

Notification / non-notification decision report

For applications lodged from 30 September 2020 onwards.

Applicant: D Tipple & T Tipple & M Tipple
Application number: RM240000
Description of activity: Retrospective land use consent for a private deck and stairs on road reserve and therefore not meeting the road setback for the Residential Zone, and located within the Coastal Environment Area (CEA).

1. Complete eight step notification decision making process

Complete Appendix A.

2. Key details

Discretionary activity

Notes for the following (click ▶ to open)

The following summarises the background, reasons for consent and activity status, processing matters and other issues

Background

The applicant has applied for a retrospective consent for a deck and associated stairway. The deck is within the property at 38 Kaiteriteri Sandy Bay Road, Kaiteriteri. The stairway is partly on the property at 38 Kaiteriteri Sandy Bay Road and it then extends down the hillside through an unformed legal road to the beach below the property. The site plans shows the deck extending to the boundary of 36 Kaiteriteri Sandy Bay Road, 8m at the closest point to the boundary of 44 Kaiteriteri Sandy Bay Road, 4m at the closest point to the boundary of the Kaka Point Reserve and almost up to the boundary (no exact measurement is given) of the unformed legal road. No elevations are included with the application but the application notes that the deck is over 2m in height and breaches the boundary setback with 36 Kaiteriteri Sandy Bay Road.

Tasman Resource Management Plan (TRMP) Zoning and Rules

The property at 38 Kaiteriteri Sandy Bay Road is in the Residential Zone and subject to the following Area overlays in the TRMP planning maps: Land Disturbance Area 1, Coastal Environment Area, and Cultural Heritage Precinct. Nearby are archaeological association sites N26/86, N26/83 and N26/84.

Residential Zone Rules

The activity cannot comply with the following Permitted activity conditions of Rule 17.1.3.1:

1. condition (k) – balcony/deck – is not meet as the deck has a finished floor level over 2m in height and within 4m of boundary.
2. condition (q) – setbacks (road boundary) – is not meet as the deck and stairs are over the road boundary
3. condition (r) – setbacks (internal boundary) – is not meet as the deck and stairs go over the boundary.

Therefore, the activity is a **Restricted Discretionary** under Rule 17.1.3.4.

Open Space Zone Rules

The activity cannot comply with the following Permitted activity condition of Rule 17.9.2.1:

4. condition (d) – setback – is not met as the deck and stairs are closer than 3m from boundary.

Therefore, the activity is a **Discretionary** activity under Rule 17.9.2.5.

Road Area

The activity is partly on unformed road and as such does not comply with the following Permitted activity condition of Rule 18.8.2.1:

5. condition (a) – the activity does not meet this rule as the deck and stairs could prevent or hinder the construction, reconstruction, maintenance or use of the road.

A resource consent is therefore required under this rule however, the Plan does not further classify Road Area - land use activities that do not meet the permitted rule. Therefore, it is a **Discretionary** activity.

Coastal Environment Area Rules

The activity cannot comply with the following Permitted activity condition of Rule 18.11.2.1:

6. condition (a) – land use – the activity does not meet this rule as the deck and stairs is considered a new building.

The activity cannot comply with the following Controlled activity condition of Rule 18.11.3.1:

7. condition (b) (iv) – setback to MHWS 30m – the activity does not meet this rule as the deck and stairs is closer than 30m to MHWS.

Therefore, the activity is a **Restricted Discretionary** activity under Rule 18.11.3.2.

Overall Activity Status

Overall, based on the information submitted with the application, the proposal is a **Discretionary** activity. It is noted that the further information requested but is still outstanding (discussed below), may show further rule breaches and this assessment is done on the information provided only.

Section 92 of the RMA

A further information request was sent to the applicant on 9 February 2024 for elevations and a geotechnical report.

The applicant subsequently asked for an extension of this timeframe to 30 May 2024 and the Council agreed.

The applicant missed that extended timeframe then asked for a new extended timeframe to align with the abatement notice timeframe of 27 July 2024 as their geotechnical expert was overseas, and this timeframe was agreed upon.

However, on the 29 July 2024 the applicant's representative emailed and stated that the first geotechnical report was "not ideal" and the applicant was seeking a second opinion with a "Geotech they have been in contact with believes he can come up with a better way to sort the issues". This action would require a further extension, so the matter was discussed between Council staff, and it was decided that the applicant has already been provided a reasonable timeframe to provide the further information and the fact that they did not like the geotechnical report they received was not an adequate reason to extend the timeframe again. The Council then

informed the applicant it would continue with the processing of their application, and at the time of writing this report the information was still outstanding.

Statutory acknowledgment areas and interested persons

The application site is adjacent to a Statutory Acknowledgement Area recognised under Treaty Settlement legislation with Iwi and recognises their special cultural relationship with Te Tau Ihu Coastal Marine Area. Because of this, Council forwarded a notice of the application to their resource management representatives as 'interested parties' in accordance with standard operating procedures. It is noted that Iwi have raised concerns over this proposal to both the applicant and to Council staff and the sites are within the cultural heritage precinct.

In addition, Council also received communication from Heritage NZ Pouhere Taonga that they were also interested in the application given the nature and location of the activity and context.

3. Public Notification Assessment

Assessment must follow section 95D: (click ▶ to open)

Assessment and reasons:

Under Section 95A (1), a consent authority must follow the steps set out, in the order given, to determine whether to publicly notify an application for a resource consent.

Step 1: mandatory public notification in certain circumstances – Section 95A (2) and (3):

It is acknowledged that criteria (a) and (c) do not apply as the applicant has not requested public notification of the application, and the application has not been jointly made with an application to exchange reserve land.

However, criterion (b) does apply. In this case, Section 95C expressly requires the public notification of this application because Council has not already decided whether to give public or limited notification of the application, and the Council requested further information on the application under Section 92(1) but the applicant did not provide the information before the original deadline or the subsequent extensions to the agreed deadline.

In light of the above, no assessment of adverse effects on the environment, or consideration of special circumstances, has been undertaken given the 'steps' hierarchy for public notification.

4. Limited Notification

Assessment must be made in accordance with section 95E: (click ▶ to open)

Statutory acknowledgment area
(for s95E(2)(c))

Te Tau Ihu Coastal

No affected persons.

Affected persons.

Reasons / analysis

As noted above, no assessment of statutory acknowledgement areas and affected persons, or consideration of special circumstances, has been undertaken at this stage either because the application must be publicly notified pursuant to Section 95A and s95C of the RMA, which comes first in the notification hierarchy.

However, in having regard to s2AA(2) of the RMA and Regulation 10 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003, it would be prudent to serve notice of the application on the following groups and persons because they may have an interest in the activity greater than the general public and/or the magnitude of adverse effects on them may be greater than less than minor:

- a. The owners/occupiers of 36 Kaiteriteri – Sandy Bay Road
- b. Ngāti Apa ki te Rā Tō
- c. Ngāti Kuia
- d. Rangitāne o Wairau
- e. Ngāti Koata
- f. Ngāti Rārua
- g. Ngāti Tama ki Te Tau Ihu
- h. Te Ātiawa o Te Waka-a-Māui
- i. Ngāti Toa Rangatira
- j. Heritage New Zealand Pouhere Taonga

5. Recommendation

It is recommended that this application be:

- Publicly notified** because it is required by Sections 95A and 95C of the RMA.
- Limited notified** because:
Choose an item.
- Processed on a **non-notified** basis for the reasons identified in this report.

Recommendation
signed by:



Date: 13 August 2024

Name: Katrina O'Connor
Position: Consultant Planner

6. Section 95 decision

Recommendation accepted under delegated authority of the Tasman District Council by:

Decision signed by:



Date: 14 August 2024

Name: Blair Telford
Position: Principal Planner - Resource Consents

Appendix A – 8 Step Notification Decision Process

Complete steps 1-8.

If public or limited notification is required, record full reasons in the relevant sections of your report.

Public notification decision making flowchart		
Step 1: Mandatory public notification	<ul style="list-style-type: none"> • Has the applicant requested public notification? • Has the applicant failed/refused to supply further information (s95C)? • Is the application made jointly with an application to exchange recreation reserve land under s15AA of the Reserves Act 1971? 	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, must publicly notify
Step 2: Public notification precluded in certain circumstances	<ul style="list-style-type: none"> • Does a relevant plan rule or NES regulation prevent public notification? • Is the application for: <ul style="list-style-type: none"> ○ a controlled activity? ○ a 'boundary activity' that is a restricted discretionary, discretionary or non-complying activity? 	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> go to step 4: special circumstances (no step 3)
Step 3: Public notification required in certain circumstances	<ul style="list-style-type: none"> • Will the activity have, or be likely to have, adverse effects on the environment that are more than minor? • Does a relevant plan or NES rule require public notification? 	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> must publicly notify
Step 4: Public notification required in special circumstances	<ul style="list-style-type: none"> • Do special circumstances exist that call for public notification? 	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> must publicly notify
Limited notification decision making flowchart		
Step 5: Mandatory limited notification to certain groups and persons	<ul style="list-style-type: none"> • Are there affected protected customary rights groups (s95F)? • Are there affected customary marine title groups (applications for an 'accommodated activity')? (s95G) • Is the activity on, adjacent to, or may affect land that is the subject of a statutory acknowledgement made per an Act specified in Schedule 11 of the Act; and the person to whom the statutory acknowledgement is made is affected under s95E? 	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> must limited notify
Step 6: Limited notification precluded in certain circumstances	<ul style="list-style-type: none"> • Does a relevant plan or NES rule prevent limited notification? • Is the application for a controlled activity that requires consent under a district plan (other than a subdivision)? 	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> go to step 8: special circumstances (no step 7)
Step 7: Limited notification required to certain other affected persons	<ul style="list-style-type: none"> • Are any of the following eligible persons 'affected' under s95E? <ul style="list-style-type: none"> • For boundary activities – an owner of an allotment with an infringed boundary? • For other activities, will there be minor or more than minor adverse effects on any 'affected persons'? 	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> must limited notify
Step 8: Limited notification required in special circumstances	<ul style="list-style-type: none"> • Do special circumstances exist that warrant notification to any persons not already determined to be eligible for limited notification? (excludes persons assessed under s95E as not being affected) 	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> must limited notify