Independent Commissioners

Meeting held in the Tasman Room, Richmond from 6 to 8 December 2010
Site visits undertaken on 5 and 8 December 2010
Hearing closed on 2 June 2011

An Independent Hearing Panel ("the Commissioners") was convened on behalf of the Tasman District Council ("the Council") to hear the application lodged by **Carter Holt Harvey HBU Ltd** ("the Applicant"), to subdivide an existing title to create eight residential lots as well as accessways, an esplanade reserve and a recreation reserve all to be vested in the Council. The application was also to build a house on each residential lot and to conduct earthworks. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM100173 (subdivision), RM100174 (Land Use - Dwellings) and RM100178 (Land Use - Earthworks).

HEARING COMMISSIONERS: Commissioner David Collins, Chairperson
Commissioner Derek Todd

APPLICANT:
Mr Nigel McFadden (Counsel)
Mr Ross Townshend (Applicant)
Mr Tom Carter (Landscape Architect)
Mr Dave Petrie (Traffic Engineer)
Mr Richard Reinen-Hamill (Coastal Hazards Engineer)
Mr Peter Cochrane
Mr Tony Quickfall (Planner)

CONSENT AUTHORITY: **Tasman District Council**
Ms Ros Squire (Reserves Forward Planner)
Mr Dugald Ley (Development Engineer)
Mr Eric Verstappen (Resource Scientist, Rivers and Coast)
Mr Mike Mackiggan (Consent Planner, Natural Resources)
Mr Mark Morris (Coordinator Subdivision Consents)

SUBMITTERS:
Mr David Short
Mr David Easton
Mr Charles Fulford
Mrs Janice Baily
Mr Chris Baigent
Ornithological Society of NZ (Mr David Melville)
Mr Mark Scales
New Zealand Historic Places Trust (NZHPT)
(Ms Sacha Walters, Dr Richard McGovern-Wilson, and Mr Te Kenehi Teira)
Tasman Christian School (Ms Caz Aldridge)
Kina Development Company (Mr Ian Kearney)
Harry Place Preserve Ltd (Dr Helen Hughes)

Ms Janet Lesser
Royal Forest and Bird Protection Society
(Ms Helen Campbell)
Dr Brian Rhoades
Mr David and Mrs Judy Mitchell
Tiakina Te Taiao
(Ms Kura Stafford and Mr Barney Thomas)
Friends of Nelson Haven and Tasman Bay
(Mrs Gillian Pollock)
Mrs Gillian Pollock

IN ATTENDANCE: Mr Jeremy Butler (Principal Resource Consents Adviser) - Assisting the Commissioners
Mrs Valerie Gribble (Hearing Secretary)

1. SUMMARY

We, the Commissioners have **DECLINED** resource consents to subdivide land at Kina Peninsula and construct dwellings and undertake earthworks.

2. DESCRIPTION OF THE PROPOSED ACTIVITY

The application site is located at 311 Kina Peninsula Road, Kina Peninsula, Tasman. The legal description of the land is Part Lot 76 DP 427 and all land is contained in Certificate of Title NL9C/707. The site of 10.7 hectares is situated on a relatively narrow finger of land near the end of Kina Peninsula. The property is bounded on the eastern side by the coast and on the western side by the Moutere Inlet.

The site is contained within a single title, but is split by a narrow strip of land which is owned by Kina Development Company (KDC). The application site property has rights-of-way over this strip, but the access track does not appear to be formed within the legal right of way, and instead the KDC property owners gain access via the one-way metal roads that run in a clockwise fashion around the site.

As part of the application, the applicant is seeking to form up and seal the shared access strip and close off the existing metal access road on the eastern (coastal) side of the site.

The entire site is relatively low lying with most of the site less than 6 metres above mean sea level, except for a raised former beach dune ridge currently covered in mature pine trees where it is proposed to site the eight residential house sites. The applicant is applying for a "generic" landuse consent for dwellings whereby a building site with a corresponding building height limit of up to 5.5 metres setting out a "building envelope" within which to build.

The application area includes an area known as the "LEH Baigent Memorial Domain" (the domain). The Deed of Covenant for the domain has not been registered against the Certificate of Title and the Companies that were party to the covenant no longer exist so it has no legal effect. However, the domain has been functioning and maintained by the applicant as a public reserve since 1982. Although the covenant refers to *"land described in Schedule 7"* it also states that Baigent Holdings *"shall*

continue to hold that part of the land described in the Schedule hereto, which is known as the LEH Baigent Memorial Domain, as a reserve for the use of the public" and maintain in a reasonable state and condition that same land and the road giving access thereto. These obligations were to expire if the land was ever vested in the Crown or local authority. A further deed of covenant was to be entered into if the land was disposed of by the company.

The application includes the vesting with the Council of 3.4 hectares of land as Local Purpose Reserve (purpose not defined) for a cost of one dollar. The balance of the land not included in the proposed residential allotments (4.31 hectares) is proposed to be vested as Local Purpose Reserve (Esplanade). This does not include the previously mentioned area of unalienated Crown land adjoining Tasman Bay. This land would continue to be administered by Land Information New Zealand and be open to public access.

3. TASMAN RESOURCE MANAGEMENT PLAN ("TRMP") ZONING, AREAS AND RULE(S) AFFECTED

According to the TRMP the following apply to the subject property:

Activity	Relevant rules	Proposal	Status
Subdivision (Rural 2 zone)	16.3.6.1 - Controlled Activities if allotments at least 50 ha in area	Does not meet the Controlled Activity criteria	Discretionary Activity pursuant to 16.3.6.2
Subdivision adjoining the Coast	16.4.2.1 - Subdivision adjoining the Coast where allotments are less than 4 ha.	Allotments less than 4ha.	Restricted Discretionary activity pursuant to 16.4.2.1
Right-of-way Access	16.2.2.1 (b) - Permitted activity where number of users is six or less.	Not a permitted activity	Restricted Discretionary Activity pursuant to 16.2.2.6
Earthworks (Land Disturbance Area 1)	18.5.3.1(k) Any earthworks within 200 metres of the coast is less than 1000 m^2 in area. 18.5.3.1(r) Any earthworks that disturbs an archaeological site.	Not permitted or Controlled Activity	Restricted Discretionary Activity pursuant to 18.5.3.3
Dwellings (Coastal Environment)	18.11.3.1 - Controlled Activity if dwellings are setback at least 100m from coast.	Not a Controlled Activity	Restricted Discretionary Activity Pursuant to 18.11.3.2
Wastewater	36.1.4 - permitted if it meets the	Designed to comply	Permitted

Activity	Relevant rules	Proposal	Status
discharge (on each dwelling site)	requirements of 36.1.4 (a-j)		

In terms of the subdivision, in a Rural 2 zone it is a fully discretionary activity under Section 16.3.6.2 of the TRMP.

4. NOTIFICATION AND SUBMISSIONS RECEIVED

The application(s) was notified on 7 August 2010 pursuant to Section 95 of the Act. A total of 112 submissions were received. A summary of the written submissions received and the main issues raised is included in Mr Morris's staff report and is adopted as the summary of submissions for this decision.

5. PROCEDURAL MATTERS

Three procedural matters should be mentioned:

- the status of some submissions/participants in the hearing;
- expert evidence not filed in advance; and
- our Memorandum to the Parties of 14th December 2010.

In opening the hearing the Chairman raised the question of the status of some potential participants in the hearing. We had been advised some time before the hearing that a deputation of children from Tasman Bay Christian School wished to take part and we had indicated that the submissions they had sent in did not include essential elements required to provide status as submitters. There is no bar to children being submitters, but submissions have to include the information required by form 13 in the Resource Management Act regulations. We had indicated however that we were open to a small number of children appearing in support of the submission lodged by their teacher, Ms Wendy Rolls.

We also recorded in opening that we did not consider that the people listed in Facebook pages attached to a submission from Mr David Short had the status of submitters, for the same reason.

Counsel for the applicant, Mr Nigel McFadden responded by indicating that he accepted Ms Rolls had status, but indicated he was not happy about children appearing, and that he agreed with our view about the Facebook contributors. We can note in passing that submitters are perfectly entitled to attach things like Facebook comments to submissions or statements presented at hearings, but the weight we can attach to them depends on things like (in this case) whether the people who posted comments were in possession of accurate information. Resource Management Act processes are not determined by the numbers of people that might express their views for or against something.

The second procedural matter that arose in the course of the hearing was the presentation of expert evidence in support of the New Zealand Historic Places Trust (NZHPT), which had not been pre-circulated. We had directed that expert evidence would be filed in advance and pre-circulated by the Council. The reason for this process is to allow all parties to know what evidence is going to be presented so that

they can assess it and provide responses at the hearing - often the most useful information and assessment for us.

Evidence that had not been filed in advance was presented by three officers of the Trust, on the argument that as they are employees they are somehow not experts. That is clearly wrong. Dr McGovern-Wilson in particular is a highly qualified and experienced expert in the matters he was giving evidence about. We were put in a difficult position at the hearing because we wanted to hear the evidence, but as we noted at the time we did not wish to put the applicant at any disadvantage. In the event, the hearing was adjourned so the applicant did have the opportunity to respond to the NZHPT's evidence, but we agree with the criticism levelled at NZHPT in the applicant's written reply.

As just mentioned, the hearing was adjourned at the request of the applicant to allow time for a response to the NZHPT evidence, and in particular to provide time for investigation of the site by a matakite (Maori seer) as was sought by the submission of Tiakina Te Taiao. A few days later we issued the following Memorandum to the Parties:

MEMORANDUM TO THE PARTIES

1. *At the request of counsel for the applicant, Mr McFadden, the hearing of this application was adjourned last Wednesday to allow the applicant to have the application site surveyed by a matakite (Maori seer). We understand that the matakite's investigation would be a complex process and the outcome could be substantial revision of the subdivision plan.*

2. *Since the hearing we have reviewed all the evidence presented at the hearing by the applicant's expert witnesses, the submitters (both expert and lay) and the Council's reporting officers/consultant. In the interests of an efficient process we wish to record that at present we have serious concerns about landscape effects and the implications of sea level rise, in addition to the issues raised by iwi representatives. We cannot indicate firm conclusions on those two matters at this stage however because we have not heard Mr McFadden's reply to the evidence of the submitters and the Council advisors.*

3. *It may be more efficient if the applicant exercises the right of reply in relation to those two matters and receives an indication from us about our conclusions on those matters, before embarking on another investigation. The purpose of this Memorandum is to indicate that we are open to that course of action, and we can undertake to provide a statement of our conclusions about landscape effects and the implications of sea level rise in this case with minimal delay, once we have carefully considered the applicant's reply. Alternatively, the applicant may prefer to complete the matakite's investigation and present a single reply covering all the matters in contention.*

David W. Collins
Derek Todd
Hearings Commissioners
14th December 2010

The applicant chose to wait for the matakite report and provide a single comprehensive reply in writing. In the event, the result of the matakite investigation was that the proposed Lot 5 building platform was moved 15 metres to the west (revised plan provided) and further protocols for excavation and accidental discovery were volunteered. We accept that these amendments are within the scope of the notified application.

6. EVIDENCE HEARD

We heard evidence from the applicant, expert witnesses, submitters, and the Council's reporting officers. The following is a summary of the evidence heard at the hearing.

6.1 Applicant's Evidence

Mr Nigel McFadden (Counsel)

Mr McFadden introduced the application and the consents applied for. He said that many of the submitters assume that the whole of the site is a public reserve; it is in fact wholly privately owned land. As part of this application that reserve status will be achieved for part of the land and there will be a range of upgrades to the new reserve.

Mr McFadden addressed the New Zealand Coastal Policy Statement (NZCPS). He said that the 2010 version is clearer and more balanced than the 1994 version. He said that it is clear that coastal development is not necessarily precluded by the NZCPS. He also discussed the status of the TRMP and the significance of the Rural 2 zoning of the property in terms of its productivity and appropriateness for subdivision.

Mr McFadden then addressed the concept of environmental compensation or offset. He said that a positive effect which will flow from the grant of consent can be considered to offset any adverse effects.

Mr McFadden considered the officers' reports and the submissions and identified the ways he considers that the proposal is consistent with Section 5 of the Act. He identified three matters of national importance and five other matters that he also considered to be relevant.
Mr McFadden submitted that the Facebook names included in Mr Short's submission do not qualify as individual submissions. He also expressed the views that the submissions from children from Tasman Bay Christian School were not formal submissions, but that the teacher Ms Rolls' submission is in order and she can call whosoever she wishes to support her submission.

In response to questions he said that the Deed of Covenant is not of great relevance, except to say that historically it puts a peg in the ground. It is an historical document, maybe of relevance in terms of land area, but the case doesn't stand or fall on the Deed of Covenant.

Mr Ross Townshend (Applicant's Representative)

Mr Townshend described the history of the proposal and the applicant's offer of the sale of the reserve to the Council. He confirmed that the applicant is still keen to seek a win:win solution.

(Note: As we had requested, the applicant's expert evidence had been pre-circulated. It was taken as read at the hearing, but with some introduction by the witnesses, and the following is a summary of some points made by the witnesses and matters discussed through questions.

Mr Tom Carter (Landscape Architect)

Mr Carter proposed seven separate controls to avoid or mitigate adverse landscape and visual effects:

- Replanting of vegetation that will grow to a maximum height of three metres;
- Rip and replant existing road;
- Revegetate new and disturbed ground;
- Keep native vegetation and remove weeds;
- Management Plan to maintain undergrowth;
- Building height restriction; and
- Recessive colours.

Mr Carter assessed the application in terms of the NZCPS 2010 and also the TRMP. He found that overall the outcomes sought by these documents would be achieved principally through avoidance or mitigation of adverse landscape and visual effects and through redevelopment of the proposed reserve area. He also assessed it against the Coastal Tasman Area design guide that is within the TRMP.

Mr Carter pointed out that most of the public submissions related to landscape issues and that public concerns about the reserve were varied. In response to Mr Boffa's Section 42A report he considered that he had carefully considered the site before reaching conclusions about the level of development that could be sustained.

In supplementary evidence tabled at the hearing Mr Carter presented a photo simulation of some of the houses as they will be seen from the Tasman Bay coast and Lot 1 from the shore of the Moutere Inlet.

Commissioner Todd asked for clarification about placing of vegetation. Mr Carter said that vegetation within the lots can be trimmed and modified but cannot be cleared to provide viewing corridors. He said the management of the Esplanade Reserve is different: vegetation there would be strengthened. There would be additional planting and existing vegetation will be assessed in terms as how high it is likely to grow. Any plants growing over 3 metres will probably be replaced.

Mr Carter said that the houses from the domain will be more visible than from the coastline. The 3 metre height restriction is only in relation to individual lots. There could be higher vegetation on esplanade reserves.

Mr Collins asked if Mr Carter did not accept that the subdivision and houses may have a major effect on the natural environment. Were there major effects which were

offset by the reserve? Mr Carter said there would be “a change” to the environment; he asked (rhetorically) if that change takes place can it be done in a way the landscape effects can be mitigated.

Mr David Petrie (Traffic Engineer)

Mr Petrie described the road environment and stated that he had no safety concerns with the roads to the site. He was also satisfied that the existing and proposed traffic volumes could be handled efficiently. He did not consider any upgrades were necessary.

Mr Petrie then outlined the road upgrades and right-of-way requirements within the site. He discussed the traffic generation as a result of the development and the necessary improvements for the reserve to be vested.

Mr Petrie addressed the access road on a causeway just to the southeast of the site. He said that higher sea levels will cause more frequent inundation or damage to the causeway, but not as a consequence of this subdivision. A contribution of $200,000 by the applicant will provide considerable scope to improve the road.

Commissioner Todd asked what sort of future-proofing might be achieved for $200,000. Mr Petrie said the quantum seemed to be in the right order. However, he did recognise that a substantial length of road is vulnerable to the sea.

Commissioner Todd suggested it might be better to have a condition to achieve an engineering outcome. He also asked if many new subdivisions have access which is not guaranteed in the long term. Mr Petrie said most of the Tasman subdivisions he has been involved in have been relatively remote from the coast and those kinds of situations have not arisen. He said that sea level rise is a relatively new phenomenon.

Mr Richard Reinen-Hamill (Coastal Hazards Engineer)

Commissioner Todd prefaced his questions by noting that spits and tidal inlets are towards the least stable land forms, whereas gravel barrier beaches and mixed sand gravel beaches are more stable. He asked for comment about the stability of this spit in particular. Mr Reinen-Hamill replied that the key issue is the Motueka Delta which is a significant supplier of sediment to the coastal system of south-eastern Tasman Bay.
However he noted that human modification has now constrained the sediment supply to a more northerly location, resulting in growth of the Motueka Spit, which in turn is causing modification and changes to the shoreline due to the nature and forcing of tidal channels.

Commissioner Todd asked if these processes were occurring further along the coast in relation to Motueka, the relationship between the two inlets to the Moutere Inlet, and the works done at Motueka inlet need to be taken into account when considering shoreline stability on Kina Peninsula. Mr Reinen-Hamill said they are factors that need to be taken into account, as is the sediment supply. He said that conservatism is important in these matters, and that the boundaries of coastal hazard assessments should not be pushed in this circumstance.

Commissioner Todd asked if there were any differences he should be aware of between coastal processes operating at Kina Peninsula and those at Ruby Bay. Mr Reinen-Hamill said Ruby Bay is also affected by the Inlet at Mapua but the processes are not directly linked.

Commissioner Todd asked about Mr Easton's observation that the spit from the south-eastern tip of Jackett Island has decreased in elevation as it has increased in length and that this has exposed the Kina coast to more frequent wave exposure. Mr Reinen-Hamill did not confirm that this had occurred at Kina Peninsula, but that in general a broadening subtidal delta would mean slightly more water depth and greater wave energy, which could cause shoreline change or erosion adjacent to the delta.

Commissioner Todd noted that Mr Reinen-Hamill's evidence relied heavily on the coastal hazard assessment report appended to the AEE; he referred to figures and maps in the report which were not reproduced in the evidence. He asked whether Mr Reinen-Hamill accepted all the findings of the report and was able to answer questions about the methodology and results of the assessment. Mr Reinen-Hamill answered he was able to do so.

Commissioner Todd then asked a series of questions on the shoreline mapping presented in the report. He noted that the base image for Figure 3 of the report was 2006 and that it included a 2010 vegetation line position, yet neither of these dates are given as information sources in the report. Mr Reinen-Hamill responded that they should have been included in the information sources listed in section 1.3 of the report.

Commissioner Todd then commented that the erosion area depicted in Figure 3, shows accretion of vegetation line of 40 metres from 2006 to 2010.

Mr Reinen-Hamill responded that this was a delta that had welded to the shore and will disperse along the shoreline.

Commissioner Todd, commented that 40 metres of vegetation accretion is extreme on a gravel beach, being an average of 10 metres per year, which indicates more than delta formation. He also noted that in the accretion area shown on Figure 3 of the report erosion of the vegetation line of between 1988 and 2010 is shown as between 40 and 70 metres.

Mr Reinen-Hamill said shoals and shoreline movement on this coast can be above and below water level. It does not take a large volume of material to create a rising seabed. A foreshore that is a half metre thick can form and then go again, which can change the visual shoreline position. He said that not a large volume of sediment movement is needed to do this.

Commissioner Todd commented that these volumes must be large enough for vegetation to grow above the tidal line. Mr Reinen-Hamill said with gravels they can get pushed up, and that vegetation establishes quickly. He has seen this in a lot of estuarine environments where there can be rapid growth and rapid removal of sediments.

Commissioner Todd questioned the appropriateness of the 20 metre short term erosion trend used in the open coast erosion assessment formula given that the evidence suggests that the fluctuations are twice this distance, and that the vegetation line is lagged and slower to response than the intertidal platform boundary used as the reference position for the erosion trigger distances. Mr Reinen-Hamill responded that the 20 metre short term trend was an average figure that seems to be appropriate for the site.

Commissioner Todd asked whether it is normal to use an averaging technique on spits, as in his experience worse case scenarios have been used. Mr Reinen-Hamill said that using averaging to understand processes is normal. This is a barrier beach rather than a spit. There is a barrier beach system that has breaches and reasonably uniform trend looking at photos along the majority of shoreline apart from where we can see obvious cases of welding. Taking the maximum movement would be prudent if we had little information but we have 60 years of photos which is a good database and allows for more detailed interpretation.

Commissioner Todd next asked a number of questions about Figure 4 from the report (the mapping of beach/intertidal platform boundary) noting that it is quite different from the patterns produced from mapping the vegetation in Figure 3.
Mr Reinen-Hamill said that what this figure is trying to show is where boundaries from tidal flat and channel are, and what the significant changes within the channel position are. Commissioner Todd said this is what he discussed with Mr Easton, who said that the Jacketts Island spit was considerably more expansive in terms of height and elevation that in the past. Commissioner Todd asked whether there was anything in this figure that disputes that. Mr Reinen-Hamill said not at all.

Commissioner Todd noted that the 2010 photograph was not used in this figure, therefore we can not determine changes since 2003. Mr Reinen-Hamill replied that this was a Google image, in which information on tidal level was not sufficient to determine low tide position.

Commissioner Todd asked about the accuracy of the position of the beach/intertidal interface or beach toe shown on the map, and about the relationship of this position to the MHWS contour, noting that the beach toe position must be lower than the MHWS contour. Mr Reinen-Hamill said the beach toe position is around the one metre contour, and is below the MHWS contour. The beach toe position was determined from aerial photographs by the different in colours of the beach sediment.

Commissioner Todd then questioned the inclusion of the 1907 survey line on this map as he assumed that this would be a high tide position, therefore would have been more appropriate to include on Figure 3 rather Figure 4. Mr Reinen-Hamill said they presumed 1907 was mean highwater mark. He did not know the origins of the line in this case, but based on experience it can vary from the debris line to the vegetation line, which are not necessarily the same as the beach toe position. Although Mr Reinen-Hamill agreed that including the 1907 survey line on Figure 3 would have been appropriate, he suggested that its position relative to the 2006 base image in Figure 4 shows that the shoreline has not shifted significantly landward from that line.

Commissioner Todd next moved on to question the relationship between the movements of the beach toe and the vegetation line. The mapping results indicate them to move in different patterns, on different time scales, and at different rates, suggesting that they are uncoupled from each with very little being able to be inferred about the movements of one from the movements of the other. Mr Reinen-Hamill disagreed, and said there might be a time lag but there is some relationship between the toe of the beach and vegetation line generally. He could not say that they are uncoupled. If we had seen erosion of beach toe, at a certain point it would start having erosion effects on vegetation, particularly in areas where the vegetation is close to the beach toe. There would be larger fluctuations in behaviour where sediment flows are travelling and lobes are being deposited or dissipated. So there will be areas where they will be coupled, and areas where there will be greater lag.

Commissioner Todd noted that in one area Figure 4 showed 200 metres of retreat of beach toe position over 60 years from 1940 to 2003, which is not reflected in either the long term or short term trend used in the open coast erosion hazard assessment formula. Mr Reinen-Hamill said with the vegetation growth there would be a lobe arriving and dissipating along the coast. Commissioner Todd said that that erosional area in Figure 4 is not the position where Mr Easton showed the pines stumps as evidence of vegetation line erosion; that area is further north along the beach near where the proposed dwelling for Lot 2 is located and where the vegetation mapping in Figure 3 shows stability.

Commissioner Todd next turned his attention to the sea level rise effects presented in section 4.2.1 of the coastal report to estimate the sea level effects for the erosion hazard assessment. He questioned the appropriateness of the modified Bruun Rule used to calculate these effects, and whether these modifications are in two papers referred to in references to the coastal hazards report.

Mr Reinen-Hamill said the standard Bruun Rule is not applicable. There has been a lot of published assessments using modified Bruun Rule for areas with upper tidal beach and flat intertidal area and truncated Bruun Rule for Hawkes Bay gravel beach areas. Fundamentally it is an appropriate process to try and simulate and then decide on the best selection of beach slope to use for making a projection.

Commissioner Todd, noted that at the slope of 1:85 given as being used in the modified Bruun Rule the corresponding distance from the beach crest to the low water would be around 420 metres. However, from his measurements on the aerial photographs presented in the coastal hazards report the distance to the outer edge of the intertidal platform and channel appeared to be only in the order of 150-200 metres.
Mr Reinen-Hamill said the seaward extent of the slope was to the low tide line. He noted that they did not take the edge of channel close to the spit, but used the widest part of the intertidal platform.

Commissioner Todd noted that this gives a degree of conservatism in the resulting predicted shoreline retreat due to a flatting of the slope, and asked whether the conservatism is too great. Mr Reinen-Hamill said they wanted to be conservative as they recognise it is a spit and they wanted something that reflected the dynamic nature.

Commissioner Todd noted that in Mr Reinen-Hamill's evidence at paragraph 26, he had talked about a conservative approach and that part of this approach was using sea level rise estimates from 1990. However the coastal hazards report section 5.4.2.1 actually uses the predicted rise from 2010 in the modified Bruun Rule calculations, hence the resulting sea level rise effects may not be as conservative as claimed. Mr Reinen-Hamill said they were still conservative, particularly those to 2110, which included ice melt considerations.

Commissioner Todd questioned the 100 year sea level effect calculation, as when he calculated this using 100 years rise of 0.75 metres as used in the report, he did not get 48 metres retreat as reported, but 63 metres. If this is added to the other factors he gets 105 metres, not 90 metres. Mr Reinen-Hamill said he would need to look at the calculations.

Commissioner Todd questioned the assumption that sedimentation rates in the inlet would keep up with sea level rise over a 100 year spectrum and asked when will it change to the rate of rise being greater that the sedimentation rate? Mr Reinen-Hamill said that if you look at projected rates of sea level rise, they increase significantly from 2060, so would suggest that it could be from that time.

Commissioner Todd noted that would trigger a change in the tidal prism. Does that then change anything for open coast stability if we change the inlet dynamics? Mr Reinen-Hamill said there may be a period of increased flow along the channel which could cause short term change in erosion. Over a long time that is more in favour of adjacent coastline rather than adverse effects.

Commissioner Todd asked about the trigger distances proposed in the mitigation. He asked for confirmation that they were measured from the beach toe rather than the vegetation line? Mr Reinen-Hamill replied 90 metres from beach toe.

Mr Todd asked whether, given there is a width of beach of around 20 metres above the beach toe and we would expect that this will be maintained as the shoreline retreats with sea level rise, does that not mean that at the time for removal of the dwellings the back edge of active beach would be located right at the dwellings? Mr Reinen-Hamill said it would be pretty close. He said he has looked at the question of whether there is sufficient space and thought there was time and the ability to move the houses. He noted that there are a couple of triggers before the removal trigger.

Regarding monitoring, Commissioner Todd noted that Mr Reinen-Hamill stated the onus should be on the Council to do the comprehensive monitoring. He asked whether this would be reasonable. Mr Reinen-Hamill responded that he believed Council monitoring would be more consistent and reliable than private monitoring which can get lost or misplaced.

Commissioner Todd asked if this monitoring should extend down to Kina Peninsula Road. Mr Reinen-Hamill said the Council should be monitoring the road access.

Regarding building elevations, Commissioner Todd noted that the proposed building sites are elevated from the beach ridge and said it appears there is an area of higher land in front of the building sites. How important is it that that landform is maintained? Mr Reinen-Hamill said that it is an historic ridge and it would be interesting to know

what the sea level state was that formed that ridge. There have been periods of higher and lower sea level. It is not crucial to maintain that level, but with future sea level rise it is important and will become more important.

Commissioner Todd asked about the coastal hazards on Kina Peninsula Road and the nature of work required to give that piece of road longer term sustainability? Mr Reinen-Hamill replied he had not done any work on this but protection similar to the Ruby Bay walkway would seem appropriate.

Commissioner Todd asked how sustainable the road would be for 50 and 100 years. Mr Reinen-Hamill said that design matters such as wave climate and durability of rock are well understood. In his view the height could be increased incrementally over 100 years. Commissioner Todd asked how far $200,000 would go in providing protection. Mr Reinen-Hamill said, looking at the recent Ruby Bay works which is a bigger wall, $200,000 would go in the order of 100 metres, maybe 150 metres.

Commissioner Collins asked if there a risk of some big change to the coastal processes the witness had described. Mr Reinen-Hamill said an earthquake would be the most significant driver of catastrophic change.

Commissioner Collins asked how the other councils listed in Paragraph 51 of the evidence deal with enforced relocations. Mr Reinen-Hamill said it is by a covenant on the title. Tauranga City Council's policy is to allow no hard protection of open coast, but removal of assets and infrastructure. There are notices on titles requiring buildings to be readily relocatable.

Mr Reinen-Hamill noted that Commissioner Todd had asked for clarification on levels and rates of sea level rise and he tabled supplementary evidence with new figures and acknowledged there were errors in his original evidence. For the open coast, the new figures showed the sea level rise effect by 2110 to be 63.5 metres, and the total predicted possible retreat to be 90 metres as presented in the original evidence. For the inlet coast, the sea level rise component to 2060 should read 5 metres and not 8 metres, based on a foreshore slope of 1:20, however the 8 metre figure was not used in the assessment.

Commissioner Todd noted that the safety factor on the open coast is only applied to the short term erosion figure, and does not include sea level rise. But on the inlet side it applies to the sea level rise calculation as well. He also noted that there was an additional matter relating to inundation on the inlet side that resulted in the setting of a 4.6 metre RL ground level for mitigation of inundation on the inlet side. He asked whether all factors that apply on the open coast are also appropriate to apply to inlet side, or are there some factors that may not be required in Lot 1.

Mr Reinen-Hamill said the factors to consider are, p13, para 33, item e3), riverflow, wave run-up effects. That is an allowance of 0.3 m but his opinion on this, given that it is a fairly narrow spit, was that a lower level on the inlet side is no appropriate. We deliberately picked a high value to mitigate inundation risks.

Commissioner Todd noted in his site visit that the Kina Developments' dwellings appeared to be at lower elevation than 4.6 m RL. He asked whether Mr Reinen-Hamill would consider those sites to be at risk from inundation. Mr Reinen-Hamill

considered that they certainly would. For new development 4.6 m is a conservative level would be OK to use, recognising it's more conservative than NIWA assessment.

Commissioner Todd said that 4.6 m makes it less conservative from a landscaping point of view. In this case would you consider reducing the ground level requirement at Lot 1 to 4m? Mr Reinen-Hamill said para 38 could be appropriate if looking at more than just a coastal hazard issue.

Mr Peter Cochrane

Mr Cochrane described the soil conditions in the vicinity of the house sites as medium sand. He considered secondary treatment of wastewater to be the appropriate level in this location.

Based on the assessment of Mr Reinen-Hamill including the low likelihood of erosion within 50 years, the low likelihood of inundation and the mechanisms recommended to deal with coastal erosion, Mr Cochrane considered it unlikely that the wastewater discharge systems would be affected by erosion or inundation.

Any modification required to address coastal erosion after 2060 can be practically implemented.

Mr Cochrane considered it unlikely that the discharge of nitrogen would adversely impact on groundwater quality. A separation distance of 16 metres would be needed to meet recreational water quality guidelines for bacteria in surface water.

Commissioner Collins asked what effect would occur as a result of rising groundwater levels in the longer term. Mr Cochrane said groundwater is deeper than 3 metres below ground level. Therefore, he would not expect rising in levels to restrict wastewater disposal. Even 2 metres depth in 2100 would be acceptable.

Mr Cochrane said the disposal field is based on 1,760 litres per day per lot. Two options have been identified. Trenching only requires an area of 70 square metres, whereas drip irrigation requires 350 square metres. Reserve area of 100% should also be considered.

Commissioner Todd sought clarification about the use of trenching, noting that the report shows, in some locations, discharge trenches that are seaward of the building lots. He said the coastal report recommends that those areas should be to landward. He asked Mr Cochrane for comment on the apparent inconsistency and whether there is room on the landward side to carry through that recommendation.
Mr Cochrane believed that there is sufficient room to the landward side. He said that the building retreat mechanism proposed by Mr Reinen-Hamill is adequate.

Commissioner Todd asked whether there would still be an effective wastewater system prior to the reaching of the proposed 20 metre trigger distance for house removal, as assuming a similar beach profile to present, this buffer distance would be totally occupied by the gravel beach therefore would be subject to wave run-up processes which may on occasions penetrate into the areas occupied by the houses and wastewater disposal areas. Mr Cochrane said he was relying on evidence of Mr Heinen-Hamill regarding the appropriateness of the trigger distance, but noted that

the systems can respond to extremes in water level and that there would not be any issues from periodic inundation.

Mr Tony Quickfall (Planner)

Commissioner Todd asked if consideration had been given to an esplanade strip. Mr Quickfall said he understood that an esplanade reserve was Council's preference, but accepted that a strip would be the alternative.

Commissioner Todd asked if moving building platforms to beyond the 100 metre limit was considered. This would make them a controlled activity. Mr Quickfall said their location was landscape-driven.

Commissioner Collins questioned the statement that the proposal is anticipated by the zone rules. He noted that 50 hectares is the minimum lot size and this proposal is far from that figure. Mr Quickfall said that there is no intermediate step; 49 hectares and 400 square metres are both discretionary.

6.2 Submitters' Evidence

Mr David Short

Mr Short spoke in opposition to the application. He said the withdrawal of the Tasman Area Community Association's submission means that the community voice will not be heard. He said that Facebook is a recognised social media that has validity and he suggested credence be given to the page and the comments made.

If there are big coastal storms and sea level rise the Council assets will be put at great risk and there will be pressure on all ratepayers.

Mr Short said that he has seen 100 acres of coastal pines with native bush amongst it removed. While nature can restore itself, at the time it was devastating. All native bush in the area got taken out and it was virtually clear-felled. He considered it necessary that removal of the pines be done with care with logs removed by helicopter so that native bush is preserved.

Mr Short believed there is inherent tension between creating reserves and putting in private houses next door to them. The application site is one of the few places you can go and sit on the beach without strong winds, it is a beautiful spot and people appreciate it as a "wild" place and not crowded with houses. He said that those kinds of places are diminishing.

Mr David Easton

Mr Easton provided an extensive description via powerpoint of his knowledge of the erosion risks on the subject site and concluded that there were far too many unknowns and risks to enable building to take place on the proposed locations.

Mr Easton said that there was a gravel bar extending from the south east tip of Jacketts Island. Mr Easton said the gravel bar used to be above water level and stretched right back to Jacketts Island which gave protection from the northerly and easterly storms 40 years ago. He said that originally the Motueka River flowed out

through Port Motueka and Thorp Street. With the change to its present location all gravels are now going out to sea near Motueka. Therefore, some of the drivers that previously deposited gravel at Kina do not now exist.

Mr Easton said in the last two years 15 metres has been lost off the front beach at Jacketts Island. More tidal water is now being directed out between Kina Peninsula and Jacketts Island.

Mr Easton asked who would buy a section in this location. The land is vulnerable and the pine stumps on the beach are evidence of that.

Mr Easton also said that the proposed esplanade reserve on the eastern side of the subject property will not be usable in the summer as there will be no shade. He said that 8 metre trees are required to provide shade but the maximum is proposed to be 3 metres.

Mr Easton said that more lights on the land would have a significant adverse effect on the night time amenity.

Mr Easton expressed little faith in the coastal modelling done. He said that there is little certainty due to the interplay of a wide range of changing factors. Not all of these factors can be accommodated in the modelling and therefore there is too much uncertainty.

Commissioner Todd asked if the vegetation and gravel interface moved in unison or independently. Mr Easton said some vegetation will be taken out with storm event. The cliff behind the road was created by the sea and the sea will go back there. He said the vegetation line has moved back as well as the gravel coming and going. Pine stumps are demonstrative of that and in some cases 30 metres comes and goes. He suggested that this all goes to show why people do not and should not build houses on gravel and sand.

Commissioner Collins asked if, from Mr Easton's house, the pines stand out as a prominent feature. Mr Easton said it is an iconic view. When you farm and do so in one place for 100 years you have a connection with the land and the view, but he said he is less concerned about the removal of the pines than the lights at night time.

Mr Charles Fulford

Mr Fulford presented his submission which opposed the application. He said no more buildings should be built on the land, regardless of the status of the applicant.

Mrs Janice Baily

Mrs Baily said that the current state of the property is that it is an area that is not overdeveloped or affected by subdivision; the land has not been "over beautified". She considered that the proposed subdivision will alter the natural and wild character.

She expressed surprise that any building could be allowed in such a low-lying area. She said that Kina Peninsula is not a suburb and should be left as it is.

Mr Chris Baigent

Mr Baigent, on behalf of members of the Baigent Family, was in attendance to support the application.

He said the flat area where ball games can be played is the "domain". Commissioner Todd asked if the intention was for public use and access to that domain. Mr Baigent said that within the agreement that was the intention.

Commissioner Collins asked what Mr LEH Baigent thought about the land and domain area. Mr Baigent said LEH Baigent purchased the land from a company that had gone broke and he took staff out there for company picnics.

Ornithological Society of NZ

Mr David Melville presented his submission on behalf of the Nelson/Golden Bay Branch Ornithological Society of New Zealand. He said the Society neither supports nor opposes the application, but is concerned that there is no reference to the ornithological values of the area in the application.

Mr Melville said that the banded dotterel [threatened, nationally vulnerable] and the variable oystercatcher [at risk, recovering] are present adjacent to the site with Tasman Bay being the most important site in New Zealand for the latter. He said that the presence of nearly 1% of the world population of variable oystercatcher is relevant under both the old and new NZCPSs. He said that the applicant has offered no appropriate mitigation for effects on this species resulting from the subdivision. Mr Quickfall's offer of new plantings is irrelevant as the birds roost on the open beach areas.

Mr Melville advised that banded dotterill nests in more sandy areas. Increased public access, noise, construction effects will disturb these shy birds. Dogs and cats cause disturbance and vandalism of roosting sites. Increased accessibility will exacerbate existing problems with domestic animals. Mr Melville suggested a covenant of no cats could be beneficial

Mr Melville said that oystercatchers probably go to the Motueka sandspit as well, but travelling there requires increased energy expenditure. The high tide resting areas at Kina are therefore chosen by the birds in preference to those at the Motueka sandspit.
Mr Melville said we often concentrate on breeding areas, but for shore birds with communal roosting two hours either side of high tide it is important to have sites of little disturbance. Consequently there are a limited number of high tide roost sites.

Mr Mark Scales

Mr Scales opposed the application. He emphasised the value of the reserve and the location.

Mr Scales had concern that there would be conflict between the houses and the users of the reserve.

Mr Scales did not consider that the removal of the pines would adversely affect natural character.

New Zealand Historic Places Trust (NZHPT)

Ms Sacha Walters presented the Trust's submission which sought that the application be declined as it is likely to have more than minor adverse effects on archaeological and cultural values of the site. She said that archaeology and Maori cultural heritage concerns are not sufficiently addressed in the application and that further investigations should be carried out that includes trenching.

Ms Walters said that they seek that Lots 1 and 2 be removed or relocated as that location has the greatest potential for archaeological discovery with Lot 1 partially located within the recorded and registered archaeological site.

Dr Richard McGovern-Wilson, a Senior Archaeologist with NZHPT, said that the site was a premium environment for Maori, reflected in the high number of sites. He said that there are 10 recorded sites on the Peninsula including middens, ovenstones and flaking floors. He said that further unrecorded and potentially more significant sites may exist along the dune ridge system where it is intended houses will be constructed.

Dr McGovern-Wilson said that the applicant's Cultural Impact Assessment for Tiakina did not address NZHPT concerns and recommended further investigations prior to any grant of consent.

Mr Te Kenehi Teira, Kaihautu or National Maori Heritage Manager for NZHPT, outlined the intensive occupation, use and significance of the area to the manawhenua. He said that the subdivision would involve large scale earthworks over an area that has a registered site and contains a high likelihood of further discoveries. The effects of this proposal on archaeology and cultural heritage are clearly more than minor and are not mitigated remedied or avoided by the proposed consent conditions or any other measures proposed.

Tasman Christian School

Ms Caz Aldridge and children from Tasman Christian School spoke about their concerns about the subdivision application. They emphasised the value of the reserve to them.

Commissioner Todd asked about the planting of the trees by school children. He asked whether the planting was out by the beach or under the big pines. Ms Aldridge understood there were different areas planted. They have planted both under the pine trees and down by the beach.

Kina Development Company Ltd

Mr Ian Kearney spoke on behalf of the company and suggested a number of layout and road operation alternatives to be considered to better handle vehicle, cyclist and pedestrian traffic.

Mr Kearney also suggested that due to archaeological considerations, Lot 1 be deleted. Otherwise Lot 10 should be deleted to reduce the security risk to the KDC property.

Mr Kearney said that the felling of pines in the Domain area reduced the use of the estuary frontage by at least 50% due to the lack of shade. Recently usage has increased as other trees have grown. He considered it essential that shade trees be planted and maintained.

Mr Kearney considered the existing pine trees to be dangerous with many falling over the years. He considered that they should be removed on safety grounds.

Commissioner Todd asked about the coastal works around the estuary side of the dwellings on Kina Development Company land. He asked if they were placed to deal with erosion issue or inundation, or just edging for landscape purposes. Mr Kearney said the ones on his place have been there since he took ownership but they do deal with minor coastal erosion.

Mr Kearney expressed doubt that they would be able to build more baches with more shareholders. He said that any building would have to be on the footprint of existing buildings.

Harry Place Preserve Ltd

Dr Helen Hughes said that it is disappointing that the intent of the 1982 covenant to have the total 10.7 hectare area as public reserve may not be honoured even though the public have had recreational use for 80 years.

Dr Hughes considered the proposal to be close to a suburban development. She supported the conclusions about the effect on landscape drawn by Mr Boffa.

Dr Hughes said that the wastewater discharge is also a concern due to the possible nutrient and pollutant loading in the estuary and on the outer coast. Algae and sea lettuce would increase, smothering shellfish beds.

Dr Hughes said that Kina Peninsula Road will come under increased attack from the sea.

Ms Janet Lesser

Ms Lesser, a resident of Kina Peninsula for 17 years, said that until recently the Covenant had been honoured and the public felt like they were on the land by right. She said a huge amount of work had gone into the land with watering of revegetated areas and removal of weeds.

Royal Forest and Bird Protection Society

Ms Helen Campbell presented a wide range of concerns relating to adverse effects on amenity values, natural character, natural values, and landscape values. She also outlined concerns around infrastructure costs to maintain road access.

Ms Campbell outlined the policy framework in both the 1994 and 2010 NZCPS and said that the proposal is contrary to these documents. She disputed Mr Carter's assessment that the site did not possess outstanding natural character.

Ms Campbell summarised by saying that Forest and Bird consider the proposal to be inappropriate due to its urban nature. She said that the proposal will have adverse environmental effects on existing wildlife, natural character, landscape, visual and amenity values, and natural features. She considered it to be sprawling and sporadic subdivision.

Commissioner Todd asked Ms Campbell about her view that the area has high natural character. Ms Campbell said for herself it is a magic area, with Moutere Inlet on one side and open sea on the other. The pines can contribute to this natural character as can activities of fires on the beach, eating shellfish etc. She said that the Council has yet to recognise it in planning documents

Commissioner Todd asked if that would be compromised by putting eight houses there. Ms Campbell considered that it would.

Commissioner Collins asked about the alternative - what would happen to the land if consent is declined. Ms Campbell said it should be purchased, it is of such importance to people of Kina area, and could be offset for something else. She considered that the Council has a responsibility to maintain areas that are important for amenity and character. The Department of Conservation (DOC) or Nature Heritage Fund would be alternatives as the site is a really important area.

She said that DOC has historic cultural and heritage responsibilities and its purchase on that basis would not be out of order.

Dr Brian Rhoades

Dr Rhoades is an engineer, a former Chief Executive Officer of the applicant company, and has a property at the south end of Jacketts Island. He stated that he opposed the application, noting that even though a decline of consent may compromise access to Jacketts Island he was still in opposition.

Dr Rhoades expressed the view that Carter Holt Harvey took on the covenant as part of the purchase of the forest and should honour the intent of the covenant. He noted that the company had acknowledged this obligation, for example in the mention of re-vegetation work there on the 2003 company website.

Dr Rhoades showed a video taken on 3 August 2008 of waves attacking the road behind the timber wall that was built in April 1996.

Mr David and Mrs Judy Mitchell

Mr Mitchell indicated opposition to the application. He said he was disappointed to learn that the clear intention of the Baigent family was not to be carried out. He stated that he does not believe that the intent, spirit and purpose of the covenant can be dismissed and a strong moral responsibility remains for the owner and the Council to ensure that the clear wishes of an important family are honoured.

Mr Mitchell said that he values the landscape, natural features and native vegetation of the Peninsula. He said that the TRMP is deficient in as it does not address and protect an area of such significance. The policy framework is not supported by the identification of any outstanding natural features and landscapes. He believed that the Kina Peninsula would qualify as an area with outstanding natural features and does qualify for recognition under Section 6(b) of the Act.

Mr Mitchell also emphasised the value of the location to Maori history and heritage with a nearby Pa and the site being recognised as a valued mahinga kai area.

Mr Mitchell drew parallels with settlement at Ruby Bay and Mapua where dune form and natural environment have been replaced by development. He said that it is his experience that landowners fight to save their land and coastal protection structures are likely. Pressure will be bought to bear on the Council to help.

Commissioner Todd asked if the removal of the pines reduces the outstanding status that Mr Mitchell believes the location possesses. Mr Mitchell said the pines contribute in no way to the outstanding natural character. Restorative planting undertaken by community will make it a more natural looking area in the future.

Tiakina Te Taiao

Ms Kura Stafford said that the site and surrounds bears a long history of occupation and is identified as a Cultural Heritage Precinct. She said that tangible and intangible cultural heritage sites and tangata whenua would be adversely affected by this proposal due to the potential risk of damage to or destruction of important waahi tapu.

Ms Stafford said that removal of pine trees and excavations may unearth koiwi, possibly urupa and artifacts. She recommended a full cultural audit and inspection by a matakite.

Mr Barney Thomas advised that the applicant had agreed to undergo a matakite process and that information about this would be given to us (the Commissioners) prior to closure of the hearing. Mr Thomas said that if the matakite says the area is *"clear"*, iwi would not be involved further.

Friends of Nelson Haven and Tasman Bay

Ms Gillian Pollock said that Kina Peninsula is low-lying and dynamic. She said that the proposal would introduce fill from an unknown source. She also said that the development will also bring in cats and dogs which will disturb and kill native birds. The Friends were also concerned that septic tank soakage would contaminate the beach.

The Friends considered that the loss of natural character was unacceptable and they supported the findings of Mr Boffa.

The Friends said that the Baigent Reserve is used on a daily basis and is much valued. The new development will be at risk from erosion and protective walls will be inevitable.

Finally, the Friends did not consider that the proposal would be consistent with the NZCPS or the TRMP and should be declined.

Commissioner Todd asked if there is any level or scale of development that the Friends would find acceptable. Mrs Pollock replied that they see it as one of the few remaining natural places on the coastline and would like to see it stay that way, with no additional development on top of what is already there.

Ms Gillian Pollock

Ms Pollock referred to the applicant's statement that the subdivision was needed to pay for improvements to the Baigent Reserve. She preferred that the improvements not be done.

Ms Pollock was concerned that coastal protection structures would be needed and that these had adversely affected the beach environment.

Ms Pollock said that disturbance and possible structural protection of the beach would affect the wide range of birds that use the beach and high-tide roost sites. She said that banded dotterel have been seen on the beach in front of the pines and little blue penguins use the shrubbery as shelter. She considered dogs to be a major threat.

Mrs Pollock referred to the objectives of the NZCPS and sought that the application be declined.

Commissioner Todd asked how many bird species would be directly affected. Mrs Pollock said during high tides, birds retreat up the beach. They generally do not live in trees but roost on flat ground. She said if there are houses with dogs, cats, children, they won't have room to retreat because they will be frightened by the activity.

Commissioner Todd noted that it is a popular place now for taking dogs. Mrs Pollock said dogs are fairly well controlled and a lot of people that go there know about the bird life. An increase in residential dwellings would be a concern as it would introduce more uncontrolled activity.

6.3 Council's Reporting Officer's Report and Evidence

Mr Leif Pigott (Co-ordinator Natural Resource Consents)

Mr Pigott said that a permitted rule in the TRMP allows up to 2 cubic metres of wastewater to be discharged subject to other design constraints. Systems are normally assessed at building consent stage if it is clear that it is practicable to construct a complying system. Information provided by the applicant suggests that sites are large enough to discharge estimated wastewater volumes and that soil types will not be a design impediment.

He said that pathogens die-off in sandy substrates and work by Environmental Science and Research (ESR) suggests within 30 or 40 metres from the point of discharge there will be complete die-off of bacteria.

The other issue is nitrogen as it is difficult to build a good system to get rid of nitrogen. However, he said that mass loading will be relatively low and he would not expect to see eutrophication of coastal waters from discharges of this size given the volume of flushing.

Mr Pigott expected wastewater systems to last for a minimum of 15 years and said that it is likely that the systems or some parts of the proposed systems will need to be replaced in 20 to 25 years. Any sea level rise that has occurred could be dealt with at that time.

Overall, Mr Pigott was satisfied that the systems would work. He noted that a condition was volunteered that the systems would have tertiary treatment, but cautioned that he would not want to see chlorine dosing in that location.

Ms Rosalind Squire (Reserves Forward Planner)

Ms Squire described the Council staff preference for an esplanade reserve over an esplanade strip on the Tasman Bay side of the subject property. She said that the applicant volunteered that a reserve be vested. She said that a reserve would allow public access until the coastal strip is eroded and a reserve is preferable as it allows the Council to do works freely.

Mr Mike Mackiggan (Planner, Natural Resources)

Mr Mackiggan clarified his opinion that removal of pine stumps would be a discretionary activity for earthworks and therefore require an additional resource consent. He suggested that such works would have unavoidable and significant adverse effects on the native understorey. Further, he considered that archaeological and cultural heritage sites would be damaged as a result.

Mr Mackiggan said he is aware of other options such as mulching stumps, but damage may still result to the native understorey.

Mr Frank Boffa (Consultant Landscape Architect)

Mr Boffa commented on Mr Carter's supplementary evidence and suggested that his photo representation of the house on proposed Lot 1 is too high (the actual house will be 900 millimetres less than the top of that mast) whereas on proposed Lot 8 the house will be 1 metre higher than the staff.

Mr Boffa considered that from Photo Point B most of the houses would be visible and appear as a wall of buildings. He considered that the houses will be more visible than Mr Carter photo simulations indicated.

Mr Boffa said that the mast positions shown in photos are the centre points of house sites and so some vegetation would be removed. He anticipated that lot owners would want a water view which will require more vegetation to be removed. He said that Mr Carter has tried to mitigate effects, but that it is extremely difficult to achieve. He thought it unrealistic to propose that there would be vegetation right up to the edge of the driveways and edges of the houses. It is inevitable that there will be provision for outdoor living, parking and space for children to play. Overall, he

considered the landscape mitigation proposals to be an administrative nightmare and would not be effective.

Mr Boffa said the general amenity and ambience of the reserve would change dramatically from the way people currently experience it. He considered that it will feel more intimidating and like being in other people's backyards as the clearing for driveways will be more open than indicated to allow for vehicle parking and turning. Overall, Mr Boffa considered that the proposal would change the character of the reserve considerably. He expected it to become more of a boat launching area. He thought that people will still use it, but differently.

Mr Boffa said that the houses and driveways would be visible several metres above the domain and quite close to rear boundaries. He said it would have been useful to have done a more accurate photo montage simulation in order to better understand the visual effects.

Mr Boffa considered that from the side the houses will look like a line. He said that fencing would be very undesirable as it would be another human intrusion.

Mr Boffa said that he has previously identified, for discussion purposes, what he sees as outstanding natural landscapes and at that time he identified the Kina Peninsula and the Moutere Inlet as such. Mr Boffa said the pines do not downgrade it as a natural feature. He said that natural character is about natural elements, natural patterns and natural processes; they do not have to be indigenous or pristine, just healthy.

Commissioner Todd asked if there is a lesser scale of development which may be appropriate in terms of natural character and landscape. Mr Boffa said one house could be a controlled activity as there is a title. However, Mr Boffa said that he considered none to be preferable. He said that two or three houses could possibly be accommodated, but there would be a threshold that should not be exceeded

Commissioner Collins asked about the view from the other side of the Moutere Inlet. Mr Boffa said that once the pines went the houses would be quite apparent and from higher viewpoints, and would be seen against the sea backdrop. There might be some screening of the houses but he suggested that it would be minimal.

Mr Dugald Ley (Development Engineer)

Mr Ley spoke about the cost of continuing to maintain the road access to the property. Mr Ley said that the Council might take the rock out and use it somewhere else, and let the sea erode back to the foot of the cliff.

Commissioner Collins said that he is aware of beaches where people have to walk to gain access. He asked whether, if there was no road access, does that mean the reserve is of no use to anybody. Mr Ley agreed it could still have some use.

Commissioner Todd asked if the Council has had a change in attitude towards this road as it has previously done protection works three times in 15 years. Mr Ley said that the Council has taken heed of the (central government) documents coming out in last five or six years. He said that in days gone by more rock would go in. Walking away from the road is now an option the Council would consider.

Mr Ley generally agreed that the roading infrastructure proposed to be provided within the site is appropriate and adequate.

Mr Eric Verstappen (Resource Scientist, Rivers and Coast)

Mr Verstappen said that coastal hazards are more likely to impact upon this property in a material way, probably between 20 and 50 years into the future due to climate change.

Commissioner Todd put it to him that the applicant has offered "managed retreat" for buildings, and buyers would be fully aware that there is no obligation to protect - use of the property would be at their risk. Mr Verstappen said that the risk is both to the land and the houses. The only way it can be mitigated is by making buildings relocatable. He said that if you own a dwelling your preference will be not to move it off the land. He said that human nature, being what it is, means the first instinct is to stay. It is not realistic to consider people would relocate at the first hint of danger.

Commissioner Todd asked if the applicant has offered appropriate distances and controls to address the risks. He also asked if Mr Verstappen was in agreement with the hazard formulation used and that it is appropriate to apply in this location.
Mr Verstappen said he does not have a problem with the methodology and how sea level rise has been included on the Tasman Bay side. His feeling was that sedimentation of the estuary will be out-paced after a while by projected sea level rise and there will be greater shoreline erosion pressure on the inlet side.

Commissioner Todd asked if he was aware that a more conservative formula was used for the inlet side. Mr Verstappen replied that Mr Reinen-Hamill has done the calculations and come up with setbacks that are appropriate for the circumstances.

Commissioner Todd asked if he is comfortable that locations of dwellings would meet the 100 year requirement of the NZ Coastal Policy Statement. Mr Verstappen noted that the last line identified in the hazard assessment is the 100 year erosion incursion line. The Royal Society has produced a recent report that is now reflecting ice melting modelling. The prognosis is not good and we have seen already how estimates of climate change risk have increased significantly.

Commissioner Todd asked whether the triggers are at the right distances.
Mr Verstappen responded that his experience with coastal communities is that some people are comfortable living on the coastline but other people are more anxious and move. Twenty metres is as close as you would want to get to enable people to respond by buying a section elsewhere and moving; and that is 20 metres from beach crest. There is about 20 metres from toe to crest, and if the crest was lapping at house piles it is not an appropriate setback. Trigger lines from the crest to house site with minimum of 20 metres is far more appropriate.

Commissioner Todd asked how important is the maintenance of the dune ridge in front of the proposed building lots, and lack of removal of material for building platform. Mr Verstappen said it is important to maintain the health of those dune systems between housing and the open coast.

Mr Todd asked how often in his experience has the section of Kina Peninsula Road been inundated with existing sea levels. Mr Verstappen said inundation has been quite regular ranging from every spring tide before protection to once or twice a year now with rock protection.

Mr Verstappen said that to reduce inundation frequency elevating the rock revetment would be needed. Commissioner Todd asked if $200,000 would allow that to happen. Mr Verstappen said it depends how much you want to futureproof the access. By the time sea level rise is factored in you have to raise the crest level by 2 metres or more and that has implications for the road. $200,000 might not be anywhere near enough.

Mr Mark Morris (Coordinator Subdivision Consents)

Mr Morris considered that future expectations of residents in the proposed houses is a relevant consideration as a future effect of the proposal. Although $200,000 has been offered in the short term, no mitigation has been offered to deal with the future effects resulting from erosion of the road and consequent isolation.

Mr Morris did not consider that the TRMP supports the proposal. The subdivision design is very distant from what is permitted in the Rural 2 Zone. He also said that the TRMP provides for rural residential development through Rural Residential Zones and the Rural 3 Zone. The TRMP suggests that development in those zones is more appropriate.

Taking Mr Boffa's assessment into account, Mr Morris concluded that the proposed eight houses and development would have a significant adverse effect on the existing amenity. He said that, regardless of mitigation and landscape controls, with clusters of this size it is inevitable that there will be an urban amenity. Such an amenity is not supported by the TRMP in the Rural 2 Zone.

He maintained his strong recommendation that the application be declined. Commissioner Todd asked if there is a lower level of development or density that Mr Morris would find acceptable. Mr Morris said that with the serious problem of providing road access to the site that is under increasing erosion pressure, the only level of density is what can currently be built as a permitted activity, which is one new dwelling.

Mr Morris said the land is zoned Rural 2. The TRMP provides rural residential Zones to provide for rural residential development. His conclusion was that the Rural 2 zoning doesn't anticipate further subdivision, particularly of a site such as this.

Commissioner Todd asked, if the access could be put aside, would you still recommend no more than one house. Mr Morris confirmed this.

Commissioner Collins noted that a lot of submitters had urged us to consider the status quo, but the status quo is not an option according to the applicant. What is the value of the reserve and recreation compared to maintaining the landscape values and views from outside? Mr Morris said he would like a win:win solution to provide for public access, but did not believe the creation of rural residential allotments is appropriate.

Even with more mitigation measures Mr Morris said that an urban amenity in an area with high natural amenity will still be inappropriate.

6.4 Applicant's Right of Reply

Mr McFadden provided a comment from Mr Reinen-Hamill stating that he considers the open coast method of determination of the effects of climate change to be sufficiently conservative and no further additional safety factor is required. Therefore, he considered it inappropriate to apply the inlet method to the open coast.

Mr McFadden also stated that consents have been granted for sea access only for subdivisions such as those at Torrent Bay and in the Marlborough Sounds.

Mr McFadden said that the subject land is not, and never has been a reserve. A grant of consent would mean that the reserve that people valued could be realised. He submitted that the covenant is of little relevance currently.

Regarding Kina Peninsula Road, he said that a grant of consent will make it more likely that the road can be retained. If the Council was to abandon the road then land owners could still get access by sea or through the estuary.

In considering the submitters concerns Mr McFadden submitted:

- that it was prudent for dwellings to overlook reserve areas for security purposes;
- that removal of the pines can be done in such a careful way that damage to the understorey would be minimised;
- that other wild places exist nearby that can be used instead by people preferring that kind of recreation experience;
- that it has been shown that the land will remain for a considerable amount of time and that steps have been taken to mitigate the hazard risks thereafter;
- that inundation is not an issue;
- that the applicant does not seek to over beautify the reserve land but to enhance it with plantings and facilities; and
- that a "no cats" covenant is volunteered to protect birds.

Mr McFadden argued that the NZHPT submission ignored the location of registered sites, noting that they are not on the areas where earthworks are to take place. He also emphasised that all of the recommendations from the Cultural Impact Assessment are to be implemented.

In addressing Mr Boffa's report, Mr McFadden said that one is not entitled to assume that land owners will breach the law and that volunteered conditions and consent notices will not be complied with. He said that the reserve area will be substantial and will mean that open space dominates. He also said that Mr Boffa took no account of Mr Carter's mitigation measures and did not appreciate that change must be balanced.

Mr McFadden said that Mr Ley's suggested abandonment of the access road was not practicable and that a contribution of $200,000 initially and then a targeted rate would spread the financial load in up-keeping the road. He therefore considered that this process will allow the road to remain.

Mr McFadden described Mr Verstappen's evidence as philosophical rather than specific. He considered that a consent notice trigger would bind land owners and anyone purchasing the allotments would know of it.

Mr McFadden did not consider that Mr Morris had taken the evidence of the applicant's witnesses on board and did not take a balanced approach to his final recommendation.

Mr McFadden then addressed the matakite investigation. He said that the investigation did not raise any matters unexpected by the applicant, except that the Lot 5 building platform is to be moved to the west by 15 metres.

Mr McFadden said that Mr Reinen-Hamill's investigation of the application is conservative and site specific, and therefore an appropriate assessment of the hazard over the next 50 to 100 years. He submitted that the Act allows for some risk.

7. PRINCIPAL ISSUES AND OUR MAIN FINDINGS

Positive Effects

a) What would the positive effects of the proposal be?

It almost goes without saying, and in fact the applicant's case hardly addressed this, that consent would enable eight households to occupy particularly attractive dwelling sites. This should not be overlooked however because it has to be kept in mind when coming to an overall conclusion on whether this set of proposals (which as discussed below would have some negative effects on the environment in our assessment) would still meet the purpose of the Act.

The positive effect emphasised most in the applicant's case would be the legalisation of public access by the creation of a 3.41 hectares recreation reserve, 4.25 hectares of esplanade reserves, and three pedestrian accessways. We will discuss what weight we have given to this under the heading of "Public Access" below.

Another positive effect of the proposal would be upgrading of the area of the proposed recreation reserve. The application is clear (page 6) that things shown on the application plan such as new vehicle parking and circulation areas (including a chip-sealed ROW through the site to the Kina Development Company land), new planting, new toilets and undergrounding of power lines would be provided at the applicant's expense. Several submitters commented that they do not want to see the character of the site changed in this way, but we accept that for many other people these would be improvements.

The other significant positive effect is a volunteered contribution of $200,000 towards upgrading of the legal road providing access to the site. This is also discussed below, under the heading of "Road Access".

Assessment Framework

b) What is the proposed development to be assessed against?

Before any meaningful assessment of the proposal can be undertaken we have to come to some understanding of the alternative(s) - what it is to be assessed against. The applicant's case was that any adverse effects on the environment would be off-set by positive effects, but as discussed below, we do not accept that so the question of what would happen if consent is refused has to be considered.

Many of the submissions appear to be based on the assumption that the alternative to this set of proposals is the status quo. We are not at all sure that can be assumed. Although clearly many people have been enjoying the use of this property all their lives on the assumption that it is some sort of "reserve", the applicant company as owner states that it is not and never has been. We will discuss the Baigent Memorial Park/Domain under that heading below. At this point we will just note that the property is held in fee simple title by the applicant company, there is nothing on the title recording an easement in favour of the public or any organisation that could facilitate public access, and the parties to the Deed of Covenant signed on 6 December 1982 (H. Baigent and Sons Ltd, and Baigent Holdings Ltd) no longer exist.

What then is the alternative(s) to the applicant's development "package" and what effects on the environment would it or they have? The applicant's case emphasised the benefit of providing legal public access, implying that public access will not be available without this development. Quite properly, this was not asserted as any sort of threat.

We have considered what alternative future this land could have. It has no productive value. Although several submitters suggested the Council should buy the property, there is no evidence that this would rank as a Council reserve purchase priority and no evidence of any other agency willing to even consider buying it.

The Tasman Resource Management Plan does not provide for the erection of any dwellings as-of-right in the Rural 2 Zone Coastal Environment Area but it does provide for one dwelling on a property of this size as a controlled activity, provided various standards are met. Notably for this property, there is a minimum setback from Mean High Water Springs of 100 metres. That would limit a building site to the centre of the site, but there is a substantial area there that is more that 100 metres from MHWS along both the open coast and the inlet shoreline

By definition an application for a controlled activity cannot be refused, but this status would allow the Council to influence things like siting, materials and colours, and landscape planting. We can safely assume that for a site such as this the Council would ensure that adverse effects on the landscape from such a single dwelling were minimised, specifically that visibility from across the inlet would be minimised within the bounds of what it would be reasonable to require.

If the property was developed with a single dwelling it seems unlikely that the owner would permit continuing public access, although they could not prevent access to the coast in the way that there is public access around the periphery of the Kina Development Company land.

Turning to possible alternative scenarios for the future appearance of the land, as the applicant's planner, Mr Quickfall pointed out, the pine trees are not protected in any way and could be cut down at any time (although as the Council's Consent Planner Natural Resources, Mr Mackiggan noted, removal of stumps would involve land disturbance so would require consent). We would not assume that the pines would be cut down under the single dwelling scenario because they are an attractive feature and provide shelter. More likely, just some would be taken out to provide a clear building site and others might be removed from time to time as they became unstable and possibly these would not be replaced.

Another possible scenario is that the applicant company might simply allow the status quo to continue informally but with no further financial contribution for maintenance. Over time the facilities would deteriorate.

All this is inevitably speculative but we have included this discussion to emphasise that we have not assessed the set of proposals before us in a vacuum. We do not accept the status quo (including continuing maintenance by the applicant) as a realistic alternative, but equally we have not assumed that if consent is refused there will necessarily be no public access to the area.

The matter of what we should compare the proposal to is related to the issue of "environmental compensation". Although Mr McFadden's case was chiefly that the proposals would not cause adverse environmental effects, he also submitted that "*environmental compensation*" is "*an extremely important 'other matter'* " in this case.

"Environmental compensation" is a developing area of resource management practice. The Environment Court has taken it into account, and in fact environmental compensation proposed has sometimes been the determining factor in whether consent should be granted. The principle is well established that the weight to be given to environmental compensation depends on the proximity between the adverse environmental effects requiring compensation and the compensation proposed; proximity both in location and in type of effect.

In this case, although as already discussed we see some positive environmental effects flowing from this proposal, we do not see these as "environmental compensation" as such. They are better described as mitigation measures, reducing the magnitude of the adverse effects. For example, proposed native planting around the house sites would reduce the visibility of the houses but it is not really environmental compensation unless it is assumed that this is the only way ecologically valuable vegetation could develop on this land. Similarly, provision of an upgraded public area is a form of environmental compensation only if it is assumed that without it there would be no public access.

Coastal Hazards

The consideration of coastal hazards are important to these proceedings, as under section 106(1) of the RMA 1991, the council may; *"refuse to grant a subdivision consent, or grant subject to conditions, if it considers that - (a) the land in respect of which a consent is sought, or any structure on the land, is likely to be subject to material damage by erosion,.... or inundation from any source"*.

There were generally two schools of thought on the vulnerability of the site to coastal hazards. The first, put forward by the applicant through their coastal expert Mr Reinen-Hamill is that there is some vulnerability, but that it can be mitigated by a range of measures including building setbacks, floor levels, building design, and compulsory removal once erosion reaches a pre-determined trigger distance. The second, put forward by a number of submitters and Mr Verstappen, is that the site is highly vulnerable to coastal hazards that cannot be adequately mitigated; therefore the subdivision should be declined. So the questions that need to be addressed in this section of our evaluation are the vulnerability to coastal hazards, and whether this risk can be adequately avoided, remedied or mitigated by consent conditions.

c) To what extent might the site vulnerable to coastal erosion?

From a geomorphologic perspective, the site is most likely to be a former barrier island comprised of Holocene sands and gravels deposits transported south from the Motueka River that has become welded to the older raised terraces of weathered gravels and clays along the raised section of the Kina Peninsula immediately to the south. As such this low lying section of the Peninsula acts like a coastal spit, being subject to both open coast processes and inlet mouth processes causing fluctuations in the locations of near-shore channels, bars, and sediment lobes, which influences the shoreline stability at the site. Therefore, there is a degree of complexity in defining the vulnerability to coastal erosion at the site. As correctly defined by Mr Reinen-Hamill, there is a need to consider long-term trends, short-term fluctuations, and possible future effects of climate change-induced sea level rise.

Before evaluating the information presented on each of these factors, we would note that we consider that the movements of the vegetation line are much more relevant for determining coastal stability of the proposed subdivision and dwellings than the movements of the beach toe (beach/intertidal platform boundary). The reasons are that the vegetation line generally represents the landward extend of responses to contemporary coastal processes, responding rapidly to coastal erosion events which remove or kill vegetation, and being able to show advance during periods of stability or accretion. On the contrary, changes in the position of the beach toe mapped on aerial photographs may be very temporary responses to the movement, welding and removal of sediment lobes transporting across the intertidal platform on the western side of the inlet mouth channel, which could bear very little relationship to shoreline stability.

The applicant's assessment of long-term trends in shoreline stability used regression analysis on movements of the open coast vegetation line mapped from nine aerial photographs at various dates over the 70 year period from 1940 to 2010. While this is not a long time frame in the context of possible changes in coastal sediment supply and transport processes, in our experience it is normal for this type of analysis, being limited by the availability of aerial photographs. The result of this analysis presented by Mr Reinen-Hamill was that while some small areas of the site showed some trends in either erosion and accretion, generally there was no over-all trend in shoreline movements, and that the coast was in a state of long-term dynamic equilibrium. None of the submitters really challenged this view of dynamic equilibrium in which there is relative net stability over this period of time. We note that the position of the 1907 surveyed HWM supports this view, so based on the information available, we have no reason to doubt this result.

However, we also note the discussion with Mr Reinen-Hamill about the possible widening and flattening of the subtidal delta at the south end of Jackett Island increasing water depth and wave energy which could cause shoreline erosion adjacent to the delta. The location of this possible long-term increase in vulnerability to coastal erosion is the location of the proposed subdivision and dwellings under this application. Therefore it would seem reasonable to apply a safety factor to the assumption that net long-term stability will continue. However, as will be explained further in question (e), the way that the setback formula is calculated does not allow this to happen.

In terms of short-term fluctuations in open coast shoreline position, Mr Reinen-Hamill's assessment was that allowing 20 metres in setback calculations was sufficient to deal with these. However, we have doubts about the validity of this assessment as the aerial photograph mapping of the vegetation line presented by Mr Reinen-Hamill showed movements of up to 40 metres over a four year period at one location and up to 70 metres over a 12 year period at another. We note that these distances of change in vegetation line position are in line with those observed by some of the submitters, particularly Mr Easton. One of us has had 27 years professional experience of studying coastal processes, and considers that movements in this range of magnitude are to be expected at the mouth to a coastal inlet subject to longshore transport processes.

We also note that there is no presentation of information on either the long-term or short-term stability of the inlet side of the Peninsula shoreline at the site to verify the applicant's claim that the long-term net movement of this shoreline is zero, and the short-term fluctuations are in the order of 5 metres.

In relation to the potential erosion effects of predicted sea level rise, we have used the calculations presented in Mr Reinen-Hamill's supplementary statement of evidence as they correct the errors found in the evidence. The potential erosion distance calculated by the modified Bruun Rule used is dependent on two parameters, the magnitude of the predicted rise, and the beach/nearshore slope used in the calculations. We consider that Mr Reinen-Hamill has used the appropriate magnitude of predicted rise as set out by MfE (2008), but that this is not overly conservative as claimed in para 26 of his evidence as it only considers the magnitude rise from 2010, not 1990 as claimed.

The Bruun Rule calculations are particularly sensitive to the beach/nearshore slope used, and we are aware that there is considerable debate in the coastal processes literature on what are the appropriate parts of the beach/nearshore environment over which to calculate this slope. The modification Mr Reinen-Hamill has made to the Bruun Rule calculation for the open coast is to apply an average slope over both the narrow steep gravel upper beach and the considerably wider flat intertidal platform. In para 27 of his evidence he compared the resulting horizontal retreat from using this slope to that produced from only using the steep gravel beach to conclude that the calculated retreat was very conservative. Based on our knowledge of the processes and theory behind the Bruun Rule, we consider the modification to the slope to be appropriate for this site rather than just use the beach slope, so the comparison behind the two resulting calculated retreats in para 27 is not valid for claiming a conservative approach. However, based on the widths of the intertidal platform, we consider that the slope of 1:85 used by Mr Reinen-Hamill could be viewed as being a conservative composite slope, resulting in a conservative estimate

of potential shoreline retreat due to future sea level rise. Therefore, we conclude that the calculated sea level rise effects on the open coast of around 22 metres of retreat by 2060 and 63.5 metres by 2110 are reasonable conservative estimates, but not as conservative as implied by Mr Reinen-Hamill. We note that there is no safety factor applied to these estimates in the calculations of building setback distances.

It is notable that the above approach of including the intertidal slope in the sea level rise effects calculations does not appear to have been followed through to the Moutere Inlet shoreline. For this shoreline, Mr Reinen-Hamill's supplementary statement of evidence indicates that a foreshore slope of 1:20 has been used, resulting in a much narrower projected effect of sea level rise of 5 metres retreat by 2060 and 15 metres retreat by 2110. From our site visit, and knowledge of estuarine environments, we consider that this slope would include very little of the intertidal mudflat of the estuary. Mr Reinen-Hamill, via Mr McFadden's right or reply, indicated that a degree of conservatism was added by applying a 30% safety factor to the sea level rise component of the building setback calculation. However, it is noted that this approach does not result in as large a projected effect as would using a flatter composite slope that included the intertidal mudflat. Although this inconsistency in approach is not adequately explained in the evidence, from our knowledge of coastal processes we are confident that sea level effects on erosion of the inlet shoreline are most likely going to be less than on the open coast shoreline. However, we do not agree with Mr Reinen-Hamill in para 31 of his evidence that the retreat at this site is most likely to be landward rather than seaward due to over wash of sediments across the spit. This would require inundation to occur across the spit, which is inconsistent with the land elevations and the inundation assessment under sea level predictions. The question therefore remains, does the very narrow effect predicted by the applicant, even with a safety factor, adequately portray the level of future erosion risk on this shoreline?

d) Are there coastal inundation risks to be considered?

Coastal inundation hazards can be divided into two parts: 1) existing risks, and 2) potential future risks associated with predicted sea level rise.

The applicant's coastal hazards report stated that maximum storm wave run-up elevation was likely to be in the order of 3.2m RL, a figure in good agreement with the gravel beach crest elevation, and below the elevation of the proposed subdivision properties except for Lot 1 on the Moutere Inlet side of the site. This lack of existing inundation risk was supported by the evidence presented by submitters, none of which indicated that there was any history of inundation from either the sea or the inlet at the site of the proposed subdivision. However, there was evidence from both submitters and council staff of inundation of Kina Peninsula Road during coastal storms, and that protection works have been undertaken to address erosion issues during these events.

In relation to future risks associated with predicted sea level rise, the evidence of Mr Reinen-Hamill (para 38) stated that 1% AEP sea level in 2110 is predicted to be in the order of 3.9 metres RL, with the coastal hazards report giving a maximum storm wave run-up of around 4.75 metres. Based on our knowledge of coastal processes, these estimates are reasonable and include some elements of conservatism by taking into account the joint probability of extreme tides, storm surges, rainfall events (inlet effect) and extreme wave events. The contour maps of the site produced by

Mr Carter in his evidence show that while the seaward parts of Lots 2-8 are below this elevation. However, there is an old dune ridge with elevations between 5 metres and 6 metres RL between the proposed building footprints and the beach, which if left undisturbed, will provide protection from inundation to the proposed building sites until this ridge is subject to coastal erosion. Following this the proposed building platforms could be exposed to storm inundation effects with sea level rise. There is no such ridge on the inlet side, and the contour plan shows the elevations at the proposed building platform in Lot 1 to be in the order of 3-3.5 metres RL. Therefore there is an inundation risk under predicted sea level rise scenarios for that allotment.

Mr Reinen-Hamill's evidence (para 43) states that the majority of Kina Peninsula Road at the location of the existing protection works is below the predicted 100 year maximum sea level elevation, so will be vulnerable to increasing inundation and erosion. This view is supported by submitters and Council staff, and is discussed further in the following section on road access.

e) Are the mitigation measures proposed sufficient to avoid, remedy or mitigate these risks?

The implication under Section 106 of the RMA 1991, is that a subdivision consent on land subject to natural hazards (erosion and inundation in this case) should only be granted if the council is satisfied that the effects of the hazards on the land or buildings can be adequately avoided, remedied or mitigated by conditions on the consent. Therefore we need to examine the adequacy of the mitigation measures offered by the applicant. We note that all of these measures relate to the proposed dwelling rather than the total land area in each of the proposed lots. There was no discussion during the hearing on providing a larger esplanade reserve along the frontage of Lots 2-8 to act as a setback for coastal erosion.

Open Coast Building Setbacks

We note that in the conditions offered by Mr McFadden in his right of reply, the building set back offered in condition (z) only requires dwellings and effluent disposal fields to be located outside the 50 year erosion zone. This is inconsistent with the evidence of the applicant's coastal expert, Mr Reinen-Hamill, who proposed a setback distance from the beach toe to the building platforms to accommodate for erosion over a 100 year period. We do not consider that a 50 year setback is sufficient and is inconsistent with Policy 25 of the NZCPS (2010) to provide for coastal hazards over at least the next 100 years when considering new subdivisions, use and developments.

Mr Reinen Hamill's proposed setback distance to the building platforms is 90 metre from the beach toe. This distance was calculated by the sum of the assessment of long-term erosion trends (0 m), short-term fluctuations (20 metres), sea level rise effects (63.5 metre), dune stability factor (1.8 metres) and a 30% safety factor applied to the long and short term components. We agree with the 100 year term and method of calculation, both of which is consistent with policy 24 and 25 of the NZCPS (2010). As per our earlier discussion we also agree with the magnitude of the past long-term trend and sea level rise components used. However, as also indicated earlier, based on the evidence presented to us we consider that the short-term component is not large enough and have concerns that the percentage safety factor does not account for the possible future long-term erosion due to changes in the inlet mouth channel and bar processes unrelated to sea level rise effects.

We also have reservations about the use of the beach toe as the reference position from which to measure setback distances. From our site visit the gravel upper beach extends around 15-20 metres landward of this position, therefore with the assumed parallel retreat of the profile under sea level rise, the back of the beach (e.g. crest position) could reach the proposed dwelling positions within around 80 years.

Based on these factors, we consider that the open coast setback distance proposed by Mr Reinen-Hamill is likely to not provide 100 years protection of the dwellings from coastal erosion. We would also note that with the current layout of the allotments a larger setback would make the lots unusable from a practical point of view for locating buildings, wastewater disposal systems, driveways, screening etc.

Inlet Shore Building Setback

To accommodate for potential erosion over a 100 year period, the applicant has proposed a 28 metre set back distance on the Moutere Inlet shoreline to the building platform on proposed Lot 1. As with the open coast proposed setbacks, this distance is from the sum of the assessment of long-term erosion trends (0 metres), short-term fluctuations (5 metres), sea level rise effects (15 metres), dune stability factor (1.8 metres), but with a 30% safety factor applied to all components except dune stability. As noted in our earlier discussion this is a larger application of safety factors than in the open coast calculations by applying it to the sea level component. However, this is overshadowed by using a steeper beach rather that a flatter composite slope including the intertidal area that would have given a considerably larger sea level rise effect. Therefore we consider that the approach on the inlet shore is actually less conservative that on the open coast. We are also concerned that both the long and short term components used in the setback calculations were not verified in evidence, hence making it difficult to assess their appropriateness.

Although not stated in the evidence of Mr Reinen-Hamill, and being inconsistent with the wording of the applicant's coastal hazards report (section 6.2), it appears that there is also a difference in the reference position from where the setback is measured from. The distances shown in Figure 6 of the hazards report indicate that for this shore it is measured from the vegetation line not the beach toe. As indicated earlier this is considered a more appropriate position on which to both measure shoreline stability and setback distances from, and counteracts the above argument on lack of conservativeness of the setback distance along the Moutere Inlet shoreline. We would note that had the setback on this shore been measured from the beach toe position, it would have been located very near to the current vegetation line making the limit of the current active beach. This would clearly be inappropriate for a 100 year setback position.

On balance, weighting up all the above factors, we consider that the possible Moutere Inlet shoreline in 2110 as shown in Figure 6 of the applicant's Coastal Hazards Report is an appropriate dwelling setback position from the Inlet shoreline.

Reassessment Trigger Point

The purpose of this trigger point is to determine whether coastal erosion is occurring at the rate predicted, and allow the reassessment of the hazard at a time when the beach is still some distance from the dwellings. However, we are unclear what the reassessment will achieve for the occupants of the dwelling who have to finance the assessment, other than to confirm that erosion is occurring faster or slower than

predicted and the possible time left before they need to relocate. The only other possibility is that the assessment offers some other mitigation measures, such as physical works, to prevent the need to relocate. Such works would be contrary to the reasons for employing a setback to start with.

For the open coast shore, this trigger distance is defined in the applicant's coastal hazards report and proposed conditions offered in Mr McFadden's right of reply as being when the beach toe position retreats to within 35 metres from the seaward position of the dwellings. With a 90 metre total setback, this allows for 55 metres of erosion before this position is reached, which it is agreed may take up to 50 years or more to reach. At this trigger point the back of the active beach profile (e.g the vegetation limit), would be in the order of 15-20 metres from the seaward edge of the dwellings. Given the evidence on the magnitude of the short-term fluctuations in the past, this distance could be eroded over the matter of a few years, giving the occupants little time before their dwelling was surrounded by beach gravels and located in the storm run-up zone.

We also note that for the Moutere Inlet shore, the 5 metres reassessment trigger setback from the beach toe as proposed in condition (cc)I. of Mr McFadden's right of reply is a nonsense as the beach from the toe to the vegetation line is in the order of 15 metres wide and so, by the time this trigger is reached, the gravel beach will have engulfed the dwelling. Also, as the trigger is located landward of the proposed 100 year setback which calls into question the accuracy of the 100 year erosion calculations.

For these reasons we see little merit in the reassessment trigger point as proposed, and consider that a regular on-going coastal erosion monitoring programme would be of more benefit to the occupants and the Council should the subdivision be granted.

Extreme Risk Trigger Point

The purpose of this trigger is to provide a specified distance at which dwellings have to be relocated off the site. We see this type of mitigating measure as an alternative to large setbacks, but have doubt whether they can be used in new developments to override Policy 25 of the NZCPS (2010) to avoid risks of coastal hazards over the next 100 years. We have interpreted the intention of this policy to be that new developments or changes in land use should avoid areas subject to coastal hazards, and where possible existing developments should use managed retreat to reduce the risks of adverse effects from coastal hazards.

However, putting this to one side, we have also examined the appropriateness of the removal trigger point proposed by the applicant. We consider that the trigger point on the open coast of 20 metres from the beach toe position in the applicant's proposed condition (bb)(II) is insufficient and impractical. Assuming parallel retreat of the beach profile, by this time the dwellings would be surrounded by beach gravels and located in the storm run-up zone. A storm event with the beach in this position is likely to result in damage to the structure, which may render it unstable for relocation as a viable dwelling. We do not believe that occupants would wait until this time before making decisions to relocate or seeking other mitigation options.

For the Moutere Inlet shore, the 3 metres removal trigger point from the beach toe as proposed in condition (cc)II. of Mr McFadden's right of reply is a nonsense for the same reasons discussed given above for the reassessment trigger line on the Moutere Inlet side.

We would also note that the proposed conditions on removal once the trigger point is reached is only for the dwellings, not the building platforms, driveways, or the effluent disposal systems associated with the dwellings.

Dwelling Ground and Floor levels

Setting minimum ground and floor levels for dwellings are mitigation measures against inundation hazards. We agree with Mr Reinen-Hamill that these ground and floor levels are conservative, being the sum of a number of extreme events which have a very low joint probability. We therefore consider that they are sufficient to mitigate against this inundation hazard over the next 100 years with predicted sea level rise.

In relation to the need for filled building platforms, there was discussion at the hearing on the desirability of these in locations which will eventually be exposed to coastal erosion and cause adverse visual effects. We note that the applicant has not proposed any conditions on this matter, nor on the need to remove the building platforms at the time that the dwellings are to be removed. We consider these matters should be addressed in conditions should the consent be granted. There was also discussion at the hearing on the need for building platforms at all if there are conditions limiting building design to open foundation pile structures that do not alter natural ground levels. We infer from the inclusion of proposed condition (x) setting minimum ground levels, that the applicant does not wish to be this restrictive on building design.

Building Design

The use of controls on building design can be to serve two purposes; 1) so that they are easily re-locatable without major restoration works required to return the site to an acceptable state, and 2) so that they provide minimum interference with the passage of water across the site, which may increase the adverse effects of coastal hazards to other property. The applicant's proposed condition (v) in Mr McFadden's right of reply adequately addresses the first of these purposes, without going as far as restricting design to open foundation pile structures and to prohibit the alteration of natural ground levels that would totally satisfy the second purpose. However, we consider that the proposed condition does provide an acceptable degree of mitigation.

Dune Care Programme

We note that Mr Reinen-Hamill in para 40 of his evidence made reference to a dune care programme as part of the mitigation measures. However there is no mention of this in the proposed condition offered by Mr McFadden in his right of reply. We consider that there would be benefit in having a dune care programme, and that it should be included in the consents conditions should the consent be granted.

Road Access

f) Would the proposed development lead to an inefficient use of resources to maintain road access?

Section 7(b) of the Act promotes "*The efficient use of natural and physical resources*."

The application site is served by Kina Peninsula Road, which has a sealed formation between 5.0 and 6.0 metres wide for the first 2.1 kilometres from State Highway 60, then becomes what the Council's Development Engineer, Mr Dugald Ley, described in his report as "*a substantial access track with no cross slope formation, no side drains and substantial foundation materials ie basic track.*" The road has an elevation of 4.0 metres above mean sea level at the end of the seal, reducing to 3.5 metres for a section about 400 metre long along the exposed coast, then rising to 4.0 metres to 4.5 metres at the north-western end where the legal road terminates at the entrance to the application site.

The exposed section running between a cliff and a rock wall has a history of Council protection efforts. In the mid 1980s, when the road was unusable at times due to storm damage, the Council constructed a clay bund to protect the road edge. In 1996 a 250 metre long timber retaining wall was built along the most exposed section. By 2005 erosion and "end effects" were evident and some rock revetment work was undertaken. In 2008 heavy storms destroyed much of the timber retaining wall. One of the submitters, Dr Brian Rhoades, showed us a video taken on 3 August 2008 showing waves attacking the road behind the timber wall. Subsequently further rock revetment work was undertaken, replacing most of the timber wall. Mr Ley's report expressed concern that the proposed residential development would lead to "*an expectation that full access will be available at all times*", and he suggested that would be expensive to provide over the longer term with rising sea level and more storm events.

As the critical section of road is lower and more exposed than the proposed building sites, it appears that major work would be required on the road before the trigger point volunteered for the removal of the eight proposed houses. The application includes a volunteered contribution of $200,000 towards work on this section of road. The question we have considered is whether, even with this contribution, the proposed development would be likely to lead to inefficient use of resources to maintain road access to the site. The applicant's coastal engineer, Mr Richard Reinen-Hamill, indicated in response to a question that the $200,000 would provide "Ruby Bay type protection" for only about 100 metres to 150 metres of the 400 metres of road at issue.

Mr Ley's report mentioned that the road presently carries about 60 vehicles per day and at the hearing he indicated that this was based on counts in October or November and involved 60 vehicles in and 60 out - i.e. 120 movements per day. He estimated there is about double this number at weekends. As the eight houses on the Kina Development Company land at the end of the Kina Peninsula are all or mostly holiday homes, these traffic movements will relate mostly to use of the Baigent Memorial park.

Although some submitters expressed a preference for the informal nature of the park as it is at present, we think it is likely that the upgrade proposed by the applicant would encourage more use, possibly by other people. This would generate additional traffic and to this would be added the traffic generated by eight new dwellings (permanent or holiday homes). In our assessment this increased use would be unlikely to justify the sort of expense needed to keep the at risk section of the road open in the longer term.

Mr Ley expressed his view that at some stage the Council should abandon the road. That is based on his knowledge of other roading priorities, and would be his advice to the Council. However, we can foresee pressure on the Council to spend money on the road, even if some sort of warning was conveyed to buyers of the proposed lots. They would add their voices to the Kina Development Company owners and the users of the reserve. Ultimately this would be a political decision. One of us has had 12 years experience as a local government Councillor and appreciates the pressures that are brought to bear by ratepayers wanting to influence these difficult choices about spending priorities. The fact that a substantial contribution towards keeping the road open had been paid by the developer would be raised, as would the fact that the eight new property owners (and the Kina Development Company owners) had been paying rates.

This is not the only scenario however. The Council might use the $200,000 and a reasonable contribution from ratepayers to maintain the road for as long as practicable, then perhaps maintain it for a further period as a 4-wheel drive good weather access and then ultimately as a pedestrian track. Some users of the Baigent Park would be content to walk, and some would use the park if it eventually had boat access only, like Jacket Island. Some of the owners of the eight proposed dwelling sites might also be perfectly happy with boat access only, like Jacket Island.

In the end, we see the road as a factor against granting consent because there is a real prospect of development of the site leading to an inefficient use of resources to maintain it in the face of sea level rise, but we do not place much weight on this because it might not happen, particularly if there was something on the titles of the proposed lots clearly indicating that this is a special situation where vehicle access may not be available in the longer term.

It should also be mentioned that there is no rule in the District Plan preventing consent being granted in this situation, or even in a situation where there is no vehicle access at all.

Baigent Memorial Park/Domain

g) What relevance does the history of public access to the site have?

Several submitters enunciated the general public perception that the application site is some kind of reserve, provided by the late Mr LEH Baigent. The applicant's case emphasised that it is not, but that the proposal would create legal public access. There was considerable discussion about a covenant entered into by H Baigent and Sons Ltd and Baigent Holdings Ltd in 1982. According to a submitter, Mr David Easton, whose family has used the site for over 120 years, the covenant formalised what had been an understanding that the land was available for public use.

The two parties to the covenant no longer exist and we are not sure what legal obligations their successors might have - according to Mr McFadden, none.

Whatever the legal status of the covenant, we agree with the submitters that some weight should be given to the clear intention of LEH Baigent expressed in the covenant. There was a suggestion that LEH Baigent intended only the flat area to be available to the public, but the covenant clearly relates to the whole 10.7 hectares.

The applicant's case is that the reserve areas proposed, and the upgrading proposed would fulfil LEH Baigent's wishes, but we are not persuaded that is so. In the first place the area would be shared with eight private properties and in the second place the reserve area will be the first to go if sea level rise predictions prove correct.

We acknowledge, as some submitters did, that the applicant company is to be commended for continuing to maintain the area for public recreation and undertaking a re-vegetation programme. A submitter, Dr Brian Rhoades, who is a former Chief Executive Officer of Carter Holt Harvey suggested that when the land was bought in 1982 as part of a much larger purchase the company accepted that there was some sort of obligation to maintain the application site for public use.

Overall, we consider that the long history of public use and the intentions of the covenant together make public use of this site almost customary use, whatever the legal position, and this makes it important to assess the extent to which the proposal would provide for continuing public use and the quality of the experience anticipated.

Effluent and Stormwater Treatment and Disposal

h) Would proposed wastewater treatment and disposal have any adverse environmental effects?

The applicant's proposal is to have individual on-site treatment systems with disposal to the ground. Detailed design of each of these would have to be assessed as part of building consent approval but the application suggests that no additional consent would be required under the Act because the systems would comply with all the standards in Rule 36.1.4 (a-j) of the TRMP.

Twenty-two submissions raised concern about possible effects of effluent disposal and one submitter, Dr Helen Hughes (Harry Place Preserve Ltd), spoke about the issue at the hearing.

In our assessment the only potential issue is the release of nutrients. Pathogens would be deal with by the treatment plants and the unsaturated sands below the infiltration beds and Mr Townshend indicated on behalf of the applicant at the hearing that tertiary treatment could be added if necessary. The concern is that with rising sea level the disposal beds may be exposed to periodic inundation, and while Mr Cochrane (the applicant's wastewater expert) indicated that systems can cope with this, it seems to us that it must increase the likelihood of nutrients (and pathogens if not addressed by treatment) discharging into the sea.

The Council's Coordinator - Natural Resource Consents, Mr Pigott, addressed this in two ways. Firstly, he noted that the nutrient loading from eight dwellings would be orders of magnitude lower than the nutrient loading from the catchment above the

Moutere Inlet. We accept that, but that does not make it inconsequential - every source of nutrients entering an enclosed body of water needs to be monitored and if possible reduced. Secondly, Mr Pigott noted that "Wastewater systems have relatively short life 15-20 years before significant work is required, thus renewal of the wastewater systems will occur several times allowing them to be moved or modified to avoid or mitigate the risk of sea level rise." That is true, but we are not convinced that in the event of sea level rise making the proposed disposal beds untenable, there is anywhere else on the proposed lots for replacement beds to be built.

Our conclusion then is that in the longer term, with rising sea level, it would become difficult to dispose of effluent from the proposed eight dwellings in a way that did not lead to the release of nutrients into the Inlet.

Ecology and Habitat

i) Would the proposed development improve or harm the ecology of the Kina Peninsula and the habitat it provides?

We heard evidence from an ecologist/ornithologist, Mr David Melville, in support of a submission lodged by the Nelson/Golden Bay Branch of the Ornithological Society of New Zealand. Mr Melville has studied birds in this region for many years and his views were supported by Ms Gillian Pollock, a submitter who has taken part in bird surveys.

Mr Melville discussed two bird species of particular concern: Banded Dotterel which is classified as "threatened, nationally vulnerable", and Variable Oystercatcher which is classified as "at risk, recovering". One pair of Banded Dotterel normally nest at Kina Peninsula adjacent to the application site. The Variable Oystercatcher is endemic (found only in New Zealand) giving the species particular significance and Tasman Bay is the most important area in New Zealand for the species. The shingle beach at Kina Peninsula is regularly used by non-breeding birds as a high tide roost. Mr Melville expressed concern that both of these species would be disturbed by construction activity and human activities including the depredations of domestic cats and dogs.

In our assessment there must already be disturbance of these birds with present human activity, particularly the running of dogs. This could be mitigated through better public awareness promoted through measures such as signs advising of nesting areas, possibly restrictions on dogs, and certainly measures to prevent people driving along the shoreline. At the time of our second site visit a vehicle was stuck in the shingle.

The question is whether the proposed subdivision and upgrading of the areas proposed for public use would lead to more disturbance. We believe they probably would, simply because there would be more human activity. It is also likely that there would be a loss of habitat for these two species over time because with rising sea level the area of open shingle used by them will be steadily reduced if the land behind is maintained in coastal vegetation as shown on the application plan.

The application noted the ecological benefit of proposed planting of suitable natives. The applicant company is to be commended for the planting it has already organised, funded, and maintained. This would benefit only common bird and invertebrate

species however, and we do not see it as addressing the more significant issue of maintaining nesting and roosting for two vulnerable bird species, with as little disturbance as possible.

Public Access to the Site

j) Would the proposed development provide for public access, particularly public access to the coast as promoted by section 6(d) of the Act?

We accept that consent to this package of proposals would provide legal public access, which does not exist at present, to 72% of the 10.7 hectare property. That is a significant positive effect, as acknowledged under that heading above. There is a strong prospect that this area available to the public will diminish in the longer term with expected sea level rise, but in the (indeterminate) meantime it would provide major benefit to the public.

All of the present coastal margins are proposed to be included in reserves, which clearly promotes the intention of section 6(d): "the maintenance and enhancement of public access to and along the coastal marine area..." As part of her presentation of behalf of the Nelson Tasman Branch of the Royal Forest and Bird Protection Society Ms Helen Campbell suggested that esplanade strips would be better because they would move with likely shoreline change. That could be a better option on the Tasman Bay side, but we do not see it as practical on the Inlet side because there is a proposed reserve between the coastal strip and the proposed building lots. There is also the disadvantage with esplanade strips in that they remain in private ownership, which could cause management problems here.

While we do see the provision of legal public access to the application site as a significant positive factor, the weight we have given that is reduced somewhat because as discussed under the issue of "Assessment Framework" above, legal public access around the present shoreline is already available (strictly at low tide only on the Inlet side), and we do not accept that this proposal is the only mechanism for public access to continue.

Landscape

k) Would the proposed development have adverse effects on the landscape?

We have had the benefit of expert evidence from two landscape architects, Mr Thomas Carter for the applicant and Mr Frank Boffa reporting under section 42A of the Act, plus the perspectives of many submitters concerned about effects of the proposed development on landscape.

Turning first to the landscape context of the application site, it can be noted that the TRMP is one of those plans that does not define areas considered to be outstanding. The "matters of national importance" which the Act requires us to "recognise and provide for" include:

"6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of these from inappropriate subdivision, use, and development;"

and

"6(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development;"

There is no question that the whole site is within the "coastal environment" for the purpose of section 6(a), so the issues are what degree of "natural character" the site and its context has, whether the site is within an outstanding natural feature or landscape, and whether the proposed subdivision and development would be "inappropriate".

There was no dispute that the site has natural character. The applicant's case is that this would be enhanced by the extensive (mostly native) planting programme proposed within the eight proposed sections and within the proposed reserve areas. Mr Boffa's view is that the natural character would be undermined by removal of the mature pine trees and the visibility of eight new houses.

Turning to whether the site is, or is part of, an outstanding natural feature and/or an outstanding natural landscape for the purpose of section 6(b) of the Act, Mr Boffa asserted that Kina Peninsula and the Moutere Inlet form an outstanding natural feature. Mr Carter did not address this. Mr Boffa noted in response to a question from us that he was an author (or the author) of a landscape study of the whole Tasman District coast undertaken for the Council in 2005 as part of work on the TRMP, and this was a finding of that study.

In the event the classifications were not included in the District Plan, but we consider that the conclusion that Kina Peninsula is part of an outstanding natural feature, made in the context of a District-wide study rather than just for the purpose of reviewing this application, is compelling evidence that the classification is correct.

In the course of her presentation on behalf of Friends of Nelson Haven and Tasman Bay Inc., Ms Gillian Pollock noted that another landscape architect, Ms Liz Kidson, had come to the same conclusion when preparing evidence on behalf of the Friends for a TRRP appeal. We are aware that Ms Kidson has had particular experience working in the Queenstown Lakes District, where classification of landscape is a requirement of the District Plan and has reached a high art.

For completeness, we have also considered Kina Peninsula against the "Pigeon Bay criteria", which have been extensively used by the Environment Court in determining whether landscapes and features are outstanding for the purpose of section 6(b). There are seven complex factors, but briefly, the Kina Peninsula has unusual "natural science" features, high aesthetic values (as demonstrated by public use) including memorability and naturalness, the dynamic processes that have formed the Peninsula are highly legible, there are transient values as a result of changing sea conditions, the landscape values are clearly appreciated by many people as shown by the many submissions that raise it, and Kina Peninsula has important tangata whenua values and important historical associations for both Maori and the wider community.

Outstanding natural features have intrinsic values, but in assessing the significance of proposed development, visibility is an important consideration. The northern end of Kina Peninsula is particularly visible from public viewpoints because of its low form,

viewed across water and mudflats (which have highly natural landscape character). It is visible from a long length of the State Highway and is below and almost straight ahead viewed from vehicles approaching from the south on the new bypass. We consider these views of the Peninsula much more important than the viewpoints within the Peninsula assessed by Mr Carter's photo-simulations.

Mr Boffa expressed concern that the pine trees, which he considers contribute to the landscape value of the Peninsula would be removed for the houses, and concern that the houses would be visible and would detract from natural character. We have already noted under the heading of Assessment Framework above that the pines (although not the stumps) could be removed as-of-right, but we questioned whether an owner would go to that expense unless some development was proposed.

We have no empirical evidence such as photo-simulations about how visible the eight houses would be from across the Inlet, but the application indicates that they would be up to 5.5 metres above building platforms levelled at 5.0 metres above mean sea level. They have had to be located along the highest part of the application site because of likely sea level change and increased severity of storms from climate change and this has meant they have to be in a row along a low ridge, parallel to the main public viewpoints along the State Highway. It is likely that the dwellings would be larger than the long-established baches on the Kina Development Company site and our perception is that they would be higher and closer together than those.

The application proposes extensive new planting of mainly natives within the proposed residential sections and within the proposed reserve areas and suggests this will mitigate the visibility of the dwellings. The proposed native vegetation is low however - up to three metres at maturity according to the application plan - and as most of this is on land sloping down from the dwelling platforms it could not provide much screening of the houses from across the Inlet.

Mr Easton mentioned the effect of lights at night. We see this as an issue not so much when there is total darkness and the context of the Peninsula cannot be discerned, but at the times when there is enough natural light to see the Inlet and the Peninsula. At those times the house lights would draw attention to the houses, undermining the otherwise highly natural appearance of the Peninsula.

We agree with Mr Boffa's conclusion that the eight houses would have "*...a significant and adverse effect on the natural character of the coastal/estuarine environment at Kina.*"

There is a separate, and in our view less important, issue of the effect of the proposed houses on the landscape experienced by users of the proposed reserves surrounding them. This seems to have been the focus of Mr Carter's design work. He noted in his supplementary evidence that "*...screening is provided by vegetation outside (primarily on the north side) of the proposed building sites and within the Proposed Esplanade Reserve.*" While it is not normally acceptable to rely on vegetation on land not owned by an applicant for screening, in this case it can reasonably be assumed that the Council would want to provide this screening.

Mr Carter's photo-simulations showed the effect of this screening from two viewpoints, Photopoint A just outside the title boundary north-east of the building sites, and Photopoint B within the intertidal area opposite the north-west boundary of

the site. These show that the relative elevations and the existing and proposed vegetation would mean that the houses would be largely obscured from those viewing positions. The landscape experience of people using the Tasman Bay shingle beach (Photopoint A) is however of a particularly natural environment and we consider that even glimpses of roofs would undermine this. This is the view from land which is already public, not one of the parts of the application site proposed for legalised public use.

We have also considered the effect of the houses on users of the proposed recreation reserve, which is of concern to many submitters. Because this area is not currently public land, the following comments should be read in conjunction with our discussion under the heading of Assessment Framework above.

The submitters represent people who enjoy the reserve as it is, and while we are conscious that there may be other people who would prefer the area developed as proposed, we consider it unlikely that any future users would not find the obvious existence of the proposed houses a detraction. We suspect that the houses would be more visible than might be thought from looking at the diagrammatic scale application plan, which suggests they would be set within vegetation. As Mr Boffa pointed out, the plan does not allow for things like parking and manoeuvring areas, curtilege development such as gardens and lawns (unless these are to be prohibited?), and the effluent disposal areas.

In addition, we do not consider it practical to remove the pine trees and build houses without significant damage to the existing partial understorey of natives so it would be about 10 years before replacement plantings provided equivalent screening.

These conclusions about landscape effects are consistent with the expectation expressed in sub-section 4.7.3 in Chapter 4 of the TRMP where in relation to the Kina Peninsula Landscape Unit it is stated:

"*Maintaining landscape qualities will be achieved by limited opportunities for subdivision and the location of additional house sites in this landscape Sub-unit.*"

In our assessment those "limited opportunities" are more likely to be found in the form of infill housing within the Rural-Residential zoned land at the other end of the Peninsula, which has much lower natural character and visibility.

Archaeology and Tangata Whenua Issues

l) Would the proposed development lead to potential disturbance of taonga, koiwi and other archaeological evidence of Maori occupation, and if so to what extent could this be mitigated?

The application included an archaeological assessment prepared by Ms Deb Foster, which set out what is known from previous investigations and recommended that "*all earthworks are monitored by an archaeologist and/or iwi representative/s.*"

We heard detailed evidence from three witnesses in support of a submission from the Historic Places Trust which had expressed concerns about the potential for the proposed development to disturb archaeological material. They were Ms Sasha Walters - Planning Heritage Advisor, Dr Richard McGovern-Wilson - Senior

Archaeologist, and Mr Te Kenehi Teira - National Maori Heritage Advisor. They described the history of Maori occupation of Kina Peninsula and the surrounding area. Dr McGovern-Wilson characterised Tasman Bay as "*a premium environment for Maori occupants during pre-history*" because of the food resources. Mr Te Kenehi Teira noted the record of warfare at Kina Peninsula. There is an expectation that koiwi (human remains) may be present.

Dr McGovern-Wilson described the Kina Peninsula as an "*archaeological precinct*" and suggested that the only registered site (of the 11 within the northern part of Kina Peninsula), N27/69, within the application property is "*not a point location*". We appreciate that he was indicating that by their nature these sites cannot describe the boundaries of all archaeological evidence, but they do indicate specific positions where things have been found and they have legal recognition. Site N27/69 is located on the seaward side of the proposed recreation reserve, and the applicant's case is that it would not be disturbed. As Dr McGovern-Wilson noted however, there may be unrecorded sites of archaeological significance elsewhere on the property, including the dune ridge where houses are proposed.

We also heard evidence from Mr Barney Thomas who is the director/chairperson of Tiakina te Taiao (submitter #42), which represents the Resource Management Act interests of four of the six Te Tau Ihu iwi. He described the whole coast as urupa (burial grounds). He was supported by Ms Kura Stafford, Tiakina te Taiao's environmental manager.

Mr Thomas and Ms Stafford indicated that they would like to see an investigation by a matakite (Maori seer) and there was some discussion about what this could achieve.

As already mentioned, the hearing was adjourned at the request of the applicant to provide time for an investigation by a matakite. Mr McFadden's reply indicated that this has been undertaken and that the result is some volunteered conditions in accordance with what was requested in a letter attached to Mr McFadden's reply from Tiakina te Taiao dated 11 March 2011 responding to the "*cultural audit*".

We are conscious that this issue relates to two Section 6 "matters of national importance" (s6(e) and s6(f)), and to section 8 of the Act.

Mr Thomas responded to a question at the hearing to the effect that if the matakite found the land was "*clear*" then the development would be acceptable. We have difficulty reconciling that with the evidence about the history and cultural significance of this land, and the position of iwi is perhaps better expressed by the comment in the letter from Tiakina te Taiao of 11 March 2011 that "*The Cultural Audit agreed to by Carter Holt Harvey and its outcome does not constitute in any way or form support for the proposed development.*"

We are drawn to the conclusion that although the applicant has done everything possible to meet the requests of the Historic Places Trust and Tiakina te Taiao, the development proposed could only detract from the archaeological and cultural values of the site. In our assessment the development would greatly increase the possibility of accidental discovery of evidence of pre-European period occupation, particularly koiwi (with associated cultural offence), and it would fragment the land into small lots with more owners for iwi to have to engage with. From the perspective of

archaeological and Maori values, in our assessment this is a particularly inappropriate site to develop for residential purposes.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

In considering this application, we have had regard to the matters outlined in Section 104 of the Act. In particular, we have had regard to the relevant provisions of the following planning documents:

a) the New Zealand Coastal Policy Statement 2010 (NZCPS);
b) Tasman Regional Policy Statement (TRPS);
c) the Tasman Resource Management Plan (TRMP);

Although the application was made prior to the release of the New Zealand Coastal Policy Statement 2010, the 2010 version was operative at the time that the hearing was held and also at the time we considered and decided upon the application. Therefore, we agree with Mr Morris that the application be assessed against the up-to-date NZCPS rather than the 1994 version.

With respect to the TRMP we have had particular regard to the objectives, policies and other provisions of the relevant chapters:

Chapter 5 - Site Amenity Effects;
Chapter 7 - Rural Environment Effects;
Chapter 8 - Margins of Rivers, Lakes, Wetlands and the Coast;
Chapter 9 - Landscape;
Chapter 10 - Significant Natural Values and Historic Heritage;
Chapter 11 - Land Transport Effects;
Chapter 13 - Natural Hazards;
Chapter 14 - Reserves and Open Space;
Chapter 23 - Natural Hazards and Hazardous Substances; and
Chapter 35 - Discharges to Coastal Marine Area.

8.2 Part 2 Matters

In considering this application, we have taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

The provisions of particular relevance are:

Section 5

The purpose of this Act is to promote the sustainable management of natural and physical resources by:

"managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while;

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment."

Section 6

The following matters of national importance are relevant:

Section 6(a) the preservation of the natural character of the coastal environment (including the coastal marine area) … and the protection of [it] from inappropriate use and development;
Section 6(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;
Section 6(d) the maintenance and enhancement of public access to and along the coastal marine area …;
Section 6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga; and
Section 6(f) the protection of historic heritage from inappropriate subdivision, use, and development.

Section 7

The following matters, to which we must have particular regard, are relevant:

Section 7(b) the efficient use and development of natural and physical resources;
Section 7(c) the maintenance and enhancement of amenity values;
Section 7(d) intrinsic values of ecosystems;
Section 7(f) maintenance and enhancement of the quality of the environment; and
Section 7(i) the effects of climate change.

Section 8

The principles of the Treaty are not relevant in this case, although this does not detract from the pre-European archaeological matters that are relevant.

9. DECISION

Pursuant to Section 104B of the Act, we **DECLINE** consent.

10. REASONS FOR THE DECISION

10.1 Section 106 of the Act

In terms of Section 106 we find that the land, and proposed structures on the land, will likely be subject to material damage by erosion. Section 106 allows us to decline consent in this circumstance and we consider that it is appropriate to do so.

10.2 Effects on the Environment

We have provided a comprehensive discussion above about our findings on the likely effects of this proposal on the environment and the following reiterates the main conclusions leading to our decision.

We have no confidence that the proposed building setbacks will avoid the risk of erosion for the 100 year planning horizon. This is due to: inconsistencies in the calculations; a bigger magnitude of short-term fluctuations; and the use of the beach toe as reference position (rather than the vegetation line).

We are not satisfied that the proposed mitigation measures, principally the relocation conditions proposed, are likely to be effective. From our assessment of the hazard risk we think there is a chance that the relocation trigger may be reached well within the planning horizon and that protection of the houses is a more likely strategy at that time than relocation.

We find that the proposal would have a significant adverse effect on landscape values and natural character. We were persuaded by the evidence of Mr Boffa in this regard.

Coastal hazard risk and landscape/natural character values are the two most significant and compelling fields of actual or potential adverse effects on the environment, and they are prominent reasons as to why we have refused consent. In addition to those very significant considerations we have the following concerns which have also influenced our decision:

There is a considerable lack of certainty about archaeological matters. As stated in the discussion above, we find that the development of the land would greatly increase the likelihood of accidental disturbance in a location that is clearly of great significance as an area of intensive Maori occupation in pre-European times.

Road access to the proposed allotments is also a concern because it is likely that the access road will come under increasing attack by the sea. New residents could be expected to put pressure on the Council to maintain the road, and although we have not assumed the Council would continue to spend money on the road, if that was the result we consider it would not be an efficient use of resources in terms of section 7(b) of the Act.

There are clearly ornithological values on both sides of Kina Peninsula. We accept the evidence that residential activities may well have an increased adverse effect on the birdlife of the peninsula over and above that caused by casual visitors to the beach.

10.3 Objectives and Policies of Planning Documents

Tasman Resource Management Plan

<u>Chapter 5: Site Amenity Effects.</u>

We consider the following provisions to be relevant:

Objective 5.1.2

Avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.

Policies

5.1.3.1 To ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied, or mitigated.

5.1.3.4 To limit the intensity of development where wastewater reticulation and treatment are not available.

5.1.3.5 To ensure that the characteristics, including size, soil type and topography of each lot of any proposed subdivision or built development are suitable for sustainable on-site treatment of domestic waste in unreticulated areas, particularly in areas where higher risks of adverse effects from on-site disposal of domestic wastewater exist.

5.1.3.12 To protect the natural character of coastal land from adverse effects of further subdivision, use or development, including effects on:

(a) natural features and landscapes, such as headlands, cliffs and the margins of estuaries;
(b) habitats such as estuaries and wetlands;
(c) ecosystems, especially those including rare or endangered species or communities;
(d) natural processes, such as spit formation;
(e) water and air quality;

having regard to the:

(i) rarity or representativeness;
(ii) vulnerability or resilience;
(iii) coherence and intactness;
(iv) interdependence;
(v) scientific, cultural, historic or amenity value; of such features, landscapes, habitats, ecosystems, processes and values.

While the proposed development can provide for on-site wastewater treatment without adverse effects on the environment, it is considered that the "natural character" of the site will be adversely affected by the creation of the eight residential sites and their associated dwellings. Thus we do not consider the development to be consistent with Policies 5.1.3.1 and 5.1.3.12.

Chapter 7: Rural Environment Effects

Objective 7.2.2

Provision of opportunities to use rural land for activities other than soil-based production, including papakainga, tourist services, rural residential and rural industrial

activities in restricted locations, while avoiding the loss of land of high productive value.

Policies

7.2.3.1 To enable activities which are not dependent on soil productivity to be located on land which is not of high productive value.

7.2.3.2 To enable sites in specific locations to be used primarily for rural industrial, tourist services or rural residential purposes (including communal living and papakainga) with any farming or other rural activity being ancillary, having regard to:

(a) the productive and versatile values of the land;
(b) natural hazards;
(c) outstanding natural features and landscapes, and the coastal environment;
(d) cross-boundary effects, including any actual and potential adverse effects of existing activities on such future activities;
(e) servicing availability;
(f) the availability of specific productive natural resources, such as aggregates or other mineral sources;
(g) transport access and effects;
(h) potential for cumulative adverse effects from further land fragmentation;
(i) maintaining variety of lot size;
(j) efficient use of the rural land resource;
(k) cultural relationship of Māori to their land.

7.2.3.4 To enable the subdivision of land or amalgamation of land parcels for the preservation of:

(a) significant natural values, including natural character, features, landscape, habitats and ecosystems;
(b) heritage and cultural values; where preservation is assured through some statutory instrument and statutory manager.

7.2.3.5 To ensure that activities which are not involved or associated with soil-based production do not locate where they may adversely affect or be adversely affected by such activities.

On the face of it the proposed development is broadly consistent with this objective and these policies. A grant of consent would certainly allow rural-residential development on an area of land of low productivity. However, Policy 7.2.3.3 requires us to have regard to matters such as natural hazards, outstanding natural landscapes, the coastal environment, cross-boundary effects, transport access and the cultural relationship of Maori to their land. Section 7.3 of the TRMP (not reproduced) also clearly sets out the framework for rural residential development in the Rural 3 zone.

Chapter 8: Margins of Rivers, Lakes, Wetlands and the Coast

The relevant objective and policies in this chapter are as follows:

Objective 8.2.1

The maintenance and enhancement of public access to and along the margins of lakes, rivers, wetlands and the coast, which are of recreational value to the public.

Policies

8.1.3.1 To maintain and enhance public access to and along the margins of water bodies and the coast while avoiding, remedying or mitigating adverse effects on other resources or values, including: indigenous vegetation and habitat; public health, safety, security and infrastructure; cultural values; and use of adjoining private land.

8.1.3.7 To ensure that adequate public access is available to outstanding natural features and landscapes in the coastal environment or the margins of lakes, rivers or wetlands, except where the impact of such access is incompatible with the duty to protect these areas or access across private land cannot be negotiated.

Objective 8.2.2

Maintenance and enhancement of the natural character of the margins of lakes, rivers, wetland and the coast, and the protection of that character from adverse effects of the subdivision, use, development or maintenance of land or other resources, including effects on landform, vegetation, habitats, ecosystems and natural processes.

Policies

8.2.3.2 To control the destruction or removal of indigenous vegetation on the margins of lakes, rivers, wetlands and the coast.

8.2.3.4 To avoid, remedy or mitigate adverse effects of buildings or land disturbance on the natural character, landscape character and amenity values of the margins of lakes, rivers, wetlands or the coast.

8.2.3.6 To adopt a cautious approach in decisions affecting the margins of lakes, rivers and wetlands, and the coastal environment, when there is uncertainty about the likely effects of an activity.

8.2.3.7 To ensure that the subdivision, use or development of land is managed in a way that avoids where practicable, and otherwise remedies or mitigates any adverse effects, including cumulative effects, on the natural character, landscape character and amenity values of the coastal environment and the margins of lakes, rivers and wetlands.

8.2.3.8 To preserve natural character of the coastal environment by avoiding sprawling or sporadic subdivision, use or development.

8.2.3.18 To avoid, remedy or mitigate adverse effects on natural coastal processes of the subdivision, use or development of land, taking account of sea-level rise.

8.2.3.21 To protect historic and cultural sites in riparian margins and the coastal environment.

The matter of providing public access to the coast through this subdivision process is complicated due to the public's unofficial public access rights. However, given the applicant's undisputed legal right to refuse access to the Baigent Reserve, we agree that this subdivision would enable better access to the coastal margin. However, countering this is Objective 8.2.2 and its associated policies which we find the proposed development to be contrary too.

Chapter 9: Landscape

Objective 9.1.2

Protection of the District's outstanding landscapes and features from the adverse effects of subdivision, use or development of land and management of other land, especially in the rural area and along the coast to mitigate adverse visual effects.

Policies

9.1.3.3 To ensure that structures do not adversely affect:
- *(a) visual interfaces such as skylines, ridgelines and the shorelines of lakes, rivers and the sea;*
- *(b) unity of landform, vegetation cover and views.*

9.1.3.4 To discourage subdivision developments and activities which would significantly alter the visual character of land in outstanding landscapes (including adjoining Abel Tasman, Nelson Lakes and Kahurangi national parks).

9.1.3.6 To manage activities which may cause adverse visual impacts in the general rural area.

9.1.3.7 To ensure that land disturbance including vegetation removal and earthworks does not adversely affect landscape character and rural amenity value in the Coastal Environment Area in locations of public visibility, particularly where there are distinctive natural landforms.

As we have previously noted we consider the Kina Peninsula to be an Outstanding Natural Landscape, and as such we find that the visual impacts of the proposed development cause it to be contrary to this objective and these policies.

Chapter 13: Natural hazards

Objective 13.1.2
Management of areas subject to natural hazard, particularly flooding, instability, coastal and river erosion, inundation and earthquake hazard, to ensure that development is avoided or mitigated, depending on the degree of risk.

Policies

13.1.3.1 To avoid the effects of natural hazards on land use activities in areas or on sites that have a significant risk of instability, earthquake shaking, fault rupture, flooding, erosion or inundation, or in areas with high groundwater levels.

13.1.3.2 To assess the likely need for coastal protection works when determining appropriate subdivision, use or development in the coastal environment and, where practicable, avoid those for which protection works are likely to be required.

13.1.3.4 To avoid or mitigate adverse effects of the interactions between natural hazards and the subdivision, use and development of land.

Following our discussion on the coastal erosion hazard above, we conclude that we do not consider this proposal to be consistent with this objective or these policies.

New Zealand Coastal Policy Statement (2010)

Mr Morris identified Objectives 2 and 5 as being of particular relevance. We agree with this but, following the evidence heard at the hearing, we would add Objectives 3, 4 and 6 as also relevant.

We find the following policies as being particularly relevant:

Policy 2 The Treaty of Waitangi, tangata whenua and Maori heritage

In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment: (inter alia)

… (i) recognise the importance of Maori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and

(ii) provide for the identification, assessment, protection and management o fareas or sites of significance or special value to Maori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Maori heritage, for example coastal pa or fishing villages.

Policy 3 Precautionary approach

(1) Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.

(2) In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:

(i) avoidable social and economic loss and harm to communities does not occur;
(ii) natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and

(iii) the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.

Policy 13 Preservation of natural character

(1) To preserve the natural character of the coastal Environment &to protect it from inappropriate subdivision, use, and development:

(a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;

including by:

(c) assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and:

(d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.

(2) Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:

(a) natural elements, processes and patterns;
(b) biophysical, ecological, geological and geomorphological aspects;
(c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;
(d) the natural movement of water and sediment;
(e) the natural darkness of the night sky;
(f) places or areas that are wild or scenic;
(g) a range of natural character from pristine to modified;
(h) experiential attributes, including the sounds and smell of the sea; and their context or setting.

Policy 15 Natural features and natural landscapes

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:

(a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;

including by:

(c) identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:

(i) natural science factors, including geological, topographical, ecological and dynamic components;
(ii) the presence of water including in seas, lakes, rivers and streams;
(iii) legibility or expressiveness - how obviously the feature or landscape demonstrates its formative processes;
(iv) aesthetic values including memorability and naturalness;
(v) vegetation (native and exotic);
(vi) transient values, including presence of wildlife or other values at certain times of the day or year;
(vii) whether the values are shared and recognised;
(viii) cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;
(ix) historical and heritage associations; and
(x) wild or scenic values;

(d) ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules;

(e) including the objectives, policies and rules required by (d) in plans.

Policy 17: Historic heritage identification and protection
Protect historic heritage in the coastal environment from inappropriate subdivision, use, and development by:

(a) identification, assessment and recording of historic heritage, including archaeological sites;
(b) providing for the integrated management of such sites in collaboration with relevant councils, heritage agencies, iwi authorities and kaitiaki;
(c) initiating assessment and management of historic heritage in the context of historic landscapes;
(d) recognising that heritage to be protected may need conservation;
(e) facilitating and integrating management of historic heritage that spans the line of mean high water springs;
(f) including policies, rules and other methods relating to (a) to (e) above in regional policy statements, and plans;
(g) imposing or reviewing conditions on resource consents and designations, including for the continuation of activities;
(h) requiring, where practicable, conservation conditions; and
(i) considering provision for methods that would enhance owners' opportunities for conservation of listed heritage structures, such as relief grants or rates relief.

Policy 18 Public open space

Recognise the need for public open space within and adjacent to the coastal marine area, for public use and appreciation including active and passive recreation, and provide for such public open space, including by:

a) ensuring that the location and treatment of public open space is compatible with the natural character, natural features and landscapes, and amenity values of the coastal environment;

b) taking account of future need for public open space within and adjacent to the coastal marine area, including in and close to cities, towns and other settlements;

c) maintaining and enhancing walking access linkages between public open space areas in the coastal environment;

d) considering the likely impact of coastal processes and climate change so as not to compromise the ability of future generations to have access to public open space; and

e) recognising the important role that esplanade reserves and strips can have in contributing to meeting public open space needs.

Policy 25 Subdivision, use and development in areas of coastal hazard risk

In areas potentially affected by coastal hazards over at least the next 100 years:

(a) avoid increasing the risk of social, environmental and economic harm from coastal hazards;

(b) avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;

(c) encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events;

(d) encourage the location of infrastructure away from areas of hazard risk where practicable;

(e) discourage hard protection structures and promote the use of alternatives to them, including natural defences; and

(f) consider the potential effects of tsunami and how to avoid or mitigate them.

We are in agreement with Mr Morris's assessment of the proposal against the NZCPS. We agree that the proposal does provide for public open space and esplanade reserves sought by Policy 18.

However, overall, the proposed subdivision is considered contrary to the New Zealand Coastal Policy Statement (2010) for the following reasons:

- It does not preserve the natural character of the area;
- It does not locate development away from an area of risk;
- Archaeological interests have not been adequately investigated to give us certainty about the magnitude of adverse effects;

- It does not take a precautionary approach to natural hazards in order to reduce economic loss to the community in terms of the long term cost of maintaining road access to the site;
- It does not protect the natural landscape of the site; and
- It does not avoid the social, environmental and economic harm from the increasing hazard risk over the next 100 years.

In interpreting Policy 25 we do not think that utilisation of "removal trigger distances" is an acceptable substitute for the 100 year avoidance approach that is prescribed therein.

Purpose and Principles of the Act

In Section 8 above we identified the relevant Part 2 matters. We find that while matter 6(d) is provided for, the proposal does not provide for matters 6(a), (b), (e), and (f). Therefore, we see this proposal as being contrary to a significant number of matters of national importance.

In assessing the proposal against Section 5 we find that the adverse effects on the environment and the extensive inconsistencies with the relevant planning documents (TRMP and NZCPS) significantly outweigh the positive effects identified. Therefore, we find that sustainable management of natural and physical resources would not be promoted by the granting of this proposal.

Contributions to the Process

We would like to record our thanks to all participants in the process. The applicant's team provided a comprehensive application and supporting submissions and evidence, the reporting officers and landscape consultant assisted us with useful assessment of the applicant's case and the submissions, and the submitters gave us much food for thought.

Issued this 18th day of July 2011

David Collins
Chair of Commissioner Panel

Date Confirmed: Chair: