

THAMES-COROMANDEL DISTRICT COUNCIL
LAND USE CONSENT APPLICATION

APPLICATION REFERENCE: RMA/2021/133

HEARING DATE: 15 July 2022

VENUE: Tairua Community Hall

APPLICANT: Tairua Beach Realty Limited

AGENT: Element Planning Limited

LOCATION: 10 The Marina, Tairua

LEGAL DESCRIPTION: Lot 309 DPS 21843

SITE AREA: 973m²

ZONING: Marine Service Zone

PROPOSAL: Use the former decommissioned Auckland Harbour Ferry SS Ngoiro as a residential dwelling that is not above ground level and encroaches the northern and western side/rear yards within the Marine Service Zone

ATTACHMENTS:

A	Application
B	Locality and Zoning Plans
C	Submissions
D	Recommended Conditions of Consent

RECOMMENDATION: Refuse Consent

1.0 PREAMBLE

- 1.1 Michael Briggs, Senior Consultant Planner, for the Thames-Coromandel District Council has prepared this report under section 42A of the Resource Management Act 1991. I hold the qualification of Bachelor of Resource and Environmental Planning from Massey University. I have over 16 years planning experience working within both public and private organisations in the Waikato and lower North Island regions. I have been employed as a Senior Planner with Kinetic Environmental Consulting Limited for the past 2 years. I have read the Code of Conduct for Expert Witnesses outlined in the Environment Court's Consolidated Practice Note and I have complied with this in preparing this staff report.
- 1.2 This report reviews the application for resource consent and the further information received and addresses the relevant information and issues raised in the submissions received. The report has no status other than as a staff report on the recommendation and has been prepared to assist the Independent Commissioner in considering the application. It is not a decision and the recommendation should not be construed or used as such.

2.0 THE PROPOSAL

- 2.1 Tairua Beach Realty Limited (the Applicant) is seeking resource consent to use the former decommissioned Auckland Harbour Ferry SS Ngoiro on 10 The Marina, Tairua (the Site) as a residential dwelling. The former ferry is largely located above ground level and is 2.0m from the northern side boundary and 4.0m from the western rear boundary.
- 2.2 The former ferry rests partially below the ground level of the Site and comprises of two levels. The lower level includes a lounge and bar, rest area, quiet room, bathroom, and walkways to the east and decks to the west. The upper level contains two bedrooms, lounge, and sunroom, as well as a kitchen, chiller and laundry. The ferry is approximately 36.5m long and 8.2m wide and is located 2.0m from the northern boundary, 8.9m from the eastern boundary, 9.6m from the southern boundary and 4.0m from the western boundary (as measured perpendicular to the boundary).
- 2.3 The exterior of the former ferry consists of timber, with a mixture of timber and aluminium joinery. The original funnel remains on top of the ferry, along with several vents and masts on the bow and stern. Most of the ferry is between 5.9m and 6.2m high, but the funnel extends to a maximum height of 8.4m.
- 2.4 The upper and lower levels of the ferry are accessed via a canopy, ramp and stairs on the southern side of the building. A small deck and stairs on the northern side provides access to and from an outdoor area in the north-western corner of the Site.
- 2.5 A shipping container is currently located in the south-eastern corner of the Site and is used for storage. The container is proposed to be removed from the Site.
- 2.6 Access to the Site is via an existing vehicle entrance and right of way from The Marina. The Site contains 21 car parks.
- 2.7 The former ferry is connected to the Council reticulated stormwater, wastewater, and potable water systems located within The Marina.
- 2.8 The Applicant proposes the following “no-complaints covenant” to be registered against the Record of Title (RT) for the Site to ensure that the proposal does not result in reverse sensitivity effects to the property to the south (12-14 The Marina):
- “The owners and occupiers of the subject site (Lot 310 DPS 21843) shall not seek to make complaint to the Thames Coromandel District Council, or any other person or body, regarding noise emitted by any activity on the adjoining allotment to the south at 12 The Marina which is zoned Marine Services, and which complies with the relevant noise rules of the aforementioned zoning, or that it complies with its resource consent or any existing use rights that the property/activity currently enjoys”.*
- 2.9 A copy of the application and plans are included within **Attachment A**.

3.0 DESCRIPTION OF SITE AND LOCALITY

- 3.1 The Site is located at 10 The Marina, Tairua and is legally described as Lot 309 DPS 21843 being 973m² in size. The Site is approximately 1km to the east across the harbour from the Tairua town centre. The subject Site is generally rectangular in shape, apart from the angled western boundary, and has a flat topography. As identified in Section 1.1 above, a shipping container is currently located in the south-eastern corner of the Site and is used for storage.
- 3.2 The properties to the north of the Site are residential in nature and zoned Extra Density Residential. The properties contain 20 two storey town houses. Northeast of the Site is an 878m² property owned by Council and zoned Recreation Passive.

- 3.3 To the southeast, the properties are zoned Extra Density Residential, but are currently used for storing boats and containers.
- 3.4 The property to the south is zoned Marine Service and contains the Tairua Pauanui Sports Fishing Club (Sports Fishing Club) (which includes marina offices, clubrooms, club restaurant, bar, kitchens, bathrooms, and a laundry), Dutchy's Outdoor Sports Store (Dutchy's) and Paradise Gym.
- 3.5 To the west of the Site is the Tairua Marina, which comprises of two floating piers with associated finger jetties, gangways and a mixture of berths.
- 3.6 A Locality and Zoning Plan are included as **Attachment B**.

4.0 SITE HISTORY

- 4.1 RT SA20A/1077 was issued on 24 March 1976.
- 4.2 The RT contains the following interests:
- Right of way over part marked Y on DP 492381 created by Easement 10235591.1.
 - Right of way created by Easement 10235591.2.
 - Right (in gross) to Public Access over part marked B on DP 475003 in favour of Thames-Coromandel District Council created by Easement Instrument 10484236.2.

The above listed interests do not restrict the proposal from proceeding.

- 4.3 On 20 November 1998, resource consent R.101000457 was granted to relocate the decommissioned ferry to the Site and utilise it as a Boat Clubhouse. At the time the Site was zoned Marine Activities Policy Area under the Transitional and Proposed District Plans. The consented location of the ferry was 3m from the northern and eastern boundaries, 9.2m from the southern boundary and 11m from the western boundary. The ferry was moved onto the Site in 1999 and located as described in Section 2.2 above.
- 4.4 On 17 September 1999, resource consent RMA19990127 was granted to operate a restaurant within the Housing Zone (Marine Activities Policy Area). The Site was zoned Marine Activities Zone (Marine Activities Policy Area) under the Transitional District Plan and Housing Zone (Marine Activities Policy Area) under the Proposed District Plan. From Council records it would appear that the building/vessel operated as a restaurant/café in accordance with the above consent until late in 2012, at which point it ceased to be used for that purpose.
- 4.5 On 21 October 2015, Council granted approval to create right of way easements pursuant to Section 348 of the Local Government Act 1974 (SUB/2015/76). The approval and subsequent certificates formed the current legal access to the Site by creating right of way over part marked Y on DP 492381 (identified above), and easement X along the northern boundary of 12-14 The Marina (Part Lot 308 DPS 13433) and 21 car parks on the Site.
- 4.6 The former ferry has been unlawful used intermittently as a dwelling/visitors accommodation for the last 10 years.
- 4.7 Copies of the consent applications and decisions are included as **Attachment C**.

5.0 DISTRICT PLAN PROVISIONS

5.1 The Proposed District Plan decisions were publicly notified on 29 April 2016 and from that date had legal effect. The appeal period on the Proposed District Plan decisions closed on 13 June 2016. The Appeals version of the Proposed District Plan was released on 17 October 2019 and is now the working document. Under section 86F of the RMA, a rule in a proposed plan must be treated as being operative (and any previous rule as inoperative) if no appeals have been lodged in relation to it.

5.2 If a resource consent application triggers the consideration of a rule in the Proposed District Plan that has been appealed, the corresponding rule in the Operative District Plan will continue to have legal effect until that appeal is resolved. Therefore, both rules are relevant to the assessment of that resource consent application. When considering the weighting between the Proposed and Operative District Plans, the relevance of the issues at appeal will need to be considered in this assessment.

5.3 I have assessed the proposal against the relevant rules of the Proposed District Plan, and I am satisfied that they are not subject to any appeals and must therefore be 'treated as being operative'. I do not consider the applicable provisions of the Operative District Plan have any weight in relation to this application.

5.4 *Special Purpose Provisions and Overlays*

5.4.1 The Site is located within the Coastal Environmental Overlay.

5.5 *Zoning*

5.5.1 The Site is located within the Marine Service Zone.

5.6 *Limitations*

5.6.1 The western boundary of the Site is identified as being subject to less than 1m Potential Flooding Depth on Council's Hazard Viewer Maps

5.7 *Reasons for Consent*

5.7.1 Resource consent is required under the RMA for the following reasons:

5.7.2 Proposed District Plan

5.7.3 The proposal is to use the former decommissioned Auckland Harbour Ferry SS Ngoiro as a residential dwelling on a property which is within the Marine Service Zone. Rule 16 in Section 49 of the Proposed District Plan specifies that the proposal is classified as a Restricted Discretionary Activity if it meets the standards within Table 3 and is located above the ground floor (i.e. dwelling on the upper floor(s) of a commercial or small-scale industrial building), an assessment of the relevant standards have been assessed below.

Standards	Compliance	Comment
1. Side/rear yard, excluding from boundaries adjoining an Industrial Area – 5m	x	The former ferry is 2m from the northern boundary and 4.0m from the western boundary.
2. Maximum building height – 10m	✓	The funnel of the ferry is approximately 8.4m high.
3. Maximum Height in Relation to Boundary (HRB) of a Residential Area – 3 m & 45°	✓	The mast on the stern of the ferry is excluded under the definition of Height as it

		exceeds the HRB by less than 2m wide and 1.5m high.
4. Maximum site coverage – 60%	✓	The ferry covers approximately 8.2% of the site (80m ²)
5. Maximum fence height – 2m	✓	No new or alterations to fencing are proposed.
6. Maximum solid fence height in a front yard, or yard adjoining a walkway or Recreation Area – 1.2m	✓	No new or alterations to fencing are proposed.
7. Maximum lux level received at any point beyond the site, as measured vertically and horizontally – 5 lux	✓	The proposed dwelling will comply.

Table 1: Relevant Standards from Table 3 in Section 49.

5.7.4 As the proposed dwelling is on the ground floor of the building and the actual location of the former ferry fails to meet the above side and rear yard requirements, it must be assessed as a **Discretionary Activity** as per Rule 16.3 of the Proposed District Plan.

5.7.5 Rule 6 in Section 39 of the Proposed District Plan specifies that vehicle parking is a Permitted Activity provided they meet the standards in Table 5 of the section, an assessment of the relevant standard has been assessed below.

Standards	Compliance	Comment
19. Dwelling – 2 parking spaces per dwelling	✓	The Site contains 12 car parks associated with the previous Boat Clubhouse and restaurant activity.

Table 2: Relevant Standards from Table 5 in Section 39.

5.7.6 The existing parking on the Site is a **Permitted Activity** under Rule 6 in Section 39 of the Proposed District Plan.

5.7.7 Conclusion

5.7.8 Overall, this application has been assessed as a **Discretionary Activity**.

6.0 WRITTEN APPROVALS AND CONSULTATION

6.1 The Applicant consulted with the owners and occupiers of 12-14 The Marina and obtained the written approval for the proposal from the following party:

- Paradise Gym – 12-14 The Marina.

6.2 While several of the submissions have requested that the written approval from the Paradise Gym be disregarded due to conflicts of interest (family and financial connections), it is not uncommon for potentially affected parties to provide written approval for family or because of a commercial or side agreement. Accordingly, I recommend that the written approval from the Paradise Gym is not disregarded.

7.0 NOTIFICATION AND SUBMISSIONS

7.1 The application was limited notified to the owners and occupiers of 12-14 The Marina on the 12th of April 2022 and the submission period closed on the 12th of May 2022.

7.2 In total, five submissions were received, one of which was from Apartment 10-6 The Marina All of the submissions are in opposition. Full copies of the submissions are attached as **Attachment D**.

7.3 Submission from 10 The Marina

7.3.1 While the owners and occupiers of 12-14 The Marina were the only persons served notice of the application; Mr Brian Hogan of Apartment 10-6 The Marina made a submission on the proposal.

7.3.2 Section 96 of the Act states that:

- (3) If an application for a resource consent is the subject of limited notification, a person described in subsection (4) may make a submission about it to the consent authority.*
- (4) A person served with notice of the application may make a submission, but the person's right to make a submission is limited by section 308B if the person is a person A as defined in section 308A and the applicant is a person B as defined in section 308A.*

7.3.3 As the owners and occupiers of Apartment 10-6 The Marina were not served with notice of the application, it is recommended that the Commissioner disregards the submission from Mr Hogan as he is not eligible to make a submission under Section 96 of the Act.

8.0 STATUTORY PROVISIONS

8.1 A subdivision consent for a discretionary activity is determined pursuant to sections 104, 104B, 106, and Part II of the Resource Management Act 1991 ('The Act').

8.2 **Section 104** of the Act states:

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –*
 - (a) any actual and potential effects on the environment of allowing the activity; and*
 - (b) any relevant provisions of—*
 - (i) a national environmental standard:*
 - (ii) other regulations:*
 - (iii) a national policy statement:*
 - (iv) a New Zealand coastal policy statement:*
 - (v) a regional policy statement or proposed regional policy statement:*
 - (vi) a plan or proposed plan; and*
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
- (3) A consent authority must not—*
 - (a) when considering an application, have regard to—*
 - (i) trade competition or the effects of trade competition; or*
 - (ii) any effect on a person who has given written approval to the application:*

8.3 **Section 104B** of the Act states:

- (1) After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority —*

(a) *may grant or refuse the application; and*

(b) *if it grants the application, may impose conditions under section 108.*

8.4 Consideration of the above matters is subject to **Part II** of the Act, which embodies the purpose and principles of the Act. Part II of the Act encompasses:

- Section 5 – Purpose and Principles of the Act:
- Section 6 – Matters of National Importance:
- Section 7 – Other Matters: and
- Section 8 – Treaty of Waitangi.

8.5 If consent is granted, conditions may be imposed on the consent pursuant to **section 108** of the Act.

9.0 RMA SECTION 104(1)(a) ASSESSMENT – ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

9.1 Below is an assessment of the actual and potential effects on the environment and matters raised in the submissions. The submission points have been addressed in conjunction with the effects identified.

9.2 *Permitted Baseline*

9.2.1 Pursuant to Section 104(2) of the Act, consent authorities may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect (i.e., consent authorities may consider the 'permitted baseline'). The permitted baseline is a concept designed to disregard effects on the environment that are permitted by a plan with regard to the scale of the effects.

9.2.2 In this case, the ferry complies with maximum permitted building height, height in relation to boundary, site coverage and car parking (2 spaces) requirements of the Proposed District Plan. As there are no reasons to ignore the permitted baseline, I recommend that Council disregard the adverse effects of the above Proposed District Plan requirements. For the sake of clarity, I note that there is no relevant permitted baseline for a residential activity and at a minimum this was a restricted discretionary activity, if the dwelling was located at first floor level.

9.3 *Consented Environment*

9.3.1 Side and Rear Yards

9.3.2 As identified in Sections 4.3 above, resource consent R.101000457 approved the former ferry being located on the Site, approximately 3m from the northern and eastern boundaries, 9.2m from the southern boundary and 11m from the western boundary.

9.3.3 As such, I recommend that Council disregard the bulk and location effects of the former ferry being on the Site and the 3m northern side yard be disregarded.

9.3.4 Access and Car Parking

9.3.5 Figure 1 below identifies the access and car parking arrangement consented by SUB/2015/76, it includes right of ways over the Site (Y) and 12-14 The Marina (X) to provide legal access to the parking spaces on both properties.



Figure 1: Portion of the Approved SUB/2015/76 Plan

9.3.6 *Submissions - Access and Parking Matters*

9.3.7 Tairua Marine Limited (TML) submit that:

- The application's access and parking effects assessment is deficient.
- The proposal relies on parking that was enabled for a commercial purpose under a different consenting regime and that parking may well extinguish if the land use changes.
- The use of commercial carparking for residential purposes may require resource consent of itself and an assessment of the effects of that activity.
- The existing 'commercial carparking' is non-compliant with the consents granted as some have been removed for landscaping.
- Whole carparking position needs to be reappraised for its suitability and proximity to the proposed activity.

9.3.8 The Sports Fishing Club submit that:

- That the application does not address the issue of car parking, which is currently non-compliant with the current consent, some parks have also been covered with fencing and landscaping.

9.3.9 Dutchy's submit that:

- Most of the existing carparks are currently being leased or rented out to local boat owners reducing useable car park numbers

9.3.10 *Consideration*

9.3.11 The Site has legal access from The Marina road reserve to the existing car parks on-site as easement X of SUB/2015/76 provides legal right of way over 12-14 The Marina. While the use of the Site may have been commercial at the time of the subdivision and a different consenting regime applied, the change in use of the Site or District Plan does not remove or extinguish the easement as it remains on the RT of 12-14 The Marina. Accordingly, I consider that access to the proposed dwelling to be consistent with that consented under SUB/2015/76.

9.3.12 Dwellings require 2 car parking spaces under Table 5 of Section 39 of the Proposed District Plan. While some of the consented car parks are covered with fencing and landscaping or leased to other parties, given the Site has contained 21 car parks previously, I consider that 2 complying parks for the proposed dwelling can be accommodated on-site. Furthermore, if consent is granted, a condition of consent can require a minimum of 2 car parks to be provided on the Site.

9.3.13 While the above submissions have raised concerns with the consented and existing access and car parking arrangement, I recommend that Council disregard the effects of the consented access and car parking in the context of the matters raised in the submission.

9.3.14 Marine Service Zone

9.3.15 While the Marine Service Zone comprises of land with appropriate water and land-based infrastructure that allows for marine related industrial and commercial activities to locate at the waters' edge, the Boat Clubhouse consented in 1998 was a "marine community and clubrooms" activity and resource consent RMA19990127 in 1999 limited the clubhouse to the middle deck only and established the restaurant on the upper deck.

9.3.16 *Submissions – Zoning Matters*

9.3.17 TML submit that:

- The Marine Services Zone addresses a need for the very limited resource of land zoned for a particular activity adjacent to the water.
- No more land contiguous within the embayment that could be used for Marine Services and the land is a limited and valuable resource that should not be given over to a use that is not associated with Marine Services.

9.3.18 Marine Imports Limited (Marine Imports) submit that:

- The Site is the last and only piece of land that could be used in the future for a bona fide marine business to operate from.
- It is crucial that no Marine Services Zone areas are lost in what is a small area to start with.

9.3.19 The Sports Fishing Club submit that:

- Granting consent for a residential activity on the Site will cause the loss of the only remaining area adjacent to the water for marine based business to operate in what is a growing and vibrant area.

9.3.20 Dutchy's submit that:

- There is currently a clear and important virtual buffer between residential and marine service zoning.
- The proposed dwelling is not in accordance with the purpose of the Marine Services Zone.
- The provisions of the Marine Services Zone seek the ground floor of buildings to be utilised by marine service activities.

9.3.21 *Consideration*

9.3.22 While the above submissions raise concerns with the loss of limited Marine Services Zone land that marine based business could operate from, the use of the Site was consented for non-marine related industrial and commercial activities (Boat Clubhouse and restaurant) in 1998 and 1999 by resource consents R.101000457 and RMA19990127. Therefore, the proposal would not result in the loss of land for marine related activities.

9.3.23 Given the above, I recommend that Council disregard the effects of the proposed dwelling on the ground floor of the former ferry.

9.4 Density, Character and Amenity

9.4.1 While resource consent R.101000457 approved locating the former ferry 3.0m from the northern boundary and 11m from the western boundary of the Site, the ferry's actual location is 2.0m from the northern side boundary and 4.0m from the western rear boundary. Therefore, the proposal includes retrospective consent for the reduced side and rear yard standards.

9.4.2 I consider the density, character and amenity effects of reducing the consented northern boundary side yard to 2.0m and the western boundary rear yard to 4.0m to be consistent with the surrounding environment.

9.4.3 The ferry has been 2.0m from the northern boundary and 4.0m from the western boundary since 1999, the proposal will not change the existing situation.

9.4.4 The Marina Villas development to the north of the Site contains 20 two storey dwellings (refer to Figure 2 below) and a solid wall approximately 6.5m high and 18m long on the boundary adjacent to the ferry. The units of The Marina Villas development cover approximately 79% (4,827m²) of the property.



Figure 2: The Marina Villas Site Plan

- 9.4.5 To the south of the Site, the building on 12-14 The Marina is approximately 8.0m high and covers approximately 15% (335m²) of the property.
- 9.4.6 Excluding the funnel, vents, and masts on top, most of the ferry is between 5.9m and 6.2m high, which is generally consistent with the height of the buildings on the above adjacent properties.
- 9.4.7 As the former ferry itself is existing and no external alterations are proposed as part of the proposal, the bulk, scale, character and amenity effects of part of the dwelling being on the ground floor will be less than minor.
- 9.4.8 As identified in Section 2.5 above, the shipping container located in the south-eastern corner of the Site is proposed to be removed from the Site. As a condition of consent can require this to occur, any adverse character and amenity effects of the container will be avoided.
- 9.4.9 Table 2 in Section 49 (Marine Service Zone) of the Proposed District Plan sets the maximum permitted noise levels for the Site in relation to the adjacent Extra Density Residential zone.
- 50 dB LAeq (15 min) Monday to Saturday 7am to 10pm and Sunday 7am to 6pm.
 - 40 dB LAeq (15 min) All other times.
 - 70 dB LAF max In other Marine Service Zones.

- 9.4.10 The maximum levels are designed to enable commercial and small-scale industrial activities to operate next to properties within residential zones. Given the Site is proposed to be used for residential purposes, I consider that the proposal is likely to comply with maximum permitted noise levels of the Marine Services Zone.
- 9.4.11 Submissions - Density, Character and Amenity Matters
- 9.4.12 TML, Marine Imports and the Sports Fishing Club have raised the shipping container in the south-eastern corner of the Site as an area of concern. While all of the submissions consider that the former ferry is in a “terrible state” and not in a condition to comply with the existing building code/rental requirements.
- 9.4.13 Consideration
- 9.4.14 As the ferry has been on the Site since 1999, no external changes are proposed to the structure and its unique marine character, I consider that the proposal will maintain the existing density, character and amenity values of the surrounding area.
- 9.4.15 As identified Section 2.5 above, the shipping container on the Site is to be removed as part of the proposal. If consent is granted, a condition of consent can ensure that this occurs.
- 9.4.16 During the site visit on the 11th of May 2021, the external condition of the ferry itself appeared to be in reasonable condition in terms of visual appearance. While some of the painted surfaces on the north-west corner of the ferry were peeling, the remainder of the exterior painted surfaces were generally in reasonable condition.
- 9.4.17 While I cannot comment on the state of the interior of the ferry as I have not been inside, if the interior is in a “terrible state”, the effects would be internal to the owner(s) and/or occupier(s) of the Site. In relation to compliance with the building code/rental requirements, if consent is granted, an advice note could identify that the building owner must give written notice to Council for the change the use of the ferry under the Building Act 2004 and can only go ahead with the change after Council gives written notice that it is satisfied that the new use of the building will comply with the Building Code.
- 9.4.18 Overall, the bulk, scale, character and amenity effects of the proposal are considered to be consistent with the surrounding environment.

9.5 Reverse Sensitivity

- 9.5.1 As the ferry is proposed to be used for residential purposes, and 12-14 The Marina is also in the Marine Services Zone and is currently used by the Sports Fishing Club and Dutchy’s Store, there is potential for the ferry’s change in use to result in reverse sensitivity effects on the property to the south.
- 9.5.2 Residents of the former ferry would be more sensitive in relation to noise and traffic effects than a commercial or small-scale industrial activity anticipated in the Marine Services Zone as the different activities anticipate a different level of amenity. Accordingly, if the ferry was formalised for residential purposes, and received the permitted noise level for the zone, it is likely that this would give rise to adverse reverse sensitivity effects which could create conflict between the activities and give rise to complaints about the activities on the property to the south.

9.5.3 12-14 The Marina Consented Noise Levels

9.5.4 The original resource consent for the Sports Fishing Club and Dutchy's Store sets the following operational noise limits for 12-14 The Marina (Condition 21 of RMA-2010-84):

The activities subject to this consent shall be designed and managed to comply with the noise limits specified in this condition. The noise limits are to be measured at or within the boundary of any site in Sub-area 'C', or within any lot within the Housing Zone, excluding activities in Sub-area 'A' and 'B' and shall not exceed the following limits:

- 7:00am to 10:00pm – 55 dBA L10
- 10:00pm to 7:00am – 45 dBA L10 and 70 dBA Lmax

The noise shall be measured in accordance with the New Zealand Standard NZS 6801:1991 Measurement of Environmental Sound and assessed in accordance with the requirements of New Zealand Standard NZS 6802:1999 Assessment of Environmental Noise.

9.5.5 The resource consent limits are consistent with the development standard for noise under Rule 346.4.5.7 of the 2010 Operative District Plan.

9.5.6 Figure 3 below shows the Tairua Marine Activities Policy Area Structure Plan Diagram under Section 346.4 of the 2010 District Plan.

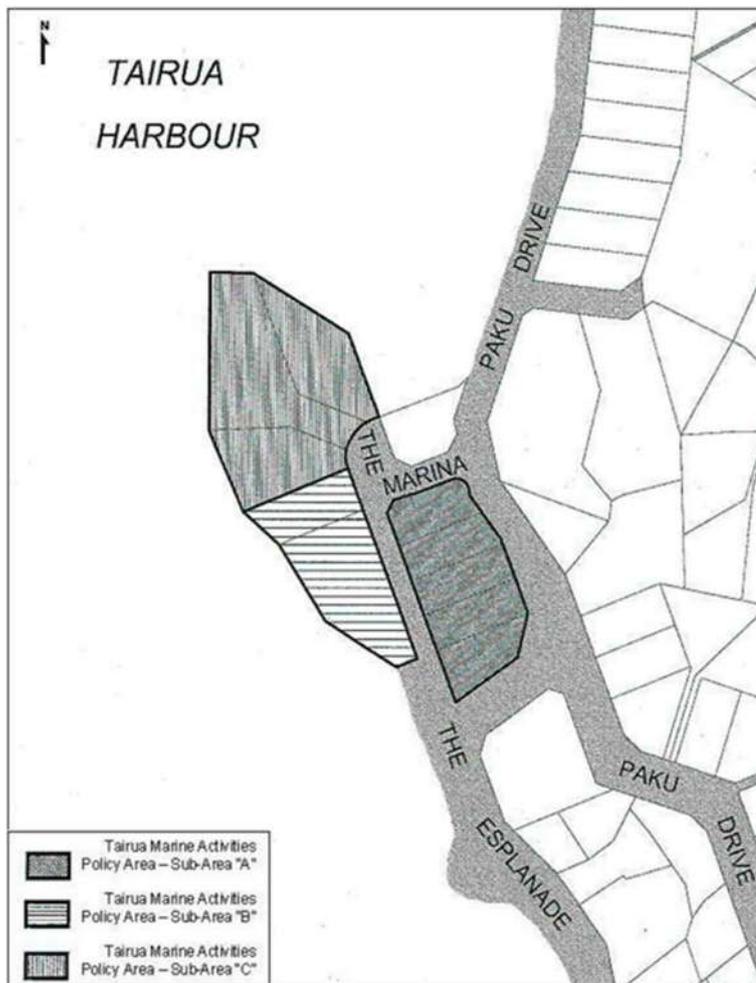


Figure 3: 2010 District Plan Tairua Marine Activities Policy Area Structure Plan Diagram

9.5.7 As the Site is within the northern lot of Sub-Area B rather than Sub-Area C, noise from 12-14 The Marina to the Site is not limited by the existing resource consent for the Sports Fishing Club and Dutchy's Store.

9.5.8 12-14 The Marina Consented Parking and Traffic

9.5.9 The original resource consent for the Sports Fishing Club and Dutchy's Store included a total of 72 car parking spaces (58 on-site, 4 at 1-7 The Marina and 10 on 4-8 The Marina). The activities were expected to be serviced predominantly by small two axel trucks outside of the peak customer hours via the proposed parking spaces. In relation to the Site, the activity included a shared two-way vehicle entrance and 9 car parks (including 2 accessible parks) to the north of the Sports Fishing Club.

9.5.10 The application for the original resource consent RMA-2010-84 included a transportation assessment by the Traffic Design Group dated February 2010. Table 9 of the assessment expected that the Sports Fishing Club and Store would generate an average of 135 daily vehicle trips and an average of 19 peak hour trips.

9.5.11 Resource consent RMA/2014/98 changed the conditions of the original resource consent to reduce the total number of parking spaces on-site from 58 to 42 and reconfigure the carparking and manoeuvring areas. Given the reduction in parking on-site, 19 parking spaces on 7 The Marina were added. The application still included the shared two-way vehicle entrance and 9 car parks to the north of the Sports Fishing Club but changed the manoeuvring area on the eastern side of the building to operate in a northern direction and to include a fuel tanker (semi-trailer) exiting via the two-way vehicle entrance shared with the Site.

9.5.12 Submissions – Reverse Sensitivity Matters

9.5.13 TML submit that the ferry is unlikely to be in the condition necessary to meet current building code standards with respect to acoustic privacy and that their tenants could be adversely affected by legitimate adverse noise complaints.

9.5.14 The submissions from Marine Imports, the Sports Fishing Club and Dutchy's identify that surrounding marine users and business have had numerous incidents/arguments with the occupier(s) of the ferry over the last few years.

9.5.15 Consideration

9.5.16 The Proposed District Plan sets appropriate noise limits for the various zones throughout the district in relation to the activities anticipated in each zone. In relation to residential activities, the maximum permitted noise levels in the Residential, Extra Density Residential and Low Density Residential zones are as follows:

- Monday to Saturday 7:00am to 10:00pm – 50 dB L_{Aeq} (15 min)
- Sunday 7:00am to 6:00pm – 50 dB L_{Aeq} (15 min)
- All other times – 40 dB L_{Aeq} (15 min) and 65 dB L_{AF} max

9.5.17 In relation to the Site and adjacent properties, Table 2 in Section 49 of the Proposed District Plan sets the following maximum noise levels in the Marine Service Zone:

Receiving sites within the Marine Service Zone (point 1 in Table 2).

- At all times – 70 dB L_{Aeq} (15 min) with no L_{AF} max

Receiving sites within residential zones (points 3 to 5 in Table 2).

- Monday to Saturday 7:00am to 10:00pm – 50 dB L_{Aeq} (15 min)
- Sunday 7:00am to 6:00pm – 50 dB L_{Aeq} (15 min)
- All other times – 40 dB L_{Aeq} (15 min) and 70 dB L_{AF} max

- 9.5.18 The only difference between the maximum noise levels of the residential zones and the Marine Services Zone is that activities in the Marine Services Zone are permitted to have a 70 dB $L_{AF\ max}$ at all other times when measured within a site in the residential zones. Accordingly, I consider that noise levels typically anticipated by residential activities throughout the district would be in the order of 40-50 dB $L_{Aeq\ (15\ min)}$ and 65-70 dB $L_{AF\ max}$.
- 9.5.19 As the Site is in the Marine Services Zone, the maximum permitted noise levels for receiving sites with residential zones do not apply to the Site or proposed residential dwelling. Given the Site and 12-14 The Marina are both within Sub-area "B" of Condition 21 of RMA-2010-84 and the Marine Services Zone, the owners and/or occupiers of the Site and proposed residential dwelling could experience maximum permitted noise levels of 70 dB $L_{Aeq\ (15\ min)}$ and short duration noise levels exceeding 70 dB (as there is no $L_{AF\ max}$) from the Sports Fishing Club and Dutchy's Store at any time.
- 9.5.20 While the Sports Fishing Club may not typically generate noise up to the maximum 70 dB $L_{Aeq\ (15\ min)}$, as it includes a restaurant, bar and clubrooms, it could and is permitted to generate noise levels up to the maximum (e.g., during club events or other functions).
- 9.5.21 Accordingly, the Site and proposed residential dwelling could experience noise levels 20-30 dB $L_{Aeq\ (15\ min)}$ more than those typically anticipated by residential activities throughout the district at any time during the day or night.
- 9.5.22 In relation to traffic effects, Appendix 8 Table C of the Proposed District Plan determines that a dwelling results in 8 vehicle trips per day. While the Sports Fishing Club and Dutchy's on 12-14 The Marina is expected to have an average of 135 vehicle trips per day, not all of the trips would use the shared two-way vehicle entrance and 9 car parks to the north of the Sports Fishing Club as some vehicles may use the parking spaces on 1-7 and 4-8 The Marina. However, if parking spaces are available on 12-14 The Marina, members and customers of the Sports Fishing Club and Dutchy's are more likely to park on 12-14 The Marina and use the two-way vehicle entrance shared with the Site. Therefore, as the owners and/or occupiers of the Site and proposed residential dwelling would be adjacent to existing non-residential activities on 12-14 The Marina, they will experience much higher vehicle trips per day than other residential dwellings.
- 9.5.23 Council's Team Leader – RMA Monitoring & Investigations, Jakki Handcock, has confirmed that the Council has received complaints from 10 The Marina in relation to the following at 12-14 The Marina:
- Containers and gas bottle swap business.
 - Boat yard operating.
 - Several structures on site.
 - Car parks being blocked.
 - Rubbish bins on roadside.
 - Use of the building questioned.
 - Car parks being blocked or changed.
- 9.5.24 Although the Applicant proposes to register a no-complaints covenant on the Registered Title for the Site that would restrict owners and occupiers making complaints to Council regarding the activities on 12-14 The Marina (as identified in Section 2.8 above), best practice identifies that the offering of a no-complaints covenant should be used as a tool to obtain unconditional written approval and the covenant should be side agreement between the parties that would be bound by the covenant. Given the owners of 12-14 The Marina, have confirmed that they are not willing to agree to a no-complaints covenant and Council does not wish to be part of a covenant in lieu of 12-14 The Marina, I consider that the

proposed no-complaints covenant is not achievable and therefore will not avoid the reverse sensitivity effects of the proposal.

- 9.5.25 Additionally, while dwellings are restricted discretionary activities in the Marine Service Zone if they meet the standards in Table 3 (yard, height, site coverage etc.) and are located above the ground floor, Matter 3 in Table 4 of the section restricts Council’s discretion to the positive and adverse effects on adjacent sites. I consider that the Proposed District Plan envisages that dwellings in the Marine Service Zone would be appropriate when the surrounding industrial and/or commercial activities operate during normal working hours (8am to 5pm Monday to Friday and reduced hours on Saturday), i.e., when the occupiers of dwellings are themselves at work.
- 9.5.26 In this case, the proposal would result in a dwelling approximately 20m from a Sports Fishing Club that is permitted and consented to generate noise levels up to 70 dB L_{Aeq} (15 min) at any time (most likely until late at night - 10pm to 12pm). Accordingly, the proposed dwelling would be subject to far greater noise levels than permitted in the Residential Zone (40-50 dB L_{Aeq} (15 min) and 65-70 dB L_{AF max}). Based on the potential reverse sensitivity effects on 12-14 The Marina, I consider that the proposed dwelling is not appropriate with the adjoining Marine Service Zone activities.
- 9.5.27 Given the permitted and consented noise levels and vehicle trips on 12-14 The Marina, I consider that using the former ferry for residential purposes has the potential to result in noise and traffic reserve sensitivity effects on the owner(s) and occupier(s) of 12-14 The Marina.

9.6 Natural Hazards

- 9.6.1 While the Site is not identified within a hazard area on Map 29C Overlays of the Proposed District Plan, Section 10 - Natural Hazards of the Proposed District Pan applies to all natural hazard risks in the district.
- 9.6.2 Waikato Regional Council’s (WRC) Hazards Portal Coastal Inundation Tool identifies the following present and future sea levels for the Tairua and Pauanui area:

Tairua and Pauanui

Sea Level Scenario		Sea Level (MVD-53)
Present Day	MHWS	1.1m
	Max Tide	1.3m
	Lower Storm Tide Range (Estimate)	1.4m
	Upper Storm Tide Range (Estimate)	2.1m
Future Projected 0.5m Sea Level Rise	MHWS	1.6m
	Max Tide	1.8m
	Lower Storm Tide Range (Estimate)	1.9m
	Upper Storm Tide Range (Estimate)	2.6m
Future Projected 1.0m Sea Level Rise	MHWS	2.1m
	Max Tide	2.3m
	Lower Storm Tide Range (Estimate)	2.4m
	Upper Storm Tide Range (Estimate)	3.1m

Table 3: WRC Hazards Portal Coastal Inundation Tool – Sea Level Scenarios.

9.6.3 At WRC's present day estimated upper storm tide range (2.1m), a portion of the northwestern corner of the Site is subject to coastal inundation (see below).



Figure 4: WRC Hazards Portal Coastal Inundation Tool – 2.0m and 2.2m sea levels respectively

9.6.3 Approximately half of the Site is subject to inundation at WRC's future projected 0.5m sea level rise estimated upper storm tide range (2.6m), while all of the Site is inundated under WRC's future projected 1.0m sea level rise estimated upper storm tide range (3.1m) (refer below).



Figure 5: WRC Hazards Portal Coastal Inundation Tool – 2.6m sea level

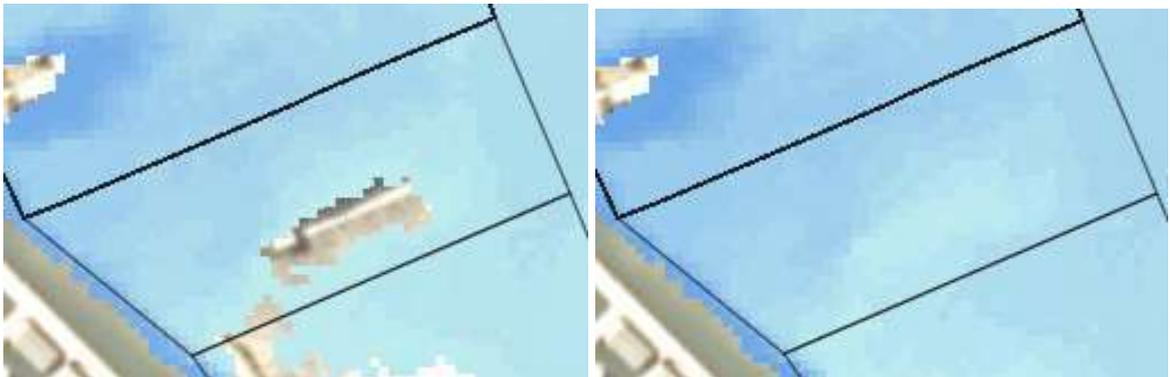


Figure 6: WRC Hazards Portal Coastal Inundation Tool – 3.0m and 3.2m sea levels respectively

9.6.4 Given the ferry is already located on the Site and no external changes are proposed to it, I consider that the proposal would not change the existing coastal inundation risk to property on the Site.

9.6.5 However, as a dwelling on the Site would normally be occupied more than an industrial or commercial activity (i.e., outside of working hours and on the weekends) and WRC's future projected sea level upper storm tide range estimates, the proposal would likely increase the coastal inundation risk to people on the Site.

9.7 Conclusion to RMA Section 104(1)(a) Assessment

- 9.7.1 As the Paradise Gym at 12-14 The Marina has given their written approval to the proposal (refer to Table 4 above), they are not an affected person in accordance with section 95E(3)(a) of the RMA.
- 9.7.2 Having considered the information submitted within the application, the observations made during the site visit and the resource consents for the Sports Fishing Club and Dutchy's Store, it is my opinion that the proposal will result in minor noise and traffic reverse sensitivity effects on 12-14 The Marina and that Tairua Marine Limited, the Sports Fishing Club and Dutchy's Store are affected persons.
- 9.7.3 Additionally, the proposed residential use of the ferry would likely increase the coastal inundation risk to people on the Site as a result of sea level rise and storm tides.

10.0 SECTION 104(1)(b) ASSESSMENT – CONSIDERATION OF RELEVANT PROVISIONS

10.1 Waikato Regional Policy Statement

- 10.1.1 The Waikato Regional Policy Statement (RPS) addresses the requirement for integrated management and advances the understanding of the inter-connected nature of resource management through the explicit identification of objectives that are relevant to the management of more than one resource.
- 10.1.2 Below are the RPS objectives and policies relevant to the proposal.
- 10.1.3 Objective 3.1 - Integrated Management

Natural and physical resources are managed in a way that recognises:

- a) the inter-relationships within and values of water body catchments, riparian areas and wetlands, the coastal environment, the Hauraki Gulf and the Waikato River;*
- b) natural processes that inherently occur without human management or interference;*
- c) the complex interactions between air, water, land and all living things;*
- d) the needs of current and future generations;*
- e) the relationships between environmental, social, economic and cultural wellbeing;*
- f) the need to work with agencies, landowners, resource users and communities; and*
- g) the interrelationship of natural resources with the built environment.*

- 10.1.4 The following policies relevant to the proposal achieve Objective 3.1:
- 6.1 – Planned and co-ordinated subdivision, use and development.
 - 6.2 – Planning for development in the coastal environment.
- 10.1.5 Although the proposed dwelling would provide additional accommodation for current and future generations, given the history of complaints between the Site and 12-14 The Marina and the lack of mitigation, the potential reverse sensitivity effects of the proposal on 12-14 The Marina would not manage the relationships between social and economic wellbeing.
- 10.1.6 While the proposal is consistent with Policy 6.2 (avoiding increasing natural hazard risks), the proposal does not represent the co-ordinated use and development sought by Policy 6.1. Refer to the policies assessment below for further details.
- 10.1.7 Overall, I consider that the proposal is inconsistent with Objective 3.1 of the RPS.

10.1.8 Objective 3.3 – Decision Making

Resource management decision making is holistic and consistent and:

- a) is aligned across legislation and national and regional strategies;*
- b) takes an integrated approach to managing resources that cross regional and functional boundaries;*
- c) adopts an appropriate planning timeframe;*
- d) adopts a precautionary approach, including the use of adaptive management, where appropriate, towards any proposed activity whose effects may be significant or irreversible but are as yet uncertain, unknown or little understood;*
- e) is transparent;*
- f) has regard to the potential for cumulative effects from activities;*
- g) is based on the best available information, including mātauranga Māori;*
- h) allows for flexible solutions for local variations;*
- i) recognises that time may be needed for change to occur;*
- j) includes working with tāngata whenua;*
- k) includes working with key stakeholders;*
- l) considers a mix of methods to achieve objectives; and*
- m) results in solutions which include processes to minimise conflicts.*

10.1.9 The following policies relevant to the proposal achieve Objective 3.3:

- 6.1 – Planned and co-ordinated subdivision, use and development.
- 6.2 – Planning for development in the coastal environment.
- 12.3 – Maintain and enhance areas of amenity value.

10.1.10 Given the history of complaints between the Site and 12-14 The Marina and the lack of mitigation, the proposal does not result in a solution which includes processes to minimise potential reverse sensitivity conflicts with 12-14 The Marina.

10.1.11 While the proposal is consistent with Policies 6.2 (avoiding increasing natural hazard risks) and 12.3, the proposal does not represent the co-ordinated use and development sought by Policy 6.1. Refer to the policies assessment below for further details.

10.1.12 As the main component of the application is changing the ferry's use to residential and the proposal does not minimise potential conflicts, I consider that the proposal is inconsistent with Objective 3.1 of the RPS.

10.1.13 Objective 3.6 – Adapting to Climate Change

Land use is managed to avoid the potential adverse effects of climate change induced weather variability and sea level rise on:

- a) amenity;*
- b) the built environment, including infrastructure;*
- c) indigenous biodiversity;*
- d) natural character;*
- e) public health and safety; and*
- f) public access.*

10.1.14 The following policies relevant to the proposal achieve Objective 3.6:

- 6.1 – Planned and co-ordinated subdivision, use and development.
- 6.2 – Planning for development in the coastal environment.

10.1.15 As identified in Section 9.6.4 above, while the proposal would not change the existing coastal inundation risk to the built environment as the ferry is existing and no external changes are proposed to it. Therefore, I consider that the proposal is consistent with Objective 3.6 of the RPS.

10.1.16 Objective 3.7 – Coastal Environment

The coastal environment is managed in an integrated way that:

- a) preserves natural character and protects natural features and landscape values of the coastal environment;*
- b) avoids conflicts between uses and values;*
- c) recognises the interconnections between marine-based and land-based activities; and*
- d) recognises the dynamic, complex and interdependent nature of natural biological and physical processes in the coastal environment.*

10.1.17 The following policies relevant to the proposal achieve Objective 3.7:

- 6.2 – Planning for development in the coastal environment.
- 12.3 – Maintain and enhance areas of amenity value.

10.1.18 Although the proposal will preserve the landscape values of the surrounding coastal environment as no external changes are proposed to the ferry, the proposed dwelling activity is unlikely to avoid conflicts between uses of the coastal environment as Council has received several complaints from the Site in relation to 12-14 The Marina and no appropriate mitigation measures are proposed.

10.1.19 Overall, I consider that the proposal is inconsistent with Objective 3.7 of the RPS.

10.1.20 Objective 3.12 – Built Environment

Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:

- a) promoting positive indigenous biodiversity outcomes;*
- b) preserving and protecting natural character, and protecting outstanding natural features and landscapes from inappropriate subdivision, use, and development;*
- c) integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors;*
- d) integrating land use and water planning, including to ensure that sufficient water is available to support future planned growth;*
- e) recognising and protecting the value and long-term benefits of regionally significant infrastructure;*
- f) protecting access to identified significant mineral resources;*
- g) minimising land use conflicts, including minimising potential for reverse sensitivity;*
- h) anticipating and responding to changing land use pressures outside the Waikato region which may impact on the built environment within the region;*
- i) providing for the development, operation, maintenance and upgrading of new and existing electricity transmission and renewable electricity generation activities including small and community scale generation;*
- j) promoting a viable and vibrant central business district in Hamilton city, with a supporting network of sub-regional and town centres; and*
- k) providing for a range of commercial development to support the social and economic wellbeing of the region.*

10.1.21 The following policies relevant to the proposal achieve Objective 3.2:

- 6.1 – Planned and co-ordinated subdivision, use and development.
- 6.2 – Planning for development in the coastal environment.
- 12.3 – Maintain and enhance areas of amenity value.

10.1.22 While the proposal is consistent with Policies 6.2 (avoiding increasing natural hazard risks) and 12.3 (maintain amenity), it is not an integrated land use that enable positive social and economic outcomes. As identified above, the proposal will not minimise the potential conflicts/reverse sensitivity effects between the Site and 12-14 The Marina.

10.1.23 As the main component of the application is changing the ferry's use to residential and the proposal does not minimise potential conflicts/reverse sensitivity, I consider that the proposal is inconsistent with Objective 3.12 of the RPS.

10.1.24 Objective 3.21 – Amenity

The qualities and characteristics of areas and features, valued for their contribution to amenity, are maintained or enhanced.

10.1.25 The following policies relevant to the proposal achieve Objective 3.21:

- 6.1 – Planned and co-ordinated subdivision, use and development.
- 6.2 – Planning for development in the coastal environment.
- 12.3 – Maintain and enhance areas of amenity value.

10.1.26 While the proposal does not represent the co-ordinated use and development sought by Policy 6.1, it is consistent with Policies 6.2 (avoiding increasing natural hazard risks) and 12.3 (maintain amenity). Refer to the policies assessment below for further details.

10.1.27 Overall, I consider that the proposal is consistent with Objective 3.21 of the RPS.

10.1.28 Policy 6.1 – Planned and Co-ordinated Subdivision, Use and Development

Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:

- a) has regard to the principles in section 6A;*
- b) recognises and addresses potential cumulative effects of subdivision, use and development;*
- c) is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and*
- d) has regard to the existing built environment.*

10.1.29 Section 6.1.2 of the RPS identifies that local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications and consideration should be given to discouraging new sensitive activities locating near existing land uses or activities.

10.1.30 Given the level of permitted and consented effects from 12-14 The Marina and the likelihood of reverse sensitivity effects, I consider that the proposed dwelling would result in an incompatible land use on the Site. Accordingly, the proposal is not consistent with principle o) in Section 6A and does not have regard to the existing built environment.

10.1.31 Given the above, I consider that the proposal is inconsistent with Policy 6.1 of the RPS.

10.1.32 Policy 6.2 – Planning for Development in The Coastal Environment

Development of the built environment in the coastal environment occurs in a way that:

- a) ensures sufficient development setbacks to protect coastal natural character, public access, indigenous biodiversity, natural physical processes, amenity and natural hazard mitigation functions of the coast;*
- b) protects hydrological processes and natural functions of back dune areas;*
- c) avoids the adverse effects of activities on areas with outstanding natural character, and outstanding natural features and landscapes;*
- d) ensures that in areas other than those identified in (c) above, activities are appropriate in relation to the level of natural character or natural feature and landscape;*
- e) has regard to local coastal character;*
- f) allows for the potential effects of sea level rise, including allowing for sufficient coastal habitat inland migration opportunities;*
- g) protects the valued characteristics of remaining undeveloped, or largely undeveloped coastal environments;*
- h) ensures adequate water, stormwater and wastewater services will be provided for the development;*
- i) avoids increasing natural hazard risk associated with coastal erosion and inundation;*
- j) has regard to the potential effects of a tsunami event, and takes appropriate steps to avoid, remedy or mitigate that risk;*
- k) avoids ribbon development along coastal margins;*
- l) does not compromise the function or operation of existing or planned coastal infrastructure;*
- m) provides for safe and efficient connectivity between activities occurring in the coastal marine area and associated land-based infrastructure;*
- n) manages adverse effects to maintain or enhance water quality; and o) maintains and enhances public access.*

10.1.33 As no external changes are proposed to the ferry, the local coastal character and potential effects of sea level rise of the existing built environment will be maintained.

10.1.34 Although the proposal would not change the existing coastal inundation risk to property, it is likely to increase the coastal inundation risk to people on the Site as dwellings are normally occupied more than an industrial or commercial activities (refer to Sections 9.6.4 and 9.6.5 above).

10.1.35 Accordingly, I consider that the proposal is partially consistent with Policy 6.2 of the RPS.

10.1.36 Policy 12.3 – Maintain and Enhance Areas of Amenity Value

Areas of amenity value are identified, and those values are maintained and enhanced. These may include:

- a) areas within the coastal environment and along inland water bodies;*
- b) scenic, scientific, recreational or historic areas;*
- c) areas of spiritual or cultural significance;*
- d) other landscapes or seascapes or natural features; and*
- e) areas adjacent to outstanding natural landscapes and features that are visible from a road or other public place.*

10.1.37 Similarly, no external changes are proposed to the ferry, amenity of the surrounding built and coastal environment will be maintained.

10.1.38 Therefore, I consider that the proposal is consistent with Policy 12.3 of the RPS.

10.2 Proposed District Plan

10.2.1 I consider the following Proposed District Plan Objectives and Policies are relevant to the proposal.

10.2.2 Section 7 – Coastal Environment

Section 7 - Objective 1

Subdivision, use and development in the Coastal Environment:

- *Enables people and their communities to provide for the social, economic, and cultural wellbeing and their health and safety;*
- *Maintains or restores the integrity, form, functioning and resilience of the Coastal Environment; and*
- *Protects the indigenous biodiversity values of the Coastal Environment in relation to the biodiversity values present; and*
- *Preserves the natural character of the Coastal Environment in relation to the level of natural character present; and*
- *Protects natural features and landscapes values of the Coastal Environment in relation to the level of natural feature and landscape values present; and*
- *Recognises and provides for the relationship of tāngata whenua with the Coastal Environment; and*
- *Maintains and enhances public open space and recreation opportunities in the Coastal Environment; and*
- *Manages coastal hazard risks, including the longterm projected effects of climate change; and*
- *Protects and enhances historic heritage values; and*
- *Avoids sprawling or sporadic patterns of development and enabling consolidation of existing settlements.*

Section 7 - Policy 1a

New subdivision, use and development along the coast shall provide a setback from the coastal edge to allow for:

- a) Preserving natural character; and*
- b) Maintaining and enhancing public access to public areas; and*
- c) Natural ecosystems functioning; and*
- d) Natural functioning of physical processes, including the ability of natural features and ecosystems to migrate inland.*

Section 7 - Policy 1b

Subdivision, use and development in the Coastal Environment (outside of the Natural Character and Outstanding Natural Features and Landscape Overlays) shall:

- a) avoid significant adverse effects on the values and characteristics of natural character, natural features and natural landscapes; and*
- b) avoid, remedy or mitigate other adverse effects on the values and characteristics of natural character, natural features and natural landscapes.*

10.2.3 While the potential reverse sensitivity effects of proposal could have adverse effects on the social and economic wellbeing of 12-14 The Marina, using the existing ferry as a dwelling will preserve the natural character and landscape values of the surrounding coastal environment while maintain public access to public areas.

10.2.4 Although the proposal will maintain the existing coastal inundation risk to property, the proposed dwelling does not manage the likely increase in coastal inundation risk to people on the Site.

10.2.5 I consider that the proposal is partially consistent with Objective 1 and Policies 1a and 1b in Section 7 of the Proposed District Plan.

10.2.6 Section 10 – Natural Hazards

Section 10 - Objective 1

Natural hazard risk to life, property, community facilities and lifeline utilities resulting from subdivision, use and development do not increase, and are at acceptable or tolerable levels.

Section 10 - Policy 1a

Subdivision, use and development shall ensure that life, property, community facilities and lifeline utilities, including on adjacent sites, are protected from the adverse effects of natural hazards to an acceptable or tolerable level of risk, in a manner that maintains the resilience of the natural environment.

Section 10 - Objective 3

Landowners and the community are prepared for flooding, erosion and tsunami hazard risks and are aware of appropriate risk reduction measures they can take.

Section 10 - Policy 3a

The redevelopment of sites at risk from natural hazards shall be provided for if the risk is acceptable or becomes more tolerable than existing risk.

Section 10 - Policy 3c

Development should consider the risk of all known natural hazards where relevant.

- 10.2.7 As identified in Section 9.6.4 above, while the proposal would not change the existing coastal inundation risk to property (the ferry is existing and no external changes are proposed), it is likely to increase the coastal inundation risk to life on the Site as a dwelling would be occupied more than an industrial or commercial activity.
- 10.2.8 While the owner of the Site may be prepared for coastal inundation in the future during storm tides, appropriate risk reduction measures have not been identified.
- 10.2.8 Accordingly, I consider that the proposal is inconsistent with Objective 1 and 3 and Policies 1a, 3a and 3b in Section 10 of the Proposed District Plan.
- 10.2.9 Section 15 – Development and Growth

Section 15 - Objective 1

Settlement development and growth uses capacity in existing or planned water, wastewater, stormwater and roading infrastructure.

Section 15 - Policy 1a

Settlement development and growth should make use of opportunities for consolidation and redevelopment of existing settlements.

Section 15 - Policy 1b

Water, wastewater and stormwater reticulation required for a development shall be within existing or planned network capacity. Development outside the Rural Area should connect to the existing stormwater, water and wastewater reticulation where it is available.

- 10.2.10 The Site has existing connections to Councils water, wastewater, stormwater and roading infrastructure and the proposed dwelling does not require any of the connections to be upgraded. Accordingly, the proposal will make use of the opportunity to redevelop the Site
- 10.2.11 I consider that the proposal is consistent with Objective 1 and Policies 1a and 1b in Section 15 of the Proposed District Plan.

Section 15 - Objective 2

Settlement development and growth provides for a thriving economy and viable communities.

Section 15 - Policy 2c

New commercial development in settlements should not detract from the vitality and viability of existing Commercial Areas.

Section 15 - Policy 2d

Settlement development and growth should not limit access to and operation of existing activities and other lawfully established activities (such as quarries).

Section 15 - Policy 2e

Land uses should not be located where they cause or worsen reverse sensitivity effects, particularly adjacent to Industrial Areas, regionally significant infrastructure, existing mining activities, and significant mineral resources and their access routes identified on a publicly available map held by the Council.

- 10.2.12 As Council has received previous complaints from the Site in relation to 12-14 The Marina while the ferry was unlawfully used as a dwelling, if consent is granted, the proposal is likely to worsen the reverse sensitivity effects on the adjoining property a lawfully established dwelling could rightly anticipate an appropriate residential level of amenity, which could give rise to adverse effects in the form of reverse sensitivity and ensuing complaints about the surrounding activities
- 10.2.13 Given the above, I consider that the proposal is inconsistent with Objective 2 and Policies 2c, 2d and 2e in Section 15 of the Proposed District Plan.

Section 15 - Objective 3

Settlement development and growth maintains the Coastal Environment's special values.

Section 15 - Policy 3b

Land use that supports marine industries should be provided for in the Coastal Environment where appropriate.

Section 15 - Policy 3c

In the Coastal Environment settlement development and growth shall:

- a) preserve natural character and landscape values; and*
- b) ensure sufficient development setbacks to protect coastal natural character, public access, indigenous biodiversity, natural physical processes, amenity, and natural hazard mitigation functions of the coast; and*
- c) protect hydrological processes and natural functions of back dune areas; and*
- d) have regard to local coastal character; and*
- e) allow for the potential effects of sea level rise, including allowing for sufficient coastal habitat inland migration opportunities; and*
- f) protect the natural characteristics of remaining undeveloped or largely undeveloped coastal environments; and*
- g) ensure adequate water, stormwater and wastewater services will be provided for the development; and*
- h) avoid increasing natural hazard risk associated with coastal erosion and inundation; and*
- i) have regard to the potential effects of a tsunami event and take appropriate steps to avoid, remedy or mitigate that risk; and*
- j) avoid ribbon development along coastal margins; and*
- k) not compromise the function or operation of existing or planned coastal infrastructure; and*
- l) provide for safe and efficient connectivity between activities occurring in the coastal marine area and associated land-based infrastructure; and*
- m) maintain and enhance public access to the coast and existing public areas; and*
- n) provide infrastructure that supports marine-based industries and sea transport.*
- o) enable people and communities to provide for their social, economic and cultural wellbeing and their health and safety.*

- 10.2.14 Although the proposal would legalise a non-marine industry on land in the coastal environment and zoned Marine Services, the Site has been consented and use for non-marine industry since 1998 (Boat Clubhouse and restaurant). Therefore, the proposal will not result in the loss of land used for marine services and will maintain the coastal environments special values.
- 10.2.15 As identified above, although the proposal will preserve the landscape values and local coastal character of the area, it will increase the coastal inundation risk to people on the Site as a dwelling would be occupied more than an industrial or commercial activity.
- 10.2.16 Accordingly, the proposal is partially consistent with Objective 3 and Policies 3b and 3c in Section 15 of the Proposed District Plan.

Section 15 - Objective 4

Settlement development and growth provides for a diverse range of land uses and living choices.

Section 15 - Policy 4a

Consistent with existing residential character and potential environmental constraints, a range of residential densities, lot sizes and dwelling forms shall provide for a variety of living choices.

Section 15 - Policy 4e

Mixed land use should be encouraged where it supports vibrant settlements and does not result in undue reverse sensitivity effects.

- 10.2.17 While the proposal may result in undue reverse sensitivity effects on 12-14 The Marina, the character of the surrounding residential area will be maintained as no external changes to the existing ferry are proposed.
- 10.2.18 As the proposal would ultimately add to the range of living choices in the area, I consider that the proposal is generally consistent with Objective 4 and Policies 4a and 4e in Section 15 of the Proposed District Plan.

Section 15 - Objective 5

Settlement development and growth maintains and enhances amenity values, character, historic heritage, transport connectivity, environmental sustainability and the vitality of individual settlements and their centres.

Section 15 - Policy 5a

Settlement development and growth including commercial, housing and subdivision design should be consistent with the existing character and context of the built environment and with the landscape character, historic heritage and amenity values of the area.

- 10.2.19 Given no external changes are proposed to the existing ferry, the proposal will maintain/be consistent with the amenity values and character of the existing built environment.
- 10.2.20 Therefore, I consider that the proposal is consistent with Objective 5 and Policy 5a in Section 15 of the Proposed District Plan.

10.2.21 Section 18 – Transport

Section 18 - Objective 3

Subdivision, use and development is designed to support the integrated, safe and efficient operation of transport networks.

Section 18 – Policy 3a

Land uses with the potential to generate significant increases in traffic;

- a) will be required to provide an Integrated Transport Assessment; and*
- b) should be located in accordance with the road function as set out in the roading hierarchy; and*
- c) should be located on or near classes of roads in the Road Hierarchy that are able to receive the increased volume, while maintaining traffic flow and road user safety.*

Section 18 - Policy 3c

Subdivision, use and development, including landscaping and planting, shall not compromise the safe and efficient operation of the transport network; however the safety and efficiency of certain network users may be prioritised over other users depending on the surrounding environment

10.2.22 As identified in Sections 9.3.5 to 9.3.13 above, the Site's existing access and car parking arrangement have been consented and legalised by SUB/2015/76. Given 21 car parks were provided on the Site for the previous Club House and restaurant activities, and that the proposed dwelling only requires 2 car parks, the proposal would reduce the potential level of traffic from the Site and is considered to support the safe and efficient operation of the transport network.

10.2.23 I therefore consider the proposal is consistent with Objective 3 and Policies 3a and 3c in Section 18 of the Proposed District Plan.

Section 18 - Objective 5

Subdivision, use and development adjacent to the District's airfields, wharves and Marine Service Zones do not significantly adversely affect the operation, future development and expansion of those airfields, wharves and Marine Service Zones.

Section 18 - Policy 5a

Subdivision, use and development that would limit the operation and functioning of the District's airfields, wharves or Marine Service Zones should be avoided.

10.2.24 As discussed above, the proposed dwelling has the potential to have reverse sensitivity effects on 12-14 The Marina, which is also in the Marine Services Zone. Accordingly, the proposal does not avoid limiting the operation and functioning of the adjoining property.

10.2.25 I consider that the proposal to be inconsistent with Objective 5 and Policy 5a in Section 18 of the Proposed District Plan as it could significantly adversely affect the operation and future development of 12-14 The Marina.

10.2.26 Section 21 – Industrial Area

Section 21 - Objective 1

Industrial land is provided and serviced in appropriate locations to accommodate the wide range of industrial activities that occur within the District.

Section 21 - Policy 1a

Industrial land shall be protected for industrial purposes and its availability shall not be reduced by the establishment of nonindustrial activities, other than:

- a) Specified activities provided for in the Marine Service Zone; and*
- b) Activities accessory to an industrial activity on the site; and*
- c) Community activities directly related to an industrial activity; and*
- d) Retail activity for servicing the travelling public in specific locations at Kopu.*

10.2.27 While the proposal would result in a non-industrial activity on land within the Marine Service Zone, the Site has been consented for a Club House and restaurant since 1998 and 1999. The proposal would therefore not result in the change in use or further loss of industrially used land.

10.2.28 Accordingly, I consider that the proposal is partially consistent with Objective 1 and Policy 1a in Section 21 of the Proposed District Plan.

Section 21 - Objective 4

Activities that are incompatible with industrial activities do not establish within the Industrial Area.

Section 21 - Policy 4a

Activities that may hinder the regular operation of industrial activities through reverse sensitivity effects and are more suitably located in other Areas of the District, shall not be located within the Industrial Area.

10.2.29 Given the existing and potential reverse sensitivity effects on 12-14 The Marina, the proposed dwelling is likely to be incompatible and may hinder the operation of future industrial activities on the adjoining property.

10.2.30 The proposal is therefore inconsistent with Objective 4 and Policy 4a in Section 21 of the Proposed District Plan.

Section 21 - Objective 5

The interface between the street and buildings and land use within the Industrial Area is clean, functional and safe.

Section 21 - Policy 5a

The area fronting the street should be presentable and free of clutter and should have clear routes for both vehicles and pedestrians from the street to the buildings.

10.2.31 As the removal of the shipping container located towards the southeast corner of the Site forms part of the proposal and conditions of consent could require its removal (if consent was to be granted), the proposal would result in a clean, functional and safe frontage to The Marina.

10.2.32 Accordingly, the proposal is consistent with Objective 5 and Policy 5a in Section 21 of the Proposed District Plan.

11.0 SECTION 104(1)(c) ASSESSMENT – OTHER MATTERS

11.1 I have considered the relevant provisions of the Proposed District Plan and I consider that the plan has been competently prepared under the Act with a coherent set of policies designed to achieve clear environmental outcomes. Accordingly, there is no need to consider Part 2, because doing so, would not add anything to the evaluative exercise required under 104(1).

11.2 There are no other matters I consider relevant to this application.

12.0 CONCLUSION

12.1 The proposal will maintain the density, character and amenity of the surrounding environment as the ferry has been located in the same position since 1999 and no external changes are proposed to the structure to accommodate the dwelling.

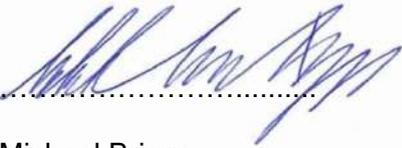
12.2 While some of the submissions have raised concerns with access and car parking, the proposal would not change the existing legal access arrangement and a minimum of 2 car parks could be provided on the Site.

- 12.3 The proposed dwelling is not appropriate for the Site as it would likely result in adverse reverse sensitivity effects on 12-14 The Marina for the following reasons:
- Council has a record of complaints from the unconsented dwelling in relation to 12-14 The Marina and if consent is granted, the proposal is likely to worsen or give rise to further reverse sensitivity effects on the adjoining property as a lawfully established dwelling would anticipate a different level of amenity and would likely give rise to further reverse sensitivity effects and create a basis for further complaints.
 - The residents of the proposed dwelling would likely occupy the Site at the same time as the Sports Fishing Club is operating (5pm onwards Monday to Friday and during the weekends).
 - The dwelling could experience maximum permitted noise levels of 70 dB $L_{Aeq (15 min)}$ and short duration noise levels exceeding 70 dB (as there is no $L_{AF max}$), when typical residential noise levels are in the order of 40-50 dB $L_{Aeq (15 min)}$ and 65-70 dB $L_{AF max}$.
 - The proposed no-complaints covenant is not achievable and will not avoid the reverse sensitivity effects of the proposed dwelling as it should be used as a tool to obtain unconditional written approval, the owners of 12-14 The Marina have confirmed that they are not willing to agree to such a covenant and Council does not wish to be part of a covenant in lieu of 12-14 The Marina.
- 12.4 While the proposal would maintain the coastal inundation risk to property, given dwellings are occupied more than industrial or commercial activities and WRC's future projected sea level upper storm tide range estimates cover the property, the proposal would likely increase the coastal inundation risk to people on the Site.
- 12.5 Although the proposal is consistent with the RPS and Proposed District Plan character, amenity and natural hazard objectives and policies, it is only due to no changes being proposed to the existing structure.
- 12.6 The proposal is inconsistent with the integrated/coordinated development, decision making, social and economic wellbeing, compatibility and natural hazard objectives and policies of the RPS and Proposed District Plan due to the likely reverse sensitivity effects on 12-14 The Marina and increase in coastal inundation risk to people on the Site.
- 12.7 Similarly, the application is also inconsistent with the sustainable management of natural and physical resource purpose of Section 5 of the Act as it does not enable people and communities to provide for their social and economic wellbeing while avoiding, remedying, or mitigating any adverse effects on the environment.

13.0 RECOMMENDATION

- 13.1 The pursuant to Section 104 and 104B of the RMA 1991 and for the reasons set out in my report, I recommend that the that the Thames-Coromandel District Council **DECLINE** the application to use the former decommissioned Auckland Harbour Ferry SS Ngoiro as a residential dwelling that is not above ground level and encroaches the northern and western side/rear yards within the Marine Service Zone.
- 13.2 Should the independent commissioner give consideration to granting consent to the proposed development, a set of draft conditions can be made available upon request.

Reporting Officer:

A handwritten signature in blue ink, appearing to read 'Michael Briggs', written over a horizontal dotted line.

Michael Briggs
Senior Consultant Planner
Kinetic Environmental Consulting Ltd

Reviewed and accepted by:

A handwritten signature in blue ink, appearing to read 'Tamil Dyer', written over a horizontal dotted line.

Tamil Dyer
Development Planning Manager
Regulatory Services

Dated at Thames, this 23rd day of June 2022

ATTACHMENT A
Application

ATTACHMENT B
Locality and Zoning Plans

ATTACHMENT C
Historic Resource Consents

ATTACHMENT D

Submissions

ATTACHMENT E

Recommended Conditions of Consent