

7 April 2022

Application No.:	RM200115
Applicant:	Murray & Jennifer Searle
Site Address:	Te Moana Road, Waikanae
Legal Description:	LOT 1 DP 88064 RT 495921
Site Area:	2.9210ha
Applicant's Address for Service:	C/- Tom Bland - Land Matters Limited 20 Addington Road RD 1 Otaki
Proposal:	To undertake earthworks within a waahi tapu site that do not meet the permitted activity standards
Operative District Plan Zone:	Rural
Proposed District Plan Zone:	Rural Dunes
Activity Status:	Land Use – Restricted Discretionary

Report prepared by: Marnie Rydon, Consultant Planner
Report peer reviewed by: Sarah Banks, Senior Resource Consents Planner

Date consent application received: 23 June 2020
Further Information Requested: 10 July 2020
Further Information Received: 3 March 2022

1 EXECUTIVE SUMMARY

This report provides an analysis of the resource management issues relating to notification status and the Council's Section 104 decision for the activity proposed under resource consent application RM200115. The decisions at sections 8 and 12 are to:

- Consider the proposed development on a non-notified basis (section 8); and
- Grant consent to the proposed activity to undertake earthworks within a waahi tapu site that do not meet the permitted activity standards (section 12) subject to a number of conditions as set out at the end of this report.

1.1 Application documents (plans and reference documents)

The following information has been provided with the application:

- Application form and Assessment of Environmental Effects (AEE) prepared by Land Matters and dated 23 June 2021. The AEE concludes that the effects on the environment will be less than minor.
- Record of Title.

- Plans prepared by Land Matters.
- Mana Whenua Assessment prepared by Ātiawa ki Whakarongotai Charitable Trust.
- Archaeological Assessment prepared by Subsurface Ltd and dated December 2019.
- Documents showing the consultation undertaken with Ātiawa ki Whakarongotai Charitable Trust.
- Earthworks Management Plan prepared by Land Matters.
- Further information responses dated 29 September and 7 December 2021 and 3 March 2022.

2 THE PROPOSAL

2.1 Description of Proposal

The Applicant is proposing to undertake earthworks over an area of 4,732m² and involving 4,641m³ of cut and 1,353m³ of fill. The earthworks will alter the ground level by a maximum of 4m. As can be seen in Figure 1 below, the earthworks extend into the access onto the site which is unformed legal road.

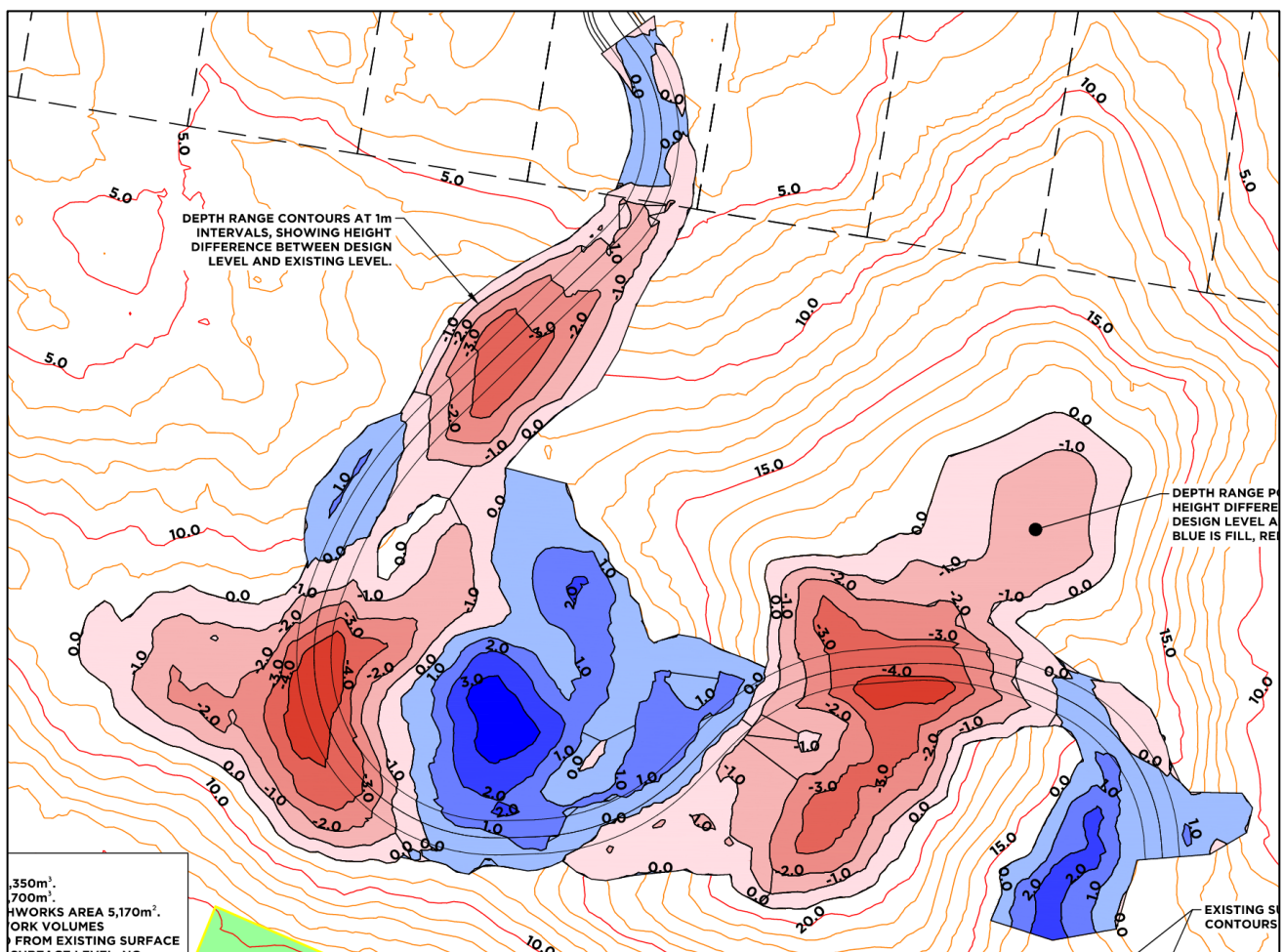


Figure 1: Plan of proposed earthworks showing cut in red and fill in blue

3 SITE AND SURROUNDING ENVIRONMENT

3.1 Site Description

The subject site does not have a street number and is accessed from an unformed portion of legal road off Te Moana Road, Waikanae Beach. The site, with an area of 2.9210ha is legally described as

Lot 1 DP 88064 and held in Record of Title 49521. There is one interest registered on the Record of Title; however, this is not relevant to the proposal.

As can be seen from the images below, the site has undulating topography and is covered in pockets of mature vegetation.

The site is currently vacant.

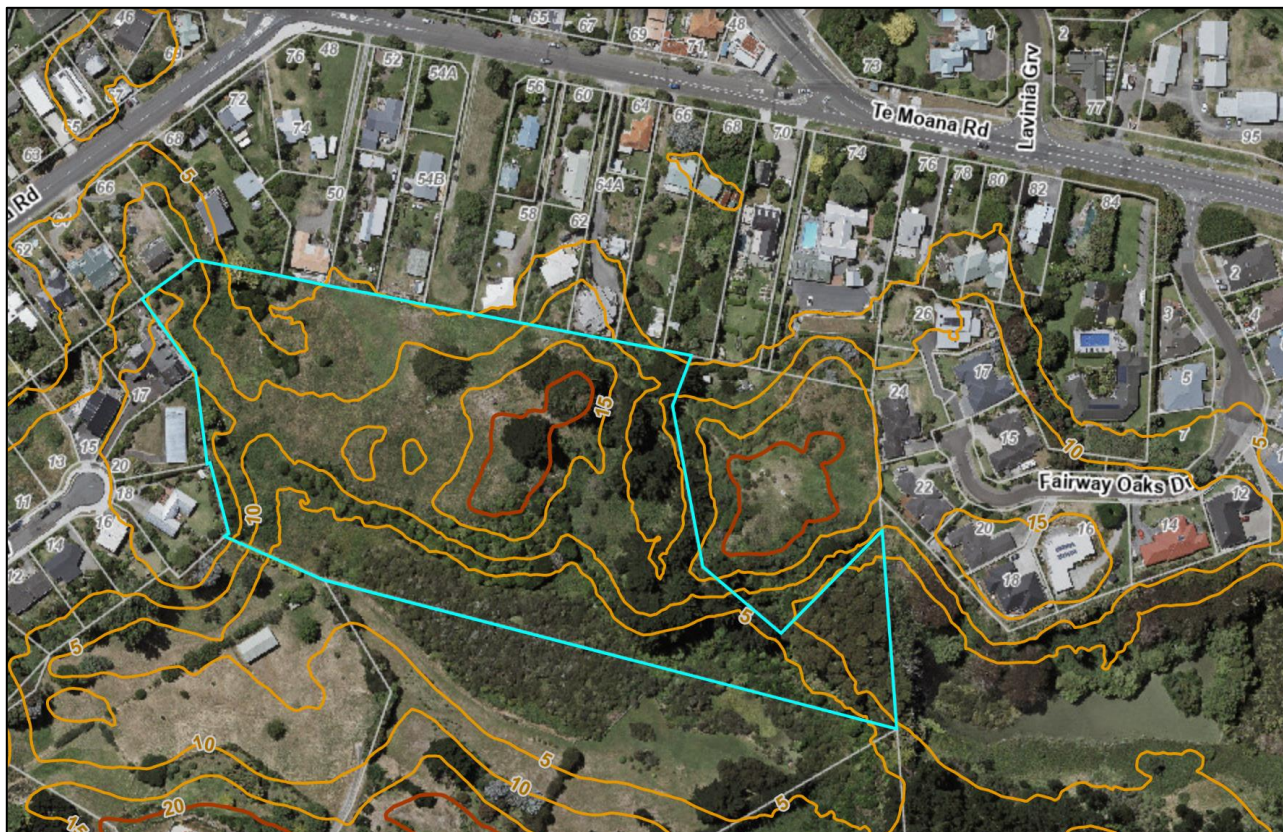


Figure 2: Aerial image showing the topography of the subject site and surrounding environment

3.2 Surrounding Environment

The surrounding environment is largely residential in nature with properties significantly smaller than the subject site that contain dwellings, accessory buildings and landscaping typical of a residential environment.

The properties adjoining the site to the south are large rurally zoned properties with similar topography to that of the subject site that contain dwellings and accessory buildings.

Approximately 170m to the north of the site on the corner of Ono Street and Te Moana Road is a takeaway restaurant, dairy and bakery.

A small reserve adjoins the property to the east.

3.3 Consent History

There are no previous resource consent applications lodged for the subject site.



Figure 3: View of the site from the end of the unformed legal road



Figure 4: view of the site looking south

3.4 External Consultation

As the application involves earthworks and the site is within a waahi tapu site, the application was provided to local iwi for comment.

Ātiawa ki Whakarongotai Charitable Trust raised initial concerns with the proposal; however, as part of the further information request consultation between the Applicant and Ātiawa ki Whakarongotai Charitable Trust resolved these concerns. The records of this consultation submitted with the application and further information request response should be read on conjunction with this report.

4 DISTRICT PLANS

In November 2012, Council notified the Proposed District Plan (PDP). Following submissions, hearings and the releasing of decisions on 22 November 2017, there was an appeals period. The appeals period closed on 25 January 2018.

As of 26 January 2018, any provisions of the PDP not appealed have legal effect and the corresponding provisions of the Operative District Plan (ODP) 1999 fall away. The ODP objectives, policies and maps still have legal effect and must be considered when processing applications.

The District Plans are assessed below.

5 OPERATIVE DISTRICT PLAN PROVISIONS

5.1 Kapiti Coast Operative District Plan 1999

The Kapiti Coast District Plan sets out the status of the activity within rules, that is whether they are permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited. The Objectives and Policies contained in the District Plan are also important in decision making as they are to be taken into account in the evaluation of the activities.

5.2 Operative District Plan Zoning and Overlays

The property is zoned Rural under the Kapiti Coast Operative District Plan. For the purposes of subdivision, the site is within the Coastal Rural Subdivision Policy Area. The site is affected by the flood hazards ponding and residual ponding, contains part of ecological site K170 (El Rancho Manuka Wetland) and is entirely within waahi tapu site W4 (Takamore Waahi Tapu Area) as per the District Planning Maps.

5.3 Operative District Plan Rules and Standards

None of the Rules and Standards of the Operative District Plan still having legal effect are relevant to the proposal.

6 PROPOSED KAPITI COAST DISTRICT PLAN 2012

6.1 The 'Proposed Plan'

On 29 November 2012, the Council publicly notified the Proposed District Plan 2012 (the Proposed Plan). The Proposed Plan included a full review of the Operative Plan provisions and marks a major shift in the Council's approach to resource management in the District.

6.2 Proposed District Plan Zoning and Overlays

The property is zoned Rural Dunes under the Kapiti Coast Proposed District Plan. The site is located entirely within waahi tapu site W4, is subject to the flood hazards ponding and residual ponding, is

within the coastal environment and contains part of ecological site K170 as per the District Planning Maps.

6.3 Proposed District Plan Rules and Standards

Chapter 3 Natural Environment

Table 3A.1 Permitted Activities

6. *Earthworks, excluding those listed in Rule 3A.1.8, in all areas except areas subject to flood hazards, outstanding natural features and landscapes, ecological sites, geological features, areas of outstanding natural character, areas of high natural character.*

Standards

1. *Earthworks must not be undertaken:*
 - a) *on slopes of more than 28 degrees; or*
 - b) *within 20 metres of a waterbody, including wetlands and coastal water.*
2. *In all other areas except as provided for in Standard 3, earthworks must not:*
 - a) *disturb more than 50m³ (volume) of land per site in living zones, working zones and open space zones within a 5 year period;*
 - b) *disturb more than 100m³ (volume) of land per site in rural zones within a 5 year period; and*
 - c) *alter the original ground level by more than 1 metre, measured vertically.*

Table 3A.3 Restricted Discretionary Activities

4. *Earthworks not complying with one or more of the permitted activity standards in Rule 3A.1.6 or Rule 3A.1.8.*

Chapter 10 Historic Heritage

Table 10A.1 Permitted Activities

9. *For the following activities in an area scheduled as waahi tapu and other places and areas of significance to Maori – Wāhanga Rima:*
 - a. *Land disturbance;*
 - b. *Additions and alterations to lawfully established buildings;*
 - c. *Fencing; relocation of lawfully established buildings within the waahi tapu;*
 - d. *Any new building on WTS0318A in the Ngarara Zone.*

Standards

1. *Notice of proposed land disturbance must be provided to Heritage New Zealand Pouhere Taonga at least 10 working days prior to work commencing.*
2. *The Accidental Discovery Protocol, set out in Schedule 10.2, must be followed.*
3. *Land disturbance in the Rural Zone must not disturb more than 100m³ within a five year period, excluding land disturbance associated with the maintenance of a network utility.*
4. *Land disturbance in the river corridor zone must not disturb more than 10m³ within a 10 year period, excluding land disturbance associated with stormwater control or the maintenance of a watercourse or network utility.*

Table 10A.3 Restricted Discretionary Activities

9. *The following activities in an area scheduled as waahi tapu and other places and areas of significance to Maori – Wāhanga Rima:*
 - e. *Land disturbance.*

6.4 Activity Status

The proposed earthworks are a **Restricted Discretionary** activity under Rules 3A.3.4 and 10A.3.9.

7 NOTIFICATION

In considering whether or not notification is required, Sections 95A to 95E of the Resource Management Act 1991 must be considered. Sections 95F and G are not relevant to this application. Sections 95 to 95E are referenced below:

95 Time limit for public notification or limited notification

95A Public notification of consent applications

95B Limited notification of consent applications

95C Public notification of consent application after request for further information or report

95D Consent authority decides if adverse effects likely to be more than minor

95E Consent authority decides if person is affected person

For the full text of the above provisions, please refer to the Resource Management Act 1991.

7.1 Effects that must be disregarded

Effects on persons who are owners and occupiers of the land in, on or over which the application relates, or of land adjacent to that land must be disregarded with respect to public notification.

The adjacent land includes the following properties:

- 50, 52, 54B, 58, 62, 64A, 66, 68, 72 and 110 Te Moana Road, Waikanae
- 31 and 45 Flaxmere Street, Waikanae
- 17, 18 and 20 Kawau Grove, Waikanae
- 66 and 68 Waimea Road, Waikanae

Any effect on a person who has given written approval to the application must also be disregarded. No written approvals were provided with the application.

7.2 Effects that may be disregarded – permitted baseline assessment

The permitted baseline refers to the adverse effects of permitted activities on the subject site.

Given the extent of the earthworks proposed, the effects cannot be disregarded under the permitted baseline.

7.3 Receiving environment

The effects of the activity are also required to be assessed against the “existing environment”. This includes existing use rights, existing activities carried out under existing consents and resource consents which have been granted where it appears those consents will be implemented. The concept of the existing environment refers to a state of affairs which a consent authority must determine and take into account when assessing the effects of allowing an activity; by contrast, the permitted baseline provide the authority with an optional means of measuring – or more appropriately excluding – adverse effects of that activity which would otherwise be inherent in the proposal.

The receiving environment is comprised of other residential development which is an anticipated form of development within this residentially zoned area. It includes the subdivision consent for 54 Te Moana Road of which stage 1 has been given effect to. It includes the waahi tapu and ecological sites.

This is the reasonably foreseeable environment within which the adverse effects of the proposal are considered.

7.4 Adverse Effects

As a restricted discretionary activity, Council can only consider those matters outlined in the District Plan, in this case the relevant matters are assessed below or in section 8.4 of this report:

Effects on Historic Heritage

The effects on historic heritage are considered to be less than minor as the application has been reviewed by local iwi with concerns raised resolved.

Layout, Design and Location of Proposed Buildings

No buildings are proposed as part of the application. Any future buildings will need to comply with any relevant standards.

Layout of the Subdivision

No subdivision is proposed.

Landscape, Amenity and Visual Effects

The following has been taken from the application:

The subject property is rolling dune land surrounded by land developed for residential use. The proposed activity will result in some changes to the landform of the property to provide for the construction of a dwelling and ancillary works around the curtilage of the dwelling (including access and gardens).

Although zoned rural, the land is surrounded by residentially-zoned land and predominantly residential character and amenity. The proposed works will retain the existing character of the subject property, which is more akin to low-density residential surrounded by suburban activity.

The proposed works will integrate well with the surrounding land and will result in less than minor effects on the existing character and amenity of the site and the surrounding area.

The earthworks have been designed in such a manner as to retain the dominant landforms within the site and retain the rolling nature of the remnant dunes. Much of the existing vegetation will be retained and enhanced through planting on completion of the works.

The site and surrounding environment, containing a range of established activities and built form, is considered to be capable of accommodating and absorbing the proposed earthworks, both during and post construction.

Based on the above, it is considered the proposed earthworks will result in less than minor adverse visual effects.

I concur with the above assessment.

Effects on Context and Surroundings Including any Effects on 'Key Access and Viewpoints' Listed in the Schedule of Historic Heritage

There are no key access or viewpoints relevant to the site.

The Effects on Water Collection Areas

The site is not located within a Water Collection Area.

Ecological Effects

The proposed earthworks will be undertaken well clear of the ecological site (K170) within the site and therefore, it is considered there will be less than minor ecological effects.

7.5 Conclusion on Adverse Effects


Overall, the adverse effects of the proposed earthworks are considered to be less than minor and therefore there are no affected parties.

7.6 s95A Public Notification

Recommendation:

That the application **need not be publicly notified** in accordance with Sections 95A and 95C-95D of the Resource Management Act 1991 as although public notification is not precluded:

- public notification has not been requested;
- the application does not involve the exchanging of reserve land;
- the adverse effects are not more than minor; and,
- no special circumstances apply.

Reported and Recommended by:  Marnie Rydon
Consultant Planner

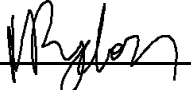
Decision: *"That the above recommendation be adopted."*

Delegated Officer (Peer Reviewer):  Sarah Banks
Senior Resource Consents Planner

7.7 s95B Limited Notification

Recommendation:

That the application be processed on a **non-notified** basis in accordance with Sections 95B and 95E of the Resource Management Act 1991 as although not precluded from limited notification, the adverse effects are less than minor and there are no special circumstances.

Reported and Recommended by:  Marnie Rydon
Consultant Planner

Decision: *"That the above recommendation be adopted."*

Delegated Officer (Peer Reviewer):  Sarah Banks
Senior Resource Consents Planner

8 SECTION 104 ASSESSMENT

In considering the merits of an application, Section 104 of the Resource Management Act 1991 must be considered. Section 104 is set out below:

104 Consideration of applications

- (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*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from 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.*
- (2A) *When considering an application affected by section 124 [or 165ZH(1)(c)], the consent authority must have regard to the value of the investment of the existing consent holder.*
- (2B) *When considering a resource consent application for an activity in an area within the scope of a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, a consent authority must have regard to any resource management matters set out in that planning document.*
- (2C) *Subsection (2B) applies until such time as the regional council, in the case of a consent authority that is a regional council, has completed its obligations in relation to its regional planning documents under section 93 of the Marine and Coastal Area (Takutai Moana) Act 2011.*
- (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:*
 - (b) *[Repealed]*
 - (c) *grant a resource consent contrary to—*
 - (i) *section 107, 107A, or 217:*
 - (ii) *an Order in Council in force under section 152:*
 - (iii) *any regulations:*
 - (iv) *wāhi tapu conditions included in a customary marine title order or agreement:*
 - (v) *section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011:*

- (d) grant a resource consent if the application should have been notified and was not.
- (4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.
- (5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.
- (6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.
- (7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.

Sections 104A-104D set out particular restrictions on determining applications for controlled, restricted discretionary, discretionary, or non-complying activities. The relevant provisions are summarised below:

104C Particular restrictions for restricted discretionary activities

Section 104C states:

- (1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which –
- (a) a discretion is restricted in national environmental standards or other regulations;
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.
- (2) The consent authority may grant or refuse the application.
- (3) However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which –
- (a) A discretion is restricted in national environmental standards or other regulations;
 - (b) It has restricted the exercise of its discretion in its plan or proposed plan.

Section 104(6) allows the consent authority to decline a consent application if it has inadequate information to determine the application.

Adequate information was provided to process the application following responses being provided to the further information request.

8.1 Internal Consultation

Council's Roading team reviewed the application and following further information being, conditions have been provided to ensure the works within legal road and the access are suitable for the heavy vehicles required for the earthworks.

8.2 Actual or potential effects on the environment

Section 104(1)(a) of the RMA requires the council to have regard to any actual and potential effects on the environment of allowing the activity. This includes both the positive and the adverse effects.

Methods of analysis to determine the actual or potential environmental effects of the activity have focused on site visits, studies of Council held data and feedback from other relevant Council departments.

Almost all of the effects related to the proposed development have been discussed in detail above at section 7 of this report. Aspects which have not already been covered are discussed below.

8.3 Positive Effects

The earthworks to facilitate the construction of a driveway will allow for the site to be used for its intended purpose and allow the landowners to access the site.

8.4 Adverse Effects

The Degree of Compliance with any Applicable Environmental Management Plan or Structure Plan Applicable to the Development

There are no applicable environmental management or structure plans.

Imposition of Financial Contributions

Financial contributions are not applicable to the proposed earthworks.

Degree of Compliance with Council's Subdivision and Development Principles and Requirements, 2012

Council's Development Engineer has reviewed the application and following the provision of further information provided conditions to ensure that the proposed earthworks meet the Subdivision and Development Principles and Requirements 2012 (SDPR).

Council's Roding team has also reviewed the application in the context of the SDPR with respect to access. A number of concerns were raised with respect to the proposal and the use of the unformed legal road for access and the impact of these on the receiving environment which includes the resource consent for the adjoining subdivision at 54 Te Moana Road. Following a number of requests and responses, Council's Roding team have provided conditions to ensure that access is suitable and the effects are acceptable. These are included in section 11 of this report.

8.5 Summary of Actual and Potential Effects

The actual and potential effects of the proposal can be adequately avoided, remedied or mitigated by the imposition of the conditions to ensure they are less than minor.

8.6 National Environmental Standards – s104(1)(b)(i)

There are currently six operative National Environmental Standards, these relate to the air quality, sources of drinking water, telecommunication facilities, electricity transmission activities, contaminants in soil and plantation forestry.

None of these are considered relevant to the proposal.

8.7 National Policy Statements – s104(1)(b)(iii)

There are currently five operative National Policy Statements, these relate to the Coastal Environment, Urban Development Capacity, Freshwater Management, Renewable Electricity Generation and Electricity Generation.

The site is within the Coastal Environment and therefore, the Coastal Policy Statement is relevant and is assessed below.

8.7.1 New Zealand Coastal Policy Statement (NZCPS) – s104(1)(b)(iv)

The purpose of the NZCPS is to state policies in order to achieve the purpose of the RMA in relation to the coastal environment of New Zealand.

The Objectives of the New Zealand Coastal Policy Statement 2010 are:

- *To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land;*
- *To preserve the natural character of the coastal environment and protect natural features and landscape values through:*
- *To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment:*
- *To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment:*
- *To ensure that coastal hazard risks taking account of climate change:*
- *To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development:*
- *To ensure that management of the coastal environment recognises and provides for New Zealand's international obligations regarding the coastal environment, including the coastal marine area.*

It is considered that the proposed earthworks will be in keeping with the above objectives of the New Zealand Coastal Policy Statement. The risks associated with the proposed earthworks, being in close proximity to the coast, needs to be balanced with enabling communities to still provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development. In this instance it is considered that proposal meets this balance.

Although the earthworks will be undertaken on sand dunes, they have been designed to largely retain the coastal natural character of the site.

8.8 Wellington Regional Policy Statement – s104(1)(b)(v)

The Wellington Regional Policy Statement (RPS) sets out the strategic framework for managing the use, development and protection of the natural and physical resources of the Wellington region in an integrated and co-ordinated manner.

The RPS provides an overview of the resource management issues for the region (within the regional council's functions under s.30 of the RMA), and states the policies and methods required to achieve the integrated management of the region's natural and physical resources. I am of the opinion that none of the Policies and Objectives of the RPS are relevant to this proposal.

8.9 Plan or Proposed Plan – s104(1)(b)(vi)

Operative District Plan

The following Objectives and Policies apply to this application:

C.2.1 – Rural Zone

Objective 1.0 – General

Policy 1(B) – Natural Environment – Use and Development

C.6.1 – Tangata Whenua

Objective 1.0 – Treaty of Waitangi

Policy 4 – Waahi Tapu, Sites of Cultural Importance and Other Taonga

Policy 5 – Relationship with the Natural Environment

Policy 7 – Coastal Environment

C.7.2 – Rural Subdivision and Development

Objective 1.0 – General

Policy 2 – Coastal Dune Environment

Policy 3 – Visually Sensitive Areas

C.7.3 – Earthworks

Objective 1.0 – General

Policy 1 – General Assessment Criteria

Policy 3 – Waahi Tapu and Cultural Sites

See the Operative District Plan for the complete text of the above Objectives and Policies.

Proposed District Plan Appeals Version

The following Objectives and Policies of the Proposed Plan are of particular relevance to this application:

Objectives:

2.1 – Tangata Whenua

2.3 – Development Management

2.4 – Coastal Environment

2.9 – Landscapes, Features and Landforms

2.11 – Character and Amenity Values

2.14 – Access and Transport

Natural Environment Policies:

3.10 – Tangata Whenua

3.14 – Earthworks

Rural Zones Policies:

7.2 – Rural Character

7.12 – Rural Dunes Zone

Infrastructure, Services and Associated Resource Use Policies:

11.4 – Managing Adverse Effects

11.11 – Quality of Infrastructure Design and Services

11.34 – Effects of Land Use on Transport

11.35 – Safety

For the full text of the above provisions, reference can be made to the Proposed Plan.

8.9.1 Summary

Overall, greater weight has been given to the PDP Objectives and Policies. The relevant Objectives and Policies endeavour to ensure that development does not detract from the character and amenity of the surrounding environment.

In this case, the proposed earthworks meet the intent of the relevant objectives and policies. The earthworks have been designed to largely retain the coastal and rural natural characters of the site and the Applicant has undertaken consultation with local iwi and concerns raised have been resolved.

Wellington Regional Proposed Natural Resources Plan

The Proposed Natural Resources Plan for the Wellington Region was notified on 31 July 2015. I am of the opinion that, in this particular case, none of the provisions of the plan are relevant because the proposed works will not be undertaken within the flood hazard areas present onsite.

8.10 Any Other Matters

Section 104(1)(c) provides that when considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

There are no other matters that are relevant to this application that need to be considered.

9 OTHER RELEVANT RESOURCE MANAGEMENT ACT SECTIONS

9.1 Conditions of Resource Consents – s108 or s220

Draft conditions were circulated to the Applicant's Agent on 10 March 2022. Following several emails pertaining to the conditions, they were agreed to by return email on 5 April 2022 thereby meeting the requirements of section 108AA of the RMA.

9.2 Review Condition – s128

No review condition is recommended.

9.3 Financial Contribution Conditions

No financial contributions are applicable to this consent.

9.4 Monitoring

No monitoring conditions will be included in this consent.

10 PART 2 MATTERS

Any consideration under Section 104(1) is subject to Part 2 of the Act. Part 2 sets out the purpose and principles of the Act. In addition, Part 2 requires the Council to recognise and provide for matters of national importance (Section 6); have particular regard to other matters (Section 7); and to take into account the principles of the Treaty of Waitangi (Section 8).

10.1 Section 5-Purpose

Section 5(1) states that the purpose of the Act is to promote the sustainable management of natural and physical resources.

The proposal is in accordance with Section 5 of the Act as it allows for the earthworks to be undertaken without having a detrimental impact on the residential environment or any neighbouring properties.

10.2 Section 6-Matters of National Importance

Section 6 establishes eight matters which must be recognised and provided for by all persons exercising functions and powers under the Act.

There are no relevant Matters of National Importance.

10.3 Section 7-Other Matters

Section 7 establishes eleven matters which all persons exercising functions and powers under the Act shall have particular regard to.

The proposal allows for the efficient use and development of a finite resource with reference to parts (b), (c) and (f) because this proposal allows for earthworks without having a detrimental impact on the surrounding environment.

10.4 Section 8-Treaty of Waitangi

The proposal is considered to be in accordance with the principles (partnership, participation and protection) of te Tiriti o Waitangi as consultation has been undertaken with local iwi as outlined earlier in this report.

10.5 Conclusion on Part 2 matters

Overall, the proposal is consistent with Part 2 matters because this proposal allows for the earthworks to be undertaken without having a detrimental effect on the surrounding environment.

11 RECOMMENDATION

That the undersigned officers, acting under authority delegated from the Council and pursuant to Sections 104 and 104C of the Resource Management Act 1991, hereby **grant** consent to undertake earthworks within a waahi tapu site that do not meet the permitted activity standards at Te Moana Road, Waikanae (being Lot 1 DP 88064) subject to the following conditions which were imposed under Section 108 of the Resource Management Act 1991.

Conditions:

General

1. The proposed activity shall be undertaken in general accordance with the Land Matters Limited plans:
 - Erosion and Sediment Control Measures Plan, Drawing No. J610-ENG-100, Rev. E
 - Driveway – Earthworks Plan, Drawing No. J101-ENG-101, Rev. D
 - New Driveway, Drawing No. J610-ENG-102, Rev. D
 - Driveway – Typical cross Section, Drawing No. J610-ENG-103, Rev. C
 - Driveway Long Section Page 1 of 2, Drawing No J610-ENG-104, Rev. A
 - Driveway Long Section Page 2 of 2, Drawing No. J610-ENG-105, Rev. A

All stamped as 'Final Approved Plans' on 7 April 2022 and the information and specifications lodged with the application RM200115 and the further information supplied by Land Matters Limited on 29 September and 7 December 2021 and 3 March 2022 except where modified by conditions of consent.

Note: Amendments can be made to plan J610-ENG-102 where this is agreed by Council's Access and Transport Manager and where these amendments are considered to be in general accordance with the resource consent approved plans.

2. Notice of proposed land disturbance must be provided to Heritage New Zealand Pouhere Taonga at least 10 working days prior to work commencing.
3. Earthworks shall comply with the requirements of NZS 4431:1989 unless otherwise specifically approved in writing by the Council's Development Engineer. Within 20 working days of the completion of the earthworks, the consent holder shall provide a report and a certificate in the form of Appendix A of NZS 4431:1989 by the inspecting engineer to the Council's Development Engineer.
4. All permanent batters shall be self-supporting and shall not exceed maximum of 30 degrees as per the recommendation of Hamish Well within the Further information response supplied dated 4 Nov 2021.
5. A stormwater disposal design for the site shall be provided as per the Land Matters plan *Erosion and Sediment Control Measures Plan, Drawing No. J610-ENG-100, Rev. E* and in accordance with the principles contained in Part 3 Section E of the Kapiti Coast District Council's Subdivision and Development Principles and Requirements, 2012 (SDPR), for consideration and acceptance by the Development Engineer.
6. Earthworks shall be undertaken as per the requirements of the approved Earthworks and Sediment Control Plan (ESCP) supplied with consent application and dated June 2020. Any proposed amendments to the ESCP shall be submitted to the Council's Development Engineer for consideration and approval. No work shall commence until amendments to the ESCP has been approved by the Council's Development Engineer.
7. Following works required by conditions 11 and 12 an agreement is to be entered into (with Council) in respect of the vehicular access within unformed legal road being constructed and maintained by the applicant. This condition will not apply in the event that a legal road is formed, and Council assumes responsibility for its maintenance.
8. The earthworks will ensure that the gradient of the access shown on the Land Matters plan *New Driveway, Drawing No. J610-ENG-102, Rev. D* can comply with NZS 4404:2010, and where the access is on legal road the gradient must be no steeper than 1 in 8 and comply with the ground clearance templates in the Operative District Plan 2021.
9. The gradient from the legal road boundary into the site must be no more than 1 in 8 for a distance 10m and must comply with the ground clearance templates in the Operative District Plan 2021.
10. Any damage to the legal road or the access on legal road caused by the earthworks and associated vehicles and vehicle movements must be rectified at the expense of the applicant to the satisfaction of Council's Access and Transport Manager.
11. Prior to use of the new driveway within Lot 1 DP 88064, an access and heavy-duty vehicle crossing must be provided. The access and crossing must be formed to construction standards and comply with Roading Standard Drawing KCDC-RD-006.

Note: It is recommended to the applicant in undertaking design works that this design considers both existing activities and those anticipated with granted application RM190176A.

12. Prior to the use of the new driveway within Lot 1 DP 88064, a sealed passing place within the legal road to the east of 54 Te Moana Road in accordance with NZS 4404:2010 and the SDPR to address safety concerns and prevent conflict between the earthworks trucks and vehicles associated with the existing dwelling and expected development at 54 Te Moana Road.

Advice Notes:

- If any landscaping is to be undertaken, it is recommended that plants used are native to the Foxton Ecological District.
- The consent holder shall notify the Council's RMA Compliance Officer of the start and completion dates of the works in writing 48 hours before the works are carried out. The consent holder shall fill out and return (by email to the duty compliance officer at compliance.dutyofficer@kapiticoast.govt.nz, or by fax to (04) 2964 830 or by post to Private Bag 60601, Paraparaumu) the form that is attached to the decision letter.
- The consent holder shall pay to the Kapiti Coast District Council the actual and reasonable costs associated with the monitoring of conditions (or review of consent conditions), or supervision of the resource consent as set in accordance with Section 36 of the Resource Management Act 1991. These costs* may include site visits, correspondence and the actual costs of materials or services which may have to be obtained.

*Please refer to Kapiti Coast District Council's current schedule of Resource Management fees for guidance on the current hourly rate chargeable for Council's staff.

- Under Section 125 of the Resource Management Act 1991, this resource consent will lapse in five years, unless it is given effect to within that time.
- It is the consent holder's responsibility to comply with any conditions imposed on this resource consent prior to and during (as applicable) exercising this resource consent.
- Please note that a resource consent is not a consent to build. A building consent must be issued prior to any building work being undertaken.
- If you disagree with any of the above conditions or disagree with the additional charges relating to the processing of the application, you have a right of objection pursuant to sections 357A or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of notification of the decision.
- The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety in Employment Act 1992), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.
- This consent does not permit any earthworks being undertaken within 5m of the ecological site, or the removal of any protected native vegetation.
- A separate application is required for a building consent if any earth-retaining structure is intended as part of this work and the wall is higher than 1.5 metres or is subject to surcharging.
- Works within the legal road will only be approved where they comply with Council procedures and processes which are set out below:
 - a. Before undertaking work in the legal road you must make a Corridor Access Request (CAR) and receive a Works Access Permit (WAP) from us. Some examples of activities requiring a permit are:
 - trenching works;
 - footpaths and entranceways;
 - work within the berm or shoulder of the road; and
 - tree work scaffolding and crane work.
 - b. Before any excavations are undertaken a "Before U Dig" inquiry must be made to check for locations of any underground services. This is a web based service that you or your

contractor use to get plans and information emailed out to you. This also provides the mechanism for you to make a Corridor Access Request and provide us with a Traffic Management Plan to protect your site, contractors, and the public during operations. Corridor Access Requests require 5 working days' notice before work can commence and Traffic Management Plans for road closures and events must be received 42 working days in advance of the closure or event. Please note: The "Before U Dig" service has no information on council's buried water, wastewater or stormwater assets. Our mapping tools show the location of the buried council assets.

- c. Work must be undertaken in accordance with Councils guides and standard drawings. Examples of forms, guides and standards drawings (engineering plans) are available for download or print from the Council website and examples include:
 - Vehicle Installation Information;
 - Vehicle Crossing Application Form;
 - Roding Standard Drawings; and
 - Vehicle Crossing Guidelines.
- Evidence of archaeological sites may include kōiwi (human skeletal remains), taonga Māori (Māori artefacts), oven stones, charcoal, shell middens, ditches, banks, pits and old building foundations. If any archaeological site(s) are uncovered during physical works, Ātiawa ki Whakarongotai Charitable Trust will require the contractor to adopt the following protocols:
 - a. Work shall cease immediately within 100 metres of the site of discovery.
 - b. The contractor and subcontractor(s) must shut down all machinery, isolate and secure the site, and advise the project manager.
 - c. No materials relating to the artefacts or site shall be removed.
 - d. The project manager shall promptly advise Ātiawa ki Whakarongotai Charitable Trust.
 - e. If skeletal remains are uncovered, the project manager will also advise New Zealand Police.
 - f. An archaeologist approved by Ātiawa ki Whakarongotai Charitable Trust shall be employed at the expense of the contractor to examine and record the site.
 - g. Ātiawa ki Whakarongotai Charitable Trust will at their discretion contact other iwi groups and organise a site inspection by appropriate tangata whenua advisors and the archaeologist.
 - h. If as a result of the site inspection and investigation there is a need for an appropriate ceremony, Ātiawa ki Whakarongotai Charitable Trust will arrange such at the contractor's expense.
 - i. Materials discovered will be handled and removed by the Ātiawa ki Whakarongotai Charitable Trust representatives responsible for the tikanga appropriate to their removal and preservation, or re-interment.
 - j. Works affecting the archaeological site shall not resume until Ātiawa ki Whakarongotai Charitable Trust, and the New Zealand Police in the case of skeletal remains, have given the appropriate consent, approval or authority for work to continue. The contractor and subcontractor(s) will allow representatives of Ātiawa ki Whakarongotai Charitable Trust and the archaeologist all reasonable access to the site to carry out their respective responsibilities or activities under this protocol.

Contact details for iwi representatives are as follows:

Ātiawa ki Whakarongotai Charitable Trust

PO Box 509

Waikanae 5250

12 DECISION

That the above recommendation be adopted under delegated authority.

Reasons for Decision:

In accordance with Sections 104 and 104C of the Resource Management Act 1991, the actual and potential effects associated with the proposed activity have been assessed and are outlined above.

I consider that the adverse effects of the proposed activity on the environment will be less than minor and that the proposed activity is not contrary to the Objectives and Policies of the Kapiti Coast Operative and Proposed District Plans.



Marnie Rydon

Consultant Planner



Sarah Banks

Senior Resource Consents Planner