

*Hearing Before:
Kāpiti Coast District Council*

Resource Consent Application

Being in relation to the proposed subdivision and use of land zoned Rural Lifestyle

DECISION REPORT OF INDEPENDENT HEARING PANEL

Dated: 2 November 2022

Result: Land Use and Subdivision consents are granted subject to the conditions in Attachment 1.

Approved for release and publication on the website of Kāpiti Coast District Council by Mark Ashby (Chairperson) while reserving the power to make minor corrections and amendments to the grant of resource consent if required under the Resource Management Act s133A. If that occurs the corrections will be published and circulated.

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Attachment 1 Consent Conditions

Glossary

Acronym/Term Definition	Definition
KCDC	Kāpiti Coast District Council
GWRC	Greater Wellington Regional Council
RMA	Resource Management Act
RPS	Regional Policy Statement
NPS-UD	National Policy Statement- Urban Development

1 Overview

1.1 Introduction

- 1.1.1 Our decision is to **grant subdivision and land use consent** subject to conditions. Our reasoning and conclusions are contained in this report.
- 1.1.2 The conditions of consent are appended as Attachment 1. At various places we include references to the consent conditions. These references are typically in brackets and use the numbering system agreed between the Applicant and the consent authority planner.
- 1.1.3 The statutory aspects of the proposal are initially outlined in Section 3.2.3 below. The granting of resource consents is a process under the Resource Management Act (“the Act” or “RMA”).
- 1.1.4 The Project requires resource consents from Kāpiti Coast District Council (KCDC). The site is zoned Rural Lifestyle in the district plan. The Applicant has already obtained consent needed from Greater Wellington Regional Council (GWRC). In most situations, our report refers generically to the ‘proposal’, ‘project’, ‘works’ or similar variations.
- 1.1.5 To assist in our understanding of the environment and the Project, we undertook two site visits. The first (separately, on different days by each commissioner) occurred before the hearing. The second, undertaken together, took place on 11 August – a week after the hearing. For the first visit we focussed on the surrounding area and did not enter the subject land. For the second visit we walked through the subject land from the south to the north. On the return leg we walked south down Tieko Street, then along Otaihanga Road. On both occasions we visited the site unaccompanied by any other party.

1.2 Roles and responsibilities of the parties

- 1.2.1 The roles and responsibilities of the parties, other than submitters in opposition or support, were set out within various application and hearing documentation. It is, however, useful to repeat these here for the sake of clarity.
- 1.2.2 The Applicant is M R Mansell, R P Mansell and A J Mansell. The Applicant was supported by expert consultants in designing the proposed subdivision and assessing its effects. At the hearing, the Applicant’s consultant team presented expert written and oral evidence. Relevant Applicant experts also took part in witness conferencing, and discussions with KCDC staff, as directed by the commissioners. The Applicant’s Planning expert responded to information requests made in panel Minutes. As is standard practice for hearings, the Applicant was also afforded a ‘right of reply’, which was provided in written form by the Applicant’s legal counsel.
- 1.2.3 Being subject to limited notification, the application was made available to the owners / occupiers of specific properties in the surrounding area. Each of those persons had the opportunity to make a written submission and, if they chose, to also appear at the hearing. The Applicant or any submitter may appeal the decision, and the process for this is outlined in the Council’s cover letter accompanying the decision.

- 1.2.4 Consent under the district plan is required for various reasons (set out later) but overall the activity status is considered non-complying. KCDC is the consent authority that must determine whether to grant or decline the resource consent application. Resource consent has already been obtained from Greater Wellington Regional Council (GWRC) with regard to earthworks and stormwater discharge.
- 1.2.5 As independent commissioners, our remit provides us with full autonomy to make the necessary decisions and impose conditions of consent on behalf of KCDC. It is not within our authority to revisit the consent granted by GWRC.

2 Location and Proposed Works

Location and Works

- 2.1.1 A description of the existing environment and the project can be found in full within Sections 2 and 3 of the Applicant's AEE.
- 2.1.2 The proposed location of the works is set out in the Application documents, and Section 2 of the KCDC's s42A Officer's report prepared by Ms Rydon. In summary, the Project focuses on an approximately 18 hectare block of irregularly shaped land that lies between the Kāpiti Expressway, Tieko Street, and Otaihanga Road. The land has been farmed in the past as part of a larger block of land but is now separated from that land by the Expressway.
- 2.1.3 Our decision report concerns a proposal to subdivide approximately 18 hectares of land zoned Rural Lifestyle, with associated physical works to give effect to the project. The existing six lots would be subdivided into 53 lots. The proposal is characterised by 22 mostly larger residential lots in the north of the area, and a grouping of 24 mostly smaller residential lots at the southern end. The northern lots will be accessed via an extension of Tieko Street. The southern lots will be accessed via a new cul de sac off Otaihanga Road.
- 2.1.4 There is also a lot set aside as a small public reserve, and an access lot containing a Shared Urban Path (SUP)¹ between the southern and northern parts of the development. Another 4 lots provide for internal roading and widening of existing roading. There is also a lot for drainage and water storage in a constructed wetland adjoining Otaihanga Road.

Adjacent Community

- 2.1.5 Residents adjoining and near the proposed development mostly access their properties from Tieko Street. For a general sense of some key characteristics of the adjacent community we adopt the following descriptions provided in the evidence of (1) Mr Foy, the Applicant's economics expert, and (2) Ms Fraser, the Applicant's traffic expert.
- 1) "The PDP [proposed district plan] describes Otaihanga as 'a quiet low density area which is set apart from the main urban area'. It also notes that the area is strongly linked to the river. Much of Otaihanga is rural in nature, although the Site is directly adjacent to

¹ Providing for walking and cycle access between the otherwise separate northern and southern parts of the development

the General Residential Zone that is bounded by Tieko Street in the south, Otaihanga Road to the west, and rural land and the river to the north.”²

- 2) “Tieko Street would originally have been constructed as a rural road and has over many years been transitioning towards being a residential street as demonstrated by the development pattern along the northern side of the street. As a rural road serving a limited number of properties it was constructed with a narrow formed width and roadside drainage rather than kerb and channel. As traffic activity has increased and without kerbs to constrain vehicle paths, vehicles are meeting more frequently, and damage is occurring to the seal edge. This is an existing maintenance issue that will need to be addressed by Council regardless of the proposed subdivision.”³

Environmental Characteristics

- 2.1.6 For a general sense of the site environment, we adopt the following description provided in the evidence of Mr Goldwater, the Applicant’s ecologist, that is: *“The site largely comprises rank pasture with pine shelterbelts and four natural wetlands on highly modified dunes. Indigenous vegetation is restricted to several stands of kānuka, all of which meet the size threshold for significance under Schedule 3.2 proposed Kāpiti Coast District Plan. The overall ecological values are considered to be low.”*⁴
- 2.1.7 Mr Goldwater’s evidence acknowledges the presence of indigenous bird and lizard species. Potential effects on these species are considered in section 11 of our decision report.

Historic Heritage

- 2.1.8 The consent application included an Archaeology assessment that, among other matters, addressed the existence of a remnant dray⁵ track. The existence of a dray track is indicated on an 1870 survey office plan of the wider area. Today, in several locations, the Archaeology assessment identifies depressions, or a broad trench, that likely represent the dray track location. Those features are consistent with 1952 aerial photography of a more intact feature.
- 2.1.9 The Archaeological assessment notes that here is a high likelihood of there being unrecorded midden sites within the proposed subdivision, although no evidence was visible during a site inspection.

² Paragraph 5.5, Statement of Evidence of Derek Foy, 18 July 2022

³ Paragraph 8.10, Statement of Evidence of Harriet Fraser, 19 July 2022

⁴ Paragraph 2.1, Statement of Evidence of Nicholas Goldwater, 21 July 2022

⁵ Typically, a two-wheeled truck or cart without sides

3 The Consents Sought

3.1 Application History

3.1.1 As noted by the Applicant, the proposal to subdivide the land was triggered by development of the Kāpiti Expressway. In effect, the Expressway has divided the Applicant's land into two parts. The land subject to the proposal is immediately west of the new road which was officially opened in February 2017. Mr Hansen, the Applicant's Planner, told us that he has been involved in the project proposal since April 2017 – including initial scoping, identifying the required consents, and identifying the expert assessments required.

3.1.2 Ms Tancock, the Applicant's legal counsel, provided an outline of the consent application history⁶. It usefully summarises the changing planning policy environment over the period from the date of lodgement, up to August 2022. We have incorporated these, and other dates / matters of relevance provided to us in evidence, into the following timeline:

- 1) Application lodged: 30 June 2021
- 2) National Planning Standards Amendments⁷ in force: 30 June 2021
- 3) Further information process: 26 July – 12 October 2021
- 4) Limited Notification: 14 October 2021
- 5) RMA amendments (Enabling Housing Supply and Other Matters): December 2021
- 6) National Policy Statement on Urban Development (NPS-UD): May 2022
- 7) Council officer's report (s42A): 13 July 2022
- 8) Hearing dates: 3 and 4 August; 7 September 2022
- 9) Notification of Kāpiti Proposed Plan Change 2 – Intensification: 18 August 2022
- 10) Joint Witness Conferencing: 24 August 2022
- 11) Notification of GWRC Proposed Plan Change 1 to Regional Policy Statement: 25 August 2022

3.1.3 We note that at some point after lodgement, the Applicant held discussions with KCDC about matters such as the Tiekō street works and the Shared Path. From the Applicant's perspective, discussions on those matters were unproductive, and the issues were revisited during the hearing and witness conferencing.

3.1.4 Ms Tancock described the 15 month timeline between lodgement and September 2022 as 'an unfortunate aspect' of the application processing. We agree with that sentiment. In particular, we note that the timing has coincided with significant changes (or proposed

⁶ 7 September 2022, *Memorandum of Counsel for the Applicant in Response to Matters Raised in Minutes 2 & 3*

⁷ The effect of this was a re-issued district plan, with numbering and naming conventions of the National Planning Standards adopted into the district plan. However, Zone names, and Policy and Rule numbers referred to in the application and other related documents (s42A report, hearing evidence), are based on the old nomenclature.

changes) to the national, regional, and local policy frameworks. The Applicant, Council, and we as the panel have each had to give serious consideration to implications arising from those changes.

3.2 District Plan Resource Consents

3.2.1 The matters sought to be covered by the consents are set out in the Application documents and Section 6.3 of the KCDC s42A Officer's report. In summary, as reported in Mr Hansen's evidence, the matters are as set out below.

Subdivision Consent

- 1) A Subdivision Consent under Rule 7A.5.3 as standard 4 for restricted discretionary activities in Rule 7A.3.2 cannot be met – **non-complying** activity.
- 2) A Subdivision Consent under Rule 9A.3.2 as the proposed subdivision is on a site where there is a ponding area – **restricted discretionary** activity (subject to standards).
- 3) A Subdivision Consent under Rule 9B.3.3 as the proposed subdivision is on peat or sand soils – **restricted discretionary** activity (subject to standards).
- 4) A Subdivision Consent under Rule 11B.5.1 as the proposed subdivision creates new lots in the rural zone and is not provided for in Rule 11B.3.2 – **non-complying** activity.

3.2.2 Based on the general principle that activities should be bundled and the most restrictive activity classification applied to the overall proposal, the subdivision consent application is overall considered to be **non-complying**.

Land Use Consent

- 1) A Land Use Consent under Rule 3A.3.4 as the permitted activity standards for earthworks in Rule 3A.1.6 cannot be met – **restricted discretionary** activity (not subject to any standards).
- 2) A Land Use Consent under Rule 9A.3.4 as the permitted activity standards for earthworks in ponding areas in Rule 9A.1.4 cannot be met – **restricted discretionary** activity (not subject to standards).
- 3) A Land Use Consent under Rule 3A.3.1 as the permitted activity standards for the trimming/modification of indigenous vegetation within 20m of a water body may not be met – **restricted discretionary** activity (not subject to standards)
- 5) A Land Use Consent under Rule 7A.3.1 as the permitted activity standards for yard setback requirements (for Lots 23 – 46) in Rule 9A.1.3(5) cannot be met – **restricted discretionary** activity (not subject to standards).
- 6) A Land Use Consent under Rule 11E.1.3(4) as the permitted activity standards for the maximum allowable width of access (to Lots 3 and 4) in Rule 11E.1.4 cannot be met – **discretionary** activity.
- 4) A Land Use Consent under Rule 11A.2.1 11 for new roads meeting the relevant standards – **controlled** activity.

- 3.2.3 Based on the general principle that activities should be bundled and the most restrictive activity classification applied to the overall proposal, the land use consent application is overall considered to be **restricted discretionary**.

Overall Status and Numbering Update

- 3.2.4 For clarity and consistency with the current version of the district plan, which has been updated to reflect the National Planning Standards, the reasons for the proposal being non-complying are:
- A Subdivision Consent under Rule SUB-RUR-56 as standard 2(a) for restricted discretionary activities in SUB-RUR-R51 cannot be met.
 - A Subdivision Consent under Rule SUB-DW-R23 as the proposed subdivision creates new lots in the rural zone and is not provided for in Rule SUB-DW-R4.
- 3.2.5 Considered separately, the subdivision and land use aspects are respectively non-complying and restricted discretionary. However, as the physical works are not separable from the subdivision (i.e., the subdivision relies on the physical works) the application overall is regarded as **non-complying** – being the most restrictive category. All of the Planning experts agreed on that point and the panel takes the same approach.

4 Regional Consents

4.1 Regional Consents Obtained

- 4.1.1 Regional consents were obtained on 28 October 2021.
- 4.1.2 Mr Hansen’s evidence in chief (section 1.6) lists the specific permits and consent. We repeat his listing below and do not consider it necessary to set out further detail:
- (a) Discharge permit for sediment laden runoff to land/water [WGN210352 (37614)]
 - (b) Discharge permit for operation stormwater to land where it may enter water including to land within 100m of a natural wetland [WGN210352 (37803)]
 - (c) Land use consent for earthworks/soil disturbance [WGN210352 (37804)]

5 Processes Around the Hearing

5.1 Public Notification and Submissions

- 5.1.1 The application was publicly notified on 14 October 2021, with the submission period closing 11 November 2021. We understand that the delay between the end of the submission period and the commencement of the in-person hearing is related to the further information process, and also to the Covid pandemic.
- 5.1.2 Thirteen submissions were received. Other than the submission of Waka Kotahi, all submissions were from owners / occupiers of land in the vicinity of the proposed development. Ten submissions were opposed to the development in full or part; two were in support in full or part; and the Waka Kotahi submission was considered to be neutral.

- 5.1.3 The most common submission points related to traffic. This includes safety effects on Tiekō Street arising during construction and over the longer term, as well as safety / delays when exiting onto Otaihangā Road. The next most common theme was overall effects rural character / amenity. Further specific amenity effects referred to included noise, light, and loss of vegetation. Some submitters also expressed concerns about effects on wildlife, and comments were also received about pest control and weed management.
- 5.1.4 A more detailed summary of the viewpoints expressed by submitters appearing at the hearing is set out in section 6.4.1.
- 5.1.5 The Applicant liaised with the Ātiawa ki Whakarongotai Charitable Trust regarding various scheme plans in the lead up to lodging the application. Post-lodgement, the Applicant provided confirmation from the Trust that the concerns of the Trust had been adequately satisfied. Further work continued with the Trust and we comment on that in section 7, with respect to historic Dray Track.

5.2 Commissioners' Minutes

- 5.2.1 We issued three Minutes, as follows:
- Minute 1 (11 July 2022) was a standard Minute regarding the exchange of evidence and hearing procedures.
 - Minute 2 (12 August 2022) directed provision of further evidence / advice to address:
 - Analysis from the Planners regarding the complex planning policy framework.
 - The provision of further plans / longsections related to the shred path grades.
 - Legal advice from the Applicant about various matters.
 - Directions to the Planning and Traffic experts to conference on consent conditions; matters related to the shared pathway; and the Tiekō Street improvements.
 - Minute 3 (19 August 2022) was an addition to the planning policy analysis we requested in Minute 2. We requested that the Planners also take into account the recently notified Plan Change 1 to the Regional Policy Statement.

5.3 Expert Conferencing

- 5.3.1 No formal expert conferencing was undertaken before the hearing. However, as noted earlier, there had been engagement between the Applicant and Council with regard to the shared pathway, and also on the potential Tiekō Street improvements (and possible developer agreement).
- 5.3.2 In Minute 2, we directed expert conferencing on the matters outlined in 5.2.1 above. As an outcome of conferencing we received Joint Witness Statements from the various experts, as outlined below.

Planning

- 5.3.3 The Planning experts conferenced on 24 August, discussing proposed consent conditions (if the consent were to be granted). The conferencing was attended by Mr Hansen for the Applicant, Ms Rydon for the Council, and Ms Blackwell for the submitter NZ Custodial Trustees (103) Ltd. (regarding 44 Tieko Street). Outcomes from Planning conferencing, in terms of condition wording, formed the basis for the final set of conditions provided to us, dated 7 September. The final set of conditions attached to this decision are largely the same as the 7 September version, subject to the amendments outlined in section 19 of our report. Other outcomes, including our ultimate findings in relation to 44 Tieko Street, are discussed in section 8 of our decision report.

Shared Urban Path

- 5.3.4 The Transport and Roding experts conference on 24 August. The conferencing was attended by Ms Fraser and Mr Taylor for the Applicant, and Mr Trotter for the Council. There was substantial agreement on a number of issues, but Mr Trotter retained concerns around several details. These included the shared path surfacing, the grade of the path, and its lighting.

Tieko Street Improvements

- 5.3.5 Conferencing also occurred in relation to proposed improvements of Tieko Street. As directed by our Minute 2, the intention of conferencing was work on agreeing a Development Agreement (which sits outside of the resource consent). Our Minute noted the panel's preliminary view that a Development Agreement was a preferable means of addressing issues related to necessary upgrades of the street – as opposed to this being enforced by consent conditions. As reported to us on the final hearing day (7 September) the parties were able to agree and conclude an Agreement. Like all Development Agreements, this is a private agreement between the developer and the Council. As such, we are not party to its contents and – with the issues having been resolved – the details of the Agreement are not relevant to our decision (although its existence is).

6 Hearing Overview

6.1 Hearing Schedule

- 6.1.1 The hearing was held over three days in Paraparaumu. The first two days (3 and 4 August) were held in a meeting room of the Kāpiti public library. The third day (7 September) was held in a Council meeting room. The hearing was considered closed after we received and considered all further information requested via other Minutes, as well as the Applicant's formal right of reply (20 September). Due to other commitments of the panel, a date of 2 November was agreed by the Applicant for the issue of our decision report.

6.2 Appearances

- 6.2.1 We record the following appearances of the various parties.

For the Applicant	Role / Expertise
• Richard Mansell	• Applicant
• Phernne Tancock	• Legal counsel
• Chris Hansen	• Planning
• Nick Taylor	• Engineering and Subdivision
• Cameron Wylie	• Geotechnical
• Derek Foy	• Economics
• Nick Goldwater	• Ecology
• Chris Greenshields	• CPTED
• Harriet Fraser	• Traffic
• Craig Martell	• Flooding and Stormwater
• David Compton-Moen	• Landscape
For Kāpiti Coast District Council	Role / Expertise
• Marnie Rydon	• Planning
• Neil Trotter	• Traffic
• Robin Simpson	• Landscape
• Emma Bean	• Hearing Administration
Submitters / Property	Position
• Gerard Earl / 31D Tieko Street	• Support
• Leanne Morris / 111 Otaihanga Road	• Oppose
• Paula Keene / 68 Tieko Street	• Support
• Alan Strawbridge / 44 Tieko Street	• Oppose
• Alice Blackwell / 44 Tieko Street	• Planning expert

6.3 Applicant Appearances and Overview

6.3.1 We heard from the Applicant and their expert witnesses on Days 1 and 2 of the hearing.

6.3.2 The Applicant's case was opened by Ms Tancock, legal counsel, who presented a general overview of the proposal and statutory matters. She referred to the desirability of the Council and the Applicant negotiating a developer agreement (under the Local Government Act), to resolve the nature of upgrades to Tieko Street. She also noted that upgrades to Tieko Street would provide public benefits over and above what is needed to address the effects of the proposal.

6.3.3 Mr Mansell (the Applicant) provided us with a history of the land's ownership by his family. He advised us that the farm had been split into three approximately equal areas by development of the Kāpiti Expressway, with one third now being occupied by Expressway land. The third to the west of the Expressway is the subject of the proposal. Another third lies to the east of the Expressway and is somewhat better land that will be retained by the Applicant. Mr Mansell told us that the proposal land is in poor condition due to being uneconomic to farm, and from the encroachment of weeds and rabbits. He noted that the Expressway had changed some drainage patterns.

6.3.4 Mr Taylor, a civil engineer and surveyor, provided evidence on engineering and subdivision design matters. He noted that earthworks for the design we were asked to consider are approximately 50% less than earlier iterations, reflecting a change in the design of the

sewerage system. Mr Taylor also outlined the nature of disagreement between himself and Mr Trotter (KCDC Traffic) in relation to construction standards for the proposed shared path between the northern and southern part of the subdivision.

- 6.3.5 Mr Wylie, a geotechnical engineer, provided geotechnical evidence covering the investigations that had informed subdivision and earthworks design.
- 6.3.6 Mr Foy, a specialist in economic effects, provided evidence on the demand for residential development. He drew out attention to Te Tupu Pai, the Council’s growth strategy, which we consider later in section 16.3, and other aspects of the policy framework covering urban growth. He also commented on the viability of the land for productive agricultural purposes.
- 6.3.7 Mr Goldwater, an ecologist, provided evidence about vegetation, natural wetlands, and other ecological features of the site. In particular, his evidence covered the identification of natural wetlands as per definitions in the National Policy Statement for Freshwater Management (‘NPS-FM’) and the Proposed Wellington Regional Natural Resources Plan. He also advised of a survey undertaken for lizards, and the inclusion of a defined area of protected lizard habitat. His evidence also responded to the ecology related concerns of some submitters.
- 6.3.8 Mr Greenshields, a landscape architect who specialises in CPTED⁸ assessment, provided evidence about design related safety of the shared path. His assessment of CPTED matters covered sight lines, landscaping, lighting, and the general layout. He noted the disagreement between Mr Taylor (for the Applicant) and Mr Trotter (for KCDC) about surfacing of the shared path – but overall, from a CPTED perspective, he expressed a neutral opinion about path surfacing.
- 6.3.9 Ms Fraser, a traffic engineer, provided evidence about a range of traffic / transport related matters. These included: construction traffic; the state of Tiekō Street; traffic generation from the developed subdivision; and the nature and use of the shared path. She outlined areas of disagreement between herself and Mr Trotter, especially in relation to design parameters for the shared path, and the need for physical upgrades to Tiekō Street.
- 6.3.10 Mr Martell, a hydraulic engineer, provided evidence about stormwater management within the subdivision. Stormwater management will mostly be via designed soakage. However, in the southern part of the subdivision, Mr Martell advised us about the use of a constructed wetland to provide the primary form of stormwater mitigation.
- 6.3.11 Mr Compton-Moen, a landscape architect specialising in urban design, provided evidence about effects of the subdivision. This included effects on urban form, landscape and natural character, landscape values, and visual amenity. His evidence had regard to mitigation planting and the constructed wetland. He also responded to visual amenity concerns raised by submitters – in particular the concerns of Mr Strawbridge in relation to 44D Tiekō Street.
- 6.3.12 Mr Hansen, a planning expert appearing on Day 2 of the hearing, provided us with his evidence in chief before the hearing (as required) and a supplementary statement on Day 2. His supplementary evidence took us through proposed amendments to conditions and also

⁸ Crime Prevention Through Environmental Design

provided commentary on the evidence of Ms Blackwell (expert Planner for Mr Strawbridge – see paragraph 6.5.12 below). In particular he was critical of Ms Blackwell’s approach to the section 104D ‘gateway tests’ in assessing objectives and policies of the district plan. He also questioned her assessment of landscape and visual effects on 44 Tiekō Street and the mitigation measures proposed by Mr Strawbridge to address those effects.

- 6.3.13 On the final day of the hearing (7 September 2022), we heard from the Applicant’s legal counsel, plus Ms Fraser (Traffic) and Mr Hansen (Planning). Those parties provide final observations about the project and matters that had either been resolved, or remained unresolved, via expert witness conferencing. One of the unresolved matters was the Shared Path where there still some disagreement between Mr Trotter (Council) and Ms Fraser regarding applicable design standards.

6.4 Council Appearances and Overview

- 6.4.1 We largely heard from the Council team on Day 2 of the hearing, although they were also present during the other days and provided us with occasional responses to matters raised by the Applicant and submitters.
- 6.4.2 On behalf of the Council, Ms Rydon, a consultant planning expert, prepared the section 42A officers report which incorporated advice from other council experts. We understand that Ms Rydon had been involved in liaising with the Applicant both before and after lodgement of the application – including managing the further information process. After the first two hearing days, she participated in conferencing with Mr Hansen in relation to the proposed consent conditions.
- 6.4.3 Mr Trotter, the Council’s Transport Safety Leader, provided evidence about the existing transport environment in the vicinity of the project site. Within that context, his focus was largely on two issues, being traffic effects in Tiekō Street and development of the Shared Path between the northern and southern parts of the subdivision. With regard to Tiekō Street, he was of the opinion that consent conditions were necessary to require physical improvement works. In witness conferencing (principally with Ms Fraser) he subsequently modified his position to accept that a Development Agreement between the Applicant and Council was an acceptable mechanism for achieving desirable safety outcomes along Tiekō Street. With regard to the Shared Path, Mr Trotter’s evidence referenced various standards as grounds for requiring an approach to design outcomes that varied from that presented by the Applicant.
- 6.4.4 On behalf of the Council, Ms Simpson, a consultant landscape expert, provided a review of the Applicant’s landscape design that fed into Ms Rydon’s section 42A report. Ms Simpson also provided hearing evidence that outlined her liaison with the Applicant’s landscape expert Mr Compton-Moen during the course of developing the subdivision design. We understand that the ultimate outcome included various design modifications. Ms Simpson therefore found that the overall and individual nature of landscape and visual effects would be acceptable.

6.5 Submitter Appearances and Overview

6.5.1 Not all of those who lodged a submission appeared at the hearing. Regardless of whether a submitter attended the hearing, we have reviewed all submissions and taken them into account in reaching our decision. The submitters who did appear at the hearing, were all heard on Day two.

6.5.2 Gerard and Elizabeth Earl are landowners at 31D Tieko Street, on which they are developing a new home. Mr Earl appeared at the hearing via video link. The commissioners visited 31D Tieko Street after the hearing. At paragraph 10.4.1 we provide further comment about the Earl's site in our findings on landscape and character effects.

6.5.3 The submission of the Earls was supportive of the need for development, in relation to the provision of adequate housing supply. The submission also expressed support for the Tieko Street upgrades proposed by the Applicant (Ms Fraser's recommendations). The Earls support the shared pathway (Lot 104) being developed to standards that discourage / avoid its use by motorised vehicles.

6.5.4 The Earls' submission also noted concerns in relation to:

- Vegetation removal and its effects on noise mitigation and visual amenity, both matters being with respect to SH1.
- Traffic, with regard to the management of construction traffic, and in relation increased vehicle movements on Tieko Street on an ongoing basis.

6.5.5 In response to some of the matters covered by Mr Earl in the submission and his presentation, Ms Tancock referred us to draft conditions related to:

- The inclusion of a requirement for liaison with residents, as part of the Construction Traffic Management Plan (CTMP).
- The use of bollards on the shared path to avoid 'road' type use.
- Avoiding bird nesting season when removing vegetation.
- Replanting of trees within the Lot 19 'dog leg' if existing trees need removal when developing the access.

6.5.6 Leanne and Brent Morris live at 111 Otaihanga Road. Ms Morris appeared at the hearing. Their approximately 1 hectare lot does not adjoin but is relatively close (approx. 20m) to Lot 105 of the proposed subdivision, being the open space lot. The Morris property is also relatively close (approx. 50m) to the southern part of the proposed subdivision, which lies beyond Lot 105. Under section 10 of our report we provide further comment about the Morris property in our findings on a range of landscape and character effects.

6.5.7 The Morris submission opposed the proposed subdivision, specifically the higher density lots in the southern part of the development. The Morris submission, and Ms Morris' presentation to us as the hearing, drew our attention to potential matters of reverse sensitivity and other potential effects. The matters of concern included:

- Reverse sensitivity, with respect to the effects of noise that may be experienced by residents of the new subdivision. This was especially in relation to rural type noises, such as from geese kept on the Morris property.
- Light pollution arising from the southern, more intensive part of the subdivision

- Potential adverse effects on native birds and bats
- Any effects on council services / infrastructure
- Traffic effects on the rural character of the locality

6.5.8 In response to some of the matters raised in the submission and by Ms Morris in person at the hearing, Ms Tancock noted that the issues were addressed in Mr Goldwater’s evidence, and she also referred us to draft conditions related to:

- The existence of the reserve (Lot 105) as a buffer between the Morris property and the southern part of the subdivision.
- Restriction on lighting of the shared pathway.
- Closure of vehicle access onto Otaihangā Road in the vicinity of the Morris property.
- Landscape management plan.
- Protection of nesting birds.
- Enhancements of kānuka stands.

6.5.9 The submission of Paula Keene and John Rice (68 Tieko Street) supported the application in full. In the words of Ms Keene, this is because the land ‘needs a purpose’ – and giving it a purpose is beneficial for immediate neighbours and the wider community. In the hearing, Ms Keene noted that appears to be in a bad state of decline, as viewed from Tieko Street. She drew attention to the significant rabbit population (which we also observed during our site visit) and expressed support for the Applicant’s proposed pest control plan. She also noted support for the erosion control plan and the retention of kānuka stands.

6.5.10 In response to some of the matters raised in the submission and by Ms Keene in person at the hearing, Ms Tancock referred us to draft conditions related to:

- Pest control.
- A Construction Traffic Management Plan
- Control over the removal of vegetation and retention of kānuka.

6.5.11 The submission of NZ Custodial Trustees (103) Ltd and Pendennis Custodial Trustee Ltd opposed the application with respect to effects on the property at 44 Tieko Street. The submitter was represented by Mr Alan Strawbridge, and supported by Ms Blackwell a consultant Planning expert.

6.5.12 Both Mr Strawbridge and Ms Blackwell appeared and spoke at the hearing. Ms Blackwell also provided a brief of written evidence. Her evidence largely covered direct effects on 44 Tieko Street, arising from the development of proposed lots directly adjoining the boundaries. As such, her evidence focussed on proposed Lots 12 to 19, with a particular emphasis on proposed Lots 13, 18 and 19. The nature of the effects perceived by the submitter are covered in section 10 of our decision report.

6.5.13 Ms Blackwell’s evidence also drew our attention to Te Tupu Pai (the Council’s growth strategy). She disagreed with the evidence of Mr Foy that, in being identified as a medium priority growth area by Te Tupu Pai, the location was necessarily suitable for development

at this time. We address Te Tupu Pai in more detail at section 16.3. She also noted that KCDC draft plan change 2⁹ did not identify the site as an urban environment.

- 6.5.14 Ms Blackwell’s evidence provided analysis of district plan objectives and a policy that she considered the development would be contrary to. Based on her analysis of Objectives DO-03, DO-011, and Policy RLZ-P2, coupled with her conclusions about adverse environmental effects, her opinion was that the development would fail to pass both ‘gateway’ tests of section 104D. Ms Blackwell’s analysis of these provisions contributed to our decision to issue Minute 2, requesting the Applicant and Council to provide an analysis and summary of specific district plan provisions – including Objective DO-03 and Policy RLZ-P2.

7 Mana Whenua and Historic Heritage

- 7.1.1 We consider it important to record issues relevant to Mana Whenua. This is not required to resolve issues, but to explain that the Project is of course located within an area of interest to mana whenua. There is one group who are identified as exercising kaitiakitanga within the area affected by the proposal; Te Ātiawa ki Whakarongotai (Te Ātiawa).
- 7.1.2 Other than role of Te Ātiawa as kaitiaki and historic owner of the land, it is also the historic location of a dray track that was used by mana whenua which is of particular interest to the project. In part, the location of the proposed Shared Path reflects the historic location of the dray track.
- 7.1.3 The Applicant has provided a report prepared by Ra Higgott for the Te Ātiawa ki Whakarongotai Charitable Trust Taiao Unit. The report relates to the historical presence of the track which connected the hapū settlements of Kenakena, Paraparaumu and Waikanae and the role of the track in relation to growth of the iwi economy in the colonial period. The Te Ātiawa report supports retention of the track and particularly notes that the installation of lighting would detract from its historic value. The report anticipates being able to work alongside the developer with respect to effects on the track and the possibility of history boards. Mr Hansen’s evidence told us that a ‘key element’ of the proposal development is “In cooperation with iwi, ways (including interpretative signage relating to the Dray Track) for the identify of Ātiawa to be reflected through the development”.
- 7.1.4 We note that the Applicant has gained a general archaeological authority (from Heritage NZ) to disturb land. The authority references the need to enable Te Ātiawa tikanga; provide the iwi with archaeological reports; and be informed in the event of the accidental discovery of kōiwi or taonga.
- 7.1.5 From information presented to us at that hearing, we understand that the Applicant has worked (and will work) with Mana Whenua to understand the issues of significance and translate them into the design. We appreciate that this may not result in complete avoidance of all adverse environmental and cultural effects on any physical remains of the Dray Track.

⁹ The non-statutory draft PC2 was issued for public feedback in May 2022 – before Ms Blackwell’s evidence was prepared. The statutory proposed PC2 was notified on 18 August 2022 – after Ms Blackwell’s evidence was written and presented to us.

- 7.1.6 Project design elements that avoid / rehabilitate natural wetlands or preserve kānuka stands are also generally consistent with kaitiakitanga.

8 Effects and Findings

8.1 Overview

8.1.1 This section of our report presents our key findings related to:

- Benefits and Positive Effects
- Project Design
- Landscape and Visual
- Ecology
- Traffic
- Construction

8.2 Joint Witness Statements

8.2.1 As noted in section 5.3 above, after the first two in-person hearing days we issued Minute 2. One of the purposes of that Minute was to direct expert conferencing on several matters. These were:

- 1) Planning experts – for the purpose of resolving, if possible, outstanding differences over wording or the inclusion / exclusion of particular conditions. An outcome from this conferencing was a set of consent conditions, marked up to show remaining areas of disagreement.
- 2) Traffic experts – for the purpose of resolving, if possible:
 - a. outstanding differences related to the Shared Path; and
 - b. the use of a Developer Agreement versus consent conditions for addressing issues related to improvements on Tieko Street.

8.2.2 Arising from the witness conferencing we received three Joint Witness Statements. The matters of agreement and disagreement outlined in those Statements has influenced our findings on the nature of effects, set out in the following sections of our decision report.

8.3 Project Benefits and Positive Effects

8.3.1 An evaluation of the Project benefits and positive effects of the proposal can be found within the AEE.¹⁰

8.3.2 Comments about positive aspects have been highlighted by the Applicant's experts. Mr Hansen held the view that the additional mitigations to address landscape and amenity

¹⁰ AEE Mr Hansen, Page 47

effects will bring additional positive effects that need to be recognised.¹¹

- 8.3.3 Ms Fraser identified a number of positive transport effects, including the provision of a shared path within the site; ties-in with existing recreational active mode routes along Otaihanga Road and the Expressway, and the proximity of the existing SH1 route for ready access to Paraparaumu and Waikanae.¹²
- 8.3.4 Mr Foy considered the proposal will have some positive economic effects, and therefore net positive economic effects.¹³
- 8.3.5 Mr Goldwater identified that the proposed protection and enhancement of the four natural wetlands in particular will have a net positive effect on indigenous biodiversity through the provision of fauna habitat and enhanced floristic diversity.¹⁴

Council Expert Evidence – Benefits and Positive Effects

- 8.3.6 Council's experts also highlighted project benefits and positive effects the proposal will bring. Ms Rydon confirmed she concurs with Mr Hansen's evaluation of the project benefits and positive effects.¹⁵ Ms Rydon further concluded that in her opinion the proposal will result in more positive effects than adverse effects.¹⁶

Findings – Benefits and Positive Effects

- 8.3.7 Overall, we find that the proposal will contribute to positive social and economic benefits, including improving the natural wetlands on the site, increasing the mix of housing typology in Kāpiti, and community benefits with the additional mitigation measures proposed as conditions of consent. Community benefits will also accrue from the Developer Agreement reached (in principle) between the Applicant and the Council, in relation to physical improvements to the formation of Tieko Street.

9 Project Design – Shared Urban Path (Lot 104)

- 9.1.1 A key design feature of the development is the Shared Urban Path (SUP) which is to be vested in Council (Lot 104). The SUP has been designed to provide a pedestrian and cycle connection between the two parts of the subdivision.
- 9.1.2 Throughout the hearing there was much discussion on the final design of the SUP. The specific design matters in contention included the following:
- The final path surfacing and grade;

¹¹ EIC, Mr Hansen, Para 10.14

¹² EIC, Ms Fraser, Para 3.1(i)

¹³ EIC, Mr Foy, Para 9.4

¹⁴ EIC, Mr Goldwater, Para 8.10

¹⁵ Section 42A Report, Para 78

¹⁶ S42A Report, Para 200

- Whether the SUP should be lit to enable use during evenings and night-time.
- 9.1.3 A number of submitters put forward their view that the SUP should be a narrow non-metalled path, in keeping with the semi-rural character of the surrounding area and in line with CPTED standards. There was little to no support for a partially lit walkway due to concerns raised around illegal use by motorised vehicles including mopeds, motorbikes and cars where there are inadequate measures to prevent this (barriers, posts, signage, etc.).
- 9.1.4 Mr Taylor also outlined the nature of disagreement between himself and Mr Trotter (KCDC Traffic) in relation to construction standards for the proposed shared path between the northern and southern part of the subdivision.
- 9.1.5 The Transport and Roading experts conferencing on 24 August, as directed by our Minute 2, was attended by Ms Fraser and Mr Taylor for the Applicant, and Mr Trotter for the Council.¹⁷ There was substantial agreement on a number of issues, however Mr Trotter retained concerns around several details. These included the shared path surfacing, the grade of the path, and its lighting.
- 9.1.6 In the Applicant's right of reply, Ms Tancock summarised the disagreement between the Applicant and Council noting that there have been several attempts at resolving the differences.¹⁸ Specifically, Ms Tancock submits that Mr Trotter's views on surface and lighting and not supported by Ms Simpson (Council's Landscape expert), nor is it supported by iwi or submitters. We further note Ms Tancock's submission that Mr Trotter is not a CPTED¹⁹ expert and that the evidence of Mr Greenshields (the Applicant's COTED expert) confirmed that with no lighting proposed, and the use of an unsealed surface, the SUP design is appropriate from a CPTED perspective.

9.2 Findings – Shared Urban Path (Lot 104)

- 9.2.1 We find that the Applicant's submitted SUP design is acceptable in the context of the surrounding semi-rural character. We place more weight on the evidence of Ms Fraser with regard to the design of the SUP. We consider that the design preference of Mr Trotter is more of a straight 'application of standards' approach, as opposed taking a more holistic view and incorporating the character of the proposal and surrounding environment. We record that we accept the evidence of Mr Greenshields with regard to CPTED national guidelines noting that there was no other expert evidence submitted with regard to CPTED guidelines. In reaching our overall conclusion we have had regard to the following matters:
- 1) There is no desire from submitters for a lit, fully sealed SUP.
 - 2) The evidence of Ms Fraser has confirmed that the design of the SUP will be safe for the shared use of pedestrians and cyclists.

¹⁷ JWS – Transport and Roading Experts – 24 August 2022

¹⁸ Applicant's Reply Submissions, Para 30-37

¹⁹ Crime Prevention Through Environmental Design

- 3) The evidence of Mr Greenshields has confirmed that the lack of lighting proposed and use of an unsealed surface is appropriate.

9.2.2 In conclusion, we prefer the Applicant’s position with regard to the design of the SUP and have amended the draft conditions accordingly – specifically condition 7 and condition 72.

10 Landscape and Visual

10.1.1 A number of submitters raised the issue of landscape character and visual amenity effects. The main concerns raised include:

- loss of rural character through increased density from the creation of residential sized allotments and smaller rural residential allotments,
- a reduction of visual amenity and loss of privacy, including from the removal of vegetation,
- reverse sensitivity and light spill effects from newly created residential allotments.

10.2 Loss of Character

10.2.1 The submissions received from Matthew and Marie Andrews, Sheryn McMurry, Brett and Leanne Morris, NZ Custodial Trustee (103) Ltd and Pendennis Custodial Trustee Ltd, Brian and Stephanie Middleton all raised concerns about the loss of the rural and rural residential character through increased density. These matters have been addressed in evidence by Mr Compton-Moen on behalf of the Applicant and by Ms Simpson on behalf of the Council. No other expert landscape evidence was submitted.

10.2.2 Mr Compton-Moen in his evidence considered that aspects of rural character can and will be maintained through the fencing types/position and landscape planting, noting that the character of existing housing is typically detached dwellings, which the proposal intends to continue, albeit at a slightly higher density.²⁰ In regard to the southern area, Mr Compton-Moen concluded that overall the character and land use of the area will shift from open, undulating grass paddocks to a more concentrated, high amenity development but that the combination of the constructed wetland (Lot 200) along Otaihanga Road, and native planting and fencing controls, will ensure that the open character is retained.²¹

10.2.3 Overall Mr Compton-Moen considered that the effects on Landscape and Natural Character will be low to very low (minor or less than minor in RMA terms) due to the modified rural-residential character of the receiving environment and key landscape elements being retained. Specific mention was made of the Expressway which in his opinion had a major effect on the character of the area with substantial earthworks undertaken, the installation of road related infrastructure including signs, and the imposition of traffic.²²

²⁰ EIC, Mr Compton-Moen, Para 7.4

²¹ EIC, Mr Compton-Moen, Para 7.6

²² EIC, Mr Compton-Moen, Para 7.7

10.2.4 Following amendments made to the development proposal prior to the hearing, Ms Simpson confirmed in evidence that she was in agreement. Ms Simpson concluded that the changes made to the southern area are acceptable and that views of the buildings would be obscured to an acceptable level by retention of more of the natural dune and additional tree planting.²³

10.3 Effects on Visual Amenity and Privacy

10.3.1 The submissions of Gerard and Elizabeth Earl, Brett and Leanne Morris, and NZ Custodial Trustee (103) Ltd / Pendennis Custodial Trustee Ltd (owners of 44 Teiko Street) raised concerns about the effects on visual amenity and loss of privacy, specifically from the removal of existing vegetation. The vegetation that is the subject of the Earl's submission is a row of pine trees along the dogleg access to proposed Lot 19. The management of this vegetation is also of concern to 44 Teiko Street, as is the row of trees along its northern boundary shared with Lot 19.

10.3.2 The loss of privacy from vegetation removal and earthworks was a particularly significant issue for the owners of 44 Teiko Street, who called expert planning evidence (Ms Blackwell), with the issue being examined throughout the course of the hearing.

10.3.3 Dealing first with the submission of Gerard and Elizabeth Earl, and the more general visual amenity effects of the overall development, Mr Compton-Moen in evidence submitted that the most likely adverse effects after mitigation will be experienced by those residential properties closest to the proposal, along Otaihanga Road and Tieko Street with views often blocked by either vegetation or topography or a combination of both.²⁴

10.3.4 Mr Compton-Moen further confirmed his opinion that the proposal's retention of existing shelter belts where possible will assist in maintaining privacy for existing properties, noting that the District Plan yard setbacks will achieve an appropriate level of separation between existing and new dwellings to ensure privacy is maintained.²⁵ Overall Mr Compton-Moen considers any residual visual amenity effects to be very low to low (less than minor in the RMA sense) at most.²⁶ No contrary evidence was provided by Ms Simpson on behalf of the Council.

10.3.5 The submission from Brett and Leanne Morris raised concerns related to reverse sensitivity effects due to animals contained within the adjoining lifestyle allotments. Concerns relating to light spill from the proposed residential allotments were also raised.

10.3.6 Ms Rydon in her Section 42A report address the issue of reverse sensitivity concluding that in her opinion adverse reverse sensitivity effects will be less than minor.²⁷

²³ Section 42A report, Appendix F, Para 15

²⁴ EIC 7.10

²⁵ EIC 7.13

²⁶ EIC 7.15

²⁷ Section 42A report, Section 6.3

- 10.3.7 Turning to potential effects on the owners of 44 Teiko Street, the issues are the existing pine trees on Lot 19 (along the northern boundary and along the dogleg access) and the potential for loss of privacy from the closeness of development on proposed lots 12-19. It appears there is a secondary issue of the trees being a safety risk as they are nearing their end of life and could fall leading to damage.²⁸
- 10.3.8 Mr Compton-Moen addressed the removal of the pines on Lot 19 in his evidence confirming that the intention is to retain the trees if possible while noting that over time they will need replacing as they reach a size and age where they will need replacing, and that they could be replaced with native species.²⁹
- 10.3.9 Ms Blackwell, in her supplementary evidence and on behalf of the owners of 44 Teiko Street, proposed a number of amendments and mitigations if we were of a mind to grant consent. Those amendments specifically related to proposed lots 12-19 and include a reduction in the number of allotments, specific building platforms, and the restriction of the number and size of dwellings. Ms Blackwell has also provided her view of the management of the trees along the northern boundary shared with Lot 19.
- 10.3.10 In his supplementary evidence, Mr Compton-Moen carefully stepped out his views on the receiving environment and addressed the changes in topography of Lot 19 following earthworks asserting that the change in elevation, being a lowering of finished ground level, will be a positive change for 44 Teiko Street.³⁰ Mr Compton-Moen also considers other aspects of the development and their impact on 44 Teiko Street in his supplementary evidence. Paragraph 10 of his supplementary evidence concludes that in light of Ms Blackwell's supplementary evidence, the view expressed in his EIC remained the same.
- 10.3.11 Much debate has taken place with respect to conditions concerning the management of the trees adjoining 44 Teiko Street. There are two separate conditions addressing this matter. Condition **XX** which was proposed in an earlier version of draft suggested conditions to manage vegetation along Lot 44's northern boundary with Lot 19, and Condition 85 which relates to the existing vegetation along the dogleg access to Lot 19.
- 10.3.12 Dealing firstly with Condition **XX**, there remains disagreement between the Applicant and owners of 44 Teiko Street as to the wording and intent of the condition. Ms Blackwell considers that if felled, the trees should be replanted, and that their ongoing maintenance should be the responsibility of the owner of Lot 19. The Applicant considers this unreasonable due to the significant cost and burden on the future owner³¹ Ms Tancock submits that the intention of Condition **XX** was only ever to bind tree removal and replacement during the construction phase of the development due to tree removal being permitted under the District Plan.

²⁸ Supplementary evidence of Mr Strawbridge

²⁹ EIC 8.3

³⁰ Supplementary evidence of Mr Compton-Moen

³¹ Applicant Reply Submissions. Para 13

- 10.3.13 As agreement was unable to be reached, the Applicant has revised their position and no longer proposes a condition for management of the trees along the northern boundary, noting they do not consider there are any effects of other reasonable basis to burden the future of Lot 19, as well as accepting the enforceability concerns raised by Ms Rydon.³²
- 10.3.14 Turning to Condition 85 of the post-hearing set of conditions, the condition has been offered up by the applicant on an *Augier* basis to address replanting of the pine shelterbelt along the dogless access of Lot 19 if removed.³³ A reworded version has been offered in the Applicant’s right of reply. Via the Council hearing administrator, we sought clarification from Ms Rydon and Ms Tancock as to whether the condition is intended as specific to the entire shelterbelt needing to be removed, or only to those parts of the shelter belt that require removal during road construction. Ms Tancock has confirmed the Applicant’s intention that the condition would only be activated if the entire shelterbelt is to be removed.
- 10.3.15 We consider the appropriateness of the above conditions in our findings below.

10.4 Findings – Landscape Character and Visual

- 10.4.1 Having considered the concerns regarding landscape character and visual effects and the expert evidence submitted, we find that the proposal is acceptable in the context of the existing modified rural-residential environment. We accept that the conditions will be effective in achieve mitigation of all adverse effects to a level that is less than minor or minor. In reaching our overall conclusion we have had regard to the following matters:
- 1) Loss of Character – We accept the expert evidence from the Applicant and Council who are in agreement the existing environment is a modified rural-residential environment and on this basis the subdivision layout and design, incorporating appropriate fencing and building setback controls and establishment of native vegetation, will have no more than minor effects on the environment.
 - 2) Effects on Visual Amenity and Privacy – We record that during our site visit we visited 31D Tieko Street to view the proposed development from the Earl’s property. We further record that that the existing trees could be removed as a permitted activity.³⁴ We therefore confirm any visual amenity effects on 31D to be less than minor. We also noted during our site visit that some background noise from the Expressway is already evident.

We rely on the evidence of Mr Compton-Moen and Ms Simpson with regard to the effects of overall visual amenity and loss of privacy in determining that associated effects will be no more than minor.

In relation to the imposition of conditions, we accept that the Applicant declined to propose a condition in relation to the management of the treeline on northern boundary shared by Lot 44 and proposed Lot 19. We accept the expert evidence that

³² Applicant Reply Submissions, Para 16-17

³³ Applicant Reply Submissions, Para 26

³⁴ Applicant Reply Submissions, Para 20

the adverse effects along that boundary will be less than minor and therefore we do not consider a tree management condition to be necessary.

Regarding Condition 85, we accept the submission of Ms Tancock that the intent is for the condition to be activated only if the entire existing shelterbelt is removed, and accept the reworded version provided in her right of reply. Again we accept the expert evidence provided, that the removal of these trees is a permitted activity under the District Plan and that any adverse effects associated with their removal can, and in this instance should, be disregarded. We also accept that this is an *Augier* condition and so we see no reason to go beyond the level of mitigation that is offered.

- 3) Effects from reverse sensitivity and light spill – Relying on the expert evidence of Ms Rydon and through our own observations while on site, we find that there is adequate separation from lifestyle allotments and the residential component of the subdivision, specifically the changes in elevation and the buffer created by Lot 105 to be vested as local purpose reserve, to ensure that effects from reverse sensitivity and light spill will be avoided.
- 4) Proposed amendments/mitigation offered by Ms Blackwell – Relying on the expert evidence of Mr Compton-Moen and Ms Simpson we find that the development amendments and additional mitigations proposed by Ms Blackwater are not justified.

11 Ecology

- 11.1.1 The principal ecological issues that were raised by submissions concerned loss of bird and wildlife habitat and pest management.
- 11.1.2 The submissions of Gerard and Elizabeth Earl, Matthew and Marie Andrews, Paula Keene and John Rice, Sheryn McMurray and Brett and Leanne Morris have raised concerns with respect to ecological effects associated with the proposed earthworks and vegetation removal, specifically the loss of natural habitat for wildlife and the current infestation of rabbits across the site.
- 11.1.3 Mr Goldwater in his EIC submitted that with proper implementation of the mitigation measures he has proposed, the overall effects of the proposed development on existing indigenous vegetation, dune habitat and function, pest management and natural wetlands would be less than minor. Similarly, potential adverse effects of the loss of exotic vegetation and effects on indigenous birds would be less than minor, noting effects have been further reduced by the Applicant's offer to retain the exotic shelterbelt on lot 19 and along Tiekoo Street, where possible.
- 11.1.4 Mr Goldwater concluded that the proposed protection and enhancement of the four natural wetlands will have a net positive effect on indigenous biodiversity through the provision of fauna habitat and enhanced floristic diversity. He also concluded that there should be a net gain in lizard population once the lizard habitat area has been established in Lot 5.
- 11.1.5 In his supplementary statement provided at the hearing, Mr Goldwater further addressed the concerns raised by submitters with respect to the proposal's ecological effects. Mr Goldwater confirmed that the assessment in his EIC sufficiently addressed the concerns

raised, noting that the mitigation and compensation measures proposed were adequate to protect and enhance natural wetland and habitat.³⁵

11.1.6 For completeness, we record that no other expert ecological evidence was presented at the hearing.

11.2 Findings – Ecology

11.2.1 We accept the evidence of Mr Goldwater that the proposed development, with the proposed mitigation package, will avoid adverse ecological effects. We accept that the conditions will be effective in mitigating adverse effects to the extent that they are less than minor or minor, specifically through the provision of an Ecological Management Plan to be certified by Council, lizard habitat restoration, wetland enhancement restoration through native planting, and the control of rabbits.

12 Traffic

12.1.1 All but one submission raised concerns with respect to traffic effects. The primary concern for many submitters is increased vehicle movements on Teiko Street on an ongoing basis and its current poor standard of formation. Concerns were also raised about traffic effects on the rural character of the locality, and construction traffic effects (considered separately in section 13 of our decision).

12.1.2 A key matter for our consideration is the effects of additional traffic generated by the development and how these fit in the context of the District Plan. We heard from both Ms Rydon and Mr Hansen who are in agreement that the vehicle movements generated will comply with relevant permitted activity standards in the District Plan and therefore effects associated with vehicle movements can be disregarded under the permitted baseline.

12.1.3 Regarding the current state of Teiko Street, it is clear to us that there is much concern among submitters as to its poor level of service due to underinvestment, and that additional traffic from the development will exacerbate this concern. The Applicant's position, through Ms Fraser, is that:

- 1) this is an existing issue that should be remedied by the Council; and
- 2) because future traffic movements generated by the development are permitted under the District Plan, requiring upgrades via conditions of consent is not required (or reasonable).

12.1.4 Ms Fraser's opinions were not shared by Mr Trotter who was of the view that improvements to Teiko Street were required to mitigate potential effects of the development.

12.1.5 In light of the differing opinions, and following adjournment of the hearing, a Development Agreement has been agreed between the Applicant and Council which we understand addresses issues related to necessary upgrades of Teiko Street (as discussed in paragraph

³⁵ Supplementary evidence of Mr Goldwater

5.3.5 of our decision). The specific details of the Agreement cannot be relied on for our decision and so are not considered further in this section. However, it stands that with this Development Agreement having been agreed in principle, Mr Trotter has confirmed that his concerns relating to upgrades of Tieko Street have been addressed. We note that a condition is proposed (Condition 67) requiring a Developer Agreement to be entered into between the two parties to for the improvement works to Tieko Street.

- 12.1.6 Regarding traffic effects on the wider transport network, Ms Fraser in her EIC, has concluded that overall the roading infrastructure associated with the proposed subdivision, including the shared urban path, can operate safely and efficiently. She also considered that the additional vehicle activity resulting from the subdivision can be accommodated within the local road network with less than minor changes to the safety and efficiency for existing road users. We accept her opinions on those matters.

12.2 Findings – Traffic

- 12.2.1 We find that potential traffic effects of the development have been appropriately assessed and considered. We accept that the conditions agreed by the Applicant and Council will be effective in addressing the matters of concern raised by submitters. In reaching our overall conclusion we have had regard to the following matters:

- 1) The need for improvements to Tieko Street is an existing circumstance.
- 2) The evidence of Ms Fraser that the volume of new traffic using Tieko Street once the subdivision is completed and occupied will not create new significant issues.
- 3) The evidence of Ms Rydon and Mr Hansen that the traffic generated by the proposal will comply with the permitted activity standards in the District Plan and can therefore be disregarding applying the permitted baseline.
- 4) That a condition of consent has been agreed to by the Applicant and Council, to enter into a Development Agreement to address Tieko Street upgrades.

- 12.2.2 In conclusion we determine traffic effects from the proposal will be acceptable.

13 Construction Effects

- 13.1.1 The principal issues relating to construction and earthworks effects are construction traffic, and sediment and erosion control during earthworks.

13.2 Construction Traffic

- 13.2.1 The submission of Gerard and Elizabeth Earl raised concerns about the increase in truck movements along Teiko Street for a period of up to 6 months. Their submission indicated they would support a traffic management plan that limited daily heavy construction traffic in Teiko Street, with the alternative being to use approaches from Otaihanga Road.

- 13.2.2 Paula Keene and John Rice (68 Tieko Street) requested that access is provided to their property throughout construction. The provision of a CTMP to give effect to that request was accepted by Paula Keene in an email to the Applicant dated 16 June 2022.

- 13.2.3 Brian and Stephanie Middleton (34 Tiekō Street) were of the opinion that Tiekō Street does not adequately accommodate existing users and they also had concerns regarding construction traffic.
- 13.2.4 Trevor and Sally Sutton (31A Tiekō Street) were also concerned about construction traffic activity on Tiekō Street and requested that construction access is from Otaihanga Road. They also recommended that the proposed footpath along the existing section of Tiekō Street should be on the eastern side of the road where there are fewer driveways.
- 13.2.5 Travis and Andrea Palmer stated that the increase in heavy construction vehicles will cause damage to their driveway, where it joins Tiekō Street.
- 13.2.6 Ms Fraser has considered the potential construction traffic effects in her EIC, submitting that the earthworks have been designed to be contained within the site, resulting in no truck movements on the public road network involving the removal of cut or delivery of fill.
- 13.2.7 Mr Trotter in his EIC has addressed the submitters' concerns with regard to construction traffic and commented that the provision of a CTMP will limit and manage heavy vehicles on the road during construction. His overall conclusion was that with the mitigation measures in place, transportation effects from this development will be less than minor.³⁶

13.3 Earthworks

- 13.3.1 Concerns in relation to sediment run off from earthworks were raised in the submission from Paula Keene and John Rice, specifically relating to the sedimentation of natural wetlands.
- 13.3.2 This matter was addressed by Mr Taylor who considered construction effects, including erosion and sediment runoff, and he was of the opinion that these can be managed appropriately through conditions of consent to ensure the effects of the development are no more than minor.³⁷

13.4 Findings – Construction and Earthworks

- 13.4.1 We find that the experts from both the Applicant and the Council are in agreement and have both concluded that effects from Construction Traffic and Earthworks will be appropriately managed and acceptable. We accept that the conditions will be effective in achieving those outcomes, specifically the provision of a Construction Traffic Management Plan and a Construction Management Plan which must be adhered to during site development. We further note that consents from Greater Wellington Regional Council have been secured which include the requirement to prepare and implement an Erosion and Sediment Control Plan to manage the discharge of sediment laden runoff.
- 13.4.2 In summary we consider that the adverse effects from construction and earthworks will be no more than minor.

³⁶ EIC, Mr Trotter, Para 12.1

³⁷ EIC, Mr Taylor, Para 3.3

14 Section 104 Consideration of Applications

14.1.1 Section 104 requires us to have regard to the following matters:

- (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.

14.1.2 We address effects on the environment in section 8 of our report. Statutory instruments (as required by s104(b)) are considered below in section 15. ‘Other matters’ (as required by s104(1(c)) are addressed in section 16.

14.1.3 Section 104(ab), which relates to offsetting or compensation measures, is relevant to one specific condition (Condition 85) which we refer to in paragraph 10.3.14.

14.1.4 Section 104 also requires us, in having regard to the matters outlined above, to undertake our decision making subject to Part 2 of the Act. That is, subject to the overriding sustainable management purpose of the Act; specific matters of national importance set out in RMA section 6; specific ‘other matters’ set out in RMA section 7; and the Treaty of Waitangi. We address Part 2 of the RMA in section 18 below.

14.1.5 Additionally, being a non-complying activity, we must be satisfied that the particular decision making restrictions set by RMA s104D are met. We address s104D in section 17 below.

15 Section 104(1)(b) Consideration of Statutory Instruments

15.1.1 We accept that relevant provisions from the following statutory instruments have been appropriately identified by the planning experts. We have had regard to these in reaching our decision and making our recommendation.

15.1.2 The policy framework has been a significant part of our decision making process. Evidence and evolving circumstances have made it clear to us that the policy framework, both recently and over the last several years, has added complexity to assessment of the proposal.

15.2 New Zealand Coastal Policy Statement (NZCPS)

- 15.2.1 The site is approximately 2.5km from the coast, and the Council’s district plan shows a coastal environment overlay covering the entire site. Planners for the Applicant and the Council both acknowledged that the site is within the coastal environment, and therefore that the NZCPS is relevant. Ms Rydon’s report reviewed various aspects of the coastal environment in the context of the NZCPS and under the RPS (addressed in section 15.4 below).
- 15.2.2 Ms Rydon identified and briefly commented on the relevance of NZCPS Objectives 1, 2, 3, 5 and 6 and Policies 1, 2, 6, 11, 13, 15, 17, 22, 24 and 25. Overall, we agree with her conclusion that the site and landform, after development, will retain some degree of coastal character. However, we observe that coastal character and other elements covered by the NZCPS policy framework are not especially strong or distinguishing aspects of the site.
- 15.2.3 For the purposes of our decision, NZCPS provisions of particular relevance include:
- Objective 3 and Policy 2 in relation to Te Tiriti o Waitangi and consultation with manawhenua.
 - Objective 2 and Policy 13 in relation to preserving natural character by avoiding significant adverse effects on the dune landforms.
 - Policy 17 in relation to the historic dray track route.
 - Policy 11 in relation to remnant stands of kākūka and other indigenous vegetation; habitat for lizard species; and mitigation through pest control.
 - Policy 14 in relation to the restoration of natural character, including through the creation of lizard habitat and development of a wetland fronting Otaihanga Road.
 - Policy 18 in relation to the provision of public open space, including Lot 105 and the shared pathway.
- 15.2.4 Policies 14 and 18 were not specifically referred to in evidence but we think their applicability is self-evident. The landscape evidence of Mr Compton-Moen noted that the development will avoid adverse effects on natural wetlands, including through the provision of a 10m wide fenced buffer. He also noted that the development avoids “the larger dune forms which provide a degree of natural character to the coastal environment”³⁸.
- 15.2.5 Mr Compton-Moen also noted, with respect to the Shared Path, that “keeping this path in as natural a form as possible reflects both the dray track, helps preserve the underlying topography of the site and natural/rural character of the development”³⁹.
- 15.2.6 Overall, we find that the development will not be inconsistent with the New Zealand Coastal Policy Statement.

³⁸ Paragraph 7.5(b), David Compton-Moen, Evidence in Chief

³⁹ Paragraph 11.2(c), David Compton-Moen, Evidence in Chief

15.3 National Policy Statement on Urban Development

- 15.3.1 Planners for the Applicant and the Council both acknowledged the relevance of the NPS-UD in their initial statements (Hansen evidence in chief; Rydon s42A report). In response to matters arising during the hearing, and our Minute 2 specifically, Mr Hansen and Ms Rydon provided further evidence which we also refer to below.
- 15.3.2 We issued Minute 2 which requested the Applicant and Council’s Planners to provide us with a summary and analysis of the NPS-UD in relation to the following matters:
- NPS-UD provisions that refer to well-functioning urban environments
 - the NPS-UD definitions of an urban environment and a Tier 1 urban environment (if different).
 - the implications of NPS-UD Policy 6 in relation to planning decisions.
 - the Council’s district growth strategy (Te Tupu Pai).
- 15.3.3 We cover matters related to the fourth bullet point (Te Tupu Pai) in section 16.3.
- 15.3.4 In relation to the first three bullet points, Ms Rydon and Mr Hansen provided us with supplementary evidence in response to our Minute.
- 15.3.5 For the Applicant, Mr Hansen drew the following conclusions about the development:
- That it will achieve a well-functioning urban environment, as measured against NPS-UD objectives 1, 3, 4 and 6.
 - That Kāpiti is a “Tier 1” urban environment because it is listed in Appendix 1 of the NPS-UD. An “urban environment” is not limited by size of area or jurisdictional boundaries but it must be, or be intended as, part of a housing and labour market of more than 10,000 people. Kāpiti as a whole meets this threshold.
 - That we must have particular regard to each of the matters in Policy 6, with no difference in relative weight to any of them. Mr Hansen provided an analysis of those matters, including in relation to Policy 6 (c) which cross-refers to meeting certain outcomes listed by Policy 1⁴⁰. We are in general agreement with Mr Hansen’s analysis of the development in relation to those Policy 1 matters.
- 15.3.6 For the Council, Ms Rydon agreed that the development would create a well-functioning urban environment. With regard to defining an urban environment, she provided further context by referring to the Statistics NZ definition of a “functional urban area”. Specific to Kāpiti, she informed us that the district has two Functional Urban Areas (Kāpiti Coast Functional Urban Area and Otaki Functional Urban Area), and that Otaihanga is included in the Kāpiti Coast Functional Urban Area. That information could be seen to provide support to regarding the site as part of an urban environment. However, we do not rely on the Statistics NZ definition of functional urban area for reaching that conclusion – as the NPS-UD definition must be the overriding determinant.

⁴⁰ See 15.3.9 below, which sets out the matters in Policy 1

- 15.3.7 Our own conclusion is that, based on a plain reading of the NPS-UD, “Wellington” is the Tier 1 urban environment in question and the Kāpiti Coast District (as a whole) is part of that environment. We derive this interpretation from the NPS-UD definitions section which cross-refers to Table 1 in the NPS-UD Appendix.
- 15.3.8 That said, we note that “urban environment”, as a standalone term, has wider applicability than just the Tier 1 and 2 urban environments listed in NPS-UD Appendix Table 1. It applies NZ wide⁴¹, provided that the housing and labour market qualifier referred to by Mr Hansen is met. The policies of the NPS-UD are split between those that apply solely to Tier 1 and 2 urban environments, and those that apply to all urban environments.
- 15.3.9 Most of the NPS-UD provisions provide direction to policy statements and planning documents. However, some apply directly to “planning decisions” – and those are the relevant objectives and policies for us to consider in our decision making. The specific provisions that refer to planning decision making are as follows:
- “Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.”
 - “Objective 5: Planning decisions relating to urban environments, and FDSs⁴², take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).”
 - “Objective 7: Local authorities have robust and frequently updated information about their urban environments and use it to inform planning decisions.”
 - “Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:
 - (a) have or enable a variety of homes that:
 - (i) meet the needs, in terms of type, price, and location, of different households; and
 - (ii) enable Māori to express their cultural traditions and norms; and
 - (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and
 - (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and
 - (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
 - (e) support reductions in greenhouse gas emissions; and
 - (f) are resilient to the likely current and future effects of climate change.”
 - “Policy 6: When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:
 - (a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement

⁴¹ Objective 1 NPS-UD

⁴² Future Development Strategies

- (b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:
 - (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and
 - (ii) are not, of themselves, an adverse effect
- (c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)
- (d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity
- (e) the likely current and future effects of climate change.”

15.3.10 We have taken the requirements of the NPS-UD into account in making our decision. In summary, we find that the NPS provides support for the development. In concert with other regional and local instruments, the NPS is part of an integrated approach that encourages and informs the development of new, well-functioning urban environments.

15.4 Wellington Regional Policy Statement

15.4.1 Planners for the Applicant and the Council both acknowledged the relevance of the RPS in their initial statements (Hansen evidence in chief; Rydon s42A report). In response to matters arising during the hearing, and our Minute 3 specifically, Mr Hansen and Ms Rydon provided further evidence on RPS Plan Change 1, which we also refer to below.

15.4.2 Ms Rydon’s s42A report commented on and drew our attention to Policies 35, 38, 14, 15, 51 and 48. For the purposes of our decision, RPS provisions of particular relevance arising from the s42A report include:

- Policy 35 in relation to natural character.
- Policy 15 in relation earthworks and vegetation clearance.
- Policy 48 in relation to Te Tiriti.

15.4.3 We have considered those particular policies in reaching findings about specific effects (see section 8 above).

RPS Plan Change 1

15.4.4 Greater Wellington Regional Council notified proposed Plan Change 1 (PC1) to the RPS on 19 August 2022. The proposed RPS amendments (with supporting explanations and section 32 analysis) cover urban and rural development issues that we considered could be of relevance to the Tiekō Street consent application. The Applicant’s legal counsel confirmed that we must take PC1 into account.

15.4.5 For that reason, we issued Minute 3 which requested the expert Planners⁴³ (Ms Rydon, Mr Hansen) to consider the following provisions from proposed Plan Change 1 and, where relevant, any RPS explanations and section 32 analysis that support those provisions:

- Policy 55.
- Policy 56 – particularly the implications of 56(d).
- The proposed amendment to the RPS definition of “urban areas”.
- The proposed new definition of “urban environment”.
- The proposed amendment to the RPS definition of “rural areas”.
- Any other related or relevant matters in the RPS in general, or the proposed plan change in particular.

15.4.6 Mr Hansen provided an analysis of RPS proposed PC1 in his supplementary evidence. As requested by the panel, a focus of that analysis was on Policies 55 and 56. As noted by Mr Hansen the proposed changes to Policy 55 reorient it away from maintaining a compact, well designed and sustainable regional form, to providing for appropriate urban expansion⁴⁴. He advised us that the amended Policy 55 (once in force), which deals with “urban expansion”, will provide for the interim period when a FDS has not yet been prepared.

15.4.7 Policy 56 (once in force), which deals with “managing development in rural areas”, takes a similar approach. That is, both of the policies allow us to consider the Council’s growth strategy (Te Tupu Pai) in the absence of a FDS.

15.4.8 We initially had some reservations about consenting the proposal in the absence of a fully resolved growth strategy such as a FDS. However, we have chosen to rely on the direction provided by the NPS-UD and its expression at a Regional level through RPS proposed Plan Change 1, as explained by Mr Hansen. On this matter, we adopt a position summarised by the Applicant’s legal counsel in paragraph 65 of her legal submissions responding to our Minutes 2 and 3.

“The Policy direction of the RPS proposed [by] PC1 Policy 55 (set out in Mr Hansen’s Addendum at Appendix 1 page 31) also assists here in that it confirms that a proposed development which achieves the outcomes sought in the NPS-UD and RPS proposed PC1 should not be deferred or put off by the Commissioners because a Council has not yet completed all its planning under the NPS-UD, and provides a decision-making framework for use in the current circumstances. That framework places weight on Te Tupu Pai, despite KCDC not yet releasing a Future Development Strategy. The proposal has been assessed by Mr Hansen as being suitable using that framework.”

⁴³ We also invited, but did not require, Ms Blackwell (the Planning expert acting for Mr Strawbridge) to respond to our Minute. We did not receive a response from her on that matter.

⁴⁴ Paragraph 7.2, Second Supplementary Statement of Evidence, Chris Hansen, 2 September 2022

- 15.4.9 We also accept Ms Tancock’s submission (her paragraph 66) that RPS proposed PC1 should be afforded greater weight than Kāpiti proposed Plan Change 2. In particular we note her contention that “is not unreasonable to expect further changes to KCDC proposed PC2 to bring it into line with RPS proposed PC1 as the higher order planning document”. We accept that view and comment on KCDC proposed PC2 below, from paragraph 15.6.6.
- 15.4.10 Overall, Ms Tancock concludes that RPS proposed PC1 can be given a “moderate degree of weight” in our decision making. Although the plan change has only recently been notified, and the detail of eventual outcomes from the submission and hearing process are uncertain, we agree with Ms Tancock’s view about weight. That is because, as she puts it, RPS proposed PC1 “advances a coherent pattern of implementation of the NPS-UD directions”.

15.5 Proposed Natural Resources Plan and Operative Regional Plans

- 15.5.1 The Applicant has successfully gained any regional consents required for the proposed works. For that reason we make no finding in relation to the regional plans.

15.6 Kāpiti Coast District Plan

- 15.6.1 As noted in sections 3.2 and 1616910106.1458728 the proposed subdivision is non-complying and the land use is restricted discretionary. Overall, the proposal must be assessed as non-complying. There was no substantive disagreement between the planning experts about the applicable provisions of the District Plan – but some disagreement about the nature of effects to be considered within the rule and policy framework.
- 15.6.2 In Minute 2 we asked the Applicant and Council’s Planners to advise us about a specific objective and policies from the District Plan and, where relevant, any District Plan explanations that support those provisions. The objective and policies were:
- DO-O3 Development Management: including in relation to the terms “existing urban areas” and “identified growth areas”.
 - UFD-P1 Growth Management: particularly in relation to part (d) of the policy.
 - UFD-P4 Residential Density: particularly in relation to part (7) of the policy.
 - RLZ-P2 Rural Character: including in relation to parts (a) and (c) of the policy.
 - RLZ-P9 Rural Lifestyle Zone: particularly in relation to part (d) of the policy.
 - INF-GEN-P7: particularly in relation to part (f) of the policy, and in relation to the focus of intensification being in “existing urban areas” as defined by the district plan.
- 15.6.3 Mr Hansen responded and provided us with a full analysis of the specified provisions in his Second Supplementary Statement of Evidence. We did not receive a similar statement from the Council, although Ms Rydon’s s42A report does comment on the district plan’s objectives and policies – essentially by adopting the Mr Hansen’s original summary from pages 70 to 75 of the consent application.
- 15.6.4 Through his analysis, Mr Hansen drew the conclusion that the objectives and policies we asked to him review reflect the Council’s ‘consolidation approach’ taken to urban form / areas when the plan was prepared prior to 2012. For that reason, he concluded that those

specific provisions are unhelpful – although the proposed development would still not be contrary when undertaking an overall RMA Part 2 assessment. In Mr Hansen’s opinion, these provisions (which reflect a consolidation approach) are no longer appropriate, and “a broader urban environment approach is now required to address the housing challenges facing the district, and the requirements of the NPS-UD.”⁴⁵

- 15.6.5 We accept Mr Hansen’s opinion that those provisions must be viewed in light of their age, and the previous approach to growth – which was not informed by a National Policy Statement.

Proposed Plan Change 2

- 15.6.6 During the course of the hearing, on 18 August 2022, the district council notified proposed Plan Change 2 (PC2) to the District Plan. The notification of the plan change occurred 1 day before that of RPS proposed PC1 (see paragraph 15.4.4 above). KCDC proposed PC2 is intended to implement the government legislated medium density residential standards (MDRS)⁴⁶, and give effect to Policies 3 and 4 of the NPS-UD.

- 15.6.7 We understand that among other locations, the MDRS will apply to the General Residential Zone at Otaihanga (an area between Otaihanga Domain and Otaihanga Road/Tieko Street). This includes part of the western side of Tieko Street, close to but not directly opposite the Mansell subdivision site.

- 15.6.8 In Minute 2 we asked the Applicant and Council’s Planners to advise us about KCDC proposed PC2, including in relation to:

- the continued zoning of the application site as Rural Lifestyle Zone.
- no identification of the application site, in whole or part, as a site by Appendix “A” of the plan change, being a range of sites proposed to be added to the General Residential Zone as part of incorporating the MDRS into the District Plan, or giving effect to policy 3 of the NPS-UD.

- 15.6.9 With respect to KCDC proposed PC2, Mr Hansen advised that it is supported by an Urban Greenfields Assessment that identified avoidance criteria for selecting future greenfields sites. We have referred to that document as also informing Te Tupu Pai, the Council’s growth strategy. As noted earlier, the subdivision site falls within an area identified as OH-01. Mr Hansen informed us that the Applicant has lodged a submission on KCDC proposed PC2 seeking that the subdivision site be included for investigation as a greenfields development area. Mr Hansen’s opinion, expressed elsewhere in his evidence and the consent application, is that the investigations leading up to lodgement of the Mansell consent application are effectively the kind of investigation flagged by proposed PC2.

⁴⁵ Paragraph 8.2(d), Second Supplementary Statement of Evidence, Chris Hansen, 2 September 2022

⁴⁶ Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, December 2021

15.6.10 Mr Hansen stated that:

“In my opinion, the Commissioners can have some level of confidence that the application site will be investigated in the future to be part of a greenfield development assessment and plan change. What the outcome of such an investigation cannot be certain. However, it is likely that any future greenfield development will provide for more intensification than the Otaihangā Estates project proposes. From this perspective, granting consent for the subdivision (including earthworks and infrastructure) proposal before you now will not impede or inhibit any future plan change or structure plan process as the proposal is serviced by existing infrastructure, provides its own internal roads and connections to the existing roading network, and manages any future climate change flood events on-site. The proposed subdivision also has lot sizes that may be able to be subdivided further in the future, should further intensification of this area be considered appropriate.”⁴⁷

15.6.11 Mr Hansen’s opinion that granting consent now “will not impede or inhibit any future plan change or structure plan process” appears consistent with Ms Rydon’s opinions which we refer to below in paragraphs 16.3.8 and 16.3.10. We agree with both experts on this matter.

16 Section 104(1)(c) Consideration of Other Matters

16.1.1 The Act requires us to ‘have regard’ to any other matter we consider relevant and reasonably necessary to determine the application. Both Ms Rydon’s s42A report and Mr Hansen’s evidence in chief considered there were no other relevant matters under s104(1)(c) of the RMA. That is, nothing that falls outside the categories of being:

- An effect on the environment [104(1)(a)]; or
- A measure proposed or agreed by the Applicant to offset or compensate for an adverse effect [104(1)(ab)]; or
- A relevant provision of a national, regional or local level policy statement or plan prepared under the RMA [104(1)(b)].

16.1.2 However, during the course of the hearing it became clear that several matters could be considered to fall under 104(1)(c). We have addressed these below, being:

- A Developer Agreement (via the Local Government Act) related to improvements on Tieko Street; and
- Te Tupu Pai, the Council’s district growth strategy, which is a document not required by either the RMA or any other legislation and is not covered by s.104(1)(b).

16.2 Developer Agreement

16.2.1 In our Minute 2, we indicated to the parties (Applicant and Council) that the panel had formed preliminary view that a Developer Agreement was the appropriate mechanism for

⁴⁷ Paragraph 5.6, Second Supplementary Statement of Evidence, Chris Hansen, 2 September 2022

addressing the nature of any desirable upgrade works for Tiekö Street. In the particular circumstances, we considered a Developer Agreement to be preferable to resource consent conditions.

- 16.2.2 As outlined under section 8.2, as part of Joint Witness Conferencing, the Applicant and Council met to discuss the possibility concluding a Developer Agreement. We understand that Agreements of this nature are not unusual, and the Council’s mandate for concluding an Agreement arises via the Local Government Act.
- 16.2.3 As an outcome of conferencing (24 August), the parties reported to us via a Joint Witness Statement (dated 26 August) that an in-principle Developer Agreement had been reached. The main aspects of the in-principle Agreement were that:
- 1) The Tiekö Street improvement package proposed by the Applicant is appropriate as designed.
 - 2) The Council will likely undertake community consultation, confirm the final design, and undertaken construction of those works themselves.
 - 3) The cost of the upgrade will be shared between the Applicant and Council. NB: the cost is a confidential matter between the two parties. The commissioners are not party to it, and this has no bearing on our decision.
 - 4) The timing of the Tiekö Street upgrade works will be at the discretion of the Council but concluded in a reasonable timeframe. The timing will be unrelated to the resource consent conditions or development timeframe for the subdivision enabled by our decision.
- 16.2.4 Notwithstanding the matters outlined above, we accept the Applicant’s contention that the need for improvements to Tiekö Street is an existing circumstance. We therefore consider it would have been inappropriate to address that need via conditions of consent placed on the Applicant. We accept the evidence of Ms Fraser (the Applicant’s traffic expert) that:
- Development and implementation of the Construction Traffic Management Plan required by conditions of consent can effectively avoid, mitigate, or remedy issues that might arise during the construction period; and
 - The volume of new traffic using Tiekö Street once the subdivision is completed and occupied will not create new significant issues.
- 16.2.5 For the record, we find that matters addressed by this particular Agreement are not 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. In other words, the Agreement not something required or agreed to by the Applicant under section 104(1)(ab). We find that the Developer Agreement is an ‘other matter’ under section 104(1)(c) of the RMA; we have had regard to its benefits when considering the overall context of the consent applications and the state of the existing environment.

16.3 Te Tupu Tai

- 16.3.1 The Council has developed a district growth strategy – Te Tupu Pai⁴⁸. The strategy articulates the Council’s vision for growth, including priorities and locations for supporting an anticipated population increase of 32,000 people in the next 30 years. We therefore considered clarity about Te Tupu Pai to be important, including in regard to its status under the NPS-UD⁴⁹. For that reason, in our Minute 2 we asked the Planners to consider:
- whether Te Tupu Pai is a Future Development Strategy (FDS) as mandated by sub-part 4 of the NPS-UD; or
 - whether it is intended as a step in progress towards a FDS; and
 - the implications of the relationship between Te Tupu Pai and the proposed development.
- 16.3.2 Ms Rydon’s supplementary evidence, in response to our Minute 2, provided background on the Te Tupu Pai, the Council’s Growth Strategy. She noted advice received from the Council’s Manager of Research and Policy that Te Tupu Pai is not a Future Development Strategy (FDS) as defined by the NPS-UD. Instead, we were told that Te Tupu Pai is precursor document. It will be used to inform the review of the Wellington Regional Growth Framework (WRGF) to meet the FDS requirements of the NPS-UD. Following the WRGF review, a FDS will be developed – covering the entire Tier 1 Wellington urban environment (including the Kāpiti Coast). It will be completed in time to inform 2024 Long Term Plans.
- 16.3.3 Ms Rydon also noted that Te Tupu Pai was informed by planning and environmental assessments undertaken by external consultants and advised us that the site forms part of an area defined as “OH-1”. The OH-1 area, through an assessment of various criteria, was classified as being “Priority Group 2A” – which means that it is a candidate for medium to long term development, subject to any constraints being overcome. The development site (18 hectares) sits in approximately the centre of the wider OH-1 area (374 hectares) which, as a whole, has a theoretic capacity for 2,100 dwellings.
- 16.3.4 Mr Foy, the Applicant’s economics expert, had introduced us to Te Tupu Pai in his evidence. During questioning he gave his opinion that there would be no economic loss through ‘developing early’, i.e., in advance of the medium to long term timeframe we refer to above. However, we understand that he had not considered the wider implications that could be explored through work on a future development strategy.
- 16.3.5 Both Ms Rydon and Mr Hansen noted the role of ‘high level constraints’ that have informed Te Tupu Pai. Ms Rydon informed us that the identification of capacity in theoretical development areas (such as OH-1) took account of avoiding high level constraints such as flood hazards, ecological sites, wetlands and other matters.
- 16.3.6 Mr Hansen also leans on the point that evolution of the proposal has required an assessment of various constraints, and that it can readily connect to available infrastructure.

⁴⁸ *Te Tupu Pai – Growing Well, Our Strategy for Enabling Sustainable Growth in Kāpiti*, March 2022

⁴⁹ We address the NPS-UD above, under section 15.3

Both of these elements are consistent with statements in Te Tupu Pai. We accept these things as standalone matters of fact. However, we note that this site specific approach divorces those matters from the question of a wider development strategy⁵⁰. In that regard we note Ms Rydon’s caution to us that the areas identified via the Te Tupu Pai work should not “be interpreted as ‘proposed’ areas for urban development, as they have not been developed as part of a structure planning or similar process”⁵¹.

16.3.7 For these reasons we do not accept Mr Hansen’s opinion that “the proposal can be appropriately considered now as a high-priority area in terms of Te Tupu Pai, as [it] is able to be developed sooner rather than later”⁵². We favour Ms Rydon’s more balanced view (paragraph 16.3.8 below) that, with regard to the district-wide question of residential capacity (and strategy), consenting and developing the site now will have pluses and minuses.

16.3.8 Ms Rydon’s advice concluded that⁵³:

- 1) “The proposed subdivision has the potential to remove capacity from the area identified as OH-1 to provide maximum yield in meeting the predicted housing shortfall and with less anticipated capacity available, the wider OH-1 Area could drop on the priority list of areas to consider for intensification.”
- 2) “However, with the lot sizes proposed, there is also the potential for further subdivision and development to occur should Council proceed with the direction established by the Boffa Miskell assessment given infrastructure will be installed as part of this application, should consent be granted.”

16.3.9 For the Applicant, Mr Hansen provided his own analysis, reaching some similar conclusions to those of Ms Rydon. In particular, we note his opinions that Te Tupu Pai:

- Is not a FDC for the purposes of the NPS-UD.
- Provides direction to the intensification requires of Policies 3 and 4 in proposed Plan Change 2.
- Is consistent with various aspects of the proposed development.
- Provides some confidence that the Otaihanga area is part of the Council’s intended future approach to meeting Kāpiti’s housing requirements.

⁵⁰ Mr Hansen advises us that the Council’s delivery of a strategy / plan change is not certain. It may not occur until 2024 or beyond. Paragraph 4.4(h), Christopher Hansen on Behalf of the Applicant, Second Supplementary Statement of Evidence, 2 September 2022

⁵¹ Paragraph 2.7, *Memorandum on behalf of Kāpiti Coast District Council Regarding Minutes 2 and 3*, 1 September 2022

⁵² Paragraph 4.7, Christopher Hansen on Behalf of the Applicant, Second Supplementary Statement of Evidence, 2 September 2022

⁵³ Paragraphs 2.13 and 2.14, *Memorandum on behalf of Kāpiti Coast District Council, Regarding Minutes 2 and 3*, 1 September 2022

16.3.10 Broadly, we agree with the scope of the conclusions drawn by Ms Rydon and Mr Hansen. We note Ms Rydon’s caution that the large lots in the northern part of the subdivision have the potential reduce the maximum capacity of lots that may be anticipated for the wider OH-1 area. However, we also acknowledge and accept her opinion that this would not entirely remove the possibility of future, more dense subdivision, if the Council choose to proceed with that approach at some later date (we assume via a plan change giving effect to a development strategy).

17 Section 104D – Non-Complying Activity

- 17.1.1 Following accepted legal and planning practice, the consent activities that make up the Project have been ‘bundled’ with respect to activity status. As noted in section 3.2 of our decision, the status of the various activities include those which are controlled, restricted discretionary, discretionary, and non-complying. When bundled, the overall activity status of a proposal must adopt the most restrictive activity status – which in this case is non-complying.
- 17.1.2 Land use consent for the development is restricted discretionary under the district plan. However, the subdivision aspect is non-complying in respect of two rules. These are:
- 1) Rule SUB-RUR-56 as standard 2(a) for restricted discretionary activities in SUB-RUR-R51 cannot be met.
 - 2) Rule SUB-DW-R23 as the proposed subdivision creates new lots in the rural zone and is not provided for in Rule SUB-DW-R4.
- 17.1.3 As the physical works are not separable from the subdivision (i.e., the subdivision relies on the physical works) the application overall is regarded as non-complying – being the most restrictive category.
- 17.1.4 As the application falls for consideration as a non-complying activity, pursuant to Section 104D of the Act, a ‘gateway test’ is required to be met before a decision is made on whether consent can be granted. Section 104D prescribes that the consent authority may proceed to the substantive assessment (s104), and make a decision on whether to grant a resource consent application for a non-complying activity, only if it is satisfied that either:
- 1) the adverse effects of the activity on the environment will be minor; or
 - 2) the application is for an activity that will not be contrary to the objectives and policies of the relevant plan (in this case, the Kāpiti Coast District Plan).
- 17.1.5 In Ms Rydon’s s42A report she concludes that the proposal is not contrary to the district plan objectives and policies, and that adverse effects can be mitigated to be minor. Mr Hansen reaches a similar conclusion, although noting that some specific provisions are “unhelpful” although not necessarily contrary (see paragraph 15.6.4 above).
- 17.1.6 Based on the evidence and analysis, we are satisfied that the proposal can meet both gateway tests under s104D. We therefore find that we are in the position of being able to grant resource consent if we so wish.
- 17.1.7 Overall, with respect to section 104 and section 104D. We conclude that the application should be granted for the reasons set out in section 20 below.

18 Part 2 RMA Assessment

18.1 Part 2 Analysis

- 18.1.1 In making a consent decision, Section 104(1) of the RMA requires our consideration to be subject to Part 2 of the Act (being Sections 5 to 8).
- 18.1.2 In their assessment and expert evidence, the planners provided robust analyses of the application against Part 2 of the RMA.
- 18.1.3 RMA Section 6 identifies matters of national importance including natural character, significant indigenous vegetation, historic heritage, and relationships of Māori with their culture and traditions. The expert planners all considered the proposal is consistent with the relevant Section 6 provisions. We note that the project design, and mitigation implemented via conditions, will address potential concerns related to the natural environment. Historic heritage and Treaty of Waitangi considerations will be address through design elements related to the historic remnants of the dray track. The Panel therefore considers that the proposal is consistent with Section 6 of the RMA.
- 18.1.4 RMA Section 7 ‘other matters’ requires the consideration of the proposal relating to the management, use, development, and protection of natural and physical resources. This includes maintenance and enhancement of amenity value, intrinsic value of the ecosystem, quality of the local environment and the effects on climate change. We consider that the project design, and associated mitigation measures, effectively address any section 7 matters.
- 18.1.5 RMA Section 8 identifies the principles of the Treaty of Waitangi. The Applicant has engaged with Ātiawa ki Whakarongotai and aspects of the design take relevant matters into account.
- 18.1.6 Overall, we conclude that a Part 2 analysis raises no matters that would otherwise negatively impact on our decision to grant consent.

19 Conditions

19.1 Conditions

- 19.1.1 The Applicant’s closing legal submissions / right of reply provided tracked changes versions of draft conditions for the resource consents. These condition sets included changes agreed between the expert planners on behalf of the parties they represent, and some instances of differing or disputed conditions or wording. As noted earlier in our report, we have accepted a rewording of Condition 85 set out by Ms Tancock in her right of reply.
- 19.1.2 We have accepted the draft conditions provided to us with refinements agreed to by the expert planners on behalf of the parties they represent. We have also made decisions about conditions wording that was in dispute between the parties.
- 19.1.3 The conditions are issued as a separate document (Attachment 1 to the decision).

20 Decision

20.1.1 We consider after having regard to all relevant matters that the single purpose of the RMA is best served by KCDC granting the resource consents on terms set by the conditions contained in Attachment 1.

20.1.2 Key reasons for our decision include:

- 1) The effects of the development are either no more than minor and / or will be mitigated by specific design elements.
- 2) Environmental effects are not contrary to relevant district plan objectives and policies.
- 3) Historic heritage and manawhenua concerns will be provided for.
- 4) Some strategic effects, related to urban form, are not fully consistent with the district plan policy framework. However, we judge those provisions to have lesser relevance in light of existing national direction (NPS-UD) and proposed regional and local direction on urban form – which themselves must be consistent with the national direction.
- 5) Traffic effects (volume increase) within Tieko Street are permitted, and the physical environment of the street will be improved via the Developer Agreement to be concluded between the Applicant and the Council.
- 6) In granting consent to a non-complying activity, the Act does not require all provisions of the district plan to be ‘not contrary’ with respect to a proposed development.

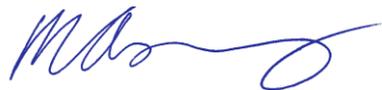
21 Acknowledgements

21.1.1 We would like to thank the participants for their constructive engagement in the process. Although the outcomes of our decision and recommendation may not be what some submitters sought, we acknowledge the effort that they have put into engaging with the process. We also acknowledge all individual written submissions and personal appearances which we found valuable in providing additional.

21.1.2 The careful assessment, investigation and response to individual issues and environmental effects by the Applicant and other parties was appreciated, especially in relation to matters we raised via directions in Minutes.

21.1.3 We would also like to acknowledge the collaborative work of the technical experts and planners involved in this matter. Finally, we gratefully acknowledge the assistance to the Panel provided by the hearing administrator before, during and after the hearing.

Mark Ashby (Chairperson)



Phillip Hindrup



Date: 2 November 2022