

DECISION OF HEARING COMMISSIONER UNDER THE RESOURCE MANAGEMENT ACT 1991

Proposal:

Resource consent is sought for a subdivision in the Rural Residential – Mapua Zone, including the subdivision and change of use under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health, land use consent to construct a generic dwelling on each of Lots 1-14 of the subdivision, discharge of wastewater to land on Lots 1-14, discharge of stormwater on lots 1-14, and disturbance of soil under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health to remediate building platforms on Lots 1-14.

This resource consent is **GRANTED**. The reasons for this decision are set out below.

Application Number:	RM220843, RM230576, RM220844, RM220845, RM220846, RM240065, RM240066, RM190134V1
Site Address:	204 and 206 Pomona Road, Ruby Bay
Legal Description:	Lot 8 DP 312213 (RT 48057) and Lot 1 DP 312213 (RT 48051)
Applicant:	Ruby Bay Views Limited
Hearing Date:	18 October 2024
Hearing Panel:	Angela Jones, Independent Hearing Commissioner
Appearances:	<u>For the Applicant:</u> Claire McKeever – Planner Gary Clark – Traffic Engineer Holly Nichol – Landscape Architect Joshua Large – Civil Engineer <u>Submitters:</u> Kathryn Hine – 201 Pomona Road <u>For Council:</u> Teresa Walton – Consultant Planner Matt McDowell – Senior Consents Planner (Natural Resources) Mike van Enter – Senior Transportation Engineer David van Echten – Development Engineer
Commissioner’s Site Visit:	17 October 2024
Hearing Closed:	12 November 2024

Summary of Decision

1. I, the Independent Hearing Commissioner, acting under delegated authority from the Tasman District Council (“the Council”), pursuant to s104B of the Resource Management Act 1991 (“the RMA”), and under the provisions of the Operative Tasman Resource Management Plan (“District Plan”), **grants** resource consent for the reasons outlined in this decision report.

Appointment

2. I, Angela Jones, an Independent Hearing Commissioner was appointed by the Council in terms of s34A of the RMA to hear the Applicant, Submitters, and the Reporting Officers for the Council, and to make a decision on the application.

Time Period for Decision

3. At the close of the hearing, it was stated that it was anticipated that the 15 working days to release the decision would be met as required by the Act.

Proposal

4. The proposal comprises:

RM220843	Subdivision of Lot 8 DP 312213 and Lot 1 DP312213 into 15 lots in the Rural Residential (Mapua) Zone and roads to vest (Lots 15 and 17). The subdivision also includes Lot 16 which will accommodate a stormwater detention dam.
RM230576	Land use consent to construct a new (generic) dwelling on each of lots 1 and 7 of subdivision RM220843 that is not set back 10 metres from the road boundary.
RM220844	Discharge of domestic wastewater to land within the Wastewater Management Area on Lots 1-14 of subdivision RM220843.
RM220845	Discharge of stormwater from Lots 1-16 and ancillary areas via detention to a watercourse.
RM220846	To disturb soil, subdivide and change the use of land in accordance with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
RM240065	Earthworks within Land Disturbance Area 1.
RM240066	Alteration of a dam structure within a river.
RM190134V1	Variation to resource consent RM190134 for a change in use, storage volume and spillway design of a dam structure.

5. A detailed description of the proposal is described in the Council’s s42A report (paragraphs 2.1 to 2.33).

6. For clarity, from hereon in I will refer to the proposed allotments as they are referred to on plans prepared by Land Dimensions Ltd, dated 22 October 2024.

Site and Locality

7. The subject site is located on the east side of Pomona Road. An aerial photograph of the site is below. The site at 204 Pomona Road currently accommodates one existing dwelling and two cottages and sheds, all located towards the western boundary of the site. An existing irrigation pond/dam is located towards the east of the site. The remainder of the site is used for pastoral grazing purposes, with a small area towards the south planted in native vegetation.



FIGURE 1: AERIAL PHOTOGRAPH (SOURCE: GRIP MAP)

8. The surrounding environment is generally rural in nature, with the majority of surrounding sites comprising rural lifestyle blocks containing singular detached dwellings and land used for primary production. Most surrounding sites are between 1 and 2 hectares in lot size.
9. The application site also includes 206 Pomona Road as 61m² of the access leg is proposed to vest as road.

Activity Status

Tasman Resource Management Plan (TRMP)

10. The site is located within the Rural Residential – Mapua Zone of the Operative Tasman Resource Management Plan (“TRMP”). The site is subject to the Land Disturbance Area 1, Wastewater Management Area, Mapua Development Area, and Services Contribution Area overlays. The site is listed on Council's HAIL register (site #576) as A10-market gardens and category 1(c) – verified Hazardous Activity due to the pre-1970's orchard land that commonly used pesticides or storage of pesticides.
11. The s42A report, authored by Ms Walton and Mr McDowall, considers the overall proposal is a Non-Complying Activity under the TRMP.
12. Paragraphs 4.4 and 4.6 of the s42A report also clearly outlines the TRMP rules which are contravened by the proposed activities and the resulting activity status. These are summarised below:

RM220843 – Subdivision

13. The subdivision requires consent as a **Restricted Discretionary Activity** pursuant to **Rule 16.3.8.4** as the subdivision does not comply with the following Controlled Activity Rules:
 - 16.3.8.1 (a) as Lots 1-14 are less than 2 hectares
 - 16.3.8.1 (b) as Lots 5 and 10 will front road to vest and have a frontage width less than 25 metres
 - 16.3.8.1 (g) as stormwater discharge does not comply with the rules in Chapter 36.4

RM230576 – Land Use

14. The construction of dwellings on Lots 1 and 7 requires consent as a **Restricted Discretionary Activity** pursuant to **Rule 17.8.3.2** as the dwellings do not comply with the following rule:
 - 17.8.3.2 (g)(j) as the dwellings will be located within 10 metres of the new road to vest (Lot 15)

RM220844 – Wastewater

15. The discharge of wastewater from Lots 1-14 in the Wastewater Management Area requires consent as a **Non-Complying Activity** pursuant to **Rule 36.1.6.1** as the wastewater discharge does not comply with the following rules:
 - 36.1.2.4(a) as the discharge is new
 - 36.1.3.2 as the discharge will be from a dwelling on an allotment that is newly created and will be less than 2 hectares in size

- 36.1.4.2(f)(iv) as the setback from other disposal fields in the subdivision may be 10 metres
- 36.1.4.2(k) as the reserve land application area of 100% is not provided within Lot 5

RM220845 – Stormwater

16. The diversion and discharge of stormwater from Lots 1-14 requires consent as a **Restricted Discretionary Activity** pursuant to **Rule 36.4.2.3** as it does not comply with the following rules:

- 36.4.2.1(1)(a) as the discharge or diversion may cause or contribute to erosion of land, including the bed of any stream or drain and (d) may cause or contribute to any damage caused by flooding.
- 36.4.2.2(c) as the stormwater is generated by a subdivision in the Rural Residential Zone.

RM220846 – Subdivision and Soil Disturbance of Contaminated Land

17. The subdivision and soil disturbance requires consent as a **Restricted Discretionary Activity** pursuant to **Regulation 10** of the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, as the proposal does not meet the following regulations:

- 8(3)(c) as the disturbed area is greater than 25m³ per 500m² of contaminated land
- 9(1) as the Detailed Site Investigation states that the soil contamination exceeds the applicable standard in Regulation 7

RM240065 – Earthworks within Land Disturbance Area 1

18. The earthworks to construct and reform a road, footpaths, accessways, and services and an amenity bund within Land Disturbance Area 1 requires consent as a **Restricted Discretionary Activity** pursuant to **Rule 18.5.2.5** as the earthworks do not comply with the following rules:

- 18.5.2.1(r) as the formation of the road exceeds 100 metres where the predominant slope of the land is less than 35 degrees from horizontal
- 18.5.2.1(v) as the level of land will be raised that may result in the diversion of floodwaters

RM240666 – Use and Alteration of a Dam Structure within a Riverbed

19. The use and alteration of a dam within a riverbed requires consent as a **Discretionary Activity** pursuant to Rule 28.2.2.4 as the works do not comply with the following rules:

- 28.2.2.1(m) as the alteration of the dam will permanently change the scale, nature and function of the structure
- 28.2.2.3 as the consent is not due for replacement

RM190143V1 – Variation to Existing Consent

20. The variation to the existing consent RM190143 to authorise the damming of water and stormwater requires consent as a **Discretionary Activity** pursuant to **Section 127** of the RMA.

Overall Activity Status

21. All of the above resource consents are necessary for the proposed activity, and to consider all of the relevant effects of the proposal in accordance with the principle of integrated resource management, the applications are bundled, and the most restrictive activity status applies.
22. Accordingly, the application is considered overall as a **Non-Complying Activity**.

Notification and Submissions

23. Pursuant to s95 of the Act, the application was processed on a limited notified basis. Notification of the application was served on the following parties:
- Owner and occupier of 158 Pomona Road
 - Owner and occupier of 173 Pomona Road
 - Owner and occupier of 199 Pomona Road
 - Owner and occupier of 201 Pomona Road
 - Owner and occupier of 213 Pomona Road
 - Owner and occupier of 235 Pomona Road
 - Owner and occupier of 27 Pine Hill Road
24. Submissions closed on 14 June 2024. One submission (owner and occupier of 201 Pomona Road) was received during the submission period which opposed the proposal.
25. A further submission (owner and occupier of 27 Pine Hill Road) was received outside of the submission period, this was granted a waiver under section 37(1)(b) by Council who accepted the late submission. This submission also opposed the proposal.
26. The Council officer report prepared in accordance with s42A of the RMA identifies the following matters as the issues raised by the submitters, including:
- Traffic safety effects along Pomona Road due to increased traffic (both during and after construction)
 - Geotechnical concerns regarding land stability, sediment run-off and erosion
 - Concerns that the density of the subdivision does not retain the rural characteristics and creates a loss of rural landscape

- Change in outlook from rural to residential and associated visual amenity effects
- RM090884 cannot form part of the permitted baseline as the consent has lapsed
- Risk to 27 Pine Hill Road from increased stormwater run-off

Summary of Hearing

27. The hearing, held pursuant to s100 of the RMA, was held on 18 October 2024 at the Tasman District Council Chambers, 189 Queen Street, Richmond.
28. The hearing was opened at 9am and after initial introductions and procedural matters, the hearing commenced with the presentations by the applicant and their experts. The submitter spoke to their submission, and the Council officers provided their response. The applicant then provided an interim verbal response and the hearing was adjourned.
29. A site visit was undertaken on 17 October 2024. I visited the application site, as well as both submitter's properties at 27 Pine Hill Road and 201 Pomona Road.
30. The applicant provided a written right of reply on 6 November 2024.
31. The hearing was closed on 12 November 2024.
32. During the hearing proceedings I exercised my right to question all persons presenting. During the proceedings evidence was heard from the applicant's expert witnesses specialising in planning, traffic, landscape architecture and engineering, from one of the submitters, and from Council's Reporting Officers. Written notes of the verbal presentations, including answers to questions, were taken. The hearing was also recorded. The written evidence is held on file with the Council.
33. For the above reasons, I do not intend to record the material and presentations in full detail in this decision. However, specific issues raised in the material are referred to as appropriate in the Evaluation section of this decision. The following is a summary of the hearing sequence and key points raised during the hearing presentations.

For the Applicant:

Claire McKeever – Planner
 Gary Clark – Traffic Engineer
 Holly Nichol – Landscape Architect
 Joshua Large – Civil Engineer

Submitters:

Kathryn Hine – 201 Pomona Road

For Council:

Teresa Walton – Consultant Planner
 Matt McDowell – Senior Consents Planner (Natural Resources)
 Mike van Enter – Senior Transportation Engineer
 David van Echten – Development Engineer

For the Applicant:

Ms Claire McKeever - Planner

34. Ms McKeever provided a summary of the proposal and proposed amended conditions, including the request to delete the conditions regarding the shared pathway along Pomona Road. She also assessed the proposal against chapter 16.3.8 as this was missed in her evidence and gave reasons as to why the shared pathway is not appropriate.

35. In response to questions, Ms McKeever:

- Confirmed that the Pomona Road pathway is not identified in the Long-Term Plan nor the District Plan.
- Confirmed the existing public walkway through 27 Pine Hill Road is an easement and is not constructed. The easement extends through to Pine Hill Road.
- Confirmed that the s127 application is also bundled as a Non-Complying Activity with the seven resource consent applications.
- Considered that the condition regarding the resident's society owning proposed lot 16 is the only way to manage the lot if Council did not want to manage this. Appropriate covenants will occur at subdivision stage as part of the proposal.
- Confirmed that the size and number of houses can be reasonably expected as the TRMP allows for smaller site sizes. Change is anticipated through the TRMP.
- Confirmed that easement E goes from the western boundary, around the detention basin and includes the area of the detention basin. Easement E is also for the drainage of stormwater from the road which needs to go into the basin. Confirmed that the plan can be amended to make the easement outline clearer. I note that an amended plan was provided with the applicants right of reply.

Mr Joshua Large – Civil Engineering

36. In response to questions, Mr Large:

- Confirmed that peak post-development will be less than pre-development flows but there may be a low intensity increase during storm events. The requirements to mitigate downstream flooding in the NTLDM have been met. There is a requirement for extended detention where there is a point source discharge to a waterway and he doesn't believe the detention basin meets this requirement. This will not have an adverse effect downstream.
- Confirmed that the maintenance of the detention basins requires regular inspections to ensure its clear of debris, and it will likely need to be mown.
- Confirmed that the overland flows that go through the site to 27 Pine Hill road are from the central catchment. This will be managed through the detention basin. Existing overland flows will be reduced.
- Confirmed that existing overland flows from the northern catchment go through to 301 Pomona Road.

Ms Holly Nichol – Landscape

37. Ms Nichol outlined the process she undertook to get to the findings in the landscape and visual effects report.

38. In response to questions, Ms Nichol:

- Provided background on the building height restrictions, stating that that the building height restrictions were imposed through the stage of consultation and sales and purchase of the subject site with the owners on the northern side of the property. These owners had requested that the building and vegetation height was restricted so as to not obstruct their views. This was prior to the Applicants owning the site. Confirmed she would have also put height restrictions around ridgelines on if they weren't already – confirmed she agrees with this and supports it.
- Confirmed she did not visit 201 Pomona Road but looked at it from a desktop analysis.
- Confirmed the timeframe for the landscaping to become established is approximately 3-5 years. The plant species have been appropriately selected for the clay and coastal environment.
- Clarified that that rolling method for building height is to do with the topography as it currently is. The building will get cut into the ground, to be under the 5m line from the existing topography.

Mr Gary Clark – Traffic

39. In response to questions, Mr Clark:

- Stated that users using the shared path is a concern. In terms of cyclists, it is a part of a cycle loop. People come down Pomona Road and would have to cross at a difficult location to access the shared pathway.
- Stated that Pomona Road provides a different function compared to Pine Hill Road. It has been used as an emergency route when other roads are closed due to slips. Pine Hill Road is part of the Great Taste Trail. Pomona Road is a difficult road for a pedestrian or cyclist due to corners and the narrow nature.
- Mr Clarke confirmed that due to the windy nature of Pomona Road, there is an unsafe aspect to the pathway where pedestrians need to cross the road on a blind corner.

For the Submitters:

Ms Kathryn Hine – Submitter (201 Pomona Road)

40. Ms Hine had a family member read her statement. He provided a summary of the submission, highlighting concerns regarding outlook, rural amenity and traffic.

41. In response to questions, Ms Hine:

- Confirmed that there are multiple viewing points from 201 Pomona Road to the Application site
- Considered that lots 3, 4, 5, 6 and 12 may also be visible from 201 Pomona Road
- Stated that the number of dwellings and their proposed heights are of concern. The application site is the last property on Pomona Road that is pastoral in nature.

For the Council:

42. A report prepared in accordance with s42A of the RMA was prepared by Council's Consultant Planner, Ms Walton and Councils' Senior Consents Planner (Natural Resources), Mr McDowell. The s42A report evaluates the proposal against the relevant statutory criteria, including the effects on the environment, as well as the policy framework of the TRMP, the Regional Policy Statement, and the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011.

43. In the s42A report, Ms Walton and Mr McDowell conclude that the effects will be acceptable, subject to conditions of consent.

Mr Mike van Enter (Senior Transportation Engineer) and Mr David van Echten (Development Engineer)

44. Mr van Enter and Mr van Echten gave a summary of roading requirements and the proposed pathway along Pomona Road.

45. In response to questions, Mr van Enter and Mr van Echten:

- Confirmed that the proposed pathway will provide refuge for the pedestrians and residents that walk along Pomona Road.
- In response to Mr Clarks comment regarding where the downhill end of the shared pathway comes back onto Pomona Road, onto a sharp corner which can create an unsafe situation for users, Mr van Enter confirmed that the path will need to be carefully considered and designed and that the safety effect relates to the pedestrians on the road. The footpath does not generate additional risk, instead it is a safe design feature which will ensure users are off the road.
- Mr van Enter added that this will be addressed through a detailed design process.
- Confirmed that the NTLDM covers aspects regarding widths and gradients in regard to recommended condition 25.
- Mr van Echten confirmed that construction effects are managed through the NTLDM through the engineering approval process.

Ms Teresa Walton – Consultant Planner

46. Ms Walton addressed matters raised in the hearing. In particular, Ms Walton:

- Confirmed that rural residential character and amenity effects will be no more than minor
- Agrees with Ms McKeever in regard to the planning framework for the pathway but does not agree that the restricted matters of discretion relating to the pathway have been considered, as the applicant previously agreed to provide the path.
- The TRMP specifically requires, through subdivision rules, that where a subdivision fronts a road that does not currently comply with the design standards for that road, that the frontage should be upgraded.
- Considers that not providing the pathway will result in more than minor adverse effects
- Commented on proposed changes to conditions.
- Confirmed that it is Councils usual practice to require developers to construct the path required under the TRMP when there may never be connectivity.
- Acknowledged that the application as lodged did not assess the relevant rule which requires the path upgrade. This was addressed through the RFI. The applicant confirmed that they would provide the path.

47. In response to questions, Ms Walton:

- Confirmed that the public access is just a 7m wide strip, not the whole of lot 16.
- Confirmed there is not a specific condition that deals with construction traffic because it's a requirement of the NTLDM as part of the engineering plan approval process.
- Mr McDowall confirmed that the change of the detention basin into lot 16 does not pose any issues.

Council's response to minute 3

Ms Walton provided a response to Minute 3 on 29 October 2024.

In her response, Ms Walton:

- Provided a revised set of conditions for all applications, taking into account the matters raised in the evidence at the hearing.
- Provided an updated planning framework assessment.
- Provided an updated assessment of effects.
- Concluded that not providing a shared path along the road frontage of the site will result in more than minor traffic safety effects and is contrary to the outcomes sought by the relevant transport objectives and policies.

Applicant's Right of Reply

48. The Applicant's right of reply was provided by Ms McKeever on 5 November 2024.

49. In her written right of reply, Ms McKeever:

- Responded to Ms Hine's concerns regarding the potential loss of amenity and effects on rural character.
- Summarised the planning and transport related matters that were discussed at the hearing
- Provided updated plans demonstrating the extent of easement E on Lot 16 for the easement in gross for the new stormwater detention basin associated with lot 15 (road to vest)
- Confirmed the Applicant's position on the shared path remains (i.e. opposing consent condition 25) primarily due to traffic safety concerns.
- Concluded that the shared path will result in more than minor traffic safety effects at both ends of the site frontage where the path will stop and that it will be contrary to the objectives and policies of the TRMP.
- Requested that if condition 25 is to be included in the consent decision, that it is made clear that there is not intended to be an opportunity for the Engineering Approval process to require further upgrades beyond the site frontage on Pomona Road to address traffic safety concerns

Findings of the Principal Issues in Contention

50. Pursuant to s104D of the RMA, in considering an application for a resource consent for a Non-Complying Activity, I must only consider granting a resource consent if I am satisfied that one of the gateway tests under Section 104D is met:

- (a) That the adverse effects of the activity on the environment are no more than minor; or
- (b) That the application is for an activity that will not be contrary to the objectives and policies of the TRMP.

51. After analysing the application and evidence; undertaking a site visit; reviewing the s42A report; the submissions; and the right of reply; the proposal raises a number of principal issues in contention. These matters are concerned with:

- Rural Residential Landscape, Character and Amenity
- Transport
- Stormwater

52. Additionally, the following matters were relevant to the application, but were not matters of contention at the Hearing so will not be discussed below. However, I rely on experts advice which determined that effects in relation to these matters are acceptable with no parties adversely affected

- Wastewater
- Soil Disturbance and Subdivision of Contaminated Land
- Earthworks
- Cultural effects

Rural Residential Landscape, Character and Amenity

53. One of the main issues of contention with the proposal was the change in rural character and amenity. Ms Hine's submission expressed concern around this matter in regard to outlook from her property at 201 Pomona Road.

54. I acknowledge that the development will result in a change in environment within the subject site which will be seen from the outlook from Ms Hine's property at 201 Pomona Road.

55. Ms Hine confirmed that there are multiple viewing points from per property to the application site and considered that multiple building sites will visible from 201 Pomona Road.

56. Ms Nichol and Ms McKeever both refer to the purpose of the zone being a development zone, where subdivision and development of this nature is anticipated.

57. Ms Nichol confirmed that not all building sites will be visible from Ms Hine's property, and that mitigation planting is proposed.

58. The proposal involves visual mitigation of the house sites through landscaping, which Ms Nichol anticipates will take approximately 3 to 5 years before mitigation is achieved, depending on the conditions of the growing season. This mitigation planting has been included through consent conditions.

59. In conclusion, I consider that the wider visual effects will be appropriately mitigated, given the anticipated outcomes if the planning framework in the TRMP. The proposal will result in an appropriate balance between the anticipated development outcome and the visual mitigation appropriate to the site and surrounding Rural Residential (Mapua) environment.

60. Overall, based on the expert evidence of Ms Nicol, I consider that overall rural residential landscape, character and amenity effects will be no more than minor and acceptable.

Transport

61. Transport and the potential construction of a shared path along Pomona Road was a primary issue of contention throughout the hearing.

62. Council considers that the consent holder should construct the share path and the applicant considers that the Council can construct the shared path at a later date, should they consider it necessary at a future time.
63. I acknowledge that the proposal includes land to vest through proposed Lot 17 which allows Council to construct this path in the future.
64. In Council's response to Minute 3, Ms Walton concluded that not providing a shared path along the Pomona Road frontage will result in more than minor traffic safety effects and is contrary to the outcomes sought by the relevant transport objectives and policies of the District Plan.
65. Specifically, Ms Walton relied on an assessment prepared by Mr van Echten which considered that the opposite side of Pomona Road is not suitable for pedestrians and that not providing the path will pose a greater risk of traffic related incidents than if a path was provided.
66. Council considers that any potential safety issues from the shared path can be dealt with through engineering design. Furthermore, Mr van Echten confirmed that construction effects are managed through the NTLDM through the engineering approval process. Council also consider that the shared path would provide refuge along this section of the road irrespective of if, or when, future connections along Pomona Road are expected.
67. Mr Clark provided a different expert opinion as evidence at the hearing, stating that there are concerns around traffic safety at the eastern end when a shared path will join the road on the corner. Mr Clark considered that users coming down Pomona Road would have to cross at a difficult location to access the shared pathway. Furthermore, Mr Clark considered that Pomona Road is a difficult road for a pedestrian or cyclist due to corners and the narrow nature.
68. Additionally, the applicant's right of reply noted that the existing grass verge was sufficient to provide any necessary refuge off the road carriageway. I do however note that the photo of the grass verge as part of the applicant's right of reply do show the grass verge freshly mown, and the grass verge may not be so attractive for pedestrians when grass is longer.
69. I acknowledge that the potential for traffic safety effects of providing the shared path was the main matter when considering whether the shared path should be constructed through this development. Overall, I acknowledge Mr Clark's concerns in this regard, however, I also acknowledge the Council's position that they are satisfied this can be mitigated through detailed design considered through engineering approval.
70. Based on the expert evidence above, I conclude that the construction of the shared path should be constructed by the consent holder, and that the potential for traffic safety effects can be appropriately dealt with through detailed design and the engineering approvals process.

Stormwater

71. Stormwater was another other issue of contention, with one submitter (owner and occupier of 27 Pine Hill Road) raising concerns in relation to stormwater from the subject site flowing into their property. I note that this submitter was not present at the hearing.
72. In his evidence, Mr Large confirmed that peak post-development stormwater flows will be less than pre-development flows but there may be a low intensity increase during storm events. He also confirmed that the requirements to mitigate downstream flooding in the NTLDM have been met. Additionally, Mr Large does not consider that adverse downstream events will occur due to the detention basin being unable to meet requirements for extended detention where there is a point source discharge to a waterway.
73. Council's evidence stated that stormwater from impervious areas within allotments upgradient will be directed to the detention basin having the ability of reducing the overland flow volume of stormwater entering the submitters property at 27 Pine Hill Road. Additionally, the detention basin has been designed to ensure post development flows do not exceed predevelopment flows. Furthermore, conditions of consent will require a detailed design of the detention pond to be approved by Council prior to development commencing within allotments. Council consider that stormwater can be appropriately managed through recommended consent conditions.
74. Based on the assessment of these experts, I do not consider that there will be any additional stormwater or flooding effects on the submitters property at 27 Pine Hill Road.
75. Additionally, I consider that any potential stormwater effects can be appropriately managed through conditions of consent, especially around the design of the detention basin in Lot 16.
76. Overall, based on Council's evidence and the evidence of Mr Large, I consider that the overall potential for stormwater effects will be no more than minor and acceptable.

TRMP Objectives and Policies

77. The s42A report includes all of the relevant TRMP objectives and policies to this development. For completeness, these are also listed and considered below.

Rural Residential Landscape, Character and Amenity

The relevant objectives and policies are:

7.2 Provision for Activities other than Plant and Animal Production

Objectives

7.2.2.1 Retention of opportunities to use rural land for activities other than plant and animal production, including rural living, rural residential, rural industrial, tourist services

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

7.2.2.2 Retention of opportunities for a range of residential living options within rural locations, including coastal and peri-urban areas, in the form of the Rural Residential and Rural 3 zones

Policies

7.2.3.2 To identify locations for Rural Residential and Rural 3 zones for rural residential activities in rural, coastal and peri-urban areas that are appropriate locations for their variety of qualities and features to allow for rural lifestyle living and which will not adversely affect plant and animal production activities, including potential reverse sensitivity effects.

7.2.3.4 To enable further subdivision and residential development within any existing Rural Residential Zone location where the land:

- (a) is not affected by natural hazards, within and beyond the boundaries of the site, including wildfire risk and coastal, flood, stormwater, geotechnical or earthquake hazards; and*
- (b) can accommodate the proposed development without adverse effects on landscape or rural, rural residential or coastal character and amenity values and adjacent plant and animal production; and*
- (c) can be adequately serviced for water, wastewater, stormwater and road access and by the road network.*

7.2.3.5 To enable further subdivision and residential development to urban densities within any existing Rural Residential Zone location where the land:

- (a) is in close proximity to an urban residential area and is appropriate to become part of the urban form of that settlement; and*
- (b) is not affected by natural hazards within and beyond the boundaries of the site, including wildfire risk, and coastal, flood, stormwater or geotechnical hazards; and*
- (c) can accommodate built development without adverse effects on character and amenity values; and*
- (d) can be adequately serviced for water, wastewater, stormwater and road access and by the road network.*

7.3 Rural Residential Development in Coastal Tasman Area

Policies

7.3.3.4 To define the land made available for residential and rural residential development within the Coastal Tasman Areas, areas in which different rules provide for different types and intensities of subdivision and development.

7.3.3.14 To take into account, and avoid or mitigate potential cumulative adverse effects on rural character, rural landscapes and amenity values, including the potential impact

that complaints from new residential activities can have on existing plant and animal production activities, arising from adverse cross-boundary effects, when assessing the effects of subdivision and development in the Coastal Tasman Area.

7.3.3.18 To enable additional development in the Mapua Rural Residential Zone, subject to servicing requirements, and evaluation of the effects of specific proposals in accordance with the 'Coastal Tasman Area Subdivision and Development Design Guide'.

7.4 Rural Character and Amenity Values

Objective

7.4.2 Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values.

Policies

7.4.3.4 To exclude from rural areas, uses or activities (including rural-residential) which would have adverse effects on rural activities, health or amenity values, where those effects cannot be avoided, remedied or mitigated.

7.4.3.5 To exclude from rural-residential areas, uses or activities which would have adverse effects on rural-residential activities, health or amenity values, where those effects cannot be avoided, remedied or mitigated.

9.2 Rural Landscape Values

Objective

9.2.2 Retention of the contribution rural landscapes make to the amenity values and rural character of the District, and protection of those values from inappropriate subdivision and development.

Policies

9.2.3.1 To integrate consideration of rural landscape values into any evaluation of proposals for more intensive subdivision and development than the Plan permits.

9.2.3.3 To retain the rural characteristics of the landscape within rural areas.

9.2.3.4 To encourage landscape enhancement and mitigation of changes through landscape analysis, subdivision design, planting proposals, careful siting of structures and other methods, throughout rural areas.

9.2.3.5 To evaluate, and to avoid, remedy or mitigate cumulative adverse effects of development on landscape values within rural areas.

Transport

11. Effects on Transport Safety and Efficiency

Objective

11.1.2 A safe and efficient transport system, where any adverse effects of the subdivision, use or development of land on the transport system are avoided, remedied or mitigated.

Policies

11.1.3.1 To promote the location and form of built development, particularly in urban areas, that:

- (a) avoid, remedies or mitigates adverse effects of traffic generation;*
- (b) provide direct and short travel routes by vehicle, cycling and pedestrian modes between living, working, service, and recreational areas;*
- (c) avoids an increase in traffic safety risk;*
- (d) allows opportunities for viable passenger transport services to be realised;*
- (e) provides a clear and distinctive transition between the urban and rural environments;*
- (f) segregates roads and land uses sensitive to effects of traffic.*

11.1.3.4 To avoid, remedy or mitigate adverse effects of traffic on amenity values.

11.1.3.5 To ensure that all subdivision design, including the position of site boundaries, has the ability to provide each allotment with vehicle access and a vehicle crossing sited to avoid adverse effects on the safety and efficiency of the road network.

11.1.3.6 To control the design, number, location and use of vehicle accesses to roads; including their proximity to intersections and any need for reversing to or from roads; so that the safety and efficiency of the road network is not adversely affected.

11.1.3.7 To ensure that adequate and efficient parking and loading spaces are provided, either on individual sites or collectively, to avoid or mitigate adverse effects on the safety and efficiency of the road network.

11.1.3.8 To avoid, remedy or mitigate adverse effects from the location, design and operation of intersections.

11.1.3.9 To ensure rural structures and vegetation do not cause or aggravate:

- (a) restricted visibility at road intersections; or*
- (b) icing on roads*

Walkways and Pedestrian Connections

7.3 Rural Residential Development in the Coastal Tasman Area

Policy

7.3.3.12 To progressively develop a network of interconnected pedestrian, cycle and equestrian routes, and reserves within the Coastal Tasman Area, including to and along the coast.

14.1 Provision of Reserves and Open Space

Objective

14.1.2 Adequate area and distribution of a wide range of reserve and open spaces to maintain and enhance recreation, conservation, access and amenity values

Policy

14.1.3.4 To provide for new open space areas that are convenient and accessible for users, including the provision of walking and cycling linkages in and around townships, between townships and between reserves.

Stormwater

7.2 Provision for Activities other than Plant and Animal Production

Policies

7.2.3.10 To use a whole-catchment approach to the management of stormwater, and to apply low impact design to address the stormwater effects and changes in drainage patterns arising from rural land development.

7.3 Rural Residential Development in Coastal Tasman Area

Policies

7.3.3.8 To avoid, remedy or mitigate adverse effects of development on land, surface and ground water resources, and the coastal marine area.

7.3.3.10 To ensure that adverse effects arising from servicing of subdivision and residential development are avoided, whether by way of on-site management, or provision of off-site reticulation.

7.4 Rural Character and Amenity Value

7.4.3.12 To avoid, remedy or mitigate servicing effects of rural subdivision and development, including road access and impacts on the road network, water availability and wastewater disposal.

7.4.3.14 To ensure the maintenance or enhancement of natural drainage features within rural catchments, and to avoid, remedy, or mitigate any adverse effects of stormwater run-off.

33.3 Stormwater Discharges

Objective

33.3.2 Stormwater discharges that avoid, remedy or mitigate the actual and potential adverse effects of downstream stormwater inundation, erosion and water contamination.

Policies

33.3.3.1 To require all owners, particularly the Council as stormwater asset manager, of all or part of any stormwater network to avoid, remedy or mitigate adverse effects of stormwater Discharges.

33.3.3.2 To advocate works to restore and protect stream or coastal habitats and improve and protect water quality affected by stormwater and drainage water discharges.

33.3.3.3 To manage the adverse effects of stormwater flow, including primary and secondary flowpaths, and the potential for flooding and inundation.

33.3.3.4 To avoid, remedy or mitigate the potential for flooding, erosion and sedimentation arising from stormwater run-off.

33.3.3.5 To avoid, remedy or mitigate the adverse effects of stormwater on water quality and the potential for contamination.

33.3.3.6 To maintain or enhance stormwater infiltration to enhance groundwater recharge.

33.3.3.7 To require owners of all or part of any stormwater drainage network to avoid, remedy or mitigate any adverse effects of stormwater discharges.

33.3.3.8 To encourage an integrated whole-catchment approach to the management and discharge of stormwater.

33.3.3.9 To require the use of low impact design in the management of stormwater discharges in any new development, where practicable.

33.3.3.10 To encourage the restoration and rehabilitation of stormwater drainage networks where natural drainage networks have been significantly modified.

33.3.3.11 To take into account the long-term management of stormwater drainage in consideration of land development, including subdivision and land-use changes.

Wastewater

7.3 Rural Residential Development in Coastal Tasman Area

Policies

7.3.3.8 To avoid, remedy or mitigate adverse effects of development on land, surface and ground water resources, and the coastal marine area

7.3.3.10 To ensure that adverse effects arising from servicing of subdivision and residential development are avoided, whether by way of on-site management, or provision of off-site reticulation.

7.3.3.22 To avoid adverse off-site effects, including cumulative effects and water contamination effects, resulting from the disposal of domestic wastewater to land arising from inappropriate scale, design, or location of subdivision and development of land for residential purposes in the Wastewater Management Area.

7.4 Rural Character and Amenity Value

7.4.3.12 To avoid, remedy or mitigate servicing effects of rural subdivision and development, including road access and impacts on the road network, water availability and wastewater disposal.

33.4 On-site Disposal of domestic wastewater

Objective

33.4.2 On-site disposal of domestic wastewater, which avoids, remedies or mitigates adverse effects on groundwater or surface water quality, habitats, human health and amenity values.

Policies

33.4.3.1 To ensure householders are aware of the potential adverse effects that may be created by discharges from on-site wastewater disposal systems, and of methods of avoiding, remedying or mitigating them.

33.4.3.2 To ensure that the adverse effects, particularly the cumulative adverse effects, of on-site disposal of domestic wastewater on water quality and aquatic habitats, including coastal water, and on human health or amenity in the Wastewater Management Area are avoided, remedied or mitigated by:

- (a) controlling the use of on-site systems in areas where there are significant limitations to sustainable on-site disposal of domestic wastewater including:*
 - (i) low or very low permeability clay soils;*
 - (ii) rapidly draining coastal soils;*
 - (iii) areas of high groundwater tables;*
 - (iv) steeply sloping sites, especially on south-facing slopes;*

- (v) *unstable terrain;*
- (vi) *proximity to surface water bodies;*
- (vii) *high density of existing and new on-site systems and the cumulative impact of such discharges in terrain that has significant limitations to on-site disposal;*
- (b) *requiring comprehensive site and soil assessments to identify any site limitations;*
- (c) *requiring a high level of performance for design, construction, installation, operation and maintenance for new on-site disposal systems;*
- (d) *ensuring adequate buffers between disposal fields, water bodies, and the coast, especially Waimea and Mapua Inlets;*
- (e) *reducing the risk to human health arising from pathogens in the wastewater entering into water;*
- (f) *ensuring the net nitrogen losses from land in the Wastewater Management Area to be subdivided do not result in adverse effects on aquatic habitats as a result of discharges of domestic wastewater;*
- (g) *ensuring stormwater management accounts for potential effects on on-site disposal fields;*
- (h) *ensuring that the potential adverse effects, especially cumulative effects of further residential development, are taken into account in considering any application to subdivide land in the Wastewater Management Area.*

33.4.3.3 To require regular programmed maintenance of on-site wastewater treatment and disposal systems to minimise risk of system failure and reduce risk of adverse environmental effects.

33.4.3.4 To encourage consideration of wastewater treatment systems that service a cluster of households (subject to any site limitations) to:

- (a) take advantage of opportunities for high technology advanced wastewater treatment solutions at cluster scales;*
- (b) reduce risks of system failure and cumulative adverse effects of single on-site systems;*
- (c) enable Council to develop effective and cost-efficient systems for monitoring on-site wastewater systems.*

33.4.3.5 To ensure that legal, practical, financial and enforceable responsibility is established for the operation and maintenance of any on-site wastewater treatment and disposal system, especially where such systems service a cluster of dwellings, taking into account both day-to-day operation and maintenance of such systems as well as provision for depreciation and replacement of equipment and of systems.

33.4.3.6 To avoid, remedy or mitigate the adverse effects of discharges of domestic wastewater, including cumulative effects, particularly those in the Special Domestic Wastewater Disposal Areas.

Earthworks

7.3 Rural Residential Development in Coastal Tasman Area

Policies

7.3.3.8 To avoid, remedy or mitigate adverse effects of development on land, surface and ground water resources, and the coastal marine area

7.3.3.11 To improve access and progressively upgrade the road network throughout the Coastal Tasman Area in accordance with development, while avoiding or mitigating adverse effects on landscape, natural character and amenity.

12.1 Land Disturbance Effects

Objective

12.1.2 The avoidance, remedying, or mitigation of adverse effects of land disturbance, including:

- (a) damage to soil;*
- (b) acceleration of the loss of soil;*
- (c) sediment contamination of water and deposition of debris into rivers, streams, lakes, wetlands, karst systems, and the coast;*
- (d) damage to river beds, karst features, land, fisheries or wildlife habitats, or structures through deposition, erosion or inundation;*
- (e) adverse visual effects;*
- (f) damage or destruction of indigenous animal, plant, and trout and salmon habitats, including cave habitats, or of sites or areas of cultural heritage significance;*
- (g) adverse effects on indigenous biodiversity or other intrinsic values of ecosystems.*

Policies

12.1.3.1 To promote land use practices that avoid, remedy, or mitigate the adverse effects of land disturbance on the environment, including avoidance of sediment movement through sinkholes into karst systems.

12.1.3.2 To avoid, remedy, or mitigate the actual or potential soil erosion or damage, sedimentation, and other adverse effects of land disturbance activities consistent with their risks on different terrains in the District, including consideration of:

- (a) natural erosion risk, and erosion risk upon disturbance;*
- (b) scale, type, and likelihood of land disturbance;*
- (c) sensitivity and significance of water bodies and other natural features in relation to sedimentation or movement of debris;*
- (d) Coastal Risk Area.*

12.1.3.3 To investigate and monitor the actual or potential adverse effects of soil erosion, other soil damage, sedimentation and damage to river beds, subsurface water bodies and caves in karst, aquatic and other natural habitats, arising from land disturbances

Section 104D Gateway Test

78. For the reasons discussed above, I agree with Ms Walton, Mr McDowell and Ms McKeever with respect to the proposal being able to meet both tests of the 104D gateway.

Sections 105, 107 and 108

79. The s42A report (paragraphs 6.34 – 6.41) outlines the requirements under sections 105, 107 and 108 of the RMA regarding the discharge of contaminants and restrictions on certain discharges.

80. I am satisfied that appropriate regard has been given to section 105 matters, the proposal will not give rise to any effects outlined in section 107, and appropriate consent conditions have been imposed as outlined in section 108.

Section 106

81. The s42A report outlines the requirements of section 106. I agree with the conclusions reached by Ms Walton and Mr McDowell that there is not a significant risk from natural hazards, and sufficient provision has also been made for legal and physical access.

National Policy Statement for Freshwater Management 2020

82. The NPS-FM 2020 came into force on 3 September 2020. The NPS-FM contains a single objective which establishes a hierarchy in the manner in which freshwater resources are to be managed. Of relevance to this proposal are Policies 1, 2, 3, 7, 9 and 15. I agree with Ms Walton, Mr McDowell and Ms McKeever that the proposal is consistent with these policies.

Part 2 of the Act

83. I agree with Ms Walton and Mr McDowell that a Part 2 assessment is not necessary. Notwithstanding, I consider the proposal is consistent with Part 2.

Subdivision Consent Decision – RM220843

84. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104B and for the reasons set out above, the Independent Commissioner **GRANTS** consent for the 15-lot subdivision in the Rural Residential – Mapua Zone, including roads to vest, at **204 and 206 Pomona Road, Ruby Bay** (Lot 8 DP 312213 and Lot 1 DP 312213), subject to the conditions below.

Reasons for the Decision

85. Section 113(1)(a) of the Act requires that I state my reasons for the decision of approval. Although it will be clear from the assessments carried out above, for the avoidance of doubt, I confirm that the principal reasons for the granting of this consent are:

1. The effects of the proposal are no more than minor and acceptable.
2. The proposal is consistent with the objectives and policies of the TRMP.
3. The Applicant has demonstrated that the potential for adverse effects can be appropriately mitigated.

Conditions of consent – Subdivision

[see Attachment 1 – RM220843 – Subdivision Conditions]

Land Use Consent Decision – RM230576

86. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104C and for the reasons set out above, the Independent Commissioner **GRANTS** consent for the construction a new (generic) dwelling on each of lots 1 and 7 of subdivision RM220843 at **204 and 206 Pomona Road, Ruby Bay** (Lot 8 DP 312213 and Lot 1 DP 312213), subject to the conditions below.

Reasons for the Decision

87. Section 113(1)(a) of the Act requires that I state my reasons for the decision of approval. Although it will be clear from the assessments carried out above, for the avoidance of doubt, I confirm that the principal reasons for the granting of this consent are:

4. The effects of the proposal are no more than minor and acceptable.
5. The proposal is consistent with the objectives and policies of the TRMP.
6. The Applicant has demonstrated that the potential for adverse effects can be appropriately mitigated.

Conditions of Consent – Land Use

[see Attachment 2 – RM230576 – Land Use Conditions]

Wastewater Discharge Decision – RM220844

88. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104B and for the reasons set out above, the Independent Commissioner **GRANTS** consent for the discharge of domestic wastewater to land within the Wastewater Management Area on Lots 1-14 of subdivision RM220843 at **204 and 206 Pomona Road, Ruby Bay** (Lot 8 DP 312213 and Lot 1 DP 312213), subject to the conditions below.

Reasons for the Decision

89. Section 113(1)(a) of the Act requires that I state my reasons for the decision of approval. Although it will be clear from the assessments carried out above, for the avoidance of doubt, I confirm that the principal reasons for the granting of this consent are:

7. The effects of the proposal are no more than minor and acceptable.
8. The proposal is consistent with the objectives and policies of the TRMP.
9. The Applicant has demonstrated that the potential for adverse effects can be appropriately mitigated.

Conditions of Consent – Wastewater Discharge

[see Attachment 3 – RM220844 – Wastewater Discharge Conditions]

Stormwater Discharge Decision – RM220845

90. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104B and for the reasons set out above, the Independent Commissioner **GRANTS** consent for the discharge of stormwater from Lots 1-16 of subdivision RM220843 and ancillary areas via detention to a watercourse at **204 and 206 Pomona Road, Ruby Bay** (Lot 8 DP 312213 and Lot 1 DP 312213), subject to the conditions below.

Reasons for the Decision

91. Section 113(1)(a) of the Act requires that I state my reasons for the decision of approval. Although it will be clear from the assessments carried out above, for the avoidance of doubt, I confirm that the principal reasons for the granting of this consent are:

10. The effects of the proposal are no more than minor and acceptable.
11. The proposal is consistent with the objectives and policies of the TRMP.
12. The Applicant has demonstrated that the potential for adverse effects can be appropriately mitigated.

Conditions of Consent – Stormwater Discharge

[see Attachment 4 – RM220845 – Stormwater Discharge Conditions]

Land Disturbance Decision – RM220846

92. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104B and for the reasons set out above, the Independent Commissioner **GRANTS** consent to disturb soil, subdivide and change the use of land at **204 and 206 Pomona Road, Ruby Bay** (Lot 8 DP 312213 and Lot 1 DP 312213) in accordance with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, subject to the conditions below.

Reasons for the Decision

93. Section 113(1)(a) of the Act requires that I state my reasons for the decision of approval. Although it will be clear from the assessments carried out above, for the avoidance of doubt, I confirm that the principal reasons for the granting of this consent are:

- 13. The effects of the proposal are no more than minor and acceptable.
- 14. The proposal is consistent with the objectives and policies of the TRMP.
- 15. The Applicant has demonstrated that the potential for adverse effects can be appropriately mitigated.

Conditions of Consent – Land Disturbance

[see Attachment 5 – RM220846 – Land Disturbance Conditions]

Earthworks Decision – RM240065

94. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104B and for the reasons set out above, the Independent Commissioner **GRANTS** consent for earthworks within the Land Disturbance Area 1 overlay at **204 and 206 Pomona Road, Ruby Bay** (Lot 8 DP 312213 and Lot 1 DP 312213), subject to the conditions below.

Reasons for the Decision

95. Section 113(1)(a) of the Act requires that I state my reasons for the decision of approval. Although it will be clear from the assessments carried out above, for the avoidance of doubt, I confirm that the principal reasons for the granting of this consent are:

- 16. The effects of the proposal are no more than minor and acceptable.
- 17. The proposal is consistent with the objectives and policies of the TRMP.
- 18. The Applicant has demonstrated that the potential for adverse effects can be appropriately mitigated.

Conditions of Consent – Earthworks

[see Attachment 6 – RM240065 – Earthworks Conditions]

Stream Works Decision – RM240066

96. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104C and for the reasons set out above, the Independent Commissioner **GRANTS** consent for the alteration of a dam structure within a river at **204 and 206 Pomona Road, Ruby Bay** (Lot 8 DP 312213 and Lot 1 DP 312213), subject to the conditions below.

Reasons for the Decision

97. Section 113(1)(a) of the Act requires that I state my reasons for the decision of approval. Although it will be clear from the assessments carried out above, for the avoidance of doubt, I confirm that the principal reasons for the granting of this consent are:

- 19. The effects of the proposal are no more than minor and acceptable.
- 20. The proposal is consistent with the objectives and policies of the TRMP.
- 21. The Applicant has demonstrated that the potential for adverse effects can be appropriately mitigated.

Conditions of Consent – Stream Works

[see Attachment 7 – RM240066 – Stream Works Conditions]

Consent Variation Decision – RM190134V1

98. Consequently, having regard to the evidence presented, and the relevant statutory criteria under s127 and for the reasons set out above, the Independent Commissioner **GRANTS** the variation to resource consent RM190134 for a change in use, storage volume and spillway design of a dam structure at **204 Pomona Road, Ruby Bay** (Lot 8 DP 312213).

Reasons for the Decision

99. Section 113(1)(a) of the Act requires that I state my reasons for the decision of approval. Although it will be clear from the assessments carried out above, for the avoidance of doubt, I confirm that the principal reasons for the granting of this consent are:

- 22. The effects of the proposal are no more than minor and acceptable.
- 23. The proposal is consistent with the objectives and policies of the TRMP.
- 24. The Applicant has demonstrated that the potential for adverse effects can be appropriately mitigated.

Conditions of Consent – RM190134V1

[see Attachment 8 – RM190134V1 – Consent Variation]