

IN THE MATTER of Proposed Plan Change 2 – Intensification to the
Kāpiti Coast District Plan

AND Submission by on Proposed Plan Change 2 (PC(N)) –
Intensification by R P Mansell; A J Mansell, & M R
Mansell

**RESPONSE TO COMMISSIONER’S REQUEST FOR ADDITIONAL INFORMATION ON
BEHALF OF R P MANSELL; A J MANSELL; & M R MANSELL**

18 April 2023

1. INTRODUCTION

1.1 On 28 March 2023 the Commissioners made the following request by email:

The Panel requests the following from Mr Hansen for S023 Mansell Family in consultation with the technical experts for SO23 following the hearing on Monday, 28 March 2023, to assist its assessment under RMA s 32A etc.;

a) An assessment of whether the rezoning of the site has any prospect of foreclosing reasonable opportunities for the development of the broader growth node or structure planning for optimal urban form.

b) An assessment of risks of applying the MDRS to an unimplemented subdivision consent granted based on a different planning regime. i.e. the creation of new development capabilities on titles that can be created under a lifestyle management regime. We assume S023 Mansell Family will still seek to secure that approval through the EC process.

c) An assessment of how the existing plan provisions address the site's values and will achieve Policy 55 of the PRPS.

1.2 Below I provide a response to each of these matters.

2. A) AN ASSESSMENT OF WHETHER THE REZONING OF THE SITE HAS ANY PROSPECT OF FORECLOSING REASONABLE OPPORTUNITIES FOR THE DEVELOPMENT OF THE BROADER GROWTH NODE OR STRUCTURE PLANNING FOR OPTIMAL URBAN FORM

2.1 As discussed in my planning evidence in chief, the Mansell site is part of a Future Urban Study area identified for further investigation Otaihanga OH-01 in Appendix n to the s.32 Evaluation Report (refer to Annexure 7).

2.2 I agreed in paragraph 11.19 of my planning evidence in chief that a structure plan approach is appropriate for the wider Otaihanga OH-01 area, particularly as the area is divided by the Kāpiti Expressway and has a number of constraints (as assessed in the

s.32 evaluation report Appendix n) that could best be addressed through a structure plan. However, I did not agree with the Council Officer's proposition that the size of the Mansell site requires a structure planned approach, as a precursor to zoning as any constraints on the site are well known and have been assessed as part of the proposed development of the site (as outlined in Section 9 of my planning evidence in chief). I considered the development of the Mansell site would not negate the ability of Council to prepare a structure plan for the wider Otaihanga OH-01 area in the future if this was desirable.

2.3 At the PC(N) hearing I understood that the Council Officers were "90%" in agreement with my position, but that as part of the "10%" they had concerns that land to the north of the Mansell site could have future opportunities foreclosed if the Mansell site was rezoned General Residential and had the MDRS provisions applied. While not stated by the Council Officers, I assume their concerns would relate to the land to the north of the Mansell site not having access to a legal road and to water and wastewater infrastructure, i.e., would development of the Mansell site preclude the opportunity to access or service this area in the future.

2.4 As part of this exercise the Mansells have sought to determine the extent that the land to the north of the site is currently serviced and accessible. Council does not appear to have undertaken this assessment prior to forming this view. As part of the recent resource consent process for the development of the Mansell site under the existing Rural Lifestyle Zone, Duncan Cotterill lawyers have been engaged to work with landowners that currently have access and easement rights over the Mansells site from the northern end of Tieko Street. Duncan Cotterill have provided a summary of their findings that indicate there are 6 properties to the north and west of the Mansell site within the wider Otaihanga OH-01 area that are currently undeveloped, and these are shown in **Figure 1** as follows:

- (i) 68 Tieko Street (Record of Title 888433) - coloured green
- (ii) 65 Tieko Street (Record of Title 880598) – colours red
- (iii) 5 Toroa Road (Record of Title 44160) – coloured pink
- (iv) 7 Toroa Road (Record of Title WN20B/1475 – coloured purple
- (v) 37 Tieko Street (Record of Title 315405) – coloured blue
- (vi) 59 Tieko Street (Record of Title 886151) – coloured orange

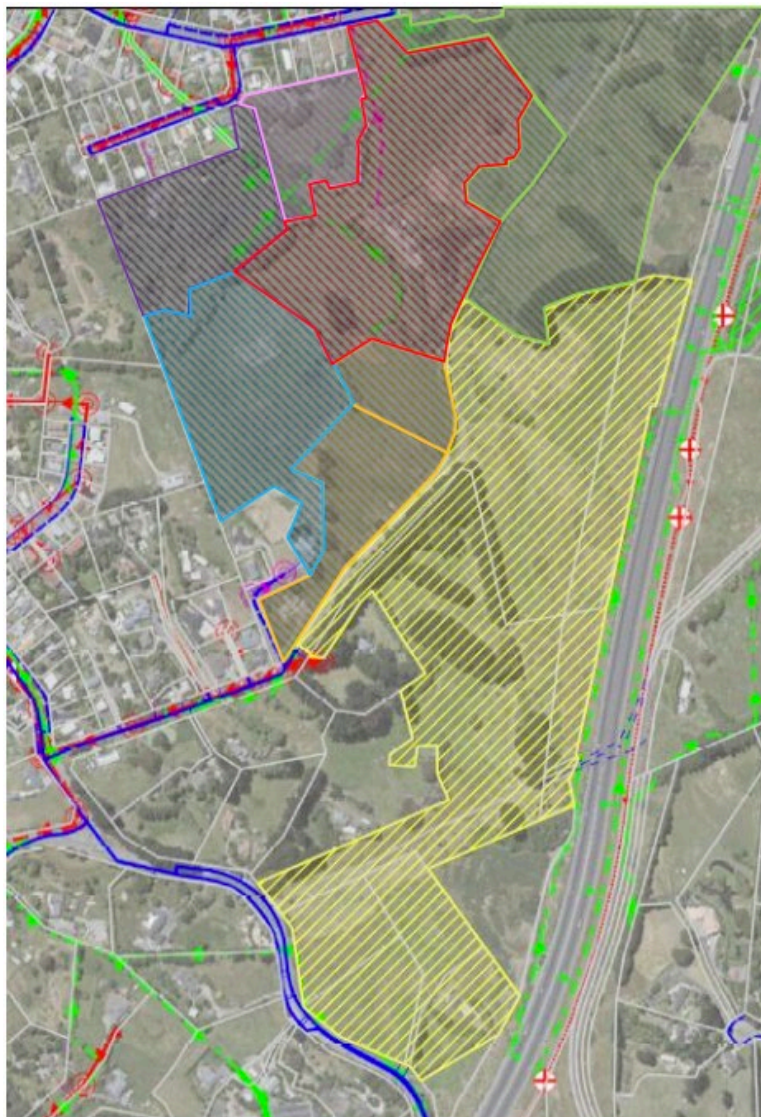


Figure 1: Colour Coded properties north & west of Mansell site

2.5 The Duncan Cotterill assessment confirms that:

- (a) All of the properties have the benefit of various easements which provide for the supply of services to each property –
 - (i) 68 Tiekō Street (coloured green) and 65 Tiekō Street (coloured red) have legal access and rights to Makaora Road;
 - (ii) 5 Taroa Road (coloured pink) and 7 Taroa Road (coloured purple) have legal access and rights to Taroa Road;
 - (iii) 37 Tiekō Street (coloured blue) is landlocked but still has the benefit of various easements and the benefit of a right of way, right to convey water, electricity, telecommunications and computer media, and right to drain sewage;

- (iv) 59 Tieko Street (coloured orange) has the benefits of a right of way, stormwater drainage right, water and electricity supply right, right to convey water, electricity, telecommunications and computer media and right to drain sewage.
 - (b) All properties except 37 Tieko Street (coloured blue) have access to a legal road and easements which provide for the supply of services to each property in the future, should these sites be developed. 37 Tieko Street has access to legal road, which allows for direct connection to easements services in the future.
- 2.6 Based on the above advice from Duncan Cotterill and the fact that all of the properties to the north and west of the Mansell site have access to legal roads (or in the case of 37 Tieko Street which has access to a legal road and easements services) and have rights to existing infrastructure, I do not consider that the rezoning of the Mansell site to General Residential with the MDRS provisions applying would foreclose the future development of these sites, or the wider Otaihangā OH-01, or a structure plan approach for optimal urban form.
- 2.7 As noted by Duncan Cotterill, in the event that the Mansell site is developed, the extension and vesting of Tieko Street Extension as legal road in KCDC (as currently proposed as part of the consents obtained) would provide greater servicing opportunities for 68 Tieko Street (green), 59 Tieko Street (orange) and 65 Tieko Street (red).
- 2.8 I note for completeness that in the event that the Mansell site is rezoned and developed in a more intensive way, it will be necessary to further extend the Tieko Street Extension, the entire length of the existing right of way, which would further improve accessing and servicing to those sites.
- 3. B) AN ASSESSMENT OF RISKS OF APPLYING THE MDRS TO AN UNIMPLEMENTED SUBDIVISION CONSENT GRANTED BASED ON A DIFFERENT PLANNING REGIME. I.E. THE CREATION OF NEW DEVELOPMENT CAPABILITIES ON TITLES THAT CAN BE CREATED UNDER A LIFESTYLE MANAGEMENT REGIME. WE ASSUME S023 MANSELL FAMILY WILL STILL SEEK TO SECURE THAT APPROVAL THROUGH THE EC PROCESS.**
- 3.1 There are two risks that can be identified of applying the MRDS to the unimplemented subdivision consent, which in my opinion forms part of the existing environment PC(N) is being considered. These risks are:
- (a) The resource consent holder decides to give effect to the consent granted regardless of the rezoning of the site and the MDRS provisions – the outcome of this risk would be the site is not utilised to its full extent for urban development as it could/should be;
 - (b) The resource consent holder decides to give effect to the consent granted regardless of the rezoning of the site and the MDRS provisions, and each individual new lot owner decides to implement urban development themselves

– the outcome of this risk is piecemeal urban development and an uncoordinated approach to development and the provision of services.

3.2 In relation to the first risk, the outcome identified applies to all land included in PC(N) to have the MDRS provisions applied to it. Like any other site in the district, whether the potential of the land for urban development is realised will depend on the owner of that land and their ability/desire to take advantage of the enabling MDRS provisions. This risk is not at all unique to the Mansell site and can be said to equally apply to any other site that is subject to rezoning under PC(N). Applying this risk to the Mansell site, would still result in a modest increase in housing (46 lots), which would be the same as if it had not been rezoned.

3.3 In relation to the second risk, as I discussed in paragraph 11.30 (c) of my planning evidence in chief, there are a number of regulatory provisions included in a range of planning instruments that would need to be adhered to for any subdivision and development to occur on the new titles created when giving effect to the non-complying resource consents for subdivision granted under the existing Rural Lifestyle zoning, *even if* the Mansell site is rezoned General Residential with the MDRS provisions applying. These planning instruments include:

- (a) The National Environmental Standards – Freshwater (NES-FW);
- (b) The proposed Natural Resources Regional Plan (proposed NRRP);
- (c) The operative district plan (with PC(N) provisions)

3.4 Each of these planning instruments have a range of rules that would apply, and I have summarised these requirements in Table 1 below:

Activity	Planning Instrument	Activity Classification
Vegetation disturbance relating to natural wetlands	NES-FW Reg 38	Permitted if standards met
	NES-FW Reg 45C	RDA for urban development
	Proposed NRRP Rule R114	Permitted if standards met
Earthworks or land disturbance	NES-FW Reg 38	Permitted if standards met
	NES-FW Reg 45C	RDA for urban development
	Proposed NRRP Rule R101	Permitted if standards met
	Proposed NRRP Rule R107	Discretionary if not permitted under Rule R101
	NES-FW Reg 38	Permitted if standards met

Taking, use, damming, diversion, discharge of water	NES-FW Reg 45C	RDA for urban development
	Proposed NRRP Rule R117	Discretionary
	Proposed NRRP Rule R118	Non-complying (within 50m of a natural wetland)
Stormwater discharge	Proposed NRRP Rule R48	Permitted from individual property if standards met
	Proposed NRRP Rule R50	RDA for new urban development
	Proposed NRRP Rule R51	Permitted to groundwater if standards met
	Proposed NRRP Rule R55	Discretionary for all other stormwater discharges
New buildings and structures	District Plan amended PC(N) Rule RGZ-Rx1	Permitted if standards met
	District Plan amended PC(N) Rule RGZ-Rx5; RGZ-Rx6; RGZ-Rx7	RDA if standards not met
Subdivision	District Plan amended PC(N) Rule SUB-DW-Rx1	Controlled if standards met (hydraulic neutrality; underground services; water supply; effluent disposal; telecoms and electricity)
	District Plan amended PC(N) Rule SUB-DW-Rx23	Non-complying
	District Plan amended PC(N) Rule SUB-RES-Rx1	Controlled if standards met (including infrastructure, access and services; wastewater disposal; financial contributions)
	District Plan amended PC(N) Rule SUB-RES-R27	RDA if controlled standards not met subject to standards (including wastewater disposal; financial contributions)

	District Plan amended PC(N) Rule SUB-RES-R32	Non-complying if not controlled or RDA
Transport	District Plan Rule TR-R2 (vehicle movements)	Permitted if standards met (no more than 100vpd)
	District Plan Rule TR-R3 (access & loading)	Permitted if standards met
	District Plan Rule TR-R10	RDA if permitted standards not met

- 3.5 Importantly I note that the proposed NRRP Appeals version 2022 does not take into account amended NES-FW that came into effect on 5 January 2023. As currently worded, some of the proposed NRRP provisions are more restrictive than the amended NES-FW that intends to enable urban development. For example, while there are a number of notes in the proposed NRRP that identifies whether a rule prevails over a regulation in the NES-FW, and there is no recognition of the enabling requirements of Reg 45C of the NES-FW prevailing over the more restrictive proposed NRRP rules.
- 3.6 The application of these rules to control matters understood to exist on the Mansell site would mean that any subsequent applications to subdivide the already subdivided lots would trigger a number of rules that would provide a number of opportunities for KCDC to address the risks associated with the outcome of piecemeal urban development and an uncoordinated approach to development. This would include consideration of whether the necessary infrastructure could be provided to service the proposed density of development at Rule SUB-RES-Rx1 which provides standards that must be met for subdivision as a controlled activity or SUB-RES-R27 as an RDA if those are not met. Again, this is not an issue unique to the Mansell site.
- 3.7 However, it is difficult at this stage to determine the extent to which this risk could be managed as a similar situation arises as with the first risk discussed above, that is whether the potential of the land for urban development is realised will depend on the owner of that land and their ability/desire to take advantage of the enabling MDRS provisions, however an important aspect to consider is that rezoning under PC(N) would provide for the opportunity for the land to be developed in a more intense way.
- 3.8 In addition to the planning instruments discussed above, the resource consents held by the Mansells only provides for the subdivision of the site and earthworks to install the

infrastructure, and the GWRC consent only provides for discharges to land within 100m of a natural inland wetland (i.e., the resource consents do not provide any additional dwellings beyond those permitted by the District Plan, as discussed below).

- 3.9 The subdivision scheme provides for two distinct types of residential development on the site (as shown in the approved scheme plan included in Annexure 2 of my planning evidence in chief).
- 3.10 In the northern area, 22 “lifestyle” lots are proposed that range in size from 2,095m² to 2.78ha with a number of constraints on the development of these lots by way of Consent Notices included in the conditions imposed on the consents including:
- (a) Fencing covenants (Lots 11, 12, 20 – 22);
 - (b) A 10m fenced wetland buffer on Lots 1, 2, 5, 14 – 18, and 20;
 - (c) Within 10m fenced wetland buffer a number of activities are prohibited: the placement of rubbish or green waste; the construction of any building or structure; earthworks, and the removal of any indigenous vegetation and/or planting of any exotic vegetation;
 - (d) Earthworks and building exclusion zone (Lots 5 – 11, 21, 22);
 - (e) Unsuitable fill material areas (Lots 11, 21) – erection of any building or structure prohibited unless a geotechnical report indicates compliance with NZS 4431:1989;
 - (f) Lizard habitat area on Lot 5 – earthworks and the erection of any building or structure prohibited within this area; fencing and planting; animal and plant pest control;
 - (g) Existing Kānuka stands not to be modified except for plant pest control; control of fire and other hazards; removal of damaged, dead or dying or diseased Kānuka (Lots 1, 2, 5 and 20);
 - (h) Earthworks and the erection of any building or structure, excluding minor buildings, in flood hazard areas (Lots 2, 3 and 5);
 - (i) Stormwater design for discharge of stormwater from roofs into soakage pits (Lots 1 – 22);
 - (j) Flood free building area required on Lots 6 and 7;
 - (k) Services required include a local pressure sewer unit complete with pump, chamber and control equipment; water, electricity etc (Lots 1 – 22).
- 3.11 In the southern area, 23 “residential” lots are proposed that range in size from 490m² to 7,130m² with the majority being between 595m² to 1,210m² with a number of constraints on the development of these lots by way of Consent Notices included in the conditions imposed on the consents including:

- (a) Fencing covenant (Lot 46); fencing requirements along rear boundary (Lots 23 – 46); fencing requirements of areas of planting shown on plans (Lots 23, 24, 32, 34, 38, 39, 41, and 42); no fencing permitted along road boundary of Lots 23 – 28; 31 – 34; 36 – 46;
- (b) Planting of areas (shown on plans) (Lots 23, 24, 32, 34, 38, 39, 41, and 42);
- (c) 5m landscape strip (Lots 37 – 43);
- (d) Earthworks building exclusion zone (Lots 29, 30, 42 - 46);
- (e) Yard setbacks applying to Lots 23 – 46:
 - (i) 4.5m from the road boundary;
 - (ii) 3m from the rear boundary;
 - (iii) 3m from one side boundary;
 - (iv) 1.5m from all other boundaries.
- (f) Unsuitable fill material area (Lot 30) – erection of any building or structure prohibited unless a geotechnical report indicates compliance with NZS 4431:1989;
- (g) Discharge of stormwater to curb and channel and compensatory storage area (constructed wetland) (Lots 23 – 46);
- (h) Services required include a local pressure sewer unit complete with pump, chamber and control equipment; water, electricity etc (Lots 23 - 46);

3.12 Other points to note are:

- (a) Requirement to comply with KCDC's Subdivision and Development Principles and Requirements 2012;
- (b) The zoning of the site has not changed and remains at Rural Lifestyle therefore any activities that are not consents (such as an additional dwelling) would be subject to the Rural Lifestyle objectives, policies and rules – this includes the number of dwellings per lot is controlled by the Rural Lifestyle zone.

3.13 Based on the above summary of the constraints imposed on the resource consents granted for the subdivision, earthworks and installation of infrastructure of the Mansell site, there is likely to be little benefit to any individual new lot owner trying to implement the MDRS provisions in a piecemeal way. Therefore, I consider it would be a low risk that the new rights created would be implemented by the new lot owners in any substantive way as new resource consents under the MDRS provisions would be required.

3.14 While the Panel has specifically asked about risks, I note that the Mansell family have held and intended to develop this land for a long time and have actively pursued and spent considerable resources on its rezoning request to the Panel – which they would not

have done if they did not have an intention of taking advantage of rezoning of the land to develop at greater density.

- 3.15 While it is important to acknowledge the risks of various options, it is also important to consider the likelihood of those risks occurring at any time. In this case, I am advised that in the event that their rezoning request as part of PC(N) is successful they will seek to redesign and obtain new consents for a higher density development in accordance with the MDRS as a matter of priority.

4. C) AN ASSESSMENT OF HOW THE EXISTING PLAN PROVISIONS ADDRESS THE SITE'S VALUES AND WILL ACHIEVE POLICY 55 OF THE PRPS.

- 4.1 As I have summarised in the table above, the existing NES-FW, proposed NRRP and operative district plan provisions cover a range of activities associated with any future subdivision and development of the site that would address the site's values (and in particular the natural inland wetlands, indigenous vegetation and dunes). In my opinion there are a range of checks and balances in place to ensure the site's values are well considered by KCDC in any consents required for future subdivision and development should the site be rezoned General Residential and have the MDRS provisions apply as sought by the Mansell family.

- 4.2 In paragraph 5.15 (c) of my planning evidence in chief I summarise the proposed amendments to Policy 55 included in PC1 to the RPS which intends to provide for appropriate urban expansion. The following matters are to be given particular regard when considering a plan change for urban development beyond the region's urban areas (as at August 2022):

- (a) The urban development contributes to establishing or maintaining the qualities of a well-functioning urban environment, including:
- (i) The urban development will be well-connected to the existing or planned urban area, particularly if it is located along an existing or planned urban transport corridor;
 - (ii) The location, design and layout of the proposed development shall apply the specific management or protection for values or protection of values or resources identified in the RPS, including:
 1. Avoiding inappropriate subdivision, use and development in areas at risk from natural hazards as required by Policy 29,
 2. Protecting indigenous ecosystems and habitats with significant indigenous biodiversity values as identified by Policy 23,
 3. Protecting outstanding natural features and landscape values as identified in Policy 25,

4. Protecting historic heritage values identified in Policy 22,
 5. Integrates Te Mana o Te Wai consistent with Policy 42,
 6. Provides for climate resilience and supports a low or zero carbon transport network consistent with Policies CC.1, CC.4, CC.10, and CC.17,
 7. Recognises and provides for values of significance to mana whenua /tangata whenua,
 8. Protecting regionally significant infrastructure as identified by Policy 8; and
- (b) The urban development is consistent with any Future Development Strategy, or the regional or local strategic growth and/or development framework or strategy that describes where and how future urban development should occur in that district or region, should the Future Development Strategy yet to be released; and
- (c) A structure Plan has been prepared; and/or
- (d) Any urban development that would provide for significant development capacity, regardless of if the development was out of sequence or unanticipated by growth or development strategies.

Assessment

4.3 In relation to (a) (i) I note Harriet Fraser provided expert evidence to the hearing that confirmed the Mansell is well connected to the existing Paraparaumu urban area¹, and to other parts of Kapiti (including Waikanae using the old state highway).

4.4 In relation to (a) (ii) I note:

- (a) In relation to 1, apart for a small are of ponding in the northern most part of the site (part of a natural inland wetland), the site is free of any the natural hazards;
- (b) In relation to 2, indigenous biodiversity values have been investigated and will be protected on the site, including the natural inland wetlands, indigenous vegetation (kanuka stands), and skink population;
- (c) In relation to 3, there are no outstanding natural features or landscape values on the site;
- (d) In relation to 4, the only historic heritage value on the site relates to a Dray Track that traverses part of the site, and the Mansell's have worked with iwi to ensure the this heritage value is recognised and Heritage New Zealand have provided the necessary bulk earthworks approval;
- (e) In relation to 5, any future development will incorporate the matters outlined in Policy 42;

¹ Paragraph 3.8; pages 4 and 5 of Ms Fraser's statement

- (f) In relation to 6, and future development and stormwater management will factor in climate change, as noted by Mr Martell the site is free from hazards – including flooding and coastal inundation making it suitable for residential development, and the location of the site promotes alternative modes of transport such as walking and cycling that supports low carbon transport options;
- (g) In relation to 7, the Mansell's will continue to engage with iwi regarding mana whenua and tangata whenua values associated with the site – there are no significant cultural heritage sites identified;
- (h) In relation to 8, there are no regionally significant infrastructure on the site.

4.5 In relation to (b), as discussed in my planning evidence in chief (paragraphs 5.7 – 5.14), the district's growth strategy 'Te Tupu Pai', while not a FDS for the purposes of the NPS-UD, does provide a reasonable level of confidence that greenfield development, and in particular the Otaihanga area, are intended to address the District's housing requirements going forward, along with intensification provisions. The rezoning request is therefore consistent with (b).

4.6 In relation to (c)/(d), while a structure plan has not been prepared for the site and is not considered necessary (as discussed in my planning evidence in chief and by various experts), the rezoning of the Mansell site to General Residential and the MDRS provisions would provide significant development capacity, as discussed by Mr Foy in his statement of evidence.

4.7 Overall I consider the existing plan provisions, including those included in PC(N) will address the site's values and will achieve the amended Policy 55 of the RPS.

5. CONCLUDING COMMENT

5.1 I am happy to answer any questions you might have.



Christopher Adrian Hansen
18 April 2023