

**BEFORE THE WHANGĀREI DISTRICT COUNCIL INDEPENDENT
HEARING PANEL**

UNDER

the Resource Management Act 1991

AND

IN THE MATTER OF

an application by Hurupaki Holdings
Limited for resource consent to
create and operate a 73 residential
allotment and café at 131 and 189
Three Mile Bush Road, Kamo

**OPENING SUBMISSIONS OF COUNSEL ON BEHALF OF HURUPAKI
HOLDINGS LIMITED**

11 May 2022

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1 INTRODUCTION

- 1.1 Hurupaki Holdings Limited (the *Applicant*) seeks subdivision consent to create 73 residential allotments, and a land use consent to establish and operate a café, at 131 and 189 Three Mile Bush Road, Kamo (the *Site*) (the *Proposal*).
- 1.2 The application seeks to enable a master-planned residential enclave within a reserve-like setting, nestled at the foot of Hurupaki. The Proposal will deliver a high level of on-site amenity for future residents; promote connectivity with the surrounding environment, including to an enhanced open space and recreation network; revegetate and restore the flank of Hurupaki; and will contribute meaningfully to Whangārei's housing stock – confirmed as a key priority for the district in Council's Long Term Plan 2021-31.¹
- 1.3 In my submission this is an exemplar scheme and one that is very worthy of the grant of consent. It has been designed by a very experienced team and will be delivered by a developer with a reputation for investing in high quality residential communities in Whangārei.
- 1.4 The Proposal is a non-complying activity. The primary issue as between the Council and the Applicant – and therefore the focus of these submissions – is the potential impact on rural character and amenity as a result of the split zoning of the Site.

Evidence to be presented

- 1.5 The eight witnesses who have prepared statements of evidence filed on behalf of the Applicant are:
 - (a) **Mark Holland (Applicant)**, Director for Hurupaki Holdings Limited.
 - (b) **Michael Farrow (Landscape Architect)**, Principal at Littoralis Landscape Architecture.
 - (c) **Madara Vilde (Ecologist)**, Senior Ecologist at Rural Design Limited.

¹ Whangārei District Council *Long Term Plan 2021-31, Volume 1*, p.14.

- (d) **Jonathan Carpenter (Archaeologist)**, Senior Archaeologist and Whangārei Office Director at Geometria Limited.
- (e) **Dean Scanlen (Transport Engineer)**, Independent Traffic Engineer at Engineering Outcomes Limited.
- (f) **Aaron Holland (Three Waters and Geotech Engineer)**, Civil Group Manager at Land Development and Engineering Limited.
- (g) **Charlotte Nijssen (Surveyor)**, Licensed surveyor at Blue Wallace Surveyors Limited.
- (h) **Melissa McGrath (Planning)**, Associate at Barker & Associates Limited.²

1.6 In these submissions I will set out:

- (a) an overview of the Proposal;
- (b) response to the Council's s42A Report;
- (c) section 104D legal principles;
- (d) section 104D(1)(b) objectives and policies;
- (e) section 104D(1)(a) effects assessment;
- (f) section 104 assessment; and
- (g) proposed conditions.

2 OVERVIEW OF PROPOSAL

2.1 A comprehensive description of the Site, the surrounding environment and the Proposal is set out in the Assessment of Environmental Effects (*AEE*) and the evidence for the Applicant. I will not repeat those descriptions in detail here.

2.2 The Site is partially zoned General Residential (*GRZ*) and Rural Production Zone (*RPROZ*). This zoning follows the Council's recent Urban and Services Plan Change (for the Proposed District Plan (*PDP*))

² Including supplementary evidence of M McGrath, dated 11 May 2022.

as part of the rolling review of the Operative District Plan (*ODP*).³ The surrounding area now contains a mix of zoning under the PDP, including GRZ to the east and south, Rural Urban Expansion Zone (renamed Future Urban Zone⁴), Low Density Residential and RPROZ to the west and Open Space Zone to the north. This has resulted in an “island” of RPROZ to the north of the Site, in an area where the PDP has otherwise enabled residential intensification.⁵

2.3 The northern part of the RPROZ portion of the Site is also identified in the PDP as an Outstanding Natural Landscape (*ONL*) and an Outstanding Natural Feature (*ONF*) (the Hurupaki Scoria Cone).

2.4 Briefly the Proposal, as notified, comprised:

- (a) a subdivision creating 76 residential allotments, a public road, jointly owned access lots, and drainage reserves;
- (b) a small local cafe;
- (c) a 5.8ha recreational reserve and small playground;
- (d) enhancement and replanting of the Waitaua Stream corridor and part of the Hurupaki Cone;
- (e) relocation of approximately 185m of dry stone walls;
- (f) connections to public reticulated wastewater and water systems; and
- (g) various site works including clearing the Site of existing buildings and structures (resource consent for the proposed earthworks has been granted consent by the Northland Regional Council⁶).

2.5 Refinements to the Proposal have occurred in light of submissions, as detailed in the evidence of Ms McGrath.⁷ Briefly, the key revisions involve amendments to the part of the Proposal located in the RPROZ,

³ Evidence of M McGrath, at [4.3]-[4.4].

⁴ WDC updated PDP to reflect National Planning Standards on 17 February 2022, including renaming the 'Rural Urban Expansion Zone' to 'Future Urban Zone'.

⁵ Evidence of M McGrath, at [4.6].

⁶ Northland Regional Council, AUT.043180.01.01; AUT.043180.02.01; AUT.043180.03.01; AUT.043180.04.01; AUT.043180.05.01.

⁷ Evidence of M McGrath, at [5.3(a)-(e)].

including the removal of three lots north of Waitaua Stream (73 lots are now proposed); re-alignment of lot boundaries and allotment areas (lots 62 – 67); consent notice conditions to control future built form in lots north of the Stream; and increased planting areas.⁸

2.6 Various mitigation measures to manage potential adverse effects of the subdivision are included as a core part of the application. In my submission, and as you will hear from the expert team, these extensive mitigation measures (including detailed conditions of consent) will ensure that, overall, the effects of the Proposal are no more than minor. In addition, the Proposal includes a suite of positive benefits which contribute to an overall “net environmental benefit”. These two categories become important when assessing whether the Proposal can pass through the s104D non-complying gateway.

2.7 Briefly, key mitigation measures include:

- (a) limited earthworks and site establishment to minimise disturbance;⁹
- (b) extensive management and treatment of stormwater to improve the quality and quantity of stormwater entering Waitaua Stream;¹⁰
- (c) best practice integrated design, erosion and sediment control guidelines;¹¹
- (d) extensive landscaping within the GRZ portion of the Site, including street trees, enhancement of stormwater ponds and open space areas;¹²
- (e) careful allotment siting and design, including size, scale and positioning of lot boundaries to ensure that the future development is viewed discreetly and unobtrusively within the valley and avoids built development on the steeper slopes of Hurupaki;¹³

⁸ Evidence of M McGrath, at [5.3(a)-(c)].

⁹ Evidence of A Holland, at [6.5]; Evidence of M McGrath, at [8.59(b)].

¹⁰ Evidence of A Holland, at [5.6]; Evidence of M McGrath, at [8.59(g)].

¹¹ Evidence of M McGrath, at [5.1(i)].

¹² Evidence of M McGrath, at [8.59(h)]; AEE, Appendix 10: Assessment of Landscape and Neighbourhood Amenity Effects.

¹³ Evidence of M McGrath, at [7.4(b)] and [8.59(a)].

- (f) larger allotment sizes in the RPROZ than within the GRZ, creating a sense of spaciousness between the proposed lots;¹⁴
- (g) a detailed Construction Management Plan to manage the construction phase of the project;¹⁵
- (h) bulk and location controls (imposed by way of consent notice) to manage scale and location of built form, including setbacks from proposed northern allotment boundaries;¹⁶
- (i) colour and finishing design controls (imposed by way of consent notice) for future buildings and major structures to mitigate visibility of built form;¹⁷
- (j) avoiding or minimising physical disturbance of indigenous freshwater and terrestrial habitats on-site;¹⁸
- (k) enhancing and creating vegetated buffers around terrestrial and riparian habitats;¹⁹
- (l) containing active site development to areas deemed of “low” existing or potential ecological significance (i.e. the Proposal concentrates subdivision on the flatter sections of the Site which are dominated by exotic pasture);²⁰ and
- (m) proposed conditions of consent which ensure any adverse effects on the environment are avoided, remedied, or mitigated.

2.8 Key positive benefits include:

- (a) a walkway system providing localised circuits and links through the Site to Hurupaki and which also anticipates future connections to allow the Site to form part of a wider neighbourhood network (including “The James” to the east);²¹
- (b) two significant enhancement areas:

¹⁴ Evidence of M McGrath, at [7.37].

¹⁵ Evidence of M McGrath, at [8.59(c)].

¹⁶ Evidence of M McGrath, at [7.37]-[7.38] and [8.59(d)].

¹⁷ Evidence of M Farrow, at [6.1(b)].

¹⁸ Evidence of M Vilde, at [6.6].

¹⁹ Evidence of M Vilde, at [6.6].

²⁰ Evidence of M Vilde, at [6.6].

²¹ Evidence of M McGrath, at [7.49(g)].

- (i) The Hurupaki Cone Enhancement Area.²² In this location the slopes of the Hurupaki Cone to the north of the Site will be restored by:
- removing stock and preventing further degradation of the Hurupaki Cone flank;
 - returning the landform to its former identity by covering the ONF/ONL portion in the original broadleaf podocarp forest cover; and
 - expanding planting in keeping with the ONF/ONL to the toe of the steep flank.
- (ii) The Waitaua Stream Corridor Enhancement Area.²³ In this location the Waitaua Stream will be protected and enhanced by the establishment of a drainage reserve, to be vested in Council, along the entire length of Waitaua Stream. The reserve area will comprise significant planting of the western portion, protection of existing indigenous vegetation and provision for on-going pest and weed management.
- (c) provision of a variety of lot sizes that will provide meaningful housing opportunities in Whangārei;²⁴
- (d) designing spatial corridors through the centre of the Site, which has required developable land to be “sacrificed” but preserves a lasting viewshaft to Hurupaki;²⁵ and
- (e) providing a café and playground, to connect the community, providing points of interest and promoting positive social outcomes/interaction.²⁶

²² Evidence of M Vilde, section 7; Evidence of M Farrow, at [9.52]-[9.53].

²³ Evidence of M Vilde, section 7; Evidence of M McGrath, at [7.49(e)].

²⁴ Evidence of M McGrath, at [7.49(a)].

²⁵ Evidence of M Farrow, at [9.65]-[9.66].

²⁶ Evidence of M McGrath, at [7.39] and [10.33]; Evidence of M Farrow, at [9.67].

- 2.9 As will be apparent from the above and in the evidence to come, the Proposal has been very carefully conceived:
- (a) The Site has been considered as a whole. While the existing zoning pattern means the northern RPROZ portion of the Site is not currently earmarked for housing, the Applicant's expert team have carefully analysed the significant natural features of the Site and the wider environment.
 - (b) That exercise revealed an opportunity to achieve significant environmental benefits if residential activity was not constrained to the GRZ portion of the Site.
 - (c) As a result, a limited number of larger lots have been proposed north of the Stream. As you will see from the visual material, the proposed subdivision blends into the base of Hurupaki Cone and will be almost entirely screened from view by other residential development.
 - (d) The Proposal will create a high-amenity, park-like setting for future home owners; however the opportunity to live and recreate at the foot of Hurupaki is a privilege. In recognition of that privilege, the Proposal contributes to the amenity not only of its future residents but to the wider neighbourhood and residents of Whangārei district through the provision of public reserve, park and playground areas; by providing pathway connections through the community into the reserve beyond; undertaking ecological enhancement of Waitaua Stream; and by significantly enhancing access to, and the experience and appreciation of, Hurupaki Cone.
 - (e) The proposed enhancement areas in particular have been described by various experienced experts as setting a high benchmark for future residential subdivision in the district.²⁷
 - (f) Put another way, the Proposal is not being advanced on the basis of a bare minimum landscape concept and an over-ambitious subdivision plan that attempts to maximise the number of potential lots. Rather, the scheme has a thoughtful layout, reducing the number of lots that might otherwise be included in the GRZ portion

²⁷ Evidence of M Vilde, at [9.18] and [11.2].

of the Site and very carefully positioning the lots north of the Stream to minimise their impact from external vantage points.

- 2.10 As a result of the work undertaken and the careful design exercise, the issues remaining on foot between the Applicant and the Council's team are very few and solely relate to proposed subdivision of the RPROZ portion of the Site.

3 SECTION 42A RECOMMENDATION

- 3.1 The Council's s42A Hearing Report (*s42A Report*) adopts a balanced approach, acknowledging the myriad positive benefits of the Proposal as well as carefully distinguishing between aspects of the Proposal in the GRZ and the RPROZ.
- 3.2 However, although the majority of the s42A Report endorses the expert assessment on behalf of the Applicant, the reporting planner has recommended a decline on the basis that:
- (a) The portion of the Proposal within the RPROZ is considered to have more than minor effects on rural landscape, character and amenity values.²⁸
 - (b) The objectives and policies of the Subdivision and RPROZ chapters do not provide for development which does not maintain rural character and amenity and it is considered that a net environmental benefit is not achieved by the Proposal.²⁹
- 3.3 It is important to consider those recommendations in context for the purpose of your assessment.
- 3.4 Both the s42A Report and the supporting landscape assessment review by Mr Kensington (*Landscape Review*) draw a bright line between the two portions of the Site, supporting a generic residential development on the GRZ portion while considering that the RPROZ part of the Site to the north of the Stream should be retained in rural use.³⁰

²⁸ Section 42A Report, at [123].

²⁹ Section 42A Report, at [123].

³⁰ Section 42A Report, Appendix 7: Landscape Review, at [27].

- 3.5 On the key effects issue, there is an inherent conflict in the s42A Report, which records that:³¹

...the extent of effects associated with the proposed residential development in the Rural Production Zone is considered to be difficult to quantify.

- 3.6 The brief analysis in the s42A Report in respect of the scale of effects is reliant on the findings of the Landscape Review.³² On careful consideration of that review, it is apparent that the difficulty expressed in the s42A Report may come as a result of the emphasis placed within the Landscape Review on the anticipated outcomes of the RPROZ rather than on quantifying the nature and scale of effects that may arise as a result of the Proposal.³³

- 3.7 In other words, the Landscape Review quickly arrives at a view that the RPROZ does not anticipate development of this nature (and that therefore the benefits of the Proposal will not be greater than the adverse effects and a net environmental benefit cannot be achieved) without first traversing in any detail any of the following:

- (a) Rural character and amenity, both generally and with respect to the specific landscape context of the Site.
- (b) The RPROZ policy framework, which provides the opportunity to subdivide and develop within the RPROZ when biodiversity, landscapes, historic heritage or significant ecology are protected and enhanced, while protecting productive rural land resources, rural character and amenity.
- (c) An assessment of the magnitude of the specific adverse landscape effects considered to arise from the Proposal (with reference to the scale of effects utilised by Mr Farrow in his initial landscape report).³⁴

³¹ Section 42A Report, at [82].

³² Section 42A Report, at [79].

³³ Section 42A Report, Appendix 7: Landscape Review, at [22] and [24].

³⁴ AEE, Appendix 10: Assessment of Landscape and Neighbourhood Amenity Effects, p.26.

- (d) A review of the measures proposed to avoid, remedy and mitigate potential adverse effects and an assessment of what remains – i.e. the residual adverse effects.
 - (e) In light of the additional positive benefits of the Proposal, which Mr Kensington considers to be “significant”,³⁵ a balancing exercise to demonstrate that those significant benefits will not be greater than the residual adverse effects that may arise.
- 3.8 Despite the clear acknowledgement of the positive outcomes associated with the Proposal³⁶, the Landscape Review concludes that the Proposal is just “too intense” and that in order to maintain appropriate levels of rural character and amenity Mr Kensington “suspects” a much lower density would be required.³⁷
- 3.9 While the specific number of lots is clearly at the heart of the perceived impact on rural character and amenity, the Landscape Review appears to suggest some compromise number of allotments to reflect Low Density Residential zoning adjacent to the Site might be more appropriate:³⁸

Having said this, I acknowledge that alternative design options might exist to result in an outcome more relative to that which might emerge through future development of the land to the west of the site, which is zoned *Low Density Residential* ...

- 3.10 However, the Landscape Review does not identify the particular mischief that this “compromise position” would remedy:
- (a) There is no suggestion that a compromise number of allotments would be less visible. To that end the Landscape Review does not respond to the visual simulations (provided to the Council on 5 April 2022, prior to preparation of the s42A) which demonstrate that the RPROZ portion of the Site has a low presence when viewed from public vantage points and that buildings located on that part of the Site would not be prominent.³⁹

³⁵ Section 42A Report, Appendix 7: Landscape Review, at [20].

³⁶ Section 42A Report, Appendix 7: Landscape Review, at [20].

³⁷ Section 42A Report, Appendix 7: Landscape Review, at [23].

³⁸ Section 42A Report, Appendix 7: Landscape Review, at [22].

³⁹ Evidence of M Farrow, at [7.19].

- (b) Nor would the compromise position retain the Site in productive land use – critically, the Landscape Review does not advocate for retaining the northern part of the Site in pasture and does not suggest that a rural productive or pastoral outcome would be a more positive landscape outcome, despite the RPROZ framework.
- (c) There is also no suggestion that a compromise number of lots would better protect and enhance significant ecological and biodiversity values, which reflects the reality that a significant reduction in lots would result in a considerable curtailing of the environmental benefits incorporated in the current Proposal.

3.11 This is in some respects a perfectly understandable approach; namely to consider that an application “feels” too intense and seek to reduce it to something that is instinctively more palatable. However, for this application more so than usual, the temptation to chip away at the number of allotments must be avoided. To do so would be tantamount to “death by a thousand compromises”, as the associated benefits and significant environmental enhancement would equally be reduced – self-evidently, a generic residential subdivision confined to the GRZ portion of the Site, or with only a handful of houses sprinkled to the north of the Stream, simply would not warrant a master-planned landscape response of the scale proposed; nor would it justify the substantial investment by the Applicant in the restoration of Hurupaki Cone.

3.12 It will be apparent that a lot of care and effort has been taken by the Applicant and the expert team in order to optimise the natural features of the Site while achieving consent for a sustainable level of development. A very careful balance has been struck; a balance which – in their attempt to more slavishly follow zone boundaries – the Council’s reporting team does not appear to have focussed on sufficiently. I say that with respect, on the basis that Mr Kensington in particular clearly acknowledges the significant benefit of the intended restoration of Hurupaki. Unfortunately Mr Kensington appears to divorce his appreciation of the restoration effort from an acknowledgement that the enhancement areas are part of a holistic application that also includes a number of residential allotments north of the Stream.

- 3.13 In reality, the result of reducing the proposed lots in the RPROZ would be an inferior proposal, loading more intensive residential activity onto the GRZ portion of the Site, with reduced landscape planting and open space areas, and the remainder of the RPROZ land-holding put to some less environmentally beneficial or only marginally productive use.
- 3.14 The integrated nature of this Proposal, and the ability to use the entirety of the Site for thoughtfully located residential development, has enabled the Applicant to maximise the environmental outcomes associated with the overall development. That is how a net environmental benefit is achieved and that is exactly how the PDP is constructed – to allow such an outcome to be granted consent where the benefits associated with a particular subdivision or land development proposal would not otherwise be secured by traditional rural use. That is the context within which the second recommendation in the s42A Report – that relating to the objectives and policies of the RPROZ – ought to be considered.
- 3.15 It is apparent that the difference of opinion on this occasion between two very experienced experts, which ultimately underpins the analysis and conclusions in the s42A Report, can be distilled to a small number of differences in approach:
- (a) While identifying that the RPROZ has more than one theme, Mr Kensington focuses almost exclusively on the need for “continued rural land use” as a way to maintain rural character and amenity.⁴⁰ In doing so, Mr Kensington does not appear to have placed any weight on the provisions of the RPROZ that seek to promote and encourage the enhancement of significant landscapes, as he has not considered those overarching objectives and policies separately from the provisions relating to net environmental benefit.⁴¹
 - (b) Spatially, there is a key difference between Mr Kensington and Mr Farrow as to the relationship of the RPROZ portion of the Site with the Hurupaki slope itself – Mr Kensington considers the Site to the north of the Stream to be a contiguous part of the volcanic cone landform.⁴²

⁴⁰ Section 42A Report, Appendix 7: Landscape Review, at [13(i)].

⁴¹ Section 42A Report, Appendix 7: Landscape Review, at [13(ii)].

⁴² Section 42A Report, Appendix 7: Landscape Review, at [28].

- (c) Mr Kensington considers that the mapped extent of the ONF and ONL does not fully capture the physical extent of the feature and he therefore appears to discount the positive impact of the proposed Hurupaki revegetation and enhancement as it will only “partially achieve the restoration of landscape character values” as the property to the west will continue to be farmed.⁴³

3.16 With respect to those key differences, as you will hear in evidence:

- (a) Rather than cherry-picking, Mr Farrow and Ms McGrath have carefully considered all of the relevant RPROZ provisions. Relevantly, Mr Farrow concludes that:⁴⁴

The preceding analysis against some of the RPROZ provisions demonstrates that it is the restored flank and stream corridor that would provide an enduring and expressive rural character to the northern part of the Site, and that the spatially and visually contained strip of land between those two natural elements is of considerably less prominence or importance in terms of rural character and amenity.

- (b) Mr Farrow has undertaken a detailed analysis of the topography and morphology of the Site and Hurupaki Cone, including by way of modelled views and photographic study, and concludes that the extent of the Cone (and therefore the appropriate extent of the ONL) lies some distance further to the north than described by Mr Kensington, leaving a “crudely triangular portion of gently sloping ground” between what he considers to be the toe of the Cone and the Stream where Lots 77-73 are proposed.⁴⁵
- (c) Mr Farrow explains that he oversaw the mapping of the ONLs for the Whangārei section of the Regional Policy Statement for Northland (which were then adopted as the basis for the PDP landscape provisions):⁴⁶

As a result of that oversight, I am aware that the adverse impact of the grazed and production forested faces of the cone was deemed to limit the values of those parts of the landform so that they did not qualify for outstanding status. Restoration of the flank vegetation

⁴³ Section 42A Report, Appendix 7: Landscape Review, at [29].

⁴⁴ Evidence of M Farrow, at [9.27].

⁴⁵ Evidence of M Farrow, at [9.12].

⁴⁶ Evidence of M Farrow, at [9.53].

within the Site (and, desirably, adjoining titles) would justify an extension of the extent of the ONL to the toe of the cone face in a future review of the District's outstanding landscapes. In my opinion, this situation highlights the magnitude of the landscape benefits, and related contribution to rural character and amenity, that the flank planting would bring.

- (d) Mr Farrow does not disregard the significance of the proposed restoration on the basis that it only relates to the portion of the slope within the Applicant's control – plainly, replanting and similar enhancement projects will occur one application at a time and adopting an “all or nothing” approach to the assessment of such applications will not encourage other landowners in future to continue the efforts already underway.

3.17 In our submission, in light of their considerable experience and the significant work that has been undertaken in respect of this Proposal, the reporting and evidence of Mr Farrow and Ms McGrath generally, and specifically in respect of these differences, should be preferred. Given that the s42A Report accepts that all other effects have been appropriately addressed, affording appropriate weight to the evidence of Mr Farrow and Ms McGrath would appropriately tip the scales in favour of the Proposal, enabling it to pass through not one but both gateways of s104D.

4 SECTION 104D - LEGAL PRINCIPLES

- 4.1 The Proposal is a non-complying activity and therefore must pass the 'gateway test' under s104D of the RMA by demonstrating that either the adverse effects of the Proposal are no more than minor;⁴⁷ or that the Proposal is not contrary to the objectives and policies of the relevant district plan.⁴⁸
- 4.2 The approach to the gateway test is well settled.⁴⁹ Non-complying status is not intended to be a “de facto prohibited” activity.⁵⁰

⁴⁷ RMA, section 104D(1)(a).

⁴⁸ RMA, section 104D(1)(b).

⁴⁹ *Dye v Auckland Regional Council* [2002] 1 NZLR 337, at [5].

⁵⁰ *Price v Auckland City Council* (1996) 2 ELRNZ 443 and 448 at page 8.

4.3 The Environment Court has been clear that the effects evaluation required under s104D(1)(a) is to be undertaken on a holistic basis:⁵¹

As to the “effects” gateway we may take into account aspects of mitigation and outcomes of imposing conditions of consent.

As will be seen from our later analysis of effects on the environment; there are some which individually can be described as more than minor, for instance in connection with visual amenity from certain properties, but the law is that the evaluation under this provision is to be undertaken “on a holistic basis, looking over the entire application and a range of effects”, not individual effects.

4.4 When considering the second gateway, namely whether the activity will be contrary to the objectives and policies of the relevant plans, relevantly:

- (a) The absence of support for an activity in the objectives and policies of a plan does not mean an application is “contrary to” those objectives and policies.⁵² “Contrary to” requires repugnancy or opposition;⁵³ in other words something that is “opposed in nature, different to or opposite”.⁵⁴
- (b) When assessing whether an activity is contrary to the objectives and policies of a plan, a broad judgment should be made, which requires more than identifying and isolating specific policies to which a proposal is contrary to.⁵⁵

4.5 While it is only necessary to satisfy one of the limbs, it is the combined opinion of the Applicant’s team of expert consultants that both tests are met.

4.6 If either limb of the gateway test is passed, the application can continue to be assessed under s104 of the RMA. Section 104(1) requires the

⁵¹ *SKP Inc v Auckland Council* [2018] NZEnvC 81, at [48]-[50].

⁵² *Wilson v Whangārei District Council* EnvC W020/07 at [35]; *Arrigato Investments Ltd v Auckland RC* [2002] 1 NZLR 323 at [52]; (2001) 7 ELRNZ 193; [2001] NZRMA 481 (CA).

⁵³ *Outstanding Landscape Protection Society Incorporated v Hastings District Council* [2008] NZRMA 8 (EnvC) at [15]; *Armstrong v Central Otago District Council* EnvC C131/08, at [102].

⁵⁴ *Royal Forest and Bird Protection Society NZ Inc v NZTA* [2021] NZHC 390 at [24], referring to *NZ Rail v Marlborough District Council* [1994] NZRMA 70 (HC), at [11].

⁵⁵ *Kuku Mara Partnership (Forsyth Bay) v Marlborough District Council* EnvC W025/02, at [728].

consent authority, when determining the application, to consider any actual or potential effects of allowing the application (including positive effects); the relevant planning framework; and any other matters considered relevant and reasonably necessary to determine the application (discussed below).

Precedent

4.7 The s42A Report considers there is potential for an adverse precedent effect if consent is granted for residential development in the RPROZ.⁵⁶

4.8 Under s104(1)(c) of the RMA the Council may consider:

...any other matter the consent authority considers relevant and reasonably necessary to determine the application.

4.9 While not referred to specifically in the RMA, the long standing position is that the precedent effect of granting a resource consent (in the sense of like applications being treated alike) is a relevant factor for a consent authority to take into account when considering an application for a non-complying activity. While you may turn your mind to "the likelihood of other, materially similar, proposals coming forward"⁵⁷ when making your decision, as a matter of law there is no requirement to make a specific finding.

4.10 The granting of a resource consent has no precedent effect in the strict sense⁵⁸ and each case by necessity depends on its facts.⁵⁹

4.11 The Court of Appeal has referred with approval to a finding of the Environment Court that:⁶⁰

To even consider future applications as a potential effect or a cumulative effect is to make a totally untenable assumption that the consent authority will allow the dike to be breached without evincing any further interest in control, merely because it has granted one consent.

⁵⁶ Section 42A Report, at [114].

⁵⁷ *Te Awanga Lifestyle Ltd v Hastings District Council* W077/09, at [45].

⁵⁸ *Dye v Auckland Regional Council* [2001] NZRMA 513, at [32].

⁵⁹ *JARA Family Trust v Hastings District Council* [2015] NZEnvC 208, at [34].

⁶⁰ *Dye v Auckland Regional Council* [2001] NZRMA 513, at [46], referring to *Wellington Regional Council (Bulk water) v Wellington Regional Council*, ENVC W003/98, at page 7 and 8.

4.12 Practically speaking, no two applications are likely to be the same, albeit they may share similarities to a greater or lesser degree. The granting of consent may well have an influence on how another application should be dealt with; however the extent of that influence will naturally depend on the nature and degree of those similarities or differences and any other extenuating circumstances. It is not the case here that the grant of one subdivision consent in the RPROZ means that inevitably any future application for residential development in the same zone could not be refused – the Council is obliged to give all applications their own fulsome examination and any suggestion that the Council would rubber stamp subsequent applications on the basis of the current Proposal is inappropriate.

4.13 In our submission, and on the basis of the evidence, this Proposal has a number of distinguishing features, such that any concerns regarding precedent are avoided. In particular:

(a) Experts on behalf of the Applicant are in agreement that the Proposal provides a number of positive benefits and thus achieves a “net environmental benefit” as per RPROZ-P9.⁶¹ A number of these benefits are directly linked to the opportunity to enhance the landscape and ecological values of the Hurupaki Cone and Waitaua Stream corridor, which are significant landform features and relatively unique within the district.⁶² These opportunities for enhancement are therefore unlikely to underpin a suite of other similar applications.

(b) Where there are similar sites or opportunities, the Proposal could represent a positive precedent, as Mr Kensington acknowledges in his Landscape Review:⁶³

... the successful revegetation of the maunga through this application, in the manner that is proposed by the applicant, could represent a positive precedent which might encourage a similar response on this neighbouring property, if and when the redevelopment potential of that land was realised in the future.

⁶¹ Evidence of M Vilde, at [11.2]-[11.3]; Evidence of M Farrow, at [9.49]-[9.60].

⁶² Evidence of M Farrow, at [9.71].

⁶³ Section 42A Report, Appendix 7: Landscape Review, at [29].

- (c) Although the northern portion of the Site is rurally zoned, it is directly adjacent to the wider residential enclave of Kamo. Residential activity on this portion of the Site therefore represents a logical extension of the existing neighbourhood and is an appropriate location to accommodate future growth for the district, unlike other RPROZ areas.⁶⁴
- (d) The RPROZ portion of the Site has minimal productive value, as the slopes of Hurupaki are too steep for cattle;⁶⁵ the size of the land and proximity to surrounding existing residential zones is not appropriate for rural activities (and raises possible reverse sensitivity issues); and the soil is of poor quality and not viable for a number of productive land uses.⁶⁶ For these reasons, the Proposal will not undermine the productive land resource of the district.

5 SECTION 104D(1)(b) – OBJECTIVES AND POLICIES

- 5.1 A conclusion on whether a proposal is repugnant to relevant objectives and policies must be reached in the context of the consideration of the objectives and policies as a whole.⁶⁷
- 5.2 Ms McGrath has undertaken a comprehensive assessment of the objectives and policies in the District Plan through the AEE and subsequently her evidence. Instead of repeating that assessment here, these submissions focus on what we understand from the s42A Report and Landscape Review to be the only point of difference between the Applicant's and the reporting planner's assessments, being the relevant provisions of the RPROZ and Subdivision chapters.
- 5.3 Mr Kensington's Landscape Review emphasises three themes from the RPROZ objectives and policies, namely (in summary):⁶⁸
- (a) Continued rural land use is anticipated to maintain rural character and amenity, with adverse effects on productive land resources from residential subdivisions and development to be avoided.

⁶⁴ For example: Ngararatunua (Map 57Z) and Tikipunga North (Map 56Z).

⁶⁵ Evidence of M Holland, at [3.2].

⁶⁶ Evidence of M McGrath, at [7.42].

⁶⁷ *Fonterra Co-operative Group Ltd v Manawatu-Wanganui Regional Council* [2013] NZEnvC 250, at [163].

⁶⁸ Section 42A Report, Appendix 7: Landscape Review, at [13].

- (b) Protection and enhancement of significant landscapes is encouraged.
 - (c) Promotion and encouragement of the conservation, enhancement and rehabilitation of outstanding natural features and outstanding natural landscapes.
- 5.4 Despite acknowledging in passing that there is more than one focus of the RPROZ provisions,⁶⁹ there is no discussion or analysis in either the s42A Report or the Landscape Review of the specific objectives and policies that underpin the identified outcomes of protection, rehabilitation and enhancement of significant landscapes and features; nor is there any acknowledgement that those natural features (including landforms, watercourses and vegetation, specifically referred to in RPROZ-P1) could be the very reason that particular sites have been zoned RPROZ in the first place.
- 5.5 To adopt the assessment in the s42A Report and Landscape Review ignores the fact that rural character and amenity can be achieved in more than one way. In other words, it could be achieved by farmed pasture, or it could be achieved by a proposal that achieves significant enhancement of an identified outstanding landscape.⁷⁰
- 5.6 Crucially, with reference to the RPROZ provisions:
- (a) The Proposal responds to the purpose of the RPROZ to protect areas of significant ecological and biodiversity values, enable the rehabilitation of ecological and biodiversity values and maintain rural amenity and character, albeit in a different form.⁷¹ Hurupaki Cone and Waitaua Stream will be rehabilitated and enhanced, consistent with the emphasis in the RPROZ:⁷²

It is important that the ecological and landscape values of the Rural Production Zone are recognised and where appropriate are protected and enhanced. Ecological and landscape values contribute significantly to the rural character and distinctiveness of the Whangarei District.

⁶⁹ Section 42A Report, Appendix 7: Landscape Review, at [7] and Attachment B.

⁷⁰ Evidence of M Farrow, at [9.19]-[9.20].

⁷¹ RPROZ 'Issues', p.1; RPROZ-O5 and RPROZ-O7; RPROZ-P8, RPROZ-P9 and RPROZ-P11.

⁷² RPROZ 'Issues', p.1.

- (b) The Site is constrained in its ability to operate in a traditional or productive rural way given its location, topography and poor quality soil. The Proposal seeks to recognise, maintain and protect rural character and amenity *in that context*.⁷³ Where there is not huge value in the pastoral aspects of the RPROZ portion of the Site, the Proposal instead focuses on recognising, maintaining and protecting natural landform features which also form part of the rural character of the Site.⁷⁴
- (c) The Proposal is consistent with the exception in RPROZ-O5 to minimise the fragmentation of rural land and promote allotment sizes that facilitate rural production activities “other than to protect significant ecological and biodiversity values”.⁷⁵
- (d) There is no inconsistency with the provisions requiring that “productive” rural land be protected, as the Site has limited productive value and any productive options are compromised by the surrounding residential development, site topography and poor quality soils.
- (e) Rural character and amenity will be maintained by ensuring that all new buildings are of a scale and character appropriate to the zone and are sufficiently set back to enable privacy and the retention of openness.⁷⁶ The visual simulations prepared by Mr Farrow demonstrate that the housing proposed on the RPROZ portion of the Site is framed and screened by the established vegetation in the centre of the Site and the dominance of Hurupaki as a backdrop.⁷⁷ The scale of the buildings will be further influenced by the finishing controls, recommended by Mr Kensington, and which have been included in the proposed conditions.
- (f) The Proposal has been comprehensively master-planned to ensure that the subdivision/development responds to the topography and characteristics of the Site (by placement of the allotments in the

⁷³ RPROZ-O3.

⁷⁴ RPROZ-O1, RPROZ-O2; RPROZ-P2, RPROZ-P3, and RPROZ-P6; Evidence of M McGrath, at [8.38].

⁷⁵ RPROZ-O5; Evidence of M McGrath, at [8.49].

⁷⁶ RPROZ-P5; Evidence of M McGrath, at [8.45].

⁷⁷ Evidence of M Farrow, at [5.2]-[5.4] and Attachment 4.

low-lying portion of the RPROZ part of the Site);⁷⁸ avoids development on highly versatile soils; and avoids reverse sensitivity effects on other rural land uses.⁷⁹

- (g) The proposed allotment, access and services have been designed and located in a way that is sensitive to and responds to the environment while avoiding the need for significant earthworks, retaining, benching or site contouring.⁸⁰

5.7 The s42A Report also considers some of the broader objectives and policies in the Subdivision Chapter,⁸¹ which Ms McGrath addresses in her evidence.⁸² Of particular note:

- (a) The proposed subdivision pattern is compatible with the role, function, amenity values and predominant character of the RPROZ (as per the Applicant's understanding of 'rural character and amenity' above) and will encourage the protection of significant ecology, biodiversity and landscapes.⁸³
- (b) The integrity of the RPROZ is maintained through the emphasis on protecting/enhancing the natural landforms; preserving open space; and creating a residential enclave, with larger allotments, which are screened from public view.⁸⁴ The subdivision has been designed to integrate with the physical features of the Site.⁸⁵
- (c) The subdivision not only avoids adverse effects on the ONL and ONF, and mitigates effects on the dry stone walls, but also provides for the protection and enhancement of those features (as acknowledged in the s42A Report⁸⁶).⁸⁷

⁷⁸ RPROZ-P11(1) and (3); Evidence of M McGrath, at [8.67].

⁷⁹ RPROZ-P11(2) and (6); Evidence of M McGrath, at [8.67(b)] and [8.67(e)].

⁸⁰ RPROZ-P11(4) and (5); Evidence of M McGrath, at [8.67(c)].

⁸¹ Section 42A Report, at [106]-[109].

⁸² Evidence of M McGrath, at [8.69]-[8.76].

⁸³ SUB-O5; SUB-P1(1); Evidence of M McGrath, at [8.73].

⁸⁴ SUB-O5; SUB-P1(2); Evidence of M McGrath, at [8.73].

⁸⁵ SUB-O5; SUB-P1(3); Evidence of M McGrath, at [8.73]; Evidence of M Vilde, at [7.10].

⁸⁶ Section 42A Report, at [106].

⁸⁷ SUB-O2; SUB-P1(4)(a), (b), and (g); Evidence of M McGrath, at [8.74].

- (d) Servicing has been comprehensively designed to ensure that the new allotments are capable of being provided with adequate services and infrastructure.⁸⁸

Net environmental benefit

5.8 The Applicant's position is that the Proposal is consistent with the definition of a net environmental benefit and relevant policies. Achieving a net environmental benefit was considered by the Applicant's expert term prior to lodging the application for consent and the Proposal was designed with those policies in mind.⁸⁹

5.9 Whether the Proposal achieves a net environmental benefit is a key issue in contention and is considered at length in the evidence of Ms McGrath. In summary:

- (a) The Proposal will not inhibit the productive potential of the land;⁹⁰ restrict the range of options for use of the land;⁹¹ or compromise the viability of existing rural production activities⁹² as the RPROZ portion of the Site has limited productive potential (due to adjacent residential zoning, site topography and soil quality).
- (b) No existing rural production activity is currently operating on-site and there are no adjoining rural production activities or strategic rural industry adjacent to the Site that will be adversely impacted by the Proposal.⁹³
- (c) The Proposal will provide legal protection in perpetuity and on-going management for appropriate areas of ONL and ONF⁹⁴ and land within a riparian margin of a stream.⁹⁵
- (d) The Proposal will manage the effects of the allotments in the RPROZ by:

⁸⁸ SUB-O5; SUB-P5; Evidence of A Holland, at [5.9]; Evidence of M McGrath, at [8.75].

⁸⁹ AEE, at [9.16] and Appendix 10: Assessment of Landscape and Neighbourhood Amenity Effects, p.13; Appendix 11: Ecological Assessment, p.42.

⁹⁰ RPROZ-P8(2).

⁹¹ RPROZ-P8(3)(b); Evidence of M Holland, at [3.2]; Evidence of M McGrath, at [8.51(d)].

⁹² RPROZ-P8(4); Evidence of M McGrath, at [8.51(e)].

⁹³ RPROZ-P8(5); Evidence of M McGrath, at [8.51(f)].

⁹⁴ RPROZ-P9(1)(b); Evidence of M Farrow, at [11.3].

⁹⁵ RPROZ-P9(1)(d); Evidence of M Vilde, at [9.14].

- (i) avoiding adverse effects in the enhancement areas;⁹⁶
 - (ii) avoiding cumulative effects by way of integration of the proposed residential development, landscape planting and management of built form;⁹⁷ and
 - (iii) creating an enclave of residential development within an enclosed "island" of RPROZ (rather than proposing a ribbon development).⁹⁸
- (e) The Proposal avoids reverse sensitivity effects⁹⁹ and development on highly versatile soil;¹⁰⁰ and minimises the fragmentation of rural land by concentrating residential development on a Site that has already been severed from rural areas.¹⁰¹
- (f) The Proposal will retain natural character, landscape qualities and characteristics, and rural character and amenity as those relate to Hurupaki Cone and Waitaua Stream.¹⁰²
- (g) The Applicant, together with its expert team, applied considerable effort toward determining an appropriate, rather than maximum, number of allotments for the RPROZ portion of the Site.¹⁰³

5.10 For the reasons above (and as set out in detail in Ms McGrath's evidence), the Applicant considers that the intended use of the RPROZ portion of the Site is an activity where the benefits of environmental protection and on-going management are considerably greater than the potential adverse effects created by subdivision.

5.11 In our submission, the approach of Ms McGrath in considering the objectives and policies in detail and *in their entirety* should be preferred to the assessment in the s42A Report. On the basis of her comprehensive assessment, it is the Applicant's position that the Proposal is not contrary to the objectives and policies of the Plan.

⁹⁶ RPROZ-P9(2)(a)(i); Evidence of M McGrath, at [8.64(d)].

⁹⁷ RPROZ-P9(2)(a)(ii); Evidence of M McGrath, at [8.64(d)].

⁹⁸ RPROZ-P9(2)(a)(v); Evidence of M McGrath, at [8.64(g)].

⁹⁹ RPROZ-P9(2)(a)(iii); Evidence of M McGrath, at [8.64(e)].

¹⁰⁰ RPROZ-P9(2)(a)(iv); Evidence of M McGrath, at [8.64(f)].

¹⁰¹ RPROZ-P9(2)(b); Evidence of M McGrath, at [8.64(h)].

¹⁰² RPROZ-P9(2)(d); Evidence of M McGrath, at [8.64(j)].

¹⁰³ RPROZ-P9(2)(e); Evidence of M McGrath, at [8.64(k)].

6 SECTION 104D(1)(a) – EFFECTS ASSESSMENT

- 6.1 In the context of s104D(1)(a) you must address whether there are adverse effects associated with the Proposal and, if so, after those effects have been avoided, remedied and/or mitigated, whether the residual effects are more than minor.
- 6.2 In reliance on the evidence and comprehensive assessments of the Applicant’s witnesses, in our submission the s104D(1)(a) test is met.
- 6.3 The s42A Report concludes the following effects are no more than minor or overall positive:
- (a) Roading and traffic effects.¹⁰⁴
 - (b) Servicing (provision of reticulated sewer, water and stormwater services and provision for power and telecom connections).¹⁰⁵
 - (c) Construction effects.¹⁰⁶
 - (d) Geotechnical and earthworks.¹⁰⁷
 - (e) Urban residential character and density, inclusive of the proposed café activity.¹⁰⁸
 - (f) Rural productivity, on the basis that it is accepted that future productive rural use of the site is limited.¹⁰⁹
 - (g) Reverse sensitivity effects.¹¹⁰
 - (h) Effects on historic heritage/stonewalls.¹¹¹
 - (i) Cumulative effects.¹¹²
 - (j) Ecological effects.¹¹³

¹⁰⁴ Section 42A Report, at [51].

¹⁰⁵ Section 42A Report, at [53].

¹⁰⁶ Section 42A Report, at [58].

¹⁰⁷ Section 42A Report, at [60].

¹⁰⁸ Section 42A Report, at [65].

¹⁰⁹ Section 42A Report, at [67].

¹¹⁰ Section 42A Report, at [68].

¹¹¹ Section 42A Report, at [72].

¹¹² Section 42A Report, at [74].

¹¹³ Section 42A Report, at [76].

- 6.4 Although the sole effect of concern to the reporting planner appears to be effects on landscape, rural character and amenity in the portion of the Site zoned RPROZ, we also comment briefly on matters raised in submissions below.

Landscape, rural character and amenity

- 6.5 Mr Farrow's assessment is that any adverse effects from the Proposal on landscape, rural character and amenity values will be no more than minor.¹¹⁴
- 6.6 In brief:
- (a) Within the RPROZ portion of the Site, the framing and screening of the terrain and established vegetation contain the potential exposure and dominance of proposed built form. The possible contrast or prominence of future buildings will be further suppressed by the finishing controls (recommended by Mr Kensington) which have been adopted within the proposed conditions of the consent.¹¹⁵
 - (b) Mr Farrow created a number of visual simulations which show that the low-lying portion of the northern, RPROZ part of the Site has a low presence in views into that area from public vantage points and buildings constructed in accordance with the consent conditions will not have a prominent presence or any noticeably adverse impact on the views to Hurupaki.¹¹⁶
 - (c) The characteristics of the Site and its broader context means the rural character of the RPROZ will be compromised by the surrounding residential zoning, which severs the Site from its connection to the rural land that extends further to the west.¹¹⁷ Accordingly activities that are typical in rural zones and which contribute to rural character will not be able to occur due to proximity to residential zones and incompatible land use activities.¹¹⁸

¹¹⁴ Evidence of M Farrow, at [11.6].

¹¹⁵ Evidence of M Farrow, at [5.2] and [5.4].

¹¹⁶ Evidence of M Farrow, at [7.19] and [8.9].

¹¹⁷ Evidence of M Farrow, at [5.6] and [8.16].

¹¹⁸ Evidence of M McGrath, at [9.23]-[9.25].

(d) Rural landscapes are not uniform and have widely varying characteristics and qualities.¹¹⁹

(e) Hurupaki and the Waitaua Stream corridor are central to the rural character of the Site and would be strengthened as part of the Proposal.¹²⁰ As Mr Farrow sets out in his evidence:¹²¹

... the cone flank and stream corridor are the most powerful distinguishing and character-forming elements in this part of the Site and are acknowledged as being part of the distinctive rural character and amenity of the RPROZ as item 1 of Policy P1 (A dominance of natural features including landforms, watercourses and vegetation). The Application's intention is to restore both ...

... I consider that it is useful to acknowledge that the vegetated stream corridor and Hurupaki flank are both very robust landscape elements or features within the RPROZ part of the Site and beyond. The intention to restore both will progressively add still more strength to the presence and resilience of each.

(f) Restoration planting of the Hurupaki slopes will shift the Hurupaki Cone away from its current pastoral state, removing the damaging presence of cattle.¹²² Mr Farrow considers this to be a superior landscape outcome and one which will justify an extension to the currently defined ONL that applies to the upper slopes of Hurupaki within the Site.¹²³

(g) The Proposal provides for opportunities to lace the neighbourhood together with a network of walking routes which encourage pedestrian movement and engender community-building.¹²⁴

6.7 Overall, Mr Farrow concludes that the Proposal reflects a careful and integrated spatial design process that would deliver a well-integrated neighbourhood that will stand as a local benchmark.¹²⁵

¹¹⁹ Evidence of M Farrow, at [9.20].

¹²⁰ Evidence of M Farrow, at [5.6], [9.19] and [9.21].

¹²¹ Evidence of M Farrow, at [9.21] and [9.48].

¹²² Evidence of M Farrow, at [4.18(g)].

¹²³ Evidence of M Farrow, at [8.5] – [8.6].

¹²⁴ Evidence of M Farrow, at [4.18(i)].

¹²⁵ Evidence of M Farrow, at [1.8].

Cultural effects

- 6.8 The Site is not located within an identified area of cultural significance and there are no sites or areas of significance or wāhi tapu scheduled in the PDP, the Northland Regional Plan (proposed appeals version), or on the HNZPT List.¹²⁶
- 6.9 The Applicant appreciates the need for meaningful consultation and engaged in direct discussions with Ngāti Kahu O Torongare (*Ngāti Kahu*) prior to lodgement of the application.¹²⁷ As part of these preliminary discussions, the Applicant understood that there are features surrounding and within the Site which are culturally significant to the hapū.¹²⁸
- 6.10 Following initial consultation, the Applicant sought to engage with Ngāti Kahu on other occasions. In the absence of written feedback or a Cultural Impact Assessment, the Applicant requested the application be publicly notified to enable Ngāti Kahu the ability to make submissions on the application. However, no submission was made.
- 6.11 The Applicant acknowledges that mana whenua are best placed to determine the nature and extent of cultural effects. Accepting this, it is the Applicant's evidence that, overall, the Proposal responds to the specific effects identified by Ngāti Kahu and the submitters.¹²⁹
- 6.12 In response to the particular concerns identified by Ngāti Kahu and the submitters:
- (a) The Proposal has been designed to reduce the potential effects on Hurupaki by avoiding development on the upper slopes, and revegetating the steeper slopes of Hurupaki. The Proposal also includes the Hurupaki Cone Enhancement Area which, among other things, intends to restore and expand the existing extent ONF/ONL planting.
 - (b) The Applicant recognises the significance of Waitaua Stream and has actively sought to protect and enhance it through the creation

¹²⁶ Evidence of J Carpenter, at [5.3].

¹²⁷ AEE, at [2.2].

¹²⁸ Evidence of M McGrath, at [7.18]-[7.20].

¹²⁹ Evidence of M McGrath, at [8.25].

of a reserve along the entire length of the Stream, the establishment of a 5.5ha ecological enhancement area, planting of the western portion, protection of existing indigenous vegetation and provision for on-going pest and weed management.¹³⁰

- (c) The Proposal has been designed to reduce the potential effects on Waitaua Stream through minimising the extent of proposed earthworks in proximity to it, containment and treatment of stormwater prior to discharge and the inclusion of best practice sediment and erosion measures.
- (d) Mr Carpenter on behalf of the Applicant has undertaken a review of the history of the Site. While he acknowledges the connection of Ngāti Kahu to the Site, Mr Carpenter's considers, based on the information available, that it is unlikely that there are specific archaeological or historical heritage features located on or associated with the Site.¹³¹

Heritage

6.13 Mr Carpenter's evidence is that the Proposal will have no more than minor archaeological and historic heritage effects.¹³²

6.14 With respect to concerns raised by submitters in relation to the dry stone walls:

- (a) The deconstruction/reconstruction of the walls will allow the rock to be re-used, in a form consistent with the original purpose of the walls.¹³³
- (b) While the original form of any individual wall and variation of that form across time and space may be of historic interest, the wider heritage value of the walls lies in the overall form, their change over time, and the amenity values they provide (as demonstrated by the restored/relocated walls at the James subdivision located next to the Site).¹³⁴

¹³⁰ Evidence of M McGrath, at [7.22(d)].

¹³¹ Evidence of J Carpenter, at [5.3]-[5.4] and [11.3].

¹³² Evidence of J Carpenter, at [8.9] and [11.1].

¹³³ Evidence of J Carpenter, at [8.9].

¹³⁴ Evidence of J Carpenter, at [8.14].

- (c) To minimise adverse effects all reconstruction work will be undertaken by a qualified stone mason, to establish a traditional dry stone wall formation consistent with the surrounding stone wall network.¹³⁵
- (d) The walls will be reconstructed utilising rock from the existing walls and, if necessary, supplemented with rock source from within the Site.¹³⁶
- (e) No rock from the stone walls will be wasted or removed from the Site.¹³⁷

6.15 Mr Carpenter did not observe any other archaeological sites within the Site and considers it unlikely that subsurface archaeological features are present.

6.16 Accordingly, Mr Carpenter considers any risk to unknown archaeological or heritage sites can be managed through the inclusion of accidental discovery protocols (in accordance with Heritage New Zealand Pouhere Taonga Act) in the proposed conditions of consent.¹³⁸

Transport

6.17 A number of submitters have raised potential adverse effects on the transport network, including connections to the Site, increased traffic, heavy vehicle traffic and general safety concerns.

6.18 Each of these concerns is addressed in detail in the evidence of Mr Scanlen. However, in summary Mr Scanlen considers the Proposal will have no more than minor adverse effects on the local road network, for the following reasons:

- (a) The proposed new intersection connection with the Site and the internal traffic management measures will ensure that the risks associated with the additional traffic will be well within acceptable limits.¹³⁹

¹³⁵ Evidence of J Carpenter, at [10.1].

¹³⁶ Evidence of J Carpenter, at [8.4].

¹³⁷ Evidence of J Carpenter, at [8.4].

¹³⁸ Evidence of J Carpenter, at [10.2].

¹³⁹ Evidence of D Scanlen, at [6.5].

- (b) Mr Scanlen acknowledges that major intersections south of the Site are already experiencing some congestion. However:¹⁴⁰

A single subdivision cannot be expected to directly address existing congestion at major intersections so far from a site and to which it will add only a tiny fraction to the traffic. The application will attract significant development contributions and those are the appropriate means for its effect on locations so remote from the Site to be addressed.

- (c) While there will be temporary heavy vehicle movement during the construction period, this is typical of any development and will be managed in accordance with a Construction Management Plan approved by the Council. This will include restrictions on movement during peak traffic periods and pedestrian movements to and from Hurupaki School.¹⁴¹
- (d) Beyond the construction period, heavy vehicle movements will be minimal (e.g. weekly rubbish trucks, occasional delivery or service trucks etc.).¹⁴²

Ecology

6.19 A single submitter identified matters in respect to ecological effects of the Proposal, including the effects of increased human presence, domestic pets, loss of habitat and effects on water quality.¹⁴³

6.20 These matters have been considered in detail in the evidence of Ms Vilde:

- (a) Human disturbance on ecological values will be limited through the provision of defined paths in the area as well as through revegetation planting, which will form a natural barrier for human movement within the wider core landscape and therefore concentrate impact from humans to small, localised areas.¹⁴⁴
- (b) The impact of increased domestic pets resulting from the Proposal will be managed within the area through appropriate controls such

¹⁴⁰ Evidence of D Scanlen, at [6.16].

¹⁴¹ Evidence of D Scanlen, at [6.13].

¹⁴² Evidence of D Scanlen, at [6.14].

¹⁴³ Evidence of M Vilde, section 8.

¹⁴⁴ Evidence of M Vilde, at [8.8].

as signage and controls on dogs e.g. keeping dogs on a lead, with the proposed ecological enhancement areas.¹⁴⁵

- (c) The loss of low ecological quality open pasture habitat will have negligible ecological effects on kiwi and bat foraging habitat. Instead, the development of the Site will actively enhance and extend potential habitat linkages for these species.¹⁴⁶
- (d) The Proposal will not adversely affect the freshwater quantity and quality both on-site and within the wider catchment if recommendations relating to best practice integrated design, erosion and sediment control guidelines provided in the associated reporting prepared for the Proposal are followed.¹⁴⁷

6.21 Overall, Ms Vilde's evidence is that the Proposal provides the opportunity to restore, protect and enhance the ecological values of the Site. With the proposed measures in place, even prior to any ecological enhancement, there will be no more than minor adverse ecological effects associated with the Proposal.

Conclusion on effects

6.22 It is the Applicant's position that the matters of concern to submitters have been carefully considered by its experts. Every attempt has been made to mitigate such effects to ensure the Proposal integrates well with the surrounding environment.

6.23 The Proposal therefore passes both the first and the second gateway test in s104D and as such consent can be granted.

7 SECTION 104 ASSESSMENT

7.1 Once you are satisfied that the Proposal can pass one or both of the s 104D gateway tests, the assessment to be made under s104(1) is very broad, including the full range of relevant plan provisions, any actual and potential effects on the environment (including positive effects), and any other matter the consent authority considers relevant and reasonably necessary.

¹⁴⁵ Evidence of M Vilde, at [8.12].

¹⁴⁶ Evidence of M Vilde, at [8.23].

¹⁴⁷ Evidence of M Vilde, at [8.31].

7.2 To assist in that assessment, in my submission:

- (a) The Proposal will deliver a very high quality, master-planned outcome for the Site.
- (b) There are a suite of positive effects associated with the Proposal that would not flow from generic development of the residential portion of the Site alone.
- (c) The actual and potential effects generated by the Proposal in terms of traffic, infrastructure, ecology, geotechnical, heritage, and cultural effects can be appropriately mitigated and are acceptable in the context of the Site and surroundings. (The s42A Report concurs.)
- (d) Any adverse effects of subdivision in the RPROZ in terms of landscape, rural amenity and character and rural productivity would be acceptable.
- (e) While the Proposal does not rely on the National Policy Statement on Urban Development, it is consistent with its purpose:
 - (i) The Proposal provides greater supply of housing, supports competitive land and development markets and improves housing affordability, in accordance with Objective 2.
 - (ii) The Proposal will respond directly to the outcomes of Policy 1 by increasing available housing in an area with good accessibility to jobs, transport links, and natural and open spaces.
- (f) The Proposal will deliver high quality housing for the district (in accordance with the Long Term Plan).

7.3 The only outstanding issue with respect to granting consent relates to the proposed activity in the RPROZ portion of the Site. It is submitted that this issue has been well and truly addressed, that those effects are no more than minor, and that the benefits of the Proposal are overwhelmingly in favour of grant of consent.

Part 2

7.4 As confirmed in the *R J Davidson Family Trust* Court of Appeal decision,¹⁴⁸ where a plan has been competently prepared an assessment under Part 2 of the RMA should not add anything to the assessment under the applicable plan itself. Both the ODP and PDP are relevant to the Proposal. There is nothing to suggest either version has not been competently prepared or that specific consideration under Part 2 is required and the Applicant does not place any particular reliance on Part 2. However, for completeness, Ms McGrath considers that the Proposal is consistent with Part 2.¹⁴⁹

8 PROPOSED CONDITIONS

8.1 As noted in the s42A Report, the Applicant provided a set of proposed conditions of consent to the Council. The reporting planner has indicated that “these can form the basis for any decision to grant if the Commissioner wishes to do so”.¹⁵⁰

8.2 An updated set of proposed conditions is attached to the evidence of Ms McGrath, incorporating a number of revisions to address matters raised in submissions and Mr Kensington and to adopt further recommendations from Ms Vilde and Mr Scanlen.

8.3 Since the Applicant has filed its evidence, it has received confirmation from both Fire and Emergency New Zealand and the Ministry of Education that they are satisfied the proposed conditions address the issues raised in their submissions.

8.4 The Applicant has considered the evidence of Ms Brownie on behalf of the Whangārei District Council Infrastructure Group (*WDC-IG*).¹⁵¹ WDC-IG requested confirmation that issues relating to the conflict between the pedestrian and stormwater assets on proposed Lot 205, and vehicular access to the upper parts of proposed Lot 205, have been resolved.

¹⁴⁸ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

¹⁴⁹ Evidence of M McGrath, at [9.13].

¹⁵⁰ Section 42A Report, at [129].

¹⁵¹ Evidence of S Brownie, dated 3 May 2022.

- 8.5 Ms McGrath addresses this in her supplementary evidence and considers that the matters raised by WDC-IG are resolved and do not require any further changes.¹⁵²
- 8.6 The Applicant requests that consent be granted for the Proposal subject to the conditions of consent now attached to the evidence of Ms McGrath.¹⁵³

DATED this 11th day of May 2022

Francelle Lupis | Claire Wills

Counsel for Hurupaki Holdings Limited

¹⁵² Supplementary Evidence of M McGrath, at [2.3]-[2.5] and Attachment 1.

¹⁵³ Evidence of M McGrath, Attachment 3.