

HEARINGS COMMITTEE AGENDA

TUESDAY, 1 MARCH 2022, 10.30 AM

Via Audio Visual Link

MEMBERSHIP:

Councillors David Benson-Pope, Mike Lord and Steve Walker

IN ATTENDANCE:

Phil Marshall (Senior Planner/Committee Advisor), Nicola Petrie (Planner), Andrew Mactier (Parks and Recreation Planner), Garreth Kyle (Research and Monitoring Officer) and Wendy Collard (Governance Support Officer)

PART A (Committee has the power to decide these matters):

1 RESOURCE CONSENT APPLICATION – SUB-2022-6 and LUC-2022-12, 7 Hereweka Street, Portobello

Introduction

Applicant to introduce themselves and their team.

Procedural Issues

Any procedural matters to be raised.

Presentation of the Planner's Report

Memorandum from Nicola Petrie

Refer to pages 1 - 18

The Applicant's Presentation

The Planner's Review of their Recommendation

The Planner reviews their recommendation with consideration to the evidence presented

The Applicant's Response

The Applicant to present their right of reply

PLEASE NOTE: The **only** section of the hearing which is not open to the public is the Committee's final consideration of its decision, which is undertaken in private. Following completion of submissions by the applicant, submitters and the applicant's right of reply, the Committee will make the following resolution to exclude the public. All those present at the hearing will be asked to leave the meeting at this point.

RESOLUTION TO EXCLUDE THE PUBLIC

To be moved:

“That the public be excluded from the following parts of the proceedings of this meeting, namely, Item 1.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

	General subject of each matter to be considered.	Reason for passing this resolution in relation to each matter.	Ground(s) under section 48 for the passing of this resolution.
1	Resource Consent application – 7 Hereweka Street, Portobello	That a right of appeal lies to any Court or Tribunal against the Dunedin City Council in these proceedings.	Section 48(1)(d)

Memorandum

TO: Hearings Committee

FROM: Nicola Petrie, Planner

DATE: 18 February 2022

SUBJECT: **RESOURCE CONSENT APPLICATION SUB-2022-6 AND LUC-2022-12**
ESPLANADE RESERVE WAIVER CONSIDERATION

DESCRIPTION OF APPLICATION

1. The applicant is seeking subdivision consent to subdivide the property at 7 Hereweka Street into two Lots and land use consent to erect a dwelling (within a proposed building platform) on Lot 2. The building platform is closer than the required setback with the district plan to enable the 10m by 7m platform to be on the flatter part of the site. Lot 1 is proposed to be 376m² and Lot 2 is proposed to be 636m². The site is rectangular in shape and is made up of predominately bush clad gully housing the Latham Bay Stream.
2. The subject site is held in Record of Title 204323 and is legally described as Lot 3 BLK IV DP 10.
3. As part of the application, the applicant has sought resource consent to waive / reduce the esplanade requirement as prescribed in the 2GP. As Council Staff do not have delegation to approve this, the matter has been referred to the Hearings Committee for a decision.

PLANNING PROVISIONS

4. The site is subject to the following provisions in terms of the Proposed 2GP.
5. The subject site is annotated with the following overlays:
 - Township and Settlement Residential Zoning;
 - Archaeological Alert Layer;
6. The 2GP Maps incorrectly show the Latham Bay Stream running through Hereweka Street Road Reserve.
7. The 2GP District Plan specifically names the Latham Bay Stream as requiring an Esplanade Strip at the time of subdivision.
8. The subdivision application advises that the 2GP Maps are incorrect and identifies the water body on site as Latham Bay Stream.
9. A previous subdivision on the site, from 2005, also identifies an unnamed stream running through the site.
10. The Proposed 2GP was notified on the 26 September 2015, and some Proposed 2GP rules had immediate legal effect from this date. Some rules become fully operative following the close of submissions, where no submissions were received. Additional rules came in to legal effect upon the release of decisions. Those additional rules become fully operative if no appeals are lodged or once any appeals have been resolved.

11. In terms of the Operative District Plan all the land at the site is zoned Residential 1. Rules 18.5.4 and 18.5.5, list the waterbodies requiring esplanade strips and reserves. Latham Bay Stream is mentioned in 18.5.5 as requiring an esplanade strip of not more than 20m in width to be provided in the case of subdivision.
12. In this instance, the relevant Proposed 2GP provision is Rule 10.3.1.2.q:
- Rule 10.3.1.2 requires an esplanade reserve with a width of 20m be provided along the bank of the Latham Bay Stream. The applicant is seeking consent to breach this provision therefore the activity is a **restricted discretionary** activity pursuant to Rule 10.3.1.4.

ESPLANADE RESERVES – RELEVANT STATUTORY PROVISIONS

Resource Management Act 1991

13. Sections 77 and 230 of the Resource Management Act 1991 allows for the variation of the width of esplanade reserves either in the district plan or by resource consent. In considering this request, Council is required to have regard to the matters set out in Section 229 of the RMA.
14. Section 229 of the Resource Management Act 1991 identifies the purposes for which the esplanade reserves or strips can be taken. The reserve strip can have one or more of the following purposes.
- a) *To contribute to the protection of conservation values by, in particular, -*
 - (i) *maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or*
 - (ii) *maintaining or enhancing water quality; or*
 - (iii) *maintaining or enhancing aquatic habitats; or*
 - (iv) *protecting the natural values associated with the esplanade reserve or esplanade strip; or*
 - (v) *mitigating natural hazards; or*
 - b) *to enable public access to or along any sea, river, or lake; or*
 - c) *to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.*

15. I consider that an esplanade strip could be taken at the site for one or more of the purposes listed above.

Proposed 2GP

16. As identified above, the activity is a restricted discretionary activity. Council has restricted its discretion to the matters in Rules 10.5.3.1 and 10.5.3.2 of the Proposed 2GP
- *Positive effects on biodiversity values or the natural character of the coast (10.5.3.1.a)*
 - *Effects on biodiversity values and natural character values of riparian margins and the coast (10.5.3.2.a)*
 - *Effects on public access (10.5.3.2.b)*

17. The Proposed 2GP also lists the following general assessment guidance:

In assessing a change or reduction to the required esplanade reserve or esplanade strip Council will consider:

- a. *Effects on the values of the water body is identified in Appendix 10C;*
- b. *The effects on the natural functioning of the water body;*
- c. *The effects on the natural functioning of the water body;*
- d. *The effect on other biodiversity values and natural character values; and*

- e. *Any other measures proposed to enhance the biodiversity of the riparian or coastal margin and associated water body.*
- f. *The effects on public recreation and access values as identified in Appendix 10C;*
- g. *Any relevant circumstances listed in the New Zealand Coastal Policy Statement 2010 or the Regional Policy Statement for Otago that may support restriction of public access; and*
- h. *The potential effects of sea level rise on the future level of the mean high water springs, and thus the width of the reserve.*

18. The proposed 2GP also provides the following additional guidance:

Potential circumstances that may support a consent application include:

- *Other opportunities to enhance public access are created by the subdivision.*
- *The design of the subdivision takes advantage of adjacent unformed legal road to provide public access.*
- *Restricting access is necessary to protect public health and safety.*

PARKS AND RECREATION PLANNING COMMENTS

19. The application for a waiver (via resource consent) for an esplanade strip has been reviewed by Council's Park and Recreation Planner, Andrew Mactier, from Council's Parks and Recreation Team (PARS). He notes that PARS have an interest in this matter as management of esplanade strips and reserves rest with PARS. PARS commented as follows:

- the application notes a previous enquiry, by the applicant with PARS, about the possibility of reducing the esplanade strip width to 3m (from the tops of the streambanks), and that such a reduction was potentially acceptable to PARS. There is no internal record reflecting this.
- Mr Mactier reports the 2GP mapping system indicates the waterway does not intersect with 7 Hereweka Street but acknowledges that as there is a waterway on site it is likely the 2GP Map is incorrect.
- The application proposes a legal instrument (Appendix A) which allows DCC access to the stream and protects conservation values but does not invite public access. The legal mechanism being easements A and B would formalise this access.
- Mr Mactier agrees that, subject to biodiversity findings, he can see no reason why the provision to reduce the esplanade strip to 3m should not be approved.
- He further elaborates that to provide provision for public access, on 7 Hereweka Street serves no useful purpose and suggests that further up Hereweka Street where the Latham Bay Stream relates to the Harbour Cone Parks Management Reserve Area would be more beneficial for providing public access. See appendix B.

Mr. Mactier's suggests, an esplanade strip could provide an opportunity to protect Latham Bay Stream from immediate effects of future development.

BIODIVERSITY COMMENTS

20. Research and Monitoring Officer, Mr. Garreth Kyle, attended the site visit, to 7 Hereweka Street, with the Processing Planner. His observations follow:

- The riparian zone hosts a mixture of exotic and indigenous plant species. The most obvious being that of one very large sycamore, along with a heavy infestation of bindweed (*Calystegia sylvatica*) and a small amount of ivy (*Hedera helix*) and several other climbers over much of the canopy.
- He notes that the indigenous species that were present were typical of many other areas of secondary regrowth throughout Dunedin, including but not limited to: *Pittosporum* species, *Coprosma* species *Hoheria* species and cabbage tree (*Cordyline australis*).
- The understory along the edge of the stream was relatively open with little regeneration due to the low light levels.

- After examining the waterway, Mr. Kyle noted it was approximately 500mm wide and largely comprised of silt and scattered with small amounts of wood debris and leaf matter. He detected several small fish (ca. /approximately 40mm long) which he was unable to identify.
- Mr. Kyle observed that the section of the water body, running through 7 Hereweka Street, would provide acceptable habitat for instream fauna and that the bed has a moderate amount of heterogeneity with small wood debris and roots providing refuge for invertebrates and small fish.
- He concludes that the intact canopy cover maintains a lower water temperature and subsequently higher oxygen levels whilst providing screening for the sunlight which limits the algal blooms or growth of water weeds.

SITE VISIT AND MAPPING INCONSISTENCIES

21. As noted earlier, the Research and Monitoring Officer and Processing Planner attend the site on Tuesday 09 February 2022 and confirmed that there is a water body running through the back half of 7 Hereweka Street.
22. It is difficult to access the waterway due to the steep gully system and dense vegetation..
23. The processing planner observed no water ways across the road from Hereweka although there are established culverts under the driveways of the properties on the opposite site of the road which potentially channel stormwater run-off. See image 1.
24. There is no formally recorded council culvert that reflects this waterway crossing the road.
25. According to the ORC maps, below 7 Hereweka Street, the water body does follow the gully with dense vegetation.
26. Where Hereweka Street meets the intersection of Portobello Road, Harington Point Road and Hatchery Road there is a larger water body (behind shops) this appears to be culverted into Latham Bay of The Otago Harbour. See images 1-3.
27. There is no recorded culvert showing the waterway crossing Harington Point Road.

PLANNING ASSESSMENT

Assessment of Effects

28. Appendix 10C of the Proposed 2GP lists the following Water Body Values for Latham Bay Stream:

Water Body	Conversation Values	Public Access and Recreation Values
Latham Bay Stream	Important as a refuge for native fish in significant lifecycle stages. Banded kokopu.	

Positive effects on biodiversity values (10.5.3.1.a)

29. An esplanade strip could have positive effects on the waterway biodiversity. There is an argument to keep the reduced esplanade, rather than remove it completely, to allow for monitoring and testing as per the comments made by the Research and Monitoring Officer and the PARS planner. There is also an opportunity for the subdivision consent to contain conditions that would ensure the health of the waterway with measures such as pest and weed control, retaining indigenous vegetation and fencing. (10.6.3.5).

Effects on biodiversity values and natural character values of riparian margins and the coast (10.5.3.2.a)

30. The only listed biodiversity value in the plan for this water body is that it is important as a refuge for native fish in significant lifecycle stages and Banded kōkopu.
31. The application makes reference to the fact that similarly sized parcels adjoining this site would also not be able to provide the 20m requirement for an esplanade strip.
32. The application also states that, the esplanade strip, will enhance conservation values in relation to the stream. Although the strip is only 3m wide it will continue to:
- Help to maintain the natural character of Latham Bay Stream's riparian margin.
 - Help to protect the stream as habitat for the Banded kōkopu.
 - Support monitoring of the stream's water quality and the Banded kokopu.

Effects on public access (10.5.3.2.b)

33. PARS see no benefit in providing public access given the lack of connectivity with any other reserves.
34. They support the reduction in esplanade strip width to allow for biodiversity values to be conserved.
35. They would like to see esplanade strips considered for the branch of Latham Bay Stream where it relates to the public reserve for Harbour Cone. As this would complement the council reserve and offer greater public recreation and access values.
36. A site visit was conducted but it was difficult to follow the waterway either upstream or downstream due to the vegetation

Objectives and Policies Assessment

Relevant Objectives & Policies	Analysis
Section 10 – Natural Environment	
Objective 10.2.1 Biodiversity values are maintained or enhanced, including by protecting areas of significant indigenous vegetation and the significant habitats of indigenous vegetation.	The proposed subdivision is seeking to establish an esplanade strip which will allow the area to remain protected and enable access for monitoring and testing.
Policy 10.2.1.11 Only allow subdivision activities where the subdivision is designed to ensure any future land use or development will: - maintain or enhance, on an on-going basis, biodiversity values; - protect area of significant indigenous vegetation and the significant habitats of indigenous fauna; and - be in accordance with policies 10.2.1.2, 10.2.1.3, 10.2.1.4 and 10.2.1.8.	With the proposed esplanade strip and potential subdivision conditions the waterway will be better monitored to maintain or enhance the local biodiversity values.
Objective 10.2.2 The biodiversity and natural character of the coast and riparian margins are maintained or enhanced.	The subdivision via a proposed easement in gross will allow Council access to the stream and proposed esplanade strip.
Policy 10.2.2.1 Encourage conservation activity in coastal and riparian margins.	Maintaining the current vegetation and potential planting that could be introduced to encourage conservation of the biodiversity values.
Policy 10.2.2.2	There is a building platform located on the edge of the 3m esplanade strip. As there are no building

Require buildings...and earthworks – large scale to be setback from the coast and water bodies an adequate distance to enable biodiversity and natural character values of coastal and riparian margins to be maintained or enhanced.	plans as yet it is unclear whether this 5m setback from a water body will be breached.
Policy 10.2.2.3 Require vegetation clearance to be setback an adequate distance from the coast and water bodies...	
10.2.2.5 Require earthworks to be located and undertaken in a way that minimises, as far as practicable, the risk of sediment entering the sea or water bodies	Proposal does not delve in to whether earthworks are required to establish building platform. May require additional resource consent.
Policy 10.2.2.7 Only allow subdivision activities adjacent to water bodies and the coast where the subdivision is designed to ensure that the following biodiversity values and natural character values are maintained or enhanced, including through provisions of an esplanade reserve or esplanade strip in identified locations: (a) Biodiversity values of riparian margins and the coast; (b) The water quality and aquatic habitats of the water body or coast; and The natural functioning of the adjacent sea or water body.	The proposed subdivision seeks to reduce the width of the esplanade strip to enable the building platform to be established on the flatter part of the site. It also enables the existing vegetation to be retained along the banks of the Latham Bay Stream and ensure the biodiversity values of the waterway are retained.
Objective 10.2.4 Subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment including for the purposes of gathering food and mahika kai ¹	PARS do not see public access to the stream as being desirable.
Policy 10.2.4.1 Require buildings...and earthworks – large scale to be setback from the coast and water bodies and adequate distance to maintain or enhance public access along riparian and coastal margins.	The potential building platform does not appear to be the required 5m from the water body so this may be required to be authorised with a future resource consent when the new build is decided.
Policy 10.2.4.3 Require subdivision of land to enhance public access to the natural environment through: a.) requiring an esplanade reserve or esplanade strip of an appropriate width and location to identified water bodies and the coast; and b.) where practicable, providing opportunities for access in other area where this will enhance recreational opportunities, particularly through connecting to and expanding the existing tracks network or utilising adjacent unformed legal roads.	Conservation values are enhanced by creating a reduced width access strip in this situation. PARS have advised the strip is not relevant to enhancing public access due to the lack of other reserves in the area, even if future subdivisions of nearby properties create linked esplanade strips.

CONCLUDING REMARKS

37. PARS accept the value of creating a 3 meters wide esplanade strip. While not directly related to this application they would like to see esplanade strips created further up Latham Bay Stream where there is a better relationship to Harbour Cone Reserve.

¹ Mahika Kai – The customary gathering of food or natural materials and the places where those resources are gathered. (2GP 2018)

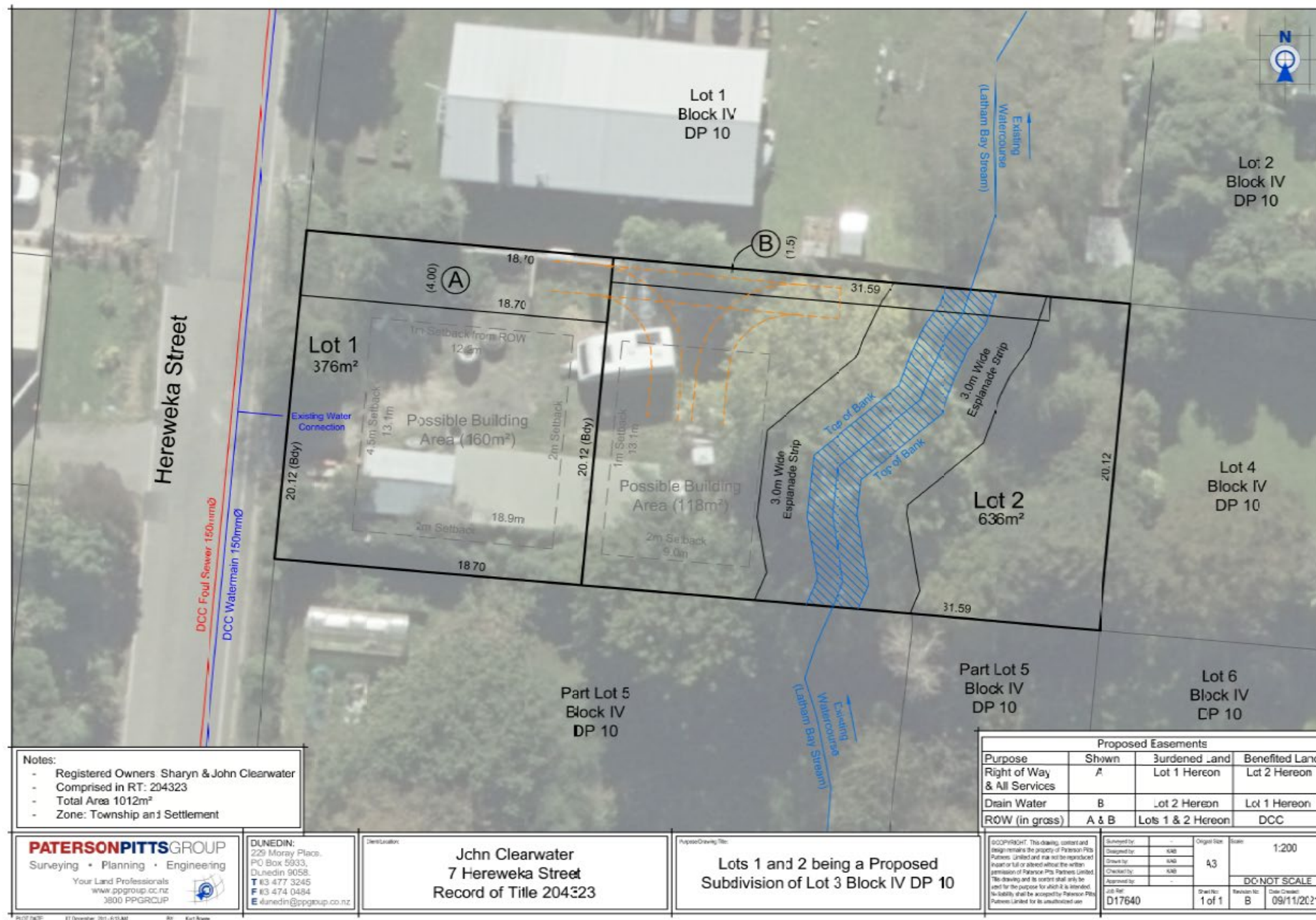
38. The Research and Monitoring Officer agrees that maintaining the vegetation will enhance the biodiversity value of the waterway.
39. The 2GP requires the establishment of an esplanade strip on Latham Bay Stream. Mapping of the stream is confusing on the plan maps but the specific reference to Latham Bay Stream within the text of the 2GP clarifies the intention to create a strip in my opinion.
40. I consider that the esplanade reserve would meet the requirement of Section 229 of the Resource Management Act and would be consistent with the objectives and policies of the 2GP.

RECOMMENDATION

1. That the application for resource consent to reduce the provision for an esplanade strip along Latham Bay Stream be **granted**.

Nicola Petrie
Planner

Appendix A



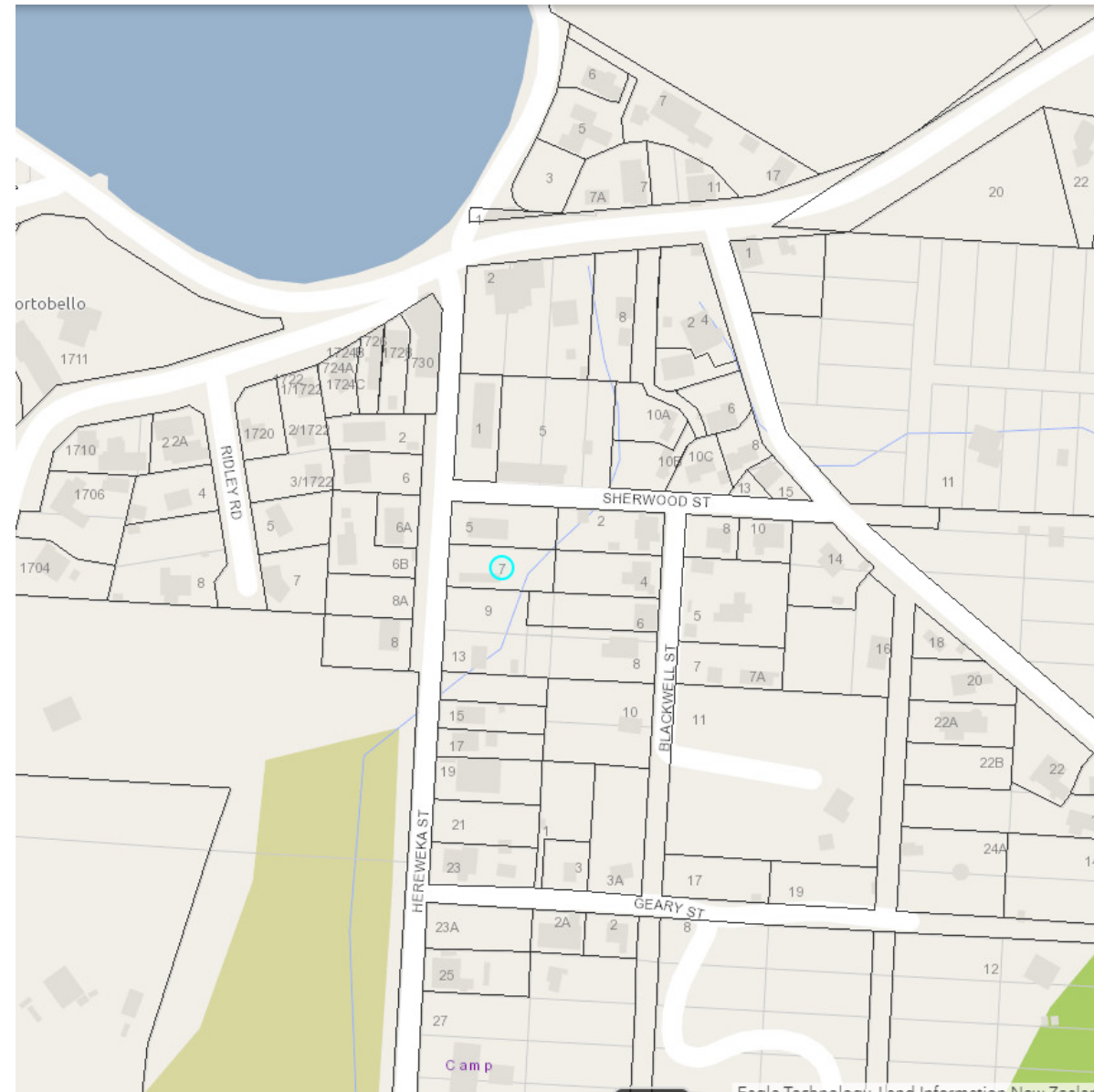
Appendix B

7 Hereweka Street location indicated by small red x and Harbour Cone



Appendix C

Department of Conversation Mapping System



Appendix D

Topo 50 Map sourced from Department of Conservation Mapping System



Appendix E

Site visit photos.



Looking down towards harbour on opposite side of road where 2GP maps Latham Bay Stream.



7 Hereweka Street Water Body – Latham Bay Stream



Picture of stream bed taken on 7 Hereweka Street.



Waterway behind the shops where the Latham Stream feeds into the Bay.





Waterway becomes more dynamic before entering culvert which travels under road



Culvert from waterway into Bay.