

Our ref 6555 & 6555A

1 February 2021

The Manager
Subdivision Consents
North Shore Area Office
Auckland Council
Private Bag 92300
AUCKLAND 1142

Attention: Trevor Cullen, Team Leader
Subdivision Specialists Northwest-Resource Consents



Dear Trevor

**RE: UNIT TITLE SUBDIVISION FOR BAYSWATER MARITIME VILLAGE OVER LOT 1 DP 309604
BAYSWATER MARINA FOR BAYSWATER MARINA HOLDINGS LTD**

1. Proposal: This application is the subdivision component of the bundled (Land Use and Subdivision) application for the creation of residential apartments over the Bayswater Marina land. The subdivision is in compliance with the Bayswater Marina 1504 rules and the Terrace Housing and Apartment zone Table E38.8.2.3.1 which is reported on by others under the provisions of the Auckland Unitary Plan approved in part.
2. Subdivision: Under Section 1504 there is:
 - 2.i Rule preventing a fee simple subdivision over the Marina land and this application is for a staged unit title development. (We refer Section 44 Marine and Coastal Area Act and refer current Interest 9592729.3 attached.)
 - 2.ii There is a requirement to provide an Esplanade Strip a minimum of 15.00 metres wide around Lot 1 DP 309604 (see 1054.3.(1) Auckland Unitary Plan and Encumbrance 9592729.5 (attached)).

Due to 2.i above this application is for a staged unit title.
Under 2.ii above we make this a two-part application.

Part 1

This is for the creation of the Esplanade Strip under Section 232 Resource Management Act and for creation of the public rights of way around the marina and access to car parking and recreation areas.

We enclose a copy of LT 549556 (Fig 1) which is the first stage to the Staged Residential Unit Title Subdivision over Sub-precinct area B on the Precinct plan referenced "1504 Bayswater Marina Precinct" the Auckland Unitary Plan approved in part. The residential development is over Pt Lot 1 DP 309604.

LT 549556 shows the following: -

- a. The area to become an Esplanade Strip is labelled on the plan and includes area I. The Esplanade Strip is within the Sub-precinct area A and part of Sub-precinct B.
- b. Area B is the access into the Marina site and generally agrees with the boundaries shown for Sub-precinct C. This will register as an easement in gross in favour of the Auckland Council. Areas B & C are for the access within the Marina Precinct not already contained within the Esplanade Strip which includes area I.
- c. Area F is the position of the underground fuel tanks and supply pipes within Sub-precinct D and over Lot 1 DP 50556 for the fuel supply to and in favour of the ownership of the Marina facilities.
- d. Area G also within Sub-precinct area D over Lot 2 DP 50556, is in favour of the owners of the Marina facilities. The Esplanade Strip has been designed and detailed to occupy all the area of land between MHWS as defined on DP 309604 and to within 1.00 metres of the exterior face of residential buildings within Sub-precinct B and encompasses land within Sub-precinct A and Part Sub-precinct B.

Esplanade Strip

In terms of the Auckland Unitary Plan, 1504 Bayswater Marina, Pt Lot 1 DP 309604, is to be subject to an Esplanade Strip created in accordance with Section 232 Resource Management Act which states

1. The width of the Esplanade Strip must be that specified in a rule of the District Plan. The rule under 1504 Bayswater Marina, 1504.3 policies state the Esplanade Strip must be a minimum of 15.00 metres wide to enhance the public access and enjoyment of the coastal marine area. The width of this area is in excess of 15.00 metres and has been designed to encompass all the land between MHWS and to within 1 metre of the face of the proposed residential buildings at ground level. This is also contained in Encumbrance 9592729.5.
2. The Esplanade Strip will be created in favour of the Auckland Council and shall be in accordance with Schedule 10 Resource Management Act, the Unitary Plan and Encumbrance 9592729.5.

3. The strip may be closed in part to public entry from time to time but there is no intention to prevent public access. However, there is a requirement for berth holders to have adjacent car park areas and these spaces will be defined as Principal Units and managed in accordance with the overarching rules for the Marina and will be in many places within the Esplanade Strip.
4. The creation of the car park spaces, open spaces and access within the Esplanade Strip will be provided for in the instrument agreed with the Auckland Council in terms of Schedule 10.
5. The access within the Esplanade Strip will be in accordance with 1504 Bayswater Marina Precinct which includes the vehicle access to the proposed residential development and for the Marina berth holders and in part for the manoeuvring of vehicles and boat trailers accessing the boat ramp.

This is a bundled application - joint Land Use and Subdivision application and the accessways and the Esplanade Strip are shown on the plans enclosed with this application with suggested road names.

- i) The main access over Sub-precinct C is "Sir Peter Blake Parade" (Area B).
- ii) The northern access and adjacent to the northern position of the Marina berths "North Lane".
- iii) The remainder of the access adjacent to the Marina berths - "South Street".
- iv) "Link Street" from Sir Peter Blake Parade to South Street, and
- v) "Cross Street" that completes the circular system suitable for the manoeuvring of the cars and boat trailers exiting the boat ramp and trailer parking areas.

Note many of these areas above are within the Esplanade Strip and as such do not (should not) be shown on this plan. We enclosed a preliminary plan Fig 2 showing the road (right of way) names.

We request that this plan LT 549556 be read in conjunction with the application to create the Unit Title Subdivision and we further request approval to this plan under Sections 232 and 348 of the Resource Management Act.

Please also note that apart from the Esplanade Strip, all other easements are easements in gross. Areas B, C & I are to be in favour of Auckland Council.

Areas B, C, F, G & I are in favour of The Bayswater Marina Company Limited.

Area I is within the Esplanade Strip. Please note area I is only referred to as a right of way because this is also shown as a fuel supply easement in gross.

Part 2

This is the subdivision to give title to the individual terraced houses and apartments within the apartment buildings.

We refer item 2.ii page 2 and because a fee simple subdivision is not permitted, the titles will be under the Unit Titles Act and over Lot 1 DP 309604.

Prior to the unit title survey (Part 2) the Esplanade Strip and easements will be created over Lot 1 DP 309604 (Part 1) and will be in place prior to the unit title survey, and on which the Esplanade Strip and easements will be identified as existing easements. The Esplanade Strip will have been approved in terms of Section 232 Resource Management Act and the agreement between Auckland Council and Bayswater Marina Holdings Ltd will recognise that within the Esplanade Strip there will be car parking, vehicle access, pedestrian access and access to the actual marina for berth holders.

We enclose our draft unit plan sheets 1-16, prepared to show how the final unit title plan will look and is prepared in terms of Section 219 Resource Management Act as the scheme plan to compliment the Resource Consent application under Section 88 Resource Management Act, and for which we request consent under Section 104 Resource Management Act. (See Fig 3).

The residential buildings, terraced housing, apartments and associated buildings permitted within Sub-precinct B are/will be shown as principal units on the unit plans.

The terraced houses are at ground level, either 4.5 or 6.0 metres wide and are all 12.0 metres deep. Provision is made for appendages outside of these dimensions and are shown as a solid line with the 4.5 & 6.0 dimensioned areas at ground level shown as a pecked line on the plan. Such appendages may not exceed 0.75 metres in width and the lengths of same are controlled and identified within the design manual. The actual unit area includes the additional 0.75 metre strip.

All car parking within Sub-precincts A & B are/will also be shown as principal units (PUs) on the unit plans. The exception is the common areas for the apartments which will be shown as accessory units common to that particular apartment.

All other areas will be common property and will contain the Esplanade Strip and easements shown on LT 549556 (Fig 1).

Once the approval sought under Section 104 Resource Management Act has been advised and the landscaping proposed over the marina land has been completed, we will be presenting the finalised unit title plan.

The unit title will be a staged unit development. Initially there will be a Proposed Unit Development (PUD) plan that will show how the final/complete unit plan will look, albeit that the PUD plan will have the units shown by pecked lines. The PUD plan will reflect and be in general agreement with the scheme plan, see Fig 3.

A First Stage plan will accompany the PUD plan and will show those units (PUs) that have been constructed to a stage that they are capable of physical measurement. Subsequent second, third, fourth etc plans will be required until all buildings (PUs) shown on the PUD plan have been completed and final "Complete Plan of Units over Lot 1 DP 309604" has been prepared.

The development is for 97 PUs except that the 3 apartment blocks PUs 13A, 21A & 46A will be divided on the PUD plan into the individual units within the apartment building for which separate ownership is required - see sheets 3/16 - 6/16 of the scheme plan.

The draft unit/scheme plans presented herein show the outline that is proposed for the initial PUD plan and at this stage, is presented for approval as a staged unit title development (subdivision) in terms of Section 104 Resource Management Act.

The PUD plan will be presented for approval under Sections 223, 224(f) Resource Management Act and Section 32(2)a Unit Titles Act 2010 (UTA 2010).

The PUD plan will be submitted together with the first stage plan (which will be prepared once there are PUs capable of physical measurement) for approval under Section 224(c) Resource Management Act and Section 32(2)a UTA 2010.

The first stage plan will show the PUs that are completed, and all other PUs will be shown individually as FDUs (Future Development Units) and each FDU will be dimensioned so that the three-dimensional shape is finite and able to be accurately depicted on the ground and as the development proceeds, the FDU shapes will become PUs.

Titles may issue for the FDUs so the development needs to be controlled in the manner detailed by Mark Hornabrook of Hornabrook Macdonald Lawyers.

Controls

1. The unit title development will be controlled by the Body Corporate established in terms of the Unit Titles Act 2010.
2. There will also be an overarching body and/or land covenants that all unit holders must buy into. This will deal with the management of the different elements within Lot 1 DP309604.
 - The use and maintenance of the accessway
 - Control of the car parking for both berth owners and unit owners

- All matters pertinent to the Marina environment and in keeping with the Auckland Council Precinct Operation as set out under 1504 Bayswater Marina Precinct.

RT 639741

Enclosed is a recent copy of RT 639741 together with interests.

- Subject to Section 11 Crown Minerals Act.
- Subject to Sub Part 3 of Part 2 of the Marine and Coastal Area Act 2011. This title is restricted by that part of the Act. See attached copy and the permission for a Unit Title survey.
- 9592729.5. The Encumbrance and conditions now also attached.

We hereby request approval under Section 104 Resource Management Act to the staged unit title development. Please read this application in conjunction with the Land Use Consent application by Craig Shearer which includes the Assessment of Environmental Effects.

Enclosed are: -

1. Fig 1 LT 549556.
2. Fig 2 Preliminary Precinct Plan.
3. Fig 3 Draft Unit (Scheme) Plan 16 sheets.
4. The Form A application form.
5. A recent copy of RT 639741 & interests.

Yours sincerely



Rogan Hampson

Encls



**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**



Identifier 639741
Land Registration District North Auckland
Date Issued 12 December 2013

Prior References
37611

Estate	Fee Simple
Area	3.3415 hectares more or less
Legal Description	Lot 1 Deposited Plan 309604

Registered Owners
Bayswater Marina Holdings Limited

Interests

Subject to Section 11 Crown Minerals Act 1991

The within land is reclaimed land subject to subpart 3 of part 2 of the Marine and Coastal Area (Takutai Moana) Act 2011 and the disposition of the freehold interest in the within land is restricted by that subpart.

9592729.5 Encumbrance to Her Majesty the Queen - 12.12.2013 at 4:23 pm

10810370.1 Mortgage to ANZ Bank New Zealand Limited - 1.6.2017 at 6:41 pm



New Zealand Legislation

Marine and Coastal Area (Takutai Moana) Act 2011

Subpart 3—Reclaimed land

29 Interpretation

(1) In this section and in [sections 30 to 45](#), unless the context otherwise requires,—

developer, in relation to any reclaimed land, means the person (including a customary marine title group) who holds the resource consent for the reclamation by which the land is formed, whether or not that resource consent was obtained after the commencement or completion of the reclamation

dispose of includes sell, exchange, gift, and transfer

eligible applicant, in relation to an application under [section 35](#), means a person who, under a provision of that section, is entitled to make that application

freehold interest means an estate in fee simple but does not include a stratum estate in freehold or in leasehold created under the [Unit Titles Act 1972](#) or the [Unit Titles Act 2010](#)

interest means a freehold interest or a lesser interest

lesser interest means an interest in reclaimed land that is less than a freehold interest and includes a lease, licence, or other right or title to occupy or use the land

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the [Land Act 1948](#)

reclaimed land means permanent land formed from land that formerly was below the line of mean high-water springs and that, as a result of a reclamation, is located above the line of mean high-water springs, but does not include—

- (a) land that has arisen above the line of mean high-water springs as a result of natural processes, including accretion; or
- (b) structures such as breakwaters, moles, groynes, or sea walls

reclaimed land subject to this subpart means reclaimed land vested in the Crown under [section 30](#) or [31](#), but does not include reclaimed land that is subject to a declaration under [section 32](#).

(2) The purpose of this subpart is to provide certainty to business and development interests in respect of investments in reclamations and to balance the interests of all New Zealanders, including their interests in conservation.



View Instrument Details

Instrument No. 9592729.5
Status Registered
Date & Time Lodged 12 Dec 2013 16:23
Lodged By Williams, Daniel Alexander
Instrument Type Encumbrance



Affected Computer Registers **Land District**
639741 North Auckland

Annexure Schedule: Contains 4 Pages.

Encumbrancer Certifications

I certify that I have the authority to act for the Encumbrancer and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Daniel Alexander Williams as Encumbrancer Representative on 11/12/2013 12:55 PM

Encumbrancee Certifications

I certify that I have the authority to act for the Encumbrancee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Keely Anne Marbeck as Encumbrancee Representative on 11/12/2013 04:18 PM

***** End of Report *****

Encumbrance Instrument

(Section 101 Land Transfer Act 1952)

Affected instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum
639741	All	Lot 1 Deposited Plan 309604

Encumbrancer

BAYSWATER MARINA HOLDINGS LIMITED

Encumbrancee

HER MAJESTY THE QUEEN

Estate or interest to be encumbered*Insert e.g. Fee simple, Leasehold in Lease No. etc*

Fee Simple

Encumbrance Memorandum Number

Not applicable

Nature of security*State whether sum of money, annuity or rentcharge and amount*

Rentcharge of \$20 per annum

Encumbrance*Delete words in { }, as appropriate*

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer register with the above rentcharge, to be raised and paid in accordance with the terms set out in the Annexure Schedule and so as to incorporate in this Encumbrance the terms and other provisions set out in Annexure Schedule for the better securing to the Encumbrancee the payment secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Annexure Schedule

Page 2 of 4 Pages

Insert instrument type

Encumbrance

*Continue in additional Annexure Schedule, if required***Terms**

1. Length of term: 999 years commencing on the date of registration of this Encumbrance.
2. Payment date(s): 1 January in each year during the term (if demanded).
3. Rate(s) of interest: Nil.
4. Event(s) in which the sum, annuity or rentcharge becomes payable: As set out in the Annexure Schedule.
5. Events in which the sum, annuity or rentcharge ceases to be payable: Nil.

Covenants and conditions*Continue in Annexure Schedule(s), if required*

As set out in the Annexure Schedule.

Modification of statutory provisions*Continue in Annexure Schedule(s), if required*

Sections 154 and 156 of the Land Transfer Act 1952, Sections 23, 203-205, 283, 288-290 and 301-302 of the Property Law Act 2007 and Section 4 of the Contracts (Privity) Act 1982 shall apply to this Encumbrance but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent-chargee) the Encumbrancee shall not be entitled to any of the powers and remedies given to encumbrancees by the Land Transfer Act 1952 and the Encumbrancee shall not be entitled to any of the powers and remedies given to mortgagees under the Land Transfer Act 1952 or the Property Law Act 2007.

Insert instrument type

Encumbrance

*Continue in additional Annexure Schedule, if required***ANNEXURE SCHEDULE****INTRODUCTION**

- A. The Encumbrancer is the registered proprietor of the Land.
- B. The Encumbrancee vested fee simple title to the Land in the Encumbrancer pursuant to a determination made under section 36 of the Marine and Coastal Area (Takutai Moana) Act 2011.
- C. As a condition of the vesting of fee simple title to the Land in the Encumbrancer, the Encumbrancee required that this Encumbrance be registered against the Land to preserve public access to the Coastal Access Strip.
- D. This Encumbrance is registered in order to give effect to the Encumbrancee's requirement.

IT IS AGREED AS FOLLOWS:

- 1. **Definitions and Interpretation:** In this Encumbrance, unless the context otherwise requires:
 - "**Coastal Access Strip**" means that part of the Land having a width of 15 metres extending along the perimeter and abutting the landward margin of the Land and the line of the mean high water springs.
 - "**Encumbrance**" means this encumbrance instrument;
 - "**Encumbrancee**" means Her Majesty the Queen.
 - "**Encumbrancer**" means Bayswater Marina Holdings Limited together with its successors and assigns.
 - "**Land**" means all of the land comprised within computer freehold register 639741.
 - "**Pedestrian Access Rights**" means the pedestrian only right to enter, remain in, leave, pass and repass in, on and over the Coastal Access Strip at all times.
- 2. **Pedestrian Access Rights:** The Encumbrancer agrees to grant to and preserve for the benefit of the public the Pedestrian Access Rights.
- 3. **Limitations on Pedestrian Access Rights:** The Encumbrancer shall be entitled to restrict the Pedestrian Access Rights of the public granted pursuant to clause 2 and/or prohibit the public from accessing the Coastal Access Strip for such temporary periods as may be necessary for safety and security reasons, including (without limitation) or

Annexure Schedule

Page 4 of 4 Pages

Insert instrument type

Encumbrance

Continue in additional Annexure Schedule, if required

holding a special event.

4. **Right to remove:** The Encumbrancer may, in its sole discretion, remove and/or restrict the Pedestrian Access Rights of any member of the public who the Encumbrancer deems is:
 - (a) causing or is likely to cause a nuisance to other members of the public, the Encumbrancer or other permitted users of the Coastal Access Strip; and/or
 - (b) acting or behaving in an inappropriate manner.
5. **Encumbrancer's right to grant interests:** Nothing in this Encumbrance shall prevent the Encumbrancer from using and leasing the Coastal Access Strip for the purposes of vehicular circulation and parking for users of the marina located adjacent to the Land.
6. **Term:** The term of this Encumbrance is 999 years commencing on the date this Encumbrance is registered with Land Information New Zealand against the computer freehold register for the Land and no power is implied for the Encumbrancer to determine this Encumbrance prior to the expiry of such term for the breach of any of the covenants in this Encumbrance (express or implied) or for any other cause.
7. **Binding covenant:** The Encumbrancer covenants and agrees with the Encumbrancee that the obligations of the Encumbrancer named in this Encumbrance shall run with the Land and bind every person who becomes the registered proprietor of the Land.
8. **Consent of Encumbrancee:** For the purposes of the Property Law Act 2007 and the Land Transfer Act 1952, the Encumbrancee consents to the following dealings affecting the Land without having to execute a consent instrument:
 - (a) creation, variation or surrender of an easement or covenant;
 - (b) grant of a mortgage, variation of a mortgage instrument or priority of mortgages;
 - (c) registration of a lease, lease variation instrument or surrender of a lease;
 - (d) the transfer of all or any part of the Land; and
 - (e) any dealing that is expressed as subject to this Encumbrance.
9. **Variations:** This Encumbrance may only be amended by a variation of encumbrance instrument executed by all parties.
10. **Notices:** Any notice required to be served on any party shall be in writing and served in accordance with the Property Law Act 2007.