

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of an application to Kapiti Coast
District Council for non-complying
resource consent for a proposed 53 lot
subdivision¹ (including earthworks and
infrastructure) at Otaihanga, Kapiti
Coast.

**STATEMENT OF EVIDENCE OF CHRISTOPHER ADRIAN HANSEN ON
BEHALF OF THE APPLICANT**

1. INTRODUCTION

Qualifications

1.1 My full name is Christopher Adrian Hansen. My qualifications are a Bachelor of Regional Planning (Hons.) from Massey University, 1980. I am a full Member of the New Zealand Planning Institute and a certified Hearings Commissioner.

1.2 Experience

1.3 I am a Director in my own Company, Chris Hansen Consultants Ltd, which I established in 2010. I have over 40 years' experience in planning and resource management working for government agencies and multi-disciplinary consultancy companies. I provide a wide range of planning consultancy services including: advice and input into policy and plan preparation; preparation of resource consents; and advice on statutory processes. I have provided planning advice to a range of commercial and industrial sectors including transport; irrigation; utilities; hydro electricity generation; fertiliser; quarrying; retail and commercial; residential and coastal marine.

¹ The original application was for a 56 lot subdivision – 49 residential lots and 7 lots infrastructure.

- 1.4 In have a long history of involvement in planning projects in the Kapiti area, including with the Ministry of Works and Development in the 1980s; Department of Conservation in the early 1990s, and as a planning consultant since the mid-1990s. I have been involved in major roading projects, commercial and retail developments, quarrying and residential subdivision and development for a range of clients in the District during this time. I have also reviewed, lodged submissions, attended hearings, drafted appeals, attended expert planner conferencing, and advised on appeal resolution in the Proposed Kapiti Coast District Plan process for several clients.

Background

- 1.5 I have been involved in the proposed subdivision and development since April 2017. Specifically, this has involved:
- (a) The initial scoping of the proposal and identifying the resource consents and expert assessments required;
 - (b) Assistance with shaping and development of the proposal after the introduction of the National Policy Statement Freshwater Management in 2020 (NPS-FM);
 - (c) Coordination of the expert assessments required to support the resource consent applications;
 - (d) Liaison with the regional and district council planners and other technical teams; liaison with Te Ātiawa ki Whakarongotai Charitable Trust and Muaupoko;
 - (e) Preparation of the resource consent applications and associated Assessment of Environmental Effects (AEE) for regional and district resource consents;
 - (f) Assisting with the preparation of an application for an Archaeological Authority from Heritage New Zealand Pouhere Taonga
 - (g) Participated in meetings with representatives of Greater Wellington Regional Council (GWRC) and Kapiti Coast District Council (KCDC), and the Trustees of 44 Tiekō Street (submitter);
 - (h) Assisted with the gaining written approvals from a number of adjoining land owners;
 - (i) Assisted the Applicant to respond to Further information Requests by KCDC prior to notification (September 2021) and post notification (April 2022).

- 1.6 Regional resource consents were granted by GWRC on 28 October 2021 for the following activities (refer to **Annexure A** of my evidence):
- (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)]
- 1.7 Heritage New Zealand Pouhere Taonga granted Authority No: 2020/378 on 27 January 2020 to the applicant for initial subdivision works identified in the authority application (refer to **Annexure 2** of my evidence). Heritage New Zealand Pouhere Taonga appointed Kevin Jones, the applicant's archaeologist, to carry out any archaeological work required as a condition of authority 202/378 on 31 January 2020.
- 1.8 I confirm that I have read the briefs of Mr Compton-Moen, Mr Foy, Ms Fraser, Mr Goldwater, Mr Greenshields, Mr Martell, Mr Taylor and Mr Wylie, to which I will cross-refer [If applicable]. However, my evidence will focus on my area of expertise, being planning.

2. CODE OF CONDUCT

- 2.1 Although not necessary in respect of council hearings, I can confirm I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2014. I have complied with the Code of Conduct in preparing this evidence and I agree to comply with it while giving oral evidence before the hearing committee. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

3. EXECUTIVE SUMMARY

- 3.1 The proposed subdivision (including earthworks and infrastructure) requires a number of resource consent for a number of activities, including for subdivision (within the rural-residential zone, within a ponding area, on peat or sand soils), and land use activities (earthworks,

earthworks in a ponding area, trimming and modifying indigenous vegetation with 20m of a waterbody, yard requirements in the southern area, accessway greater than the maximum allowable width, and new roads). Overall a non-complying activity resource consent is required.

- 3.2 Regional consents have already been gained from GWRC for discharges and earthworks/land disturbance activities.
- 3.3 Potential and actual adverse environmental effects have been identified by relevant experts, and mitigations have been offered that mean any adverse effects are managed to be no more than minor (on lizard habitat) and less than minor or negligible for all other effects.
- 3.4 I do not agree that the improvements works offered by the applicant by way of a Developers Agreement is required as a mitigation to adverse effects from the proposal that arises from increased traffic movements, as these traffic movements are part of the permitted baseline. I oppose the conditions imposed in the s42A Report to require these improvements as a mitigation of adverse effects of the proposal.
- 3.5 I do not agree that the shared path should have the status of a roading asset, and be designed and constructed to the high-level sought by KCDC Roding Team.
- 3.6 The proposed subdivision (including earthworks and infrastructure) is consistent with the objectives and policies of the relevant planning mechanisms, including the PDP (Appeals Version 2018) relevant at the time the application was lodged.
- 3.7 The proposal therefore successfully meets both of the two s104 gateway tests, and can be considered under the requirements of s104 of the RMA.
- 3.8 The proposal meets s104 requirements and is consistent with Part 2 of Resource Management Act 1991 (RMA).
- 3.9 I consider resource consent can be granted for a lapse period of 10 years with appropriate conditions, and I have recommended a number of deletions, amendments and additions to the conditions included in the s42A Report.

4. SCOPE AND STRUCTURE OF EVIDENCE

4.1 I have structured my evidence as follows:

- (a) Project description
- (b) Site description and surrounding environment
- (c) The regulatory context
- (d) Consent requirements
- (e) Permitted baseline and the existing environment
- (f) Potential and actual environmental effects
- (g) Submissions and Responses
- (h) Response to KCDC's Requests for Further Information
- (i) Response to Officers' Report 42A
- (j) Planning assessment
- (k) Suggested Conditions
- (l) Conclusion

5. PROJECT DESCRIPTION

5.1 The proposal involves the subdivision of a 18ha² (western) portion of the Mansell Family Farm that has been severed by the Kapiti Expressway. The subdivision of this area involves earthworks, construction of roads, installation of services and the identification of a notional building area on the larger life-style lots.

5.2 The proposed Otaihanga Estates subdivision will create a total of 53 lots (refer to **Figure 1**):

- (a) 22 rural life-style lots in the northern area of the site (Lots 1 – 22);
- (b) 24³ residential lots adjacent to Otaihanga Road in the southern area of the site (Lots 23 – 46);
- (c) 2 lots for two internal roads to be vested in KCDC or be dedicated as road (Lots 100 – 101);

² The original application was for 17ha but additional land has been included as a result of Waka Kotahi offering back land no longer required for the Expressway.

³ The original application had 29 residential lots in the southern area – 3 have been deleted in response to the KCDC's Landscape Peer Review as discussed below.

- (d) 2 lots for road widening along Otaihanga Road to be vested in KCDC or be dedicated as road (Lots 102 – 103);
- (e) 1 lot to be vested in KCDC as a shared path linking the two internal roads (Lot 104);
- (f) 1 lot to be vested in KCDC as recreation reserve with access via an existing accessway from Otaihanga Road (Lot 105); and
- (g) 1 lot to be vested in KCDC as local purpose reserve (stormwater) providing for drainage and water storage (constructed wetland) adjacent to Otaihanga Road (Lot 200).



Figure 1 – Revised Scheme Plan

5.3 Key elements of the proposal include:

- (a) The retention and protection of 4 natural inland wetlands that are to be fenced to create a 10m buffer, and margins to be improved; notational building areas identified within the lots that include the natural inland wetlands;

- (b) The retention of mature kānuka trees⁴ and pest plant management and underplanting within the groves;
- (c) Landscape and amenity planting to soften any change in the rural-residential character and visual effects of the proposal, particularly from Otaihanga Road;
- (d) The relocation of lizards (grass skinks) to a dedicated 1ha lizard habitat area around the northern most natural inland wetland;
- (e) The retention as much as possible of dominant dunes on the site, and the identification of 'no-build' areas, and building setback requirements, to protect these dunes;
- (f) In cooperation with iwi, ways (including interpretative signage relating to the Dray Track) for the identify of Ātiawa to be reflected through the development;
- (g) A pressure sewage system and water system to be connected to the nearby KCDC's reticulation system servicing Otaihanga;
- (h) The creation of a constructed wetland to store stormwater and planting to filter out potential contaminants before it is released to the KCDC stormwater system
- (i) Stormwater from northern access road to be disposed of via swales and through under-drain bio-filtration devices prior to discharge to land;
- (j) An overflow pipe in the Otaihanga Road reserve adjacent to the Waka Kotahi site immediately east of the southern area of the site to allow ponding on the Waka Kotahi caused by a 100-year flood event to discharge to the roadside drain;
- (k) Provision of a new intersection with a right turn bay on Otaihanga Road providing access to residential lots in the southern part of the site;
- (l) Provision of walking, cycling and bridleway links to the existing Kapiti WCB;
- (m) Provision of a community park;
- (n) Animal and plant pest control;
- (o) Controls on fencing;
- (p) Controls on roofing materials for buildings in Lots 1 – 22; and
- (q) Lots 23 – 46 subject to specific yard setback requirements (of 4.5m from the road boundary, 3m rear yard, and 3m for one side and 1.5m for all other sides).

⁴ The applicant has applied for consent to trim or modify the mature kānuka trees within 100m from a waterbody (the natural wetlands) as there is a possibility this is required to ensure the health of these trees/stands – this is a precautionary measure only.

5.4 As well as the reduction in the number of lots in the southern area, additional elements have been offered by the applicant to address a number of matters that have arisen from the request for further information, submissions, and expert conferencing with the Landscape Peer Reviewer including:

- (a) A number of amendments to the landscape treatment of the subdivision, including:
 - (i) An additional 5m buffer planting to the northern edge of the constructed wetland overlapping into Lots 38 - 42;
 - (ii) Retention and supplementary planting of kānuka along Otaihanga Road;
 - (iii) Retention and extension of a greater portion of the natural dune form with a no-build zone in the south-west corner of the site in Lots 42 – 44;
 - (iv) Pockets of native planting proposed on private lots, consisting of kānuka, libertia and fax species for both northern and southern areas;
 - (v) Pinch points in road will be vegetated to slow traffic and provide amenity;
 - (vi) Two metre wide berm along southern access road (Lot 100) (between the road and pavement) to be planted with native grasses to reduce maintenance.
- (b) A change in design of the shared path to reduce gradients in steep areas; agreement to seal the sharp curve at the southern end of the shared path at the access to Lots 20/21⁵;
- (c) Detail design of the Community Park to provide for connectivity to the southern area and the shared path;
- (d) The offer of a Construction Traffic Management Plan to manage construction traffic use of Tieko Street;
- (e) The applicant has made a number of undertakings to the Trustees of 44 Tieko Street relating to: availability of firewood from any trees removed; retaining trees between the boundary of 44 Tieko Street and Lot 19 (unless removal is required from a safety perspective or to construct the Tieko Street extension) – agreement to replant in native species if this is necessary; and
- (f) The applicant has confirmed pest control measures to be included in the Construction Management Plan (in discussions with submitters Keene & Rice) that include:

⁵ As shown in Sheet 15; Scheme Plans 22208 SCH Rev Q

- (i) Two night shoots of rabbits within 1 month prior to the commencement of earthworks, with at least 1 week between the shoots;
- (ii) Animal pest control in the Lizard Habitat area in Lot 5 within 1 month prior to and during construction targeting mustelids, hedgehogs, and rats;
- (iii) Post construction manage animal pests until lots are sold;
- (iv) In consultation with KCDC's Stormwater Team, continue to undertake pest control in the constructed wetland to ensure plants are established and maintained for 5 years after it is vested in KCDC (in recognition of applicant's obligations under the GWRC consents).

5.5 Although not part of the proposal requiring resource consent, a number of upgrade improvements of Tieko Street have been offered by the applicant to form part of a Developers Agreement, including (Refer to Sheets 18 – 21 of Scheme Plans 22208 SCH1 Rev Q):

- (a) Safety improvements to intersection of Tieko Street and Otaihanga Rd including the trimming/removal of planting along Otaihanga Road and at the Tieko Street intersection; widening of the existing movement lane exiting Tieko Street; clear road markings (including give way triangle) and new 'GIVE WAY' sign; and a new street light on the southern side of Otaihanga Road adjacent to Tieko Street;
- (b) Yellow 'no stopping' lines along the narrow part of Tieko Street which is to be narrowed to 4m (single lane); movement lane to the north to be widened and new 'SINGLE LANE – GIVE WAY' and 'ROAD NARROWS' signs to control vehicles travelling south along narrow part of Tieko Street; white lines to delineate carriageway;
- (c) Concrete wheel stops to be installed along the narrow part of Tieko Street to stop vehicles driving on the grass verge and separating footpath on western side;
- (d) A new street light mid-way along Tieko Street on western side and new street light on the western side of the intersection with Otaihanga Road; and
- (e) A new footpath along (parts) of the western side of the road.

6. SITE DESCRIPTION AND SURROUNDING ENVIRONMENT

6.1 Section 2 of the AEE provides a description of the site and the surrounding environment. Additional information is also provided in technical reports accompanying the AEE, and in information provided to

KCDC as part of the response to the s92 Request dated 8 April 2022, particularly in relation to the surrounding area.

6.2 The key points to note regarding the site and the surrounding environment are:

- (a) The site supports wetlands, dunes, and terrestrial vegetation;
- (b) There are four wetland areas on the site that have been assessed as being natural inland wetlands in terms of the National Policy Standards Freshwater Management (NPS-FM);
- (c) Indigenous bird species include swallow, grey warbler, paradise shelduck and swamp harrier, silvereye and fantail; introduced species include blackbird and Australian magpie – none of the species are classified as ‘threatened’ or ‘at risk’;
- (d) Northern grass skink have been found on the site – these are not ‘threatened’;
- (e) The vegetation on the site is characterised by pasture with shelter belts and remnant kānuka groves;
- (f) The soil profile of the site is silty/sand topsoil (to approx. 0.25m below ground level) overlaying loose dense silty sand to 16m below ground level;
- (g) There is little evidence of archaeological sites observed on the site; and
- (h) The site includes one existing dwelling (which will remain), and the surrounding area is characterised by a mix of similar rural-residential properties with large dwellings; the Otaihanga General Residential area immediately west of Tiekō Street; the Waikanae River to the north; and the Kapiti Expressway immediately east and NIMT railway, Southwards Museum and the Otaihanga Transfer Station further east/southeast.

7. THE REGULATORY CONEXT

7.1 The RMA restricts any person to use land in a manner that contravenes a district rule unless a resource consent expressly allows the activity, or it is allowed under the existing use rights provisions⁶.

7.2 The RMA requires the consideration of any resource consent application in terms of s104, and being subject to Part 2. Section 104(D) of the RMA places particular restrictions for non-complying activities, and a consent authority may grant consent if it is satisfied that either the adverse effects

⁶ RMA s9(3).

on the environment⁷ will be minor; or the activity will not be contrary to the objectives and policies of relevant plans.

- 7.3 Relevant statutory planning mechanisms include:
- (a) New Zealand Coastal Policy Statement 2010 (NZCPS);
 - (b) National Policy Statement – Urban Development 2020 (NPS-UD);
 - (c) National Policy Statement – Freshwater Management 2020 (NPS-FM);
 - (d) Wellington Regional Policy Statement 2013 (RPS);
 - (e) Resource Management (Enabling Housing Supply and other Matters) Amendment Act 2021.
- 7.4 The Proposed Kapiti Coast District Plan (PDP) was notified in 2012 and at the time of the lodging of the consent application, had been through the plan process with hearings held and all appeals resolved. The Operative District Plan 1999 was therefore not considered relevant, and no assessment was made against its provisions. The 2018 Appeals Version of the PDP is the relevant plan for the consideration of the applications. I note the PDP does not give effect to the NPS-UD which was introduced in 2020.
- 7.5 The relevant PDP zoning and planning map notations are:
- (a) The site is zone Rural Residential (Planning Map 09A);
 - (b) There are no plan features shown on the site (Planning Map 09B);
 - (c) There is a ponding area shown over the north-eastern corner of the site (Planning Map 09C);
 - (d) The site is within the Coastal Environment; there are no rivers, streams or drains shown on the site (Planning Map 09D).
- 7.6 The relevant provisions of the above planning mechanisms have been referenced when assessing the resource consent application in terms of s104 of the RMA.
- 7.7 In addition to the above, the applicant has gained regional consents under the proposed Natural Resources Plan (Appeals Version) from

⁷ RMA s104(3)(a)(ii) excludes the consideration of any effect on a person who has given written approval to the application.

GWRC (as outlined in Section 1.6 above) and Archaeological Authority under the Heritage New Zealand Pouhere Taonga Act 2014 from Heritage New Zealand Pouhere Taonga (as discussed in Section 1.7 above).

8. CONSENT REQUIREMENTS

- 8.1 The proposal requires the following resource consents from KCDC:
- (a) 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.
 - (b) 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).
 - (c) A Subdivision Consent under Rule 9B.3.3 as the proposed subdivision is on peat or sand soils – restricted discretionary activity (subject to standards).
 - (d) 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.
 - (e) 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).
 - (f) 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).
 - (g) 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)⁸.
 - (h) A Land Use Consent under Rule 7A.3.1⁹ 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).

⁸ The applicant has applied for consent to trim or modify the mature kānuka trees within 100m from a waterbody (the natural wetlands) as there is a possibility this is required to ensure the health of these trees/stands – this is a precautionary measure only.

⁹ While not included in the original resource consent application, this additional resource consent was requested as part of the response to the s92 request dated 15 September 2021 responding to questions regarding the usability of Lots 23 – 26; this request was prior to notification of the application.

- (i) A Land Use Consent under Rule 11E.1.3(4)¹⁰ 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.
 - (j) A Land Use Consent under Rule 11A.2.1¹¹ for new roads meeting the relevant standards – controlled activity.
- 8.2 Resource consents have been sought with a lapse period of 10 years. This is sought as a precautionary measure due to pandemic related delays, contractor timeframes and material shortages in the construction industry.
- 8.3 Overall a **non-complying activity** resource consent is required for the proposed subdivision (including earthworks and infrastructure).

9. PERMITTED BASELINE AND EXISTING ENVIRONMENT

- 9.1 The permitted baseline allows for adverse effects of an activity permitted by the district plan to be disregarded when assessing a resource consent application.
- 9.2 I note in paragraph 70 (page 17) of the s42A Report that that KCDC's Officer considers that construction noise (Rule 12D.1.10), and vehicle movements (Rule 11E.1.2), will comply with the permitted activity standards and therefore any noise effects or effects associated with vehicle movements can be disregarded under the permitted baseline. I concur with this assessment, and refer to specific vehicle movement standards below when considering outstanding planning matters.
- 9.3 Other permitted activity effects relevant to the site relate to the following activities:
- (a) The trimming or modification of indigenous vegetation within the Rural-residential Zone beyond 20m from a water body (Rule 3A.1.2);
 - (b) Pastoral and arable farming, shelterbelts (subject to standards), outdoor (extensive) pig farming, horticulture, viticulture, and orchards (Rule 7A.1.2);
 - (c) Buildings and structures (including habitable buildings and accessory buildings) subject to standards (Rule 7A.1.3) including, amongst other things:

¹⁰ The need for this resource consent was identified in the KCDC Officer's s42A Report; para. 45; page 11.

¹¹ The need for this resource consent was identified in the KCDC Officer's s42A Report; para. 45; page 11.

- (i) 1 household unit and 1 minor flat on any site;
 - (ii) accessory farm buildings maximum height 10m;
 - (iii) sensitive activities greater than 300m of a building or enclosure containing lawfully established intensive farming activity.
- (d) Fences and walls with a maximum height of 1.2m if less than 50% visually permeable, or 1.8m if more than 50% visually permeable (Rule 8.1.1);
 - (e) Lighting for pedestrian/cycleways with a minimum of 10 lux (Rule 8.1.1);
 - (f) New or relocated buildings in ponding areas where the building floor level is constructed above the 1% AEP flood event (Rule 9A.1.3);
 - (g) Fences in any flood hazard area – no standards relating to ponding areas (Rule 9A.1.5);
 - (h) The development and installation of any new network utility complying with clearance distances, not in the ponding area on site (Rule 11A.1.5);
 - (i) New underground telecommunication and radiocommunication facilities subject to clearance standards (Rule 11A.1.6);
 - (j) Aboveground cabinets in the road reserve less than maximum height of 3m and maximum footprint of 3m² (Rule 11A.1.10).

9.4 The existing environment is outlined in Section 6 of the s42A Report (Pages 16 – 17), and I generally concur with the matters considered to make up the existing environment. Additional to these matters, I would also consider in relation to traffic movements on Tiekoo Street:

- (a) Looking at aerial images, there appears to be 4 undeveloped lots to the north of Tiekoo Street with access via the right of way, and 2 undeveloped lots that are part of the proposed site that have legal access to Tiekoo Street – each of these lots could have a dwelling and minor flat built as a permitted activity, if standards are met;
- (b) A subdivision resource consent [RM170306] that has been granted but not yet given effect to which allows for 5 additional dwellings to access Tiekoo Street.

10. POTENTIAL AND ACTUAL ENVIRONMENTAL EFFECTS

10.1 Section 5 of the AEE identified the following actual and potential adverse effects associated with the proposed subdivision (including earthworks and infrastructure):

- (a) Landscape, natural character and visual amenity effects;
- (b) Traffic effects;
- (c) Construction effects;
- (d) Flood hazard effects;
- (e) Geotechnical effects;
- (f) Biodiversity effects;
- (g) Archaeological effects;
- (h) Cultural effects; and
- (i) Positive benefits.

- 10.2 These effects and the mitigations proposed to manage any adverse effects to acceptable levels is summarised in the table in Chapter 5.9 of the AEE. The overall conclusion of the assessment is that any actual and potential adverse environmental effects of the proposed subdivision (including earthworks and infrastructure) will be no more than minor (on lizard habitat), and less than minor or negligible on all other matters, and that there are positive social and economic benefits, including improved natural wetlands on the site, increasing the mix of housing typology in Kapiti, and community benefits with the additional measures proposed.
- 10.3 Through the request for further information process, and the Peer Review of the Geotechnical Report and Landscape & Visual Impact Assessment, further mitigations have been offered by the applicant to address a number of matters raised, and these are discussed further below. The result of the additional mitigations offered through this process is that any actual and potential adverse environmental effects have been reduced even further.
- 10.4 I note para 75 (Section 6; Page 17/18) of the s42A Report generally identifies the above effects, and includes additional effects relating to reverse sensitivity and rural production effects.
- 10.5 I generally concur with the KCDC Officer's assessment of the effects relating to reverse sensitivity, rural productivity, cultural and archaeological as being less than minor. I also note in paragraph 179 (Section 6.9; Page 28) the KCDC Officer says the adverse ecological effects are also less than minor which I also concur with, however this is not recorded as such in the summary table in paragraph 200 (Section

6.12 Conclusion as to Effects; Page 31), and instead uses the term “acceptable with conditions”.

10.6 While I’m am not entirely clear what the KCDC Officer means by saying the other adverse effects are “acceptable with conditions”, I note that in paragraph 271 (Section 8 Section 104D; page 36) the KCDC Officer states the adverse effects “can be mitigated to be minor” and therefore I assume the term ‘acceptable with conditions’ equates to “effects are minor”.

10.7 I hold a different opinion on the level of adverse effects, with the mitigations offered, than the KCDC Officer in regards to those affects considered ‘acceptable’ or ‘minor’, and I will provide my reasons below.

Landscape, Character, Amenity and Visual Effects

10.8 The landscape, natural character, and amenity values of the rural-residential area have been well identified and documented in the Landscape & Visual Impact Assessment (LVIA), and subsequent revisions, prepared by DCM Urban and summarised in Section 5.1 of the AEE. I note the KCDC’s Landscape Peer Review confirms the methodology used by DCM Urban is recognised and accepted, and appropriate¹².

10.9 The planning context for these assessments is the site is not an outstanding natural feature or landscape that requires protection¹³. Furthermore, the PDP does not identify the site as one of the following natural features in the Planning Maps:

- (a) Area of Outstanding Natural Character;
- (b) Area of High Natural Character; or
- (c) Special Amenity Landscape.

10.10 Therefore, there are no special attributes of the site identified in the PDP that would warrant special attention or protection. Any landscape, natural character, and amenity values are therefore to be given the same level of consideration as other matters addressed by the PDP provisions.

¹² Section 2.1; Page 5; Peer Review of Estates Otaihangā Subdivision Proposal Landscape and Visual Impact Statement by Robin Simpson Design.

¹³ Section 6 (b).

Notwithstanding this, I do recognised that every site will have landscape and amenity values of importance to the local and wider community.

10.11 As outlined in the evidence of Mr Compton-Moen, the evidence of Ms Simpson (KCDC's Landscape Peer Reviewer), and summarised in Section 6.2 of the s42A Report, there have been considerable changes to the southern end of the proposal, including:

- (a) Reducing the number of lots by 3;
- (b) Further screening of Otaihanga Road by the retention and extension of the remnant dune in Lots 42 – 44;
- (c) Increasing the planting from 5m to 10m along the northern edge of the constructed wetland (Lot 200);
- (d) Increasing buffer planting along Otaihanga Road;
- (e) Introduction of pinch points and plantings along the access road;
- (f) Additional planting along the access road and additional copses of trees on private land.

10.12 The applicant has also committed to the maintenance of the planting in Lot 200 for a 5 year period after the constructed wetland has vested in KCDC.

10.13 These mitigations outlined above are additional to the earlier mitigations that the applicant had included in the original application, and through the s92 RFI process. I therefore disagree, bearing in mind there are no special attributes or planning status of the site, with the KCDC Officer's view they "... consider the adverse landscape, character, amenity and visual effects will be suitably minor and acceptable, subject to the conditions outlined in Appendix B being imposed¹⁴."

10.14 In my opinion, the applicant has agreed to a very high level of mitigations to address landscape and amenity effects above what is required when considering the planning status of the site. I am firmly of the view that the mitigations offered mitigate any adverse landscape and amenity effects to be less than minor or negligible, from an RMA planning perspective. I also consider the additional mitigations agreed to bring additional positive benefits for the proposal, that need to be recognised.

¹⁴ Para 92; Page 20 of s42A Report.

Traffic Effects

- 10.15 Traffic effects associated with the proposed subdivision and construction activities have been identified and assessed in the Traffic Assessment Report (TAR) prepared by Harriet Fraser¹⁵ and summarised in Section 5.2 of the AEE. Additional information on traffic matters have been provided in response to both of the s92 RFI, as discussed in detail in Section 7 of Ms Fraser's evidence.
- 10.16 Key traffic effects can be summarised as:
- (a) Safe access to the southern area from Otaihanga Road;
 - (b) Safe access to the northern area via the existing intersection between Otaihanga Road and Tieko Street;
 - (c) Safe travel on the access roads within the site;
 - (d) Construction traffic;
 - (e) Safety associated with the shared use path and access to Lots 20 – 22;
 - (f) Traffic generated by the proposal.
- 10.17 In Section 6 of her evidence, Ms Fraser outlines in detail the transport context and transport elements of the proposal, as included in her TAR. She also confirms there are only two areas of partial or non-compliance with the PDP provisions:
- (a) The provision of a footpath on only one side of the new access road to the southern area (Lot 100) – the PDP requires a footpath on both sides where access is provided to more than 20 dwelling units;
 - (b) Access widths to Lots 3 and 4 are wider than the maximum width of 9m in the permitted activity standards.
- 10.18 In terms of traffic movements generated from the proposal, the reduced number of lots from the original application means the proposed subdivision would generate some 368 to 460 vehicle movements per day with up to around 55 vehicle movements per hour in the busiest hours. For Tieko Street, the additional 19 dwellings are expected to generate 152 – 190 vehicle movements per day with up to 23 additional vehicle movements during the busiest times. I note Ms Fraser considers Tieko Street as it current exists can be expected to accommodate traffic flows

¹⁵ Appendix E to the consent application dated 29062021.

up to 1,000 vehicle movements per day, and the forecast traffic volumes for Tieko Street can be appropriately accommodated in terms of carrying capacity of the current street¹⁶.

- 10.19 These numbers are well within the permitted activity standard¹⁷ which would allow for 100 vehicle movements per day per residential lot, or 4,600 vehicle movements per day.
- 10.20 In terms of construction traffic, approx. 375 truck movements on Tieko Street have been identified associated with the delivery of roading aggregate, with up to 64 truck movements per day. Ms Fraser has proposed a Construction Traffic Management Plan by way of a condition to manage any effects of construction traffic on Tieko Street.
- 10.21 Ms Fraser also identifies a number of positive transport effects, including the provision of a shared path within the site; tie-in with existing recreational active mode routes along Otaihanga and the expressway, and the proximity of the existing SH1 route for ready access to Paraparaumu and Waikanae.
- 10.22 Ms Fraser recommends a number of matters be addressed through consent conditions to address:
- (a) The potential damage to the Tieko Street carriage way as a result of construction traffic activity;
 - (b) The management of the interaction between all road users and construction traffic on Tieko Street;
 - (c) Inclusion of a requirement for Detail Design and Post Construction Road Safety Audits of the proposed new intersection on Otaihanga Road; and
 - (d) Truck access to the site from Otaihanga Road for construction purposes be restricted to the existing northern driveway until the new intersection is constructed.
- 10.23 Overall Ms Fraser concludes that the roading infrastructure associated with the proposed subdivision can operate safely and efficiently, and that vehicle activity resulting from the subdivision can be accommodated within the local network with less than minor changes to the safety and efficiency of existing road users. I concur with her assessment and conclusion.

¹⁶ Para 8.8; Page 23 of Ms Fraser's evidence.

¹⁷ Rule 11E.1.2 of PDP.

- 10.24 I note in Section 6.5 (Page 21) of the s42A Report the KCDC Officer assesses transportation effects, and covers Tieko Street and Tieko Street extension; new road from Otaihanga Road, and general transportation effects. I note this assessment includes the need for improvement works to mitigate the effects of the proposal on Tieko Street to be imposed by way of consent conditions. Overall the KCDC Officer concludes that with the mitigations via consent conditions (including updates proposed) adverse effects associated with the construction of new roads, widening of an existing road and subsequent vehicle movements from allotments being occupied to be acceptable.
- 10.25 For reasons discussed below, I consider this conclusion to be flawed. In my opinion, the adverse traffic effects as identified by Ms Fraser have been addressed and mitigated to the extent that any effects are less than minor.
- 10.26 I acknowledge there are still two outstanding traffic matters that are yet to be resolved:
- (a) There is an existing need for the maintenance and upgrade of Tieko Street to provide safe and efficient movement along this street;
 - (b) The level of design required for the shared use path.
- 10.27 I address both of these points as outstanding planning matters below.
- Flood Hazard*
- 10.28 Flood hazard effects of the proposed subdivision and earthworks and associated infrastructure have been identified and assessed in the Awa Environmental Report¹⁸ accompanying the applications. The stormwater design for the proposal focuses on retaining the natural hydrological functions of the natural wetlands. The design solution address the two distinct areas within the site – in the northern rural life-style area individual lot soakage devices are proposed; in the southern residential area, traditional kerb and channel solutions discharge to a constructed wetland (Lot 200).
- 10.29 In the northern area, and increases in development runoff have been designed to be fully mitigated up to and including the 100 year event,

¹⁸ Appendix H – Flood Hazard Report; Awa Environmental; 290621.

and there are no changes to the exiting flood levels. In the southern area, some areas of flooding will be displaced by development, and this lost storage will be mitigated by increasing flooding capacity in the areas that remain.

- 10.30 Due to the change in levels in the southern area, land to the east of the site owned by Waka Kotahi is currently subject to ponding in a 100 year flood event, and this ponding will not be able to drain onto the site as it currently does. To remedy this, it is proposed to install a drain on the Waka Kotahi land to allow the ponding in a 100 year flood event to drain into the existing KCDC roadside drain, and then be stored within the constructed wetland in Lot 200 for release once the 100 year flood event has passed.
- 10.31 I note in the s42A Report the KCDC Officer points out in paragraph 140 (Page 24) that Standard 2 of Rule 9A3.2 (relating to subdivision of land with a ponding area) requires each building area to be located above the 1% AEP flood event level. This is different to the permitted activity standard in Rule 9A.1.3 (new or relocated buildings in ponding areas) that requires the building floor level to be above the 1% AEP flood event level. Mr Martell in his evidence has clarified that the level of fill in lots 6 and 7, which include a very small ponding area, is above the 1% AEP flood event level, meaning standard 2 of Rule 9A3.2 is met¹⁹.
- 10.32 In his evidence, Mr Martell concludes that the stormwater/flood impacts associated with development of the site can be mitigated through the proposed on-site mitigation measures. If these mitigations are adopted, he concludes any effects will be less than minor. I concur with Mr Martell's conclusion on this matter. I therefore disagree with the KCDC Officer conclusion that with the appropriate conditions, flood hazards can be mitigated and are 'acceptable' or 'minor'.

Geotechnical Effects

- 10.33 Geotechnical effects of the proposed subdivision and earthworks and associated infrastructure have been identified and assessed in the RDCL Geotechnical Report²⁰ accompanying the applications.

¹⁹ Para 6.18; Page 13 of evidence of Mr Martell

²⁰ Appendix F – Geotechnical Report; RDCL; 290621 [revised 100322]

- 10.34 The findings of the geotechnical assessment indicated there is little no risk of liquefaction on the site, and the site is suitable for residential development , subject to several recommendations that included:
- (a) Foundation recommendations – NZS3604:2011 shallow foundations are suitable for the overall site;
 - (b) Building platforms will require testing to confirm site requirements in accordance with NZS3604:2011; and
 - (c) A nominal setback of 5m from slopes >15 degrees to protect against potential for slope stability.
- 10.35 I note Mr Wylie in his evidence confirms he supports the conditions that relate to geotechnical issues²¹, and he considers any geotechnical effects are less than minor²². I concur with Mr Wylie’s assessment. I therefore disagree with the KCDC Officer’s conclusion that with the appropriate conditions, liquefaction hazards are ‘acceptable’ or ‘minor’.

Construction Effects

- 10.36 Construction effects associated with the proposed subdivision and earthworks and infrastructure are addressed in the Engineering Infrastructure Report²³ and summarised in Section 5.3 of the AEE. Construction traffic effects have already been discussed above. Included in the Engineering Infrastructure Report is a Preliminary Erosion & Sediment Control Plan (ESCP) that addresses the effects from construction activities, including sediment entering natural wetlands; erosion caused by land disturbance; dust; topsoil storage sites; and the deposit of unsuitable materials on site.
- 10.37 Given any construction effects will be managed through the proposed ESCP, as required by conditions, in my opinion any adverse effects from construction activities will be less than minor.

11. SUBMISSIONS

- 11.1 I generally concur with the summary of submissions included in paragraph 48 of the s42A Report (Section 4 Notification and Submissions; Page 12). The only minor omissions I note are:

²¹ Paras 6.11 – 6.13; Page 6/7 of Mr Wylie’s evidence

²² Para 6.16; Page 7 of Mr Wylie’s evidence

²³ Appendix I – Engineering Infrastructure Report (and appendices); Cuttriss; 290621

- (a) Submission 6 Brent James and Leanne Morris also raised as an issue effects on Rural Character;
- (b) Submission 7 NZ Custodial Trustees (103) Ltd and Pendennis Custodial Trustee Ltd also raised rural character issues relating to privacy, and planning issues.

11.2 In paragraph 50 (Page 12) the KCDC Officer summarises the 13 submissions, stating that four oppose in part the proposal. This is not correct as only three submissions (2, 6 and 12) opposed the proposal in part, as identified in the table in paragraph 49. One submitter (11 Jimmy Tinsley) did not state their position.

11.3 The KCDC Officer identifies in Figure 7 (Page 14) that Submitter 1 Gerard and Elizabeth Earl are located at 50 Hollis Rd, Paraparaumu. However, the submitter identifies in the submission that they have recently purchased land at 31D Tieko Street and intend to develop this for their family home within the next 12 months.

11.4 The applicant has had discussions with a number of submitters, and I summarise these below:

Gerard and Elizabeth Earl – Submission 1

11.5 The applicant has had a telephone discussion with Mr Earl regarding the following matters included in the Earl's submission:

- (a) Environmental concerns – the applicant confirmed the intention to retain some of the mature pines, if possible and Mr Earl is happy with that proposal;
- (b) Traffic – the applicant outlined the proposed improvements to Tieko Street that are not part of the application; Mr Earl indicated he would rather keep the rural feel of Tieko Street so his preference was that there was as little upgrade as possible;
- (c) Construction Traffic - the applicant outlined the management of construction traffic (CTMP) and Mr Earl appeared happy with this approach;
- (d) Lot 104 – Mr Earl confirmed they opposed the shared path in general, but in particular a path where it would be possible to drive a car on.

Paula Keene and John Rice – Submission 4

11.6 The applicant has had email correspondence²⁴ with the submitters, to confirm the following:

²⁴ Richard Mansell dated 26042022

- (a) Pest control – control of pests as discussed in Section 5.4 (f) above, to be included as a Condition on consent;
- (b) Sediment/runoff control – to be through the Erosion & Sediment Control Plan, as required by the GWRC consents²⁵;
- (c) Access – to be controlled by a Construction Transport Management Plan, to be included as a Condition on consent²⁶;
- (d) Native vegetation – confirmation that all existing kānuka stands to be retained and protected;
- (e) Weed control – confirmation blackberry and gorse will be removed from Lots 2 – 5 where earthworks are proposed.

11.7 The submitters replied by email²⁷ to the applicant that the matters outlined (above) 'sound fine'.

NZ Custodial Trustees (103) Ltd and Pendennis Custodial Trustee Ltd – Submission 7

11.8 I have had numerous emails and phone calls with Ms Alice Blackwell of The Property Group, and a meeting (on a Without Prejudice basis) with Ms Blackwell and a Trustee of 44 Tiekō Street, regarding the matters raised in their submission. In response to the submission points raised, I can advise:

- (a) Privacy Effects – the applicant has provided the Trustees with a cross section of the finished ground height of Lot 19 and 44 Tiekō Street so they are able to determine whether a dwelling could be built that would cause privacy effects, as discussed in Mr Taylor's evidence²⁸;
- (b) Removal to existing vegetation – the applicant has indicated the trees along the northern boundary of 44 Tiekō Street and proposed Lot 19 will be retained if possible – if any trees are required to be removed for safety or tree health reasons, the applicant would liaise with the Trustees regarding appropriate native species to be planted;
- (c) The applicant has also indicated a preference to retain the trees along the access to Lot 19 and the western boundary of 44 Tiekō Street, and they would only be removed if earthworks required for the access undermined their integrity²⁹ – the applicant would liaise with the Trustees regarding appropriate native species to be planted;

²⁵ Paragraph 9.4(a) – (c); Page 21/22 of Mr Taylor's evidence.

²⁶ Paragraph 9.4(d); Page 22 of Mr Taylor's evidence.

²⁷ Paula Keene dated 16062022.

²⁸ Paragraph 9.7(a) – (c); Page 23 of Mr Taylor's evidence.

²⁹ Paragraph 9.7(d); Page 24 of Mr Taylor's evidence.

- (d) Easement in relation to Access – the applicant has confirmed there is no effect on the very narrow easement over the site (southern end of proposed Lot 19) to 44 Tieko Street³⁰;
- (e) Traffic – the applicant has outlined the proposed improvements to Tieko Street which are not part of the application, as discussed in Section 5.5 above.

Waka Kotahi – Submission 9

11.9 I have had numerous phone discussions and emails with Mr Luke Braithwaite, planner with Waka Kotahi, addressing the matters raised in their submission and providing him with information on the legal status of the titles of the properties to be subdivided. In response to the submission points raised, I can advise:

- (a) Reverse sensitivity – Rule 12D.1.14 requires habitable dwellings within 40m of the nearest edge of the Expressway carriageway to meet noise standards; this requirement would only relate to the eastern part of Lot 35 which would be within 40m from the edge of the carriageway – there is adequate area further west on Lot 35 to construct a building, and it is proposed to add a Consent Notice requiring any habitable building on Lot 35 to be located greater than 40m from the edge of the Expressway carriageway;
- (b) Flood Hazard – I have confirmed with Mr Braithwaite the proposal to install a drain on the Waka Kotahi land, as proposed in the Awa Environmental Report, to drain the ponding on the site resulting from a 1:100 AEP flood event to the KCDC road drain; Mr Braithwaite has advised³¹ this approach is acceptable, and has indicated Waka Kotahi would provide access to their land via an ‘Agreement as to Works’ process when the drain needs to be installed.

11.10 I note that individual experts have addressed specific matters raised in submissions in their evidence, and in particular I defer to the evidence of Ms Fraser; Mr Compton-Moen; Mr Goldwater; Mr Taylor, Mr Martell and Mr Greenshields.

12. RESPONSE TO KCDC’S REQUESTS FOR FURTHER INFORMATION

12.1 The applicant received two s92 request for further information (RFI) from KCDC – pre-notification request dated 26 July 2021 and post-notification request dated 17 January 2022. The matters included in these RFI are summarised in paragraphs 32 and 36 of the s42A Report.

³⁰ Paragraph 9.7(f); Page 24 of Mr Taylor’s evidence.

³¹ Telecom Braithwaite/Hansen 23062022.

12.2 Importantly, a considerable amount of additional information, including additional and revised plans and diagrams, has been provided through this process, and amendments to the proposal including:

- (a) Seeking additional consent for the reduction of the yard requirements for the lots in the southern area to ensure they are usable;
- (b) Clarification of how the sight lines could be improved at the Tiekō Street/Otaihanga Road intersection;
- (c) Clarification of the vertical alignment on a new plan of the proposed new intersection at the access to the southern area and Otaihanga Road;
- (d) Clarification of the design, width and purpose of the shared path (Lot 104);
- (e) The proffering of a Construction Traffic Management Plan to manage any construction traffic effects on Tiekō Street;
- (f) Clarification on a new plan of the separation of the 3.5m wide vehicle access to Lots 20 & 21 and the shared path, and the turning circle for vehicles at the end of the ROW;
- (g) Confirmation of the cycling distances from Tiekō Street to Paraparaumu via various routes;
- (h) Clarification on a new plan of the access to the proposed community park (Lot 105) via the new southern area access and treatment of the existing shared path on Otaihanga Rd adjacent to Lot 105;
- (i) Revision of the RDCL Geotechnical Report to address geotechnical matters arising from the Peer Review;
- (j) Additional plans showing the proposed improvements to Tiekō Street – these improvements are not part of the resource consent application;
- (k) The commissioning of a CPTED assessment of the proposed shared use path (Lot 104) to address concerns raised by the KCDC Roding Team;
- (l) Redesign of the gradients of parts of the shared use path to address cyclists safety concerns raised by the KCDC Roding Team;
- (m) Additional visual assessments and commentary on the surrounding environment to address concerns raised by the Landscape Architect Peer Reviewer;
- (n) Confirm details on animal pest control measures, as discussed above in Section 5.4 (f).

13. RESPONSE TO OFFICERS' REPORT S42A

- 13.1 I have closely review the s42A Report, and have already identified above where I concur with the findings of the report in relation to the permitted baseline, existing environment, assessment of (some) adverse environmental effects, and the summary of submissions. I have also identified where I think additional matters are relevant to these topics.
- 13.2 I wish to make the following additional (relatively minor) points regarding the s42A Report:
- (a) 2.1 The Site and Locality – para 9 (Page 3) – I note the s42A Report records the combined area of the site as being 25.3449 ha; as confirmed by My Taylor in his evidence³², the site is 18ha in total area;
 - (b) 2.2 The Proposal/Application – Para 20 (Page 7) – I note the s42A Report says 13 of the proposed rural-residential lots meet the 4,000m² minimum lot size for an RDA – for completeness, there are also two lots in the southern area (Lots 29 and 30) that also exceed the minimum RDA lot size;
 - (c) 3 Activity Status - Para. 45 (Page 10 - 11) – I note the table includes additional rules not identified in the original application – for clarity:
 - (i) Rules 9A.4.2 (subdivision of land containing ponding) - discretionary activity rule that applies if the RDA standards are not met (it is assumed these standards will be met);
 - (ii) 11E.4.1 (access exceeding the maximum width) - it is accepted this rule should have been included in the application;
 - (iii) Rule 11E.2.1 (controlled activity for new roads) – it is accepted this rule should have been included in the application;
 - (iv) Rule 7A.3.1 (yard setbacks) - was not part of the original application, and this consent was requested as part of the s92 RFI (as discussed above);
 - (v) Rules 12D.1.10 (construction noise) and 11E.1.2 (vehicle movements) – these rules were not referenced as the proposed activity complies with the permitted activity standards and no consent is required.
 - (d) 4 Notification and Submissions – para 50 (Page 14) – this section records there are 'four opposed in part' submissions – this is not correct as 3 submissions 'opposed in part' the

³² Paragraph 5.1, page 5 of Mr Taylor's evidence.

proposal, and 1 submission does not state a position, as correctly shown in the table in para 49 (Page 12);

- (e) 4 Written Approvals - para 52 – I note it is recorded that there is another owner of 183 Otaihanga Rd that did not provide their approval – this owner is A J Mansell, who is one of the applicants, who was unavailable for health reasons to provide their written approval as an owner of 183 Otaihanga Rd;
- (f) 6.5 Transport Effects – Paras 112/113 (Page 21) – I note in relation to the trimming/removal of vegetation along Otaihanga Road at the Tiekō St intersection, and the statement in para. 113 that the planting is on third party land – Mr Taylor addresses this point in his evidence, and confirms the planting is in road reserve³³; as I understand it, subject to confirmation that the vegetation to be trimmed is not significant indigenous vegetation and covered by Rule 3A.1.3, the trimming should be permitted under Rule 3A.1.2 of the PDP;
- (g) 6.6 Natural Hazard Effects – Flooding – Para 140 (Page 24) – I note the reference to Rule 9A.3.2 standard 2 and the requirement for each building area to be located above 1% AEP flood event, and not just the building floor level as required by Rule 9A.3.3 – I can confirm this can be achieved to comply with the Rule 9A.3.2 standard, as discussed in Mr Martell's evidence.

14. PLANNING ASSESSMENT

- 14.1 Section 7³⁴ of the s42A Report provides a statutory assessment of the proposal against the relevant planning mechanisms, as required by s104(1)(b) of the RMA.
- 14.2 Overall I concur with the KCDC Officer's assessment of the proposal against the relevant planning mechanisms, and the overall conclusion that the proposed subdivision and earthworks are not contrary to the objectives and policies of the PDP.
- 14.3 Section 8³⁵ of the s42A Report concludes that the proposal meets both gateway tests of s104D of the RMA, and I concur with this finding.
- 14.4 Section 9³⁶ of the s42A Report considers there are no matters considered relevant that would assist in determining the application as required by s104(1)(c) of the RMA. I concur with this finding. I do note there is an additional line in this paragraph that is likely to be a typing error?

³³ Paragraph 10.4; Page 30 of Mr Taylor's evidence.

³⁴ Pages 31 – 36 of the s42A Report.

³⁵ Paras 271, 272; Page 36 of the s42A Report.

³⁶ Para 273; Page 36 of the s42A Report.

14.5 Section 10³⁷ of the s42A Report provides an assessment of the proposal under Part 2 of the RMA. While I generally agree with the assessment provided, and the assessment provide for completeness, I assume there is an error in para 277 which states that overall the KCDC Officer considers “...*the proposal is inconsistent with the purpose of the RMA as set out in Part 2.*” [my emphasis added]. I assume this should have read the proposal is not inconsistent with the purpose of the RMA, which is consistent with the assessment provided in para 276.

14.6 Notwithstanding the above matters, as I have identified above in my evidence, there are three outstanding planning issues yet to be resolved, and I address these matters below:

Improvements to Tiekoo Street

14.7 There is general agreement amongst the traffic experts, KCDC officers and submitters that Tiekoo Street is in need of maintenance and improvement. The applicant has recognised this point, and offered to enter into a Developers Agreement with KCDC to assist with improvements to Tiekoo Street, and the agreed design is included in the revised Scheme Plans³⁸ provided to KCDC as part of the January 21 2022 RFI response. The applicant has made it very clear to KCDC (including in objecting to that RFI request and in its response) that the improvement works are not part of the resource consent application. I have outlined the key elements of the proposed improvements in paragraph 5.5 above.

14.8 However, Mr Trotter in his evidence, and the KCDC Officer in the s42A Report, have formed the view the Tiekoo Street improvements are required to mitigate an effect from the additional traffic generated from the proposed subdivision, and conditions³⁹ are imposed to require the works to be undertaken prior to the completion of the subdivision process, including providing a road safety audit for the improvements.

14.9 In paragraph 6.8 of his evidence, Mr Trotter states that: “*Given the current less than ideal situation in Tiekoo Street it is my opinion that the potential increase in traffic, which is a maximum of 100 vehicle movements per day per lot, along this road is not acceptable..*”.

³⁷ Paras 274 – 277; Pages 36/37 of the s42A Report.

³⁸ Sheets 18 – 21; Scheme Plans Rev Q.

³⁹ Conditions 62; 64; 67.

Paragraph 117 of the s42A Report states: *“The mitigation shown on the Cuttriss Consultants Limited plans detailed in paragraph 114 above are considered critical by the Council’s Transport Safety Lead to mitigate the effects of the increased traffic along Tieko Street resulting from the proposal to an acceptable level ...”*. In paragraph 118 the KCDC Officer confirms that to ensure these works are carried out, conditions on consent have been provided by Council’s Transport Safety Lead and included in the Appendix B conditions.

- 14.10 From a planning perspective, I have two issues with the approach taken to the improvements proposed by the KCDC Officers. Firstly, it is incorrect to determine that the proposed subdivision creates vehicle movement effects that are required to be mitigated. As the KCDC Officer has stated in their permitted baseline assessment, vehicle movements including associated with residential activity and construction activity will comply with the permitted activity standards and therefore any effects associated with vehicle movements can be disregarded under the permitted baseline. I concur with this conclusion.
- 14.11 Secondly, KCDC is not able to impose a condition on a resource consent unless it is directly connected to an adverse environmental effect of the activity, or unless the applicant has proffered or agree to such a condition. In my opinion, the conditions imposed do not directly connect to an adverse effect (as the effect of the vehicle movements are to be disregarded) and are opposed by applicant, this has not been offered up. The conditions imposed are also subject to third party process (KCDC to do consultation under the Local Government Act 2002) so cannot be assumed to be in their final form. In my opinion, the conditions requiring the improvement works to Tieko Street should be deleted. I note Ms Fraser expresses the same view in her evidence⁴⁰, both in terms of Mr Trotter misquoting the effects, and due to it being subject to another process.
- 14.12 I would point out the applicant did proffer a condition⁴¹ to facilitate, with the collaboration of KCDC, the trimming of vegetation at the intersection of Otaihanga Road and Tieko Street as it could be done while works were being carried out as part of the Developers Agreement. However, the KCDC Officer has indicated they believe this vegetation is on third party

⁴⁰ Section 11; Pages 40 – 42 of Ms Fraser’s evidence.

⁴¹ Paras 112/113; Page 21 of s42A Report.

land, which is disputed by Mr Taylor in his evidence. Even if it was on private land Ms Fraser points out that KCDC have powers under the District Plan to undertake trimming for safety reasons, such as preserving sight lines, and this is needed now.

Status and Design Standard of the Shared Path (Lot 104)

- 14.13 The original resource consent application proposed a shared path that would provide a recreational opportunity for the local community, in pre-application discussion with the KCDC Parks & Recreational Officer at the time. The application clearly states that the shared path (Lot 104) would be vested in KCDC as a 'local purpose reserve (walkway/cycleway/bridleway)'⁴². The benefits of the shared path including providing accessibility between the northern and southern area by enabling a loop track, and enhancing the amenity of the area. It was made clear in the application that the shared path would not be lit in line with the rural environment, and would be designed to meet CPTED guidelines⁴³.
- 14.14 It therefore came as a surprise to the applicant when a meeting with KCDC's roading team declared the shared path would be a roading asset vested in the Roding Team, and needed to meet the standards for a connector link for commuters. This decision was not made in consultation with the applicant, and created a number of issues regarding design, surface standard, gradients etc. I note the evidence of Ms Fraser, Mr Greenshields and Mr Taylor address the various issues associated with this shift in the status of the shared path.
- 14.15 From a planning perspective, I can find no provision in the PDP that requires a shared path be provided as part of the proposed subdivision. In my view, the applicant was working with the KCDC Parks & recreation team to provide an additional facility to the community park that is being established on Lot 105, and would enhance the recreational and amenity values of the subdivision and the local area. I do not consider shared path with a design speed of 30km/h⁴⁴ is necessary or fit for purpose. I believe common sense needs to prevail in this situation, and the

⁴² Section 3.1; Page 15 of resource consent application.

⁴³ Section 5.3.5; Page 29 of resource consent application.

⁴⁴ Paragraph 9.6; Page 63 of s42A Report – Mr Trotter's evidence.

designed proposed by the applicant, as explained by Ms Fraser, Mr Taylor, Mr Compton-Moen and Mr Greenshields is appropriate.

Landscape Assessment

- 14.16 The LVIA⁴⁵ undertaken by DCM Urban on behalf of the applicant, and a Peer Review undertaken by an Independent Landscape Architect on behalf of KCDC, has assessed the ‘magnitude of change’ the landscape to absorb change, and the ‘RMA level of effects’ on the landscape with the mitigations proposed. This assessment has been undertaken in accordance with the NZILA continuum of natural character and the NZILA Best Practice Guide – Landscape Assessment and Sustainable Management with a seven point scale. As I understand it, this seven-point scale is still a work in progress, with a number iterations and a final version due to be published 27 July.
- 14.17 The reason I raise these points is because, as I understand it, a level of caution has to be taken when trying to align the terms used in the two mechanisms being used, as demonstrated below:

very low	low	low-mod	moderate	mod-high	high	very high
less than minor	minor	more than minor		significant		

- 14.18 I understand that guidance will be provided to clarify that the above mechanisms are not an equation, but a matter to be justified with explanations and reasons.
- 14.19 The reason for raising this point is because I found it difficult to follow the terminology used in the Peer Review document when assessing the magnitude of change and the RMA effects. For example, referring to the magnitude of earthworks visible from Otaihanga Road as ‘moderate-significant’⁴⁶ links two terms used in the above table – ‘moderate’ as a magnitude and ‘significant’ as a RMA effect, but in the table above ‘moderate’ relates to ‘more than minor’ and not ‘significant’, hence my confusion about the consistent use of the terms.

⁴⁵ Appendix D to the resource consent applications; revised in July 2022.

⁴⁶ Para 12; Robin Simpson evidence; last sentence.

- 14.20 This is not a criticism of the Peer Reviewers assessment, but an observation of the difficulty of trying to align the assessments of the two mechanisms in a consistent way.
- 14.21 I accept at the end of the day, the overall findings of the Peer Reviewer are that the mitigations proposed are 'acceptable', and the revised scheme can go forward for resource consent. As I have stated in para 10.14 above, I am of the view that the mitigations offered are more than necessary and any adverse effects are less than minor or negligible.

15. CONDITIONS

- 15.1 I note that a number of experts have provided comments on conditions relevant to their area of expertise, and I defer to their comments and the amendments they suggest. I will provide a revised set of conditions for the hearings, that incorporate the changes proposed by the experts, and my changes below.
- 15.2 Condition 7 – I support the requirement that Lot 104 be vest in KCDC as a local purpose reserve (shared path).
- 15.3 Condition 9 – requires the consent holder to enter a fencing covenant to ensure that the KCDC shall not be liable for or called upon to erect or maintain or contribute towards the cost of the erection or maintenance of any fence along the reserve boundaries. The Applicant can meet this in respect of Lot 104 (as all boundaries are contained within the proposed development) but cannot meet this for all of the boundaries of Lot 105. The applicant can enter into covenants requiring this in relation to Lot 105's boundaries with proposed Lots 23 and 47, but cannot impose covenants for the boundary of Lot 105 with the legal road (owned by Council) or the boundary with Lot DP 13 51041 (which is a private property owned by a third party – not the applicant). The Applicant has no ability to covenant out of the legal situation in respect of boundaries with third parties. The condition should be amended to reflect this position.
- 15.4 Condition 14 - This condition needs to be modified to allow for earthworks associated with the extension of the dune within Lots 42 – 44; suggested wording: *“Earthworks, except earthworks required to extend the dune within Lots 42 – 44”*.

- 15.5 Condition 21 – delete reference to hedges as there is no need to limit their height.
- 15.6 Condition 26 – as identified by Mr Taylor⁴⁷, the development contribution calculation is incorrect. Notwithstanding this, these contributions should be deleted as they are part of the Developer Agreement; the agreement will be legally binding and have its own requirements for the Applicant and KCDC to complete various actions in set timeframes, there is no need to impose further restrictions in the conditions.
- 15.7 Condition 33 – add the following: *“The Development Engineer is to confirm certification within 20 working days of receipt of the CMP.”*
- 15.8 Condition 39 – this condition seems to repeat the wording already included in Condition 37; delete.
- 15.9 Condition 46 – add the following: *“The Development Engineer is to confirm approval within 20 working days of receipt of the plans and specifications.”*
- 15.10 Condition 53 – add the following: *“The Development Engineer is to confirm approval within 20 working days of receipt of the engineering drawings and hydraulic calculations.”*
- 15.11 Condition 60 – add the following: *“The Development Engineer is to confirm approval within 20 working days of receipt of the plans and specification for the water infrastructure”.*
- 15.12 Conditions 62 – opposed for reasons discussed above, delete.
- 15.13 Condition 63 – add the following: *“The Access and Transport Manager is to confirm certification within 20 working days of receipt of the final details of road design and construction plans.”*
- 15.14 Conditions 64 and 67 – opposed for reasons discussed above, delete reference to Tieko Street alterations/improvements.
- 15.15 Condition 68 – add after the first sentence the following: *“The Access and Transport Manager is to confirm certification within 20 working days of receipt of the CTMP.”*

⁴⁷ Para 11.1; Page 36 of Mr Taylor’s evidence.

- 15.16 Condition 74 – a resource consent application has been applied for to trim or modify indigenous vegetation if it is necessary for the health of the kānuka stands – the condition needs to be modified to allow for this. Suggested wording (~~strikeout-deleted~~; underlined words added): “... *other than for the removal of pest species, or for the control of fire or other hazards, or to ensure the health of the kānuka stands*”.
- 15.17 In addition to the above, a number of conditions proposed by the applicant have not been incorporated into the conditions included in the s42A Report. It is requested the following conditions are added to the conditions: “... *other than for the removal of pest species, or for the control of fire or other hazards, or to ensure the health of the kānuka stands*”.

Stormwater

Condition ST7

Lot 200 shall be vested in Council as Local Purpose Reserve (stormwater).

Note: *The consent holder must meet any requirements of GWRC consent [WGN210352] conditions relevant to Lot 200 prior to vesting in Council.*

Condition ST8

Completion documentation shall be submitted in support of an application for Section 224(c) certification in accordance with Part 1 of NZS 4404:2010 and Part 4, Schedule 1 of Council’s SDPR:2012. The consent holder shall provide Council with an itemised schedule of quantities and costs, and the CCTV inspection reports, for those stormwater services and assets which are to be vest in Council.

Water

Condition W3

Completion documentation, including operation and maintenance manuals, shall be submitted in support of an application for Section 224(c) certification in accordance with Part 1 of NZS 4404:2010 and Part 4, Schedule 1 of Council’s SDPR:2012. The consent holder shall provide Council with an itemised schedule of quantities and costs for those water services and assets which are to be vest in Council.

Roading

Condition R2

The consent holder shall provide a new intersection on Otaihanga Rd with a right turn bay providing access to southern area to comply with

Austroads standards as shown in the scheme plans included in Drawing Number 22208 SCH1 Rev P. The final design of the new intersection is to be provided to the Council's Development Engineer for certification in writing prior to the commencement of any construction. The Development Engineer is to confirm certification within 20 working days of receipt of the final design of the new intersection.

Condition R4

The consent holder will facilitate, in collaboration with Council's Road Engineering, the trimming/removal of planting along Otaihanga Road at the Tieko Street intersection to meet Austroads sight line standards, prior to the completion of the subdivision and development.

Condition R5

The consent holder shall ensure the provision and design of the shared use path meet the relevant CPTED standards for intended purpose and use of the facility where practicable.

Condition R7

The consent holder is required to submit to Council's Road Engineering a post construction safety audit undertaken by a suitably qualified person confirming the intersection providing new access to the southern part of the site, and the Tieko Street intersection, is meeting Austroads safety standards. If Austroads safety standards are not being met, the consent holder shall submit to Council's Road Engineering an amended design that would meet these standards.

Environmental

Condition EN8

The following activities are prohibited within the 10m fenced wetland buffer identified within Lots 1, 5, 14-18 and 20 on sheet 3 of the Cuttriss Consultants plan Drawing Number 22208 SCH1 Rev P:

- The placement of rubbish or green waste;
- The construction of any building or structure;
- The removal of any indigenous vegetation and/or planting of any exotic vegetation.

Note: A Consent Notice under Section 221 of the RMA will be issued for Lots 1, 5, 14-18 and 20 to facilitate the recording of this condition, which is to be complied with on an ongoing basis.

16. CONCLUSION

- 16.1 The proposed subdivision (including earthworks and infrastructure) requires a number of resource consent for a number of activities, including for subdivision (within the rural-residential zone, within a ponding area, on peat or sand soils), and land use activities (earthworks, earthworks in a ponding area, trimming and modifying indigenous vegetation with 20m of a waterbody, yard requirements in the southern

area, accessway greater than the maximum allowable width, and new roads). Overall a non-complying activity resource consent is required.

- 16.2 Regional consents have already been gained from GWRC for discharges and earthworks/land disturbance activities.
- 16.3 Potential and actual adverse environmental effects have been identified by relevant experts, and mitigations have been offered that mean any adverse effects are managed to be no more than minor (on lizard habitat) and less than minor or negligible for all other effects.
- 16.4 I do not agree that the improvements works offered by the applicant by way of a Developers Agreement is required as a mitigation to adverse effects from the proposal that arises from increased traffic movements, as these traffic movements are part of the permitted baseline. I oppose the conditions imposed in the s42A Report to require these improvements as a mitigation of adverse effects of the proposal.
- 16.5 I do not agree that the shared path should have the status of a roading asset, and be designed and constructed to the high-level sought by KCDC Roding Team.
- 16.6 The proposed subdivision (including earthworks and infrastructure) is consistent with the objectives and policies of the relevant planning mechanisms, including the PDP (Appeals Version 2018) relevant at the time the application was lodged.
- 16.7 The proposal therefore successfully meets both of the two s104 gateway tests, and can be considered under the requirements of s104 of the RMA.
- 16.8 The proposal meets s104 requirements and is consistent with Part 2 of RMA.
- 16.9 I consider resource consent can be granted for a lapse period of 10 years with appropriate conditions, and I have recommended a number of deletions, amendments and additions to the conditions included in the s42A Report.



Christopher Adrian Hansen
20 July 2022

ANNEXURE A – REGIONAL CONSENTS

ANNEXURE 2 – ARCHAEOLOGICAL AUTHORITY