

**APPLICATION FOR
LAND USE AND SUBDIVISION
CONSENT**

Lex Anderson and Denise Gray

**761 ARAMOANA ROAD,
TE NGARU**

Prepared By

Cubitt Consulting Ltd

February 2021

Table of Contents

| | Page Number |
|---|--------------------|
| 1. Description of Proposal | 1 |
| 2. Status of Proposal | 2 |
| 3. Assessment of Environmental Effects | 3 |
| 4. District Plan Policy Framework | 9 |
| 5. S 104D and True Exception Test | 10 |
| 6. Affected Persons and Notification | 11 |

Appendices

- 1. Subdivision Plan**
- 2. Certificate of Title**
- 3. Geolink Investigations Ltd report**
- 4. Coastal Hazard evidence, Maurice Davis 2011**

1. Description of Proposal

1.1 *Background and Site Description*

The subject property is located at 761 Aramoana Road in the small coastal township of Te Ngaru. Te Ngaru is a small, well established settlement located approximately 3 kilometres before Aramoana, on Aramoana Road. The site is legally described as Lot 1 DP 17304 and Lot 1 DP 386904 and has a total area of 7.3641 hectares. The property is held computer register 376663 in the name of the applicants, Lex Arthur John Anderson and Denise Rose Gray.

The property has approximately 70 metres of frontage to Aramoana Road. The area of land that fronts the road (around 4000m²) is relatively flat, with a few low dunes. The bulk of the property sits in behind the Te Ngaru township and comprises the steep, bush clad slope that forms the backdrop to the township. A strip of pasture runs along the top of the cliff. A lower lying flat area of ground is located at the north eastern corner of the title. A dwelling is located within Lot 1 DP 17304 (which has an area of 1683m²) while a relocatable house has been sitting on the adjoining site to the west for a number of a years but is not occupied or connected to services. A number of out-buildings sit to the north of this.

The property was subject to a resource consent application in 2011 for a subdivision of the property that reflected the character of the township. The Te Ngaru township comprises a strip of approximately 30 residential size allotments that were mostly built on. Lot 1 DP 386904 of the subject property was at that time (and still is), the largest undeveloped section in the township. It was proposed subdivide that allotment into four lots for residential development as follows:

- Lot 1 - 1400m².
- Lot 2 - 1100m².
- Lot 3 - 1100m².
- Lot 4 - 6.8 hectares.

Cancellation of the existing amalgamation condition for Lot 1 DP 17304 was also sought so that it became an independent site. Land use consent was also sought for the establishment of dwellings

Despite being well developed, Te Ngaru was zoned 'Rural' under the operative District Plan 2006. As a consequence, the proposed subdivision was non-complying and initially refused by Council. However, a reduced proposal was negotiated with Council and was consented through the Consent Order process in the Environment Court on 8 May 2013. The order enabled the subdivision of the existing dwelling from the site and the establishment of one new residential dwelling on the balance lot. That order is attached as Appendix 5.

Due to a number of circumstances, mainly involving family matters, the applicant did not give effect to the consent order in time.

1.2 *Proposed Activity*

The Proposed Dunedin City District Plan (2GP) has now recognised the Te Ngaru township, zoning it 'Township and Settlement'. However, rather strangely the undeveloped Aramoana Road frontage of the applicant's property has not been included in that zoning despite being at the same contour and Council having already agreed to a limited amount of development on the property. The applicant considers this inequitable given the land is not useable under the current Rural Coastal zoning. As a consequence, the applicants seek consent to subdivide the site in a similar manner to the original subdivision proposal. Lot 1 DP 386904 of the 7.3641-hectare parent title is proposed to be subdivided as follows:

- Lot 1 - 1400m².
- Lot 2 - 1036m².
- Lot 3 - 1190m².
- Lot 4 - 6.8 hectares.

Lot 1 DP 17304 (1683m²) is to be held in an independent title which will require cancellation of the existing amalgamation condition. All allotments have frontage to Aramoana Road with both Lot's 3 and 4 having leg-in access.

The subdivision plan prepared by Craig Horne Registered Surveyor is attached as Appendix 1.

Land use consent is also sought for the erection of dwellings and associated ancillary buildings (such as garages and garden sheds) within Lots 1 to 4. The exact location of the buildings within each site is not yet known. Consequently, consent is sought on the basis of the bulk and location requirements of the Township and Settlement Zone of the Proposed Dunedin City District Plan. The following conditions, or similar, are considered appropriate and are promoted as part of this proposal:

- That the sites shall be developed in accordance with the relevant rules of the Proposed Dunedin City District Plan for Township and Settlement Zone.
- All dwellings shall have minimum floor height of 102.675m Otago Datum.
- All dwellings shall be constructed on piles and shall be relocatable.
- All dwellings shall be restricted to a single storey and a maximum height of 6-metres.
- That final building design is submitted to Council's Consents Manager for approval prior to or at building consent. An advice note would be helpful here advising that the intent of this condition is to ensure the new dwellings reflect the existing character and scale of the Te Ngaru settlement.
- That the on-site effluent disposal system shall be designed and the location of the disposal field shall be confirmed by an appropriately qualified professional. This design and location shall be submitted to and approved by the Resource Consent Manager prior to construction commencing. This condition should be attached to the relevant titles via the consent notice process.
- That prior to the occupation of the dwellings, domestic water and firefighting storage is to be provided. An adequate firefighting water supply is to be available at all times in accordance with SNZ PAS 4509:2008 in order to reduce the fire risk to the property.
- That prior to s224(c) certification, vehicle access shall be provided to each allotment boundary from the carriageway of Aramoana Road. Engineering details for this work shall be submitted to, and approved by, the Transportation Operation Manager prior to construction commencing.
- That the Accidental Discovery Protocol be attached via the consent notice process.

The applicant also proposes that the existing native vegetation on Lot 4 be retained and enhanced. A condition is proposed to achieve this as follows:

- An indigenous revegetation planting plan shall be developed for Lot 4 to enhance landscape and biodiversity values. This plan shall be prepared by an appropriately qualified professional planting and shall be submitted to Council's Consents Manager for approval prior to or at building consent. This planting shall be implemented within 5 years of the resource consent being given effect to.

2. Status of Proposed Activity

The property is zoned 'Coastal Rural' and 'Township and Settlement' in the 2GP. The following planning notations also affect the site:

- Archaeological Alert layer
- Hazard 3 (coastal) Overlay Zone.
- Wāhi Tupuna Mapped Area.

Subdivision within the Coastal Rural zone is a restricted discretionary activity under Rule 16.3.5 subject to compliance with a number of standards, in particular a minimum site area of not less than 40 hectares. Lots 1 to 4 will be under the required minimum site area and as a consequence, the proposal is a **non-complying activity** under the Plan.

Subdivision in the 'Township and Settlement' zone is a restricted discretionary activity under Rule 15.3.5 subject to compliance with a number of standards, in particular a minimum site area of not less than 1000m² where there are no reticulated services, as is the case here. Lot 1 DP 17304 contains 1683m² so complies with this minimum and will also comply with the other standards. Subdivision of Lot 1 DP 17304 is therefore a **restricted discretionary activity**.

In the Coastal Rural zone, Rule 16.5.2(a) permits residential activity at a density of 1 residential unit per site provided that the minimum area of the site is not less than 15 hectares. Any new dwellings on Lots 1 to 4 will be on sites less than 15 hectares and are therefore **non-complying activities**.

In the 'Township and Settlement' zone, Rule 15.5.2(j) permits residential activity at a density of 1 residential unit per site provided that the minimum area of the site is not less than 1000m². The existing dwelling will be on a site in excess of 1000m² so will comply with the density rule.

Overall, the proposal in the Rural part of the property is considered to be a **non-complying activity** while the proposal within the 'Township and Settlement' zone part of the property is considered a **restricted discretionary activity**.

3. Assessment of Environmental Effects

3.1 Introduction

Rule 16.12.2.1 contains the following are assessment matters for all non-complying activities under the proposed district plan.

Relevant objectives and policies (priority considerations):

a. Objectives 16.2.1, 16.2.2, 16.2.3, 16.2.4

b. *The activity does not detract from, or preferably contributes to, the strategic direction objectives, including, but not limited to, those related to:*

i. Objective 2.2.2, 2.2.3, 2.2.4, and 2.3.1

General assessment guidance:

c. *In assessing the significance of effects, consideration will be given to:*

i. *short to long term effects, including effects in combination with other activities; and*

ii. *the potential for cumulative adverse effects arising from similar activities occurring as a result of a precedent being set by the granting of a resource consent; and*

iii. *Manawhenua values and the relationship between manawhenua and the natural environment is maintained, including cultural values and traditions associated with:*

1. *wāhi tūpuna; and*

2. *the customary use of mahika kai (Objective 14.2.1).*

*iv. If located outside a **wāhi tūpuna mapped area**, Kai Tahu may advise the Council if it considers that the granting of the consent would affect the integrity of the broader environment within which the wāhi tūpuna is located, or the linkages between wāhi tūpuna.*

d. In assessing activities that are noncomplying due to being in an overlay zone, mapped area, in a scheduled site, or affecting a scheduled item, that otherwise require resource consent, the assessment guidance provided in relation to the underlying activity status will also be considered.

In relation activities for Minimum site size infringement, Rule 16.12.6 Assessment of noncomplying performance standard contravention provides as follows:

Relevant objectives and policies (priority considerations):

a. Objectives 2.2.2, 2.2.4, 2.3.1, 2.4.6

b. Objectives 16.2.3, 16.2.4

c. Areas important for food production are protected from subdivision activities that may diminish food production capacity (Policy 2.2.2.1).

d. Subdivision activities that provide for residential activity at a rural residential or suburban scale are avoided (Policy 2.2.4.4).

e. The productivity of farming and other activities that support the rural economy is maintained or enhanced through restricting subdivision activities that may lead to land fragmentation and create pressure for residential oriented development (Policy 2.3.1.2).

f. The identified character values of the rural zones are maintained (Policy 2.4.6.2).

g. Subdivisions are designed to ensure any associated future land use and development maintain or enhance the rural character and visual amenity of the rural zones (Policy 16.2.3.8).

h. Subdivisions are designed to ensure any future land use and development will:

i. maintain or enhance the productivity of rural activities;

ii. maintain high class soils for farming activity, or ensure any loss is no more than minor;

iii. maintain land in a rural rather than rural residential use; and

iv. not increase the potential for reverse sensitivity from residential activities in the rural zones (Policy 16.2.4.3).

i. See Section 9.7 for guidance on the assessment of resource consents in relation to Objective 9.2.1 and effects related to the efficiency and affordability of infrastructure.

j. A legal mechanism is proposed that will ensure that any proposed undersized allotment cannot be used for a residential activity, and overall there is no net increase in residential development potential.

In relation to density/minimum site size infringement in wāhi tūpuna mapped areas, Rule 16.12.6 lists the following assessment matter for noncomplying performance standard contravention:

Relevant guidance from other sections (priority considerations):

- a. See Section 14.6 for guidance on the assessment of resource consents in relation to Objective 14.2.1 and effects on the cultural values of Manawhenua

Condensing all these provisions down, and having regard to the District Plan provisions, we are of the opinion that the key effects that need to be considered are as follows:

- The effects on rural character and visual amenity values
- The effects of fragmentation on productive potential of rural land
- Transportation effects
- The provision of services.
- Natural hazards
- The effects on the cultural values

3.2 *Landscape Character and Amenity Values*

While the site is zoned Rural, the nature and character of the area is not reflective of open, productive rural farm land. It forms part of a settlement that comprises a strip of approximately 30 residential size allotments between the road and the cliff that rises directly up behind the settlement. The vast majority of independent titles at the settlement have been built on, with 27 dwellings making up the settlement. As a consequence, it is somewhat surprising that the Aramoana Road frontage of this site has not been included in the Te Ngaru 'Township and Settlement' zone of the 2GP.

The property has no value as rural land and is really only fit to be developed as part of the township. What is proposed here is in keeping with the existing character of the area and the surrounding development, essentially amounting to infill. As a consequence, the proposal will not have adverse effects on the landscape character and amenity of the area. The new dwellings will not extend the area of residential development further into undeveloped areas of the Rural land sitting behind the zone.

The only real question to address therefore, is whether the design and location of the new dwellings will be incompatible with the existing settlement. There is a very distinctive pattern and character to the existing dwellings at Te Ngaru. The houses all have a rustic, understated small scale appearance which does not dominate the surrounding natural landscape element, and they appear to sit well in this environment. To ensure the current crib-like style and balance of this small settlement remains, we have promoted the following conditions:

- *All dwellings be restricted to a single storey and a maximum height of 6-metres.*
- *That final building design is submitted to Council's Consents Manager for approval prior to or at building consent. An advice note should also be attached to this condition advising that the intent of this condition is to ensure the new dwellings reflect the existing character and scale of the Te Ngaru settlement.*

Overall, the construction of new dwellings in this location will lift the general appearance of the settlement. The imposition of the 'Township and Settlement' zone standards will ensure that on-site amenity and that of neighbouring property owners is maintained.

The enhancement of the native vegetation on the site will also have positive effects landscape and biodiversity benefits.

3.3 *The effects fragmentation on productive potential of rural land*

The site does not contain high class soils and has not been part of a productive farm property for many decades. Limited grazing has taken place on the northern part of Lot 4 in the past but the majority of the property is steep, bush clad land not suitable for any productive rural uses. Hence, the subdivision proposed will not impact on either the productive potential of the site itself, or the wider rural environment.

Because the surrounding land uses are residential in nature and scale, there is little opportunity for conflict or reverse sensitivity issues to arise in this neighbourhood.

3.4 *Transportation (Assessment Matters 6.7.24, 18.6.1(c) and (m))*

Access to all new parcels will be from Aramoana Road, which provides legal and sealed frontage to the site. Aramoana Road is identified as a 'collector road' within Councils roading hierarchy. The District plan defines collector roads as roads that "*distribute and collect local traffic within and between neighbourhoods and link rural communities. They provide for traffic movement and property access.*"

Access to Lot 1 DP 17304 is already formed. Access to Lots 1 to 4 can be located and designed in accordance with Councils standard requirements. Sight distances are adequate in this location, given the existing traffic environment.

3.5 *Services: Provision for stormwater, water and effluent disposal*

The dwelling within Lot 1 DP 17304 is self serviced in respect to water supply and disposal of effluent and stormwater. There are no cross-boundary issues with respect to effluent disposal evident at the site. It is proposed that the four new allotments that will be made available for development will also be self serviced in respect to water supply and disposal of effluent and stormwater.

With respect to water supply, the standard roof collection and tank storage system will be utilised by all new dwellings. Adequate water supply will also be provided for fire fighting purposes as outlined in the NZFS Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008. The requirement to comply with this code only occurs at the time habitable buildings are erected on the new allotments. Consequently, the requirement to comply with the code should be included in a consent notice to be placed on the certificates of Title for Lots 1 to 4.

For the previous subdivision proposal, the late Mike Robins of Geolink Land Investigations assessed the area for suitability to safely dispose of effluent on-site. He noted that the soils are well drained with surface stones and possible gravels at 40cms and advised that effluent disposal systems should be designed to prevent the rapid percolation of effluent into the groundwater. This will mean that effluent will need to be treated to a high standard and disposed of by irrigation into a vegetated area or soil/sand filter system. Again, a condition of this nature can be attached to the relevant certificates of title by a consent notice.

Stormwater will also be dealt with on-site. However, details of this are best left to building consent stage.

3.6 *Natural Hazards*

As noted above, the Te Ngaru settlement is identified as being within the Hazard 3 (coastal) Overlay Zone. This is considered a low-risk hazard category which aligns with the evidence presented with the original proposal by Mr Maurice Davis, a Marine and Coastal Engineer with CPG New Zealand Ltd, in relation to sea level rise and coastal hazards. This evidence is

attached. Mr Davis advised that *“the site of the proposed subdivision is well protected from surges or long period waves originating offshore and in these circumstances, its exposure to the effects of sea level rise and climate change can be confined to the assessment of effects of conditions created within the harbour, namely sea level rise, waves generated by local winds and wave set-up, the latter being the effect of wind shear forces tending to elevate water levels at the downwind edge of a large area of exposed water.”* Mr Davis then detailed the relevant conditions in the location and concluded that the effects of climate change on the shore at Te Ngaru will be minor and the effects on the adjacent land in the proposed subdivision will be negligible.

Mr Davis also assessed the issue of sea level rise and found no reason to decline the application on that basis. It was noted that there are existing properties in Te Ngaru which will be subjected to any possible sea level rise effects to an equal or greater extent than the proposed new subdivision. As the settlement has now been zoned ‘Township and Settlement’, this appears to have been acknowledged by Council. The conditions proposed adequately address this issue and reflect the Consent Order conditions.

The late Mike Robins report for the original proposal also assessed the suitability of the geology of site for the proposed development. With respect to the location of Lots 1 to 3, he advised that these are stable sites with good foundation conditions. He found no evidence of mass movement but he did find some evidence of debris slides and rock fall on the steep land. However, he noted that the slopes behind the sand flats are well vegetated, have a soil cover and that there are few exposed bluffs. There is now more vegetation and no evidence of rockfall. Given the proposed enhancement of the existing vegetation on the site, the potential risk from this has been further reduced since the original proposal.

3.7 Cultural effects

As noted above, the site is affected by an Archaeological Alert layer and Wāhi Tupuna Mapped Areas. Although Iwi did not make a submission on the original proposal, the New Zealand Historic Places Trust (NZHPT) wrote to the Council in response to being notified of the subdivision proposal. The correspondence was not in the form of an affected party approval or a submission and advised as follows:

The NZHPT is an autonomous Crown Entity. With responsibilities under the Historic Places Act 1993 (HPA) to promote the identification, protection, preservation, and conservation of the historical and cultural resources of New Zealand.

According to the New Zealand Archaeological Association’s (NZAA) Site Record Database, there is a burial ground located either on, or in very close proximity to the application site (NZAA Site Number I44/131).

The HPA makes it unlawful for any person to destroy, damage, or modify the whole or any part of an archaeological site without prior authority of the NZHPT. This is the case regardless of whether the activity is permitted under the District Plan or a resource or building consent has been granted. If there is a chance that site damage may occur, an Archaeological Authority from the Historic Place trust must be obtained.

With respect to the current application, the NZHPT is aware that resource consent has not been sought for earthworks. Nevertheless some earthworks are likely to be required for access to the proposed allotments, as well for building foundations at such time as dwellings and accessory buildings are erected on Lots 1-3. Given the presence of a recorded burial site, the NZHPT considers that it would be prudent for the consent holder to obtain an Archaeological Authority prior to any earthworks being undertaken on the site, in case other archaeological material is discovered.

NZHPT can provide further advice and guidance to the applicant on this process. Obtaining an Archaeological Authority in advance of works would avoid unnecessary delay in the event that archaeological material is discovered during site works.

This is reflected in the values of Wāhi Tupuna Mapped Area 21 that affects the site as follows:

A4.21 Hill faces near/at Aramoana

A4.21.1 Description of area

The site of a settlement against the hill, close to the site of present-day Aramoana. There were many burial sites in the area.

A4.21.2 Values to be protected

1. *Ara tawhito*
2. *Kāika*
3. *Urupā*
4. *Wāhi taoka*
5. *Archaeological remains*

A4.21.3 Principal threats to values

1. *Earthworks*
2. *Mining*

Significant earthworks are not likely to be necessary as a part of this proposal. However, the consent holder will seek the necessary Archaeological Authority from the Heritage New Zealand prior to any development occurring.

Wāhi Tupuna Mapped Area 32 also affects the site as follows:

A4.32 Views from Ōtākou Marae around Upper Harbour

A4.32.1 Description of area

The peaks visible from the marae are significant landmarks that imbue ceremonial occasions and mihi. They are a reminder of the close link of people to the environment and are a cultural identity marker.

A4.32.2 Values to be protected

1. *Wāhi taoka*
2. *Mauka*

A4.32.3 Principal threats to values

1. *Activities that affect views from the marae down to the foreshore, including buildings, structures, public amenities, network utilities, forestry and shelterbelts and small woodlots.*
2. *Activities that affect views of peaks and ridgelines across the harbour (including Keyhole rock), including buildings, structures, public amenities, network utilities, mining, forestry, earthworks, new roads or additions and alterations to existing roads.*
3. *Activities affecting views of Taiehu (hill immediately east of marae), including buildings, structures, public amenities, network utilities, mining, earthworks and forestry.*

In terms of the values to be protected here, the proposal should have little impact. It is merely infill development within an existing settlement that does not block any particular views.

Overall, we expect the proposal to have little impact on cultural values. However, the proposal has been sent to Iwi for comment.

3.8 Conclusion

The nature and character of this environment is not reflective of its current zoning. This particular neighbourhood is essentially a residential enclave, that is more characteristic of the Township and Settlement zone. Hence the creation of four additional independent titles together with the addition of new residential activities in this location, will have less than minor adverse environmental effects.

4. District Plan Policy Framework

In relation to the Rural zone policies, Objective 16.2.1 is to reserve the zone *“for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.”* Policy 16.2.1.1 enables farming, grazing and conservation in the rural zones while Policy 16.2.1.7 is to avoid residential activity in the rural zones where the density standards are not met, unless it is the result of a surplus dwelling subdivision.

The proposal clearly does not achieve these policies except insofar as the native vegetation on Lot 4 will be maintained and enhanced. However, it is considered that the zoning of the site is not appropriate as the Aramoana Road frontage of the property is part of the Te Ngaru Settlement and should be recognised as such.

Hence, Objectives 16.2.2 (potential for conflict and reverse sensitivity), Objective 16.2.3 (rural character and amenity values) and 16.2.4 (productivity of rural activities) are not compromised because of the character of the location.

Objective 11.2.1 of the natural hazard policy framework requires land use and development to be located and designed in a way that ensures that the risk from natural hazards, and from the potential effects of climate change on natural hazards, is no more than low, in the short to long term. Policy 11.2.1.8 requires new buildings containing residential activity on the ground floor in the Hazard 3 (coastal) Overlay Zone to be relocatable, unless site constraints mean this is not practicable.

The experts involved in the previous application found the risk from natural hazards, including sea level rise, was minimal to at least 2110 (a 100-year period from the date of that application). The conditions proposed will ensure the buildings can be removed if necessary.

Manawhenua Objective 14.2.1 requires the relationship between Manawhenua and the natural environment to be maintained or enhanced. This includes the cultural values and traditions associated with wāhi tūpuna. Safeguards will be put in place to ensure the wahi tūpuna values of the site will be maintained.

Having considered the key objectives and policies of the District Plan, we have concluded that this proposal is contrary to the residential policies of the Rural zone but we consider this to be an inappropriate zoning for this site. We do not consider the proposal inconsistent or at odds with the other key policies of the District Plan.

4. Section 104D and True Exception Test

Section 104D of the Act sets out a test that non-complying activities must pass before they can be considered for consent. The test has two limbs, being that the activity must have no more than a minor adverse effect on the environment or that it must not be contrary to the policy framework of the District Plan. The conclusion reached above is that the proposal passes the effects test and as a consequence, Council can consider the proposal for consent. In relation to the policy test, we consider the site to be inappropriately zoned.

Given that the activity passes the section 104D test, the only other issue that needs to be considered is the question of plan integrity and precedent. The Dunedin City Council tends to apply the 'true exception' test promulgated in the Russell decision in this regard. It should be noted that there are few, if any, other Environment Court divisions outside that of Judge Smith's Court that apply this test. In our view the Council should apply the actual authorities on this issue and not just solely the Russell test. The authority on precedent effects is Dye v Auckland Regional Council, CA86/01, which notes that the granting of a resource consent has no precedent effect in the strict sense. It is obviously necessary to have consistency in the application of legal principles and all resource consent applications must be decided in accordance with a correct understanding of those principles. In factual terms however, no two applications are ever likely to be the same, albeit one may be similar to the other. The most that can be said is that the granting of consent may well have an influence on how other applications should be dealt with. The extent of that influence will depend on the extent of the similarities.

More recently, the Courts have been quite critical of arguments based around plan integrity. As noted in the EC in *Wilson v Whangarei DC W20/07*, arguments about plan integrity are "overused and it can rarely withstand scrutiny when measured against the provisions of the RMA." [Paragraph 43]. The Court of Appeal stated in the *Auckland RC v Living Earth (2008)* decision that having specific and explicit regard to the integrity of the Plan is not required as a matter of law. The 2009 EC decision *Protect Piha Heritage Soc Inc v Auckland RC A015/09* noted that the RMA makes no reference to the integrity of planning instruments, precedent or to the coherence of and public confidence in the District Plan. While these are useful concepts that may be applied in appropriate cases, the Court stated that the need to apply them is less necessary where the plan provisions are effects based and the proposal does not generate adverse effects which are more than minor. The EC in *Berry v Gisborne DC W20/07* made it quite clear from that there will be very few cases where "plan integrity will be imperilled to the point of dictating that the instant application should be declined".

Given this particular environment, it cannot be said that the activity could adversely affect the integrity of the Plan by creating an 'undesirable precedent'. Quite clearly the characteristics of this location, being the small residential settlement of Te Ngaru, is not reflective of its rural zoning. The sections proposed are in keeping with the existing settlement pattern within the township.

If the principle of the 'true exception' test is applied, then it is evident that the proposal on this site and in this location, is a 'true exception' that is outside the generality of the provisions of the plan and the zone. Consequently, it is our view that granting consent in this case would not create difficulties for Council in administering the District Plan consistently.

5. **Affected Persons and Notification**

With regard to sections 95A, 95B and 95C of the Act, it is considered that the subject application should be processed on a non-notified basis because:

- The activity will have or is likely to have adverse effects on the environment that are less than minor.
- The applicant did not request public notification of the application.
- There is no rule or National Environmental Standard that requires public or limited notification of the application.
- The activity will NOT have adverse effects that are minor or more than minor on any person(s) or order holders(s). Written approval is being sought from iwi.
- No special circumstances exist in relation to the application.