

DECISION FOLLOWING THE HEARING OF AN APPLICATION FOR RESOURCE CONSENT UNDER THE RESOURCE MANAGEMENT ACT 1991 (RMA)

Proposal

To subdivide land at 42 Okura Road, Kairakau, Elsthorpe in stages into 11 new lots comprising eight rural lifestyle allotments, two balance allotments and a separate lot to be amalgamated with Lot 1 DP 25627 (38 Okura Road).

The resource consent is **GRANTED** subject to conditions. The reasons are set out below.

Application Details

Application number:	RM230016
Applicant:	S R & B J Williams Charitable Trust Board
Site address:	42 Okura Road, Kairakau, Elsthorpe
Legal Description:	Lot 2 DP 481291 (RT 674477)
Site Area:	111.9000ha
Relevant district plan and zoning:	<p>Central Hawkes Bay Operative District Plan (2003) (ODP):</p> <ul style="list-style-type: none"> • Rural Zone • Township Zone • Coastal Margin Area <p>Central Hawkes Bay Proposed District Plan (Operative in Part, August 2024) (PDP):</p> <ul style="list-style-type: none"> • General Rural Zone • Large Lot Residential Zone • Archaeological Sites • Tsunami Hazard Overlay • Coastal Environment Overlay
Application activity status:	<p>ODP - N/A</p> <p>PDP - Discretionary Activity</p>

Hearing Details

Hearing days:	25, 26 and 27 June 2024
Independent Commissioner:	Kitt Littlejohn
Appearances:	<p><u>S R & B J Williams Charitable Trust Board:</u></p> <p>Matthew Lawson - Legal Counsel Lawrence Yule – Applicant Representative Tom Bunny – Geotechnical Engineer Rick Wentz – Geotechnical Engineer Tim Forde – Forestry Consultant George Elvers – Traffic Engineer</p>

	<p>Simon Gabrielle – Civil Engineer Shannon Bray - Landscape Architect Philip McKay - Planning</p> <p><u>Submitters</u></p> <p>Vicky & George Williams David & Lorraine Keighley Max & Joan Chatfield Michael & Lisa Smith Mangakuri Beach Management Society - Legal Counsel, Matthew McClelland KC - Mike Smith Karen Stothart Anne & Nic Salmond</p> <p><u>Central Hawkes Bay District Council:</u></p> <p>Erin Griffith – Landscape Architect Lee Paterson – Geotechnical Engineer Wayne Hodson – Civil Engineer Chris Rossiter – Traffic Engineer Ryan O’Leary – Planner – Section 42A reporting officer</p> <p>Bianca Lord – Hearings Adviser</p>
Commissioners’ site visit	25 June 2024
Hearing Closed:	16 August 2024

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1. SUMMARY OF DECISION

- [1] The S R & B J Williams Charitable Trust Board has sought resource consent to subdivide its rural land at 42 Okura Road, Kairakau, Elsthorpe Williams Trust into 11 lots, comprising of eight rural lifestyle allotments, two balance allotments and a separate lot to be amalgamated with the adjoining property at 38 Okura Road.
- [2] The application describes the approach to the new rural lifestyle lots as 'landscape led', with each lifestyle lot having three 'zones' intended to function in an integrated way to provide a suitable building platform for a new dwelling, associated curtilage (i.e., garden, lawn area, small

sheds and water tanks, but no additional habitable buildings), and landscape enhancement (i.e., coastal native revegetation). To manage and mitigate the environmental effects of the proposed new rural lifestyle lots, the Trust proposes that they each be the subject of ongoing conditions relating to their use and development, to be formalised by way of consent notice on the lots. Overall, the Application is to be assessed as a discretionary activity.

- [3] The Council reporting officer does not recommend that consent be granted, believing that the application is inappropriate development and contrary to the provisions of the relevant planning documents. All of the submitters agree with this recommendation and consider that the development will fundamentally affect the amenity values of Mangakuri Beach and its small settlement, and should be refused.
- [4] On the evidence presented to me I am satisfied that the proposal merits approval, subject to conditions.
- [5] In relation to the contested effects, I have preferred the evidence of Mr Bray. I agree with his analysis that effects on natural character will be positive, effects on rural character will be neutral, and effects on visual amenity and views will be less than minor. With respect to effects on amenity values, I find these too will be minor. The proposal will not reduce the remoteness or isolation of the Mangakuri Beach settlement or any of the other natural or physical features enjoyed by those who live there to a more than minor degree.
- [6] In my assessment, the Proposed District Plan's strategic approach to the management of rural and coastal areas is not threatened by the application, which appropriately limits lifestyle subdivision in the GRUZ, preserves the natural character of the coastal environment of the district and protects it from inappropriate subdivision. With the conditions to be imposed, I find that the proposal:
- (a) will avoid significant adverse effects, and avoid, remedy and mitigate adverse effects on the natural character of the coastal environment;
 - (b) is not sprawling or sporadic subdivision;
 - (c) manages its proposed activities, has minimized its adverse effects, and includes provision for the restoration and rehabilitation of natural character, indigenous vegetation and habitats, and other natural coastal features; and
 - (d) does not threaten the overall objective that the GRUZ be used predominantly for primary production, maintains the predominant character of the GRUZ, and manages its effects so as to maintain rural character and amenity, and the natural character and amenity values present within the coastal environment.
- [7] Overall, I find that the proposal promotes sustainable management and will not create an adverse precedent or imperil the integrity of the PDP. The PDP envisages a careful case by case assessment of the appropriateness of the location of rural lifestyle development, and the specific features promoted by a proponent. Following application of that framework to this proposal at this location, I am satisfied that the application can be approved.

2. INTRODUCTION

[8] This decision is made on behalf of the Central Hawkes Bay District Council (Council) by an Independent Hearing Commissioner¹ and has been prepared in accordance with ss 18A² and 113³ of the RMA. It sets out the findings and determinations made following the hearing of the application by S R & B J Williams Charitable Trust Board (Applicant or Williams Trust) to subdivide its land at 42 Okura Road, Kairakau, Elsthorpe, primarily to create eight new residential lifestyle lots adjacent to the existing coastal settlement at Mangakuri Beach (**Application**).

2.1 Procedural matters

[9] The Application was publicly notified on 10 April 2024, with the submission period closing on 15 May 2024.⁴ A total of 24 submissions were received, one in support and 23 in opposition.

[10] I was delegated the task of determining the Application in late May 2024 and on 31 May 2024 I issued directions for the pre-exchange of reports and evidence in advance of a hearing, which was scheduled to take place over the 25th to 27th of June 2024. These directions were varied informally with respect to the timing of the provision of certain evidence over the ensuing pre-hearing period but were otherwise substantially complied with.

[11] In accordance with this timetable, I record that the Council reporting officer filed the s 42A Report, the Applicant filed evidence in support of the Application, no submitter filed expert evidence, two statements of non-expert evidence were filed,⁵ two statements of rebuttal evidence were filed and one submitter filed legal submissions in advance.⁶

[12] I conducted a visit to the proposed site and surrounding area on 25 June 2024, accompanied by a Council employee (Ms Bianca Lord).

2.2 Materials considered and hearing process

[13] Prior to the commencement of the hearing, I reviewed the following materials:

- (a) A copy of the Application, including its supporting Assessment of Environmental Effects (**AEE**)⁷, prepared in accordance with Schedule 4 of the RMA;⁸
- (b) Further information provided by the Applicant in response to requests from the Council officers under s 92;
- (c) A copy of all submissions made on the Application;

¹ Kitt Littlejohn, appointed and acting under delegated authority under ss 34 and 34A of the RMA.

² Section 18A requires persons exercising powers and performing functions under the RMA to take all practicable steps, inter alia, to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised.

³ Section 113 sets out the matters to be included in any decision on a resource consent application. Although not structured to follow the format of s 113, this decision has addressed and included all of the matters required by s 113.

⁴ Section 3 of the s 42A Report.

⁵ Mangakuri Beach Management Society Inc; Mike Smith.

⁶ Mangakuri Beach Management Society inc.

⁷ Assessment of Environmental Effects Report by Mitchell Daysh Limited updated 14 August 2023.

⁸ Unless otherwise specified, references to sections and sub-sections are references to sections and sub-sections in the Resource Management Act 1991.

- (d) A report on the Application and submissions received prepared under s 42A by Mr Ryan O’Leary⁹ (**Report**), a consultant planner engaged by the Council, which included specialist input from various expert technical consultants;¹⁰
- (e) Briefs of evidence in support of the application from the Williams Trust,¹¹ a written statement on behalf of Fire and Emergency NZ, and written statements by several of the submitters;
- (f) Rebuttal statements of evidence from Mr O’Leary and Ms Griffith in response to the Applicant’s planning and landscape effects evidence;¹² and
- (g) Legal submissions on behalf of the Mangakuri Beach Management Society Inc.

[14] The Report analysed all the information received in relation to the Application and summarised the key issues for determination. As noted, it was supported by statements of evidence from various experts who had been engaged by the Council to advise it on specialist landscape and engineering matters. In the Report, Mr O’Leary recommended that the Application not be granted for the following reasons set out in his executive summary:

4. *In considering the application under Section 104 of the Resource Management Act 1991 (RMA), subject to Part 2 of the Act, I conclude that:*

- (a) *The proposal would likely result in notable positive effects, including providing additional rural lifestyle allotments in a coastal setting and enhancing the landscape character overtime through a coastal re-vegetation framework. Albeit there remains some uncertainty on exactly how this coastal revegetation framework will be implemented which would helpfully be clarified by the Applicant.*
- (b) *I rely on the assessment of Ms Griffith’s who concludes that the adverse effects generated on rural and natural character are moderate (a more than minor environmental effect) and have not been sufficiently mitigated.*
- (c) *I consider that the proposal is consistent with the provisions of the ODP but is contrary to the provisions of the PDP to such an extent that it amounts to inappropriate use or development. I consider that greater weight should be given to the strategic direction of the PDP as it represents a significant policy shift and reflects the community’s aspirations for the rural land resource.*
- (d) *I consider that the proposal will not be consistent with the sustainable management purpose of the Act insofar as it conflicts with the overall strategy for sustainable management of the rural land resource that underpins the PDP.*

5. *I consider that the granting of consent would be contrary to the community’s expectations,*

⁹ Dated 4 June 2024.

¹⁰ Erin Griffith – Landscape Architect; Lee Paterson – Geotechnical Engineer; Wayne Hodson – Civil Engineer; and Chris Rossiter – Traffic Engineer.

¹¹ Lawrence Yule – Applicant Representative; Tom Bunny – Geotechnical Engineer; Rick Wentz – Geotechnical Engineer; Tim Forde – Forestry Consultant; George Elvers – Traffic Engineer; Simon Gabrielle – Civil Engineer; Shannon Bray - Landscape Architect and Philip McKay – Planning.

¹² Dated 21 June 2024.

and would undermine the integrity of the PDP.

- [15] The Report was taken “as read” at the hearing, as were the briefs of pre-exchanged evidence. Witnesses were given the opportunity to summarise and/or highlight aspects of their written briefs. Six of the Applicant’s witnesses had prepared written summary statements which they spoke to.¹³
- [16] Submitters either spoke to their pre-filed statements or spoke to their submissions highlighting issues of concern to them.
- [17] At the conclusion of hearing evidence from the Applicant and the submitters, Mr O’Leary and the expert consultants advising him summarised their assessments and provided responses or further comments on matters that had arisen during the hearing relevant to their areas of expertise. Mr O’Leary advised that based on the evidence he had heard and the matters raised by his expert advisers, he remained unable to recommend that consent be granted.
- [18] At the end of proceedings, Mr Lawson, counsel for the Williams Trust presented some brief comments by way of initial reply and sought leave to file more detailed written reply submissions. These submissions were filed on 24 July 2024.
- [19] I formally closed the hearing on 16 August 2024.

2.3 Summary of evidence

- [20] Section 113 of the RMA requires me to provide a summary of the evidence heard at the hearing. I summarise the evidence presented to the hearing in the body of this decision.

3. THE SITE, PROPOSAL AND CONSENT REQUIREMENTS

- [21] A detailed description of the proposal and the site are set out in the Application documents and the Report. The following summary is derived from these materials and informed by my site visit.

3.1 The site and locality

- [22] The application site is legally described as Lot 2 DP 481291 (Record of Title 674477) and contains a total area of approximately 111.9ha (**Site**). No dwellings have been established on the Site, which forms part of the Applicant’s pastoral grazing land known as ‘Mangakuri Station’.
- [23] The general topography of the Site is rolling to steep hill country ranging in elevation from 120m in the west to 20-30m on the eastern, ocean frontage. The south-eastern boundary has direct beach access with the remaining boundaries to the north-west fronting Williams and Mangakuri Roads. The north-eastern boundary of the site is adjacent to the Mangakuri Beach settlement on Okura Road. Historically part of the Mangakuri Station, this settlement consists of around 25 dwellings arranged in a single row. A number of these dwellings are occupied permanently, with the remainder being used as baches.

¹³ L Yule, P McKay, S Bray, S Gabrielle, T Bunny and R Wentz.

[24] The PDP describes the Mangakuri Beach settlement as follows:

Mangakuri Beach Settlement comprises a single row of baches/holiday homes discretely located above and on the landward side of the road, between the base of the hills and the foreshore dunes. Sites in this settlement are large in size (the average site size being just under 3,000m²), with only one dwelling on each site. The character of this settlement is therefore very open, small scale and has a feeling of remoteness.

[25] The Site contains several blocks of trees, including a cluster of poplars in its north-eastern portion and a mixed tree block in its north-western portion, as well as several stock drinking water ponds. Horticulturally, it is predominantly Land Use Capability Class 6 and 7, and archaeologically it is known to contain eight recorded sites, none of which appear to be directly affected by the Application. The Site has no buildings, including dwellings.

[26] The Hawke's Bay Regional Council Hazard Portal identifies a number of coastal hazards on the eastern portion of the Site, which is within the mapped Coastal Environment. These are a Tsunami Hazard (Near Source Inundation Extent) and a Cliff Shore Hazard Zone. Landslide hazards include areas of moderate earthflow risk in the west and severe earthflow risk in the eastern portion of the Site.

[27] The wider environment consists of rolling hills and coastal farmland. Mangakuri Beach is defined by headlands to the north and south and relatively steeply rising topography behind the beach which separates the coast from the Mangakuri River. This river flows north to meet the coast at Kairakau Beach. The beach settlement of Kairakau is 6.4km to the north and Waipawa, located on State Highway 2, is 42km (about a 45-minute drive) to the west. The settlement is about a one-hour drive south of Hastings, mostly on sealed, but winding rural roads.

[28] In his addendum report to the Application AEE, Mr Bray described the character of the landscape within which the Site is located as follows:¹⁴

The Land Use Capability of the proposed site is Class 7. It is somewhat steep and exposed to the coast. From a landscape perspective, it is not difficult to read that this area of Mangakuri Station is less productive than the more sheltered, fertile elements of the farm that are found inland. This can be seen through the legibility and formation of the landforms in the wider area, the wind-blown nature and species type of the vegetation, and the pockets of surface erosion resulting from repeated coastal saturation. Irrespective of any zoning, as I have identified in my assessment, this site has a strongly identifiable coastal character. This is further reinforced by its proximity to the existing beach settlement and is strongly defined by the prominent ridgelines behind the site.

By contrast, the wider farm on the inland side of the coastal ridgeline reinforces the rural amenity. This wide expanse of farmland country is part of a long sequence of productive farmland country extending from the settled areas of Waipawa and Waipukuaru to the first coastal ridgelines. This part of the landscape exudes a strong sense of productive capacity, visible through the various cropping and grazing regimes on the flatter terraces and the presence of rural built form such as woolsheds and stock yards. Older, more

¹⁴ Wayfinder Addendum Report, s 92 Response, 22 September 2023.

traditional farming residences are typically located close to the farming infrastructure, the dwellings and built form clustered together and usually surrounded by shelter and amenity vegetation.

The contrast between the two landscapes is pronounced. The winding journey from the main highway is enclosed, the views framed within valleys that encapsulate rural amenity. This immediately changes at the coast – crossing over the ridgeline the seascape opens up and there is a freshness to the air. The vegetation changes, with coastal native species becoming more prevalent and exotic trees showing the stresses of salt-laden wind exposure. The tendency is to slow down and take in the destination. This is the signal of a new experience, a coastal landscape.

[29] From my own experience of this locality, both historically and for the purposes of this hearing, this description accurately describes the landscape within which the Site sits.

3.2 The proposal

[30] The Williams Trust seeks consent to subdivide the Site into 11 lots (see Figure 1 below), comprising of eight rural lifestyle allotments, two balance allotments and a separate lot to be amalgamated with the adjoining property at 38 Okura Road (Lot 1 DP 25627).

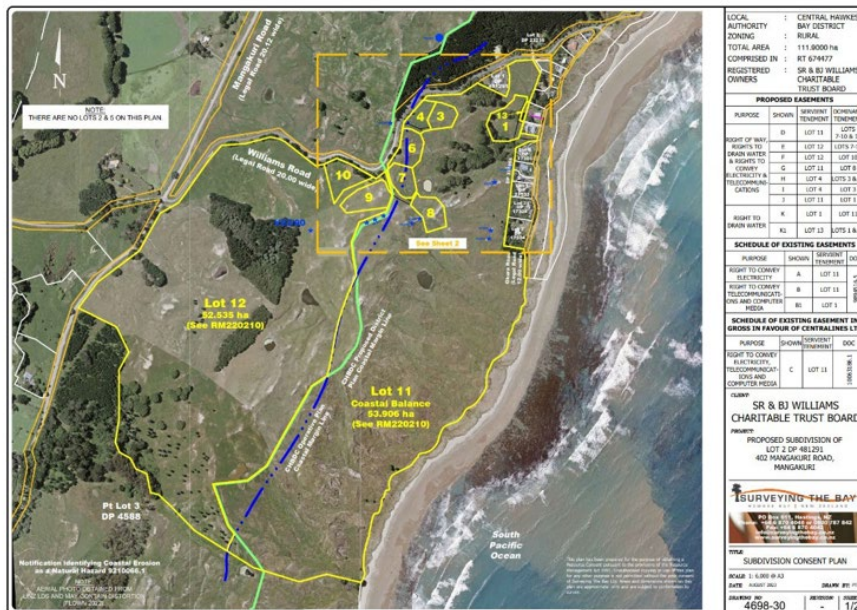


Figure 1: Proposed 11-lot subdivision – Excerpt from Proposed Scheme Plan

[31] Mr Yule, the longest serving trustee and acting chair of the Williams Trust summarised the rationale for the subdivision as follows:¹⁵

- a. *Development of an 8-lot subdivision directly behind Okura Road on land that does not interrupt the day-to-day farming operations.*
- b. *The Trustees preferred option is to complete the staged subdivision themselves and retain the balance of the land for farming purposes.*

¹⁵ Soe dated xxx section 7

- c. *The Trust principally focus on farming rather than becoming a long-term property developer.*
- d. *House sites are to be located outside of existing slip zones and to allow space between existing baches and the new sites.*
- e. *Use part of the funds generated to fund deferred capital requirements around fencing and buildings and to repurpose the property by planting up to 300ha of mixed species forestry, natives and open-spaced erosion protection poplars.*
- f. *Transfer some funds to non-farming related investment opportunities to enhance the distribution activity of the Trust.*
- g. *When funds allow, invest in new infrastructure including a new manager's house, a new shepherd's house, woolshed and tourism accommodation. An employee would likely use the current manager's house to run the tourism and farm maintenance operations.*
- h. *Invest in on-farm tourism tracking and forestry roads.*
- i. *Due to considerable time delays, costs and poor farming returns, the Trust is also considering one lifestyle subdivision away from the coastal margin and other opportunities on Kairakau Road.*

[32] In his concluding comments, Mr Yule noted that primary aim of the Applicant was to ensure the survival of Mangakuri Station as a sustainable and profitable farming business to support the Williams Trust's charitable purposes, and that development of the 8-lot subdivision would enable this purpose to be met with no disruption to the farming business. In his view, as well as this direct outcome, the subdivision would allow eight new families to enjoy Mangakuri in the same way that its existing residents and visitors do.

[33] Proposed Lots 1, 3, 4, 6, 7, 8, 9 and 10¹⁶ are intended to be used for rural lifestyle purposes and range in size from 4,636m² to 9,307m². Lots 11 and 12 comprise two balance rural lots, each over 50ha in size, and Lot 13 is a small parcel (585m²) which is intended to be amalgamated with the adjacent Lot 1 DP25627 at 38 Okura Road by way of boundary adjustment. In addition to the ability for Lots 1, 3, 4, 6, 7, 8, 9 and 10 to be developed for residential lifestyle activities as a result of the subdivision, Lots 11 and 12 would also be available for future dwelling and building establishment. In essence therefore, excluding Lot 13, the Application proposes to subdivide a single large title into 10 titles, with each of those titles having a right to be developed for rural or lifestyle living.

[34] It is proposed that the subdivision of the Lots be staged as follows:

¹⁶ There are no Lots 2 or 5.

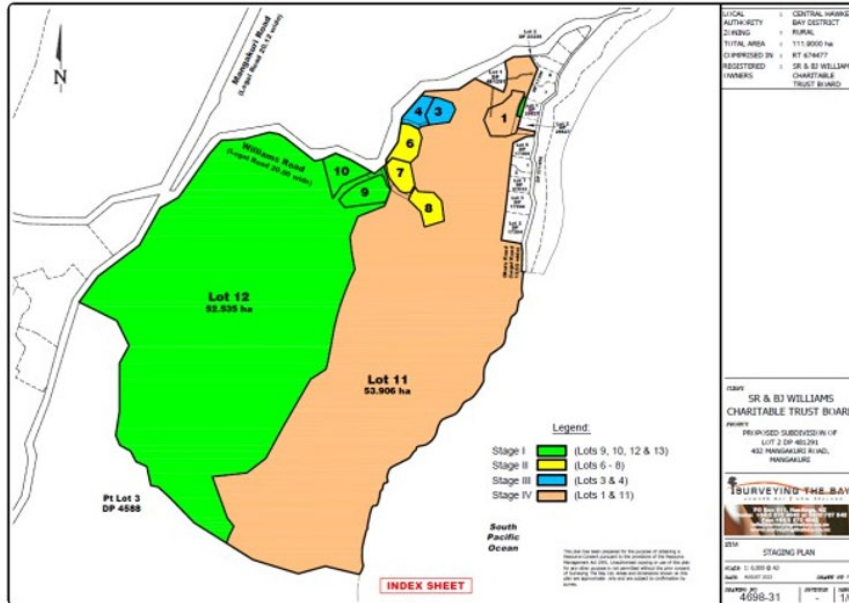


Figure 2: Proposed Staging Plan

[35] The Application describes the approach to the eight proposed new rural lifestyle lots as ‘landscape led’, with each lifestyle lot having three ‘zones’ intended to function in an integrated way to provide a suitable building platform for a new dwelling, associated curtilage (i.e., garden, lawn area, small sheds and water tanks, but no additional habitable buildings), and landscape enhancement (i.e., coastal native revegetation).

[36] To manage and mitigate the environmental effects of the proposed new rural lifestyle lots, the Applicant proposes that they each be the subject of ongoing conditions relating to their use and development, to be formalised by way of consent notice on the lots. The detail of the conditions to be imposed evolved over the course of the processing of the Application in response to feedback from the Council’s reviewing consultants and submitters, including by way of evidence etc at the hearing. For the purposes of this decision, the consent notice conditions discussed are those presented to me on 16 July 2024, incorporating the Applicant’s final position on conditions in reply.

[37] Detailed consent notice conditions are proposed addressing the following:

- (a) Water supply (potable and for firefighting) and how it is to be achieved;
- (b) Management of stormwater detention and runoff on the lots;
- (c) On-site wastewater treatment and disposal;
- (d) Requirements for the ongoing maintenance of shared infrastructure and communal areas;
- (e) Requirements for the management of potential reverse sensitivity effects on the balance rural use of the Station;
- (f) Building platform design and slope stability measures (i.e., geotechnical requirements);
- (g) The location of future building platforms on balance rural lots 11 and 12;

- (h) Design controls and density restrictions for all of the Lots other than Lot 12 covering building, fencing and landscaping design including:
 - (i) One residential unit only on the eight new lifestyle lots and Lot 11, except that Lots 1 and 11 may also have a minor household unit. On Lot 11, visitor accommodation can be established instead of a minor household unit;
 - (ii) Location of buildings and other structures on the lots;
 - (iii) Total building (footprint) area on the lots;
 - (iv) Maximum height of buildings on the lots;
 - (v) Building materials to be used;
 - (vi) Location and design of accessory structures, retaining walls and fencing;
 - (vii) Location and design of exterior lighting and utilities; and
 - (viii) Planting to be undertaken and maintained in the identified 'Landscape Enhancement Zone' on each of the lots.
- (i) A restriction on the ability to subdivide Lot 12 under PDP Rule SUB-R5 for a period of nine years from the date of issue of title;
- (j) A restriction on the ability to subdivide Lot 11 in perpetuity, other than as authorised by this consent (RM20230016).

[38] As further mitigation for the proposed subdivision, the Williams Trust also offers¹⁷ to limit its ability to subdivide other land it owns that forms part of the wider Mangakuri Station. As this land is not part of the subdivision, this proposed constraint is to be effected by way of land covenant under s 108(2)(d) of the RMA. The restriction is the same as that offered to apply to Lot 12, namely no subdivision under PDP Rule SUB-R5 for a period of nine years from the date of issue of s 224(c) certificate for the first stage of any subdivision authorised by RM20230016.

¹⁷ By way of *Augier* condition.



Figure 5: Record of Titles to which the proposed land covenant relates

- [39] Another component of the Application is the preparation and implementation of a landscape management plan to mitigate the potential adverse landscape effects from built development and earthworks through re-vegetation measures within the site. Under this plan, Lot 11 will feature staged vegetation enhancement to establish native coastal vegetation and hillside stability plantings behind the existing beach settlement. A smaller area of planting/revegetation is also proposed around the accessway to Lot 12, with the remainder of the lot to be used for pastoral activities.
- [40] A series of easements to facilitate access and rights to convey services (including telecommunications and electricity) is also part of the Application. In addition, all lots within the subdivision are intended to have 'rights to roam' to enable access to proposed walking tracks over the coastal balance lot (Lot 11). These are intended to connect the access for each to Okura Road and the beach beyond. This access would provide an alternative pedestrian access for residents who wish to access the beach.
- [41] The Application notes that pastoral farming and potentially forestry activities are proposed on the balance lots (Lots 11 and 12), in accordance with the PDP permitted activities in the Rural Zone, as opposed to activities proposed concurrently with this subdivision application. No land use consents are sought with respect to activities on these lots.

- [42] Completion of the subdivision will also require earthworks for the construction of vehicle access, building platforms and the provision of drainage infrastructure. The total estimated earthworks volume required is 24,070m³. No land use consent is required for these earthworks essentially because the Site is so large and the threshold for consent is proportional to the title area involved.¹⁸ Despite that, the Applicant offers to undertake all earthworks in accordance with an Erosion and Sediment Control Plan (**ESCP**) to mitigate potential adverse effects from erosion and sediment-laden water and a Construction Traffic Management Plan (**CTMP**). The ESCP would be developed in accordance with the *Hawke's Bay Regional Council Guidelines for Erosion and Sediment Controls* (2009) and would have to be submitted to the Council for certification prior to earthworks being undertaken (as would the CTMP).
- [43] The Site has the benefit of a consent authorising its subdivision into two lots of 54ha and 57ha respectively, generally in the same layout as Lots 11 and 12 of the Application (RM220210). New residential dwellings are able to be established on these two lots on designated building platforms that are in approximately the same locations as the Lot 10 and Lot 7 building platforms proposed by the Application. Although it is understood that this consent would not be implemented if the Application is approved and implemented, it is relevant to an understanding of the existing environment for the purposes of assessing the effects of the Application and the number of new rural lifestyle dwellings that it is proposed to establish.

3.3 Consent requirements

- [44] Initially, the consent requirements for the subdivision were complicated by the fact that the Council had released its decisions on submissions on the PDP, but these decisions were subject to appeals that were being case managed by the Environment Court. An understanding of the status of these appeals is important because under s 86F a rule in a proposed plan must be treated as operative (and any previous rule inoperative) if the time for making any appeals has expired and all appeals on the rule have been withdrawn, dismissed or determined.
- [45] The Application, the Report and the planning evidence to the hearing assessed the proposal under the provisions of both the ODP and PDP, on the basis that both plans were still relevant until such time as the appeals on the PDP were resolved. I sought further information on this matter at the hearing and was advised that, apart from two rezoning request and two appeals concerning ONF notations on a specific property, none of which affected the Site, all other appeals had been resolved and a consent order presented to the Environment Court on 27 May 2024. After the close of the hearing, this consent order was formally made by the Court (on 7 August 2024) and the PDP subsequently updated to reflect the outcome of the Court's order on 13 August 2024. Consequently, all of the appeals were dismissed in full or in part.
- [46] This means that for the purposes of my decision, the provisions of the ODP that applied to the Site and the Application no longer have effect and it is the PDP's provisions that have sole relevance to the Application.
- [47] Under the PDP, most of the Site is located within the General Rural Zone (**GRUZ**). Where the site meets the Mangakuri settlement along Okura Road, a small portion is within the Large Lot Residential Zone (**LLRZ**). Much of the Site is also located within the Coastal Environment

¹⁸ PDP, Rule EW-R6.

overlay, and within that overlay, along the coastal edge, within the Tsunami Hazard (Near Source Inundation Extent) overlay.

- [48] Two subdivision rules in the PDP appear to apply to the Application, although there was a difference of opinion between Mr O’Leary and Mr McKay as to the extent of their application. As SUB-R1 is entitled ‘Subdivision not otherwise provided for’ it is logical to determine first whether there are any other subdivision rules that do provide for the subdivision proposal. Of those rules, SUB-R5 ‘Subdivision to create a Lifestyle Site (not in association with a Conservation Lot)’ seems to be such a rule (the eight rural lifestyle lots proposed are “Lifestyle Sites” as defined in the PDP). Of those eight sites, Lots 9 and 10 are outside of the Coastal Environment Area, but as they do not comply with the criteria in SUB-R5(1)(a), they are a discretionary activity under SUB-R5(4). These lots also do not achieve SUB-R5(1)(c)(v) or SUB-R5(1)(d)(v), with that non-compliance to be assessed as a restricted discretionary activity under SUB-R5(3) and SUB-R5(2) respectively.
- [49] Proposed Lots 1, 3, 4, 6, 7 and 8 are within the Coastal Environment Area, comply with SUB-R5(10)(a), and are therefore to be assessed as a discretionary activity.
- [50] As the Application seeks that the balance lot from this lifestyle subdivision be created as two lots (Lot 11 and 12), this additional subdivision appears to be covered by SUB-R1. As part of this land is within the GRUZ (Coastal Environment Area), it is to be treated as a restricted discretionary activity under SUB-R1(3). On the basis that the lots would also not meet SUB-S8, this non-compliance is to be considered as a restricted discretionary activity under SUB-R1(2).
- [51] As a boundary adjustment lot, Lot 13 appears to be a controlled activity.
- [52] As the subdivision proposed by the Application is a comprehensive proposal for all of the lots sought, with conditions being offered in an integrated manner, I see no basis to ‘unbundle’ any of the specific subdivision activities, other than Lot 13, which is controlled. Overall, with the exception of that aspect, the Application is to be assessed as a discretionary activity.
- [53] The Report notes that no consent is required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 and no one suggested otherwise to me. I accept that position.
- [54] The Report also noted a possibility that there may be areas of the Site that are a natural inland wetland as defined in the National Policy Statement for Freshwater Management (2020) (**NPS:FW**) and thus may require consent under the National Environmental Standard for Freshwater (**NES:FW**) for aspects of its proposed earthworks.¹⁹ Confirmation from the Applicant about this was sought.
- [55] In his evidence, Mr McKay advised that initial advice from the Hawkes Bay Regional Council was that existing vegetation in the location of one of the proposed dry ponds to be constructed for stormwater management appeared to indicate the presence of a natural inland wetland and it was therefore likely that a more detailed assessment and a resource consent application would be required.

¹⁹ Para 2.66.

[56] Such 'late breaking' rule compliance issues, especially for an application that has been before the Council since February 2023, are not helpful. Despite Mr McKay's evidence identifying this issue prior to the commencement of the hearing no party requested the consent authority to invoke s 91 and defer its commencement. The ability to use that power expired when the hearing commenced. Furthermore, no party sought a formal adjournment of the hearing on the basis of this issue when it commenced. With no scope for this consent requirement to be included in the Application at this stage, I find, reluctantly, that the only option would be to leave it 'at large' as a matter for the Applicant to address in advance of undertaking any physical works on the Site in the area of any natural inland wetlands. If complying with the NES:FW required amendments to any consents held, then those changes would need to be made before any works could proceed.

4. SUBMISSIONS RECEIVED

[57] The Application was publicly notified following a decision to that effect under s 95A. Twenty-four submissions in opposition were received. The Report summarised the key issues with the Application under the following topic areas:

- Geotechnical effects.
- Stormwater and wastewater effects.
- Visual amenity, Character and landscape effects.
- Traffic / roading.
- Natural hazard effects.
- Effects on the coastal environment.
- Effects of the earthworks and construction processes.
- Fragmentation of rural land.
- Section 106 of the RMA Assessment.
- Objectives and Policies of the ODP and PDP Assessment.
- Proposed Conditions of Consent
- Slope instability effects.

[58] Under s 104(1) of the RMA, consideration of the submissions received on an application is a mandatory task for the consent authority. In undertaking that task, the various matters listed in s 104 must be 'had regard to'.

[59] I record that I have read all of the submissions made on the application.

[60] A number of the matters of concern raised in the submissions are effects and planning matters, the assessment of which is now commonly undertaken by independent experts with suitable qualifications and experience to do so. I record that no submitters provided any expert independent evidence in support of the environmental concerns they raised in their

submissions.

5. REVELANT STATUTORY REQUIREMENTS

5.1 Section 104(1)

[61] Section 104(1) sets out the mandatory matters to which I must have regard when considering the Application and the submissions received. For this Application, the matters comprise: the actual and potential effects on the environment of allowing the activity and the relevant provisions of any applicable national and regional policy statements and plans. Section 104(1)(c) also allows regard to be given to any other matter considered relevant and reasonably necessary to determine the application.

[62] The approach to be taken to the various matters in s 104(1) is well established: the directive “must have regard to” does not mean “must give effect to”. Rather it simply requires decision-makers to give genuine attention and thought to the matters set out.²⁰ The relative weight to be given to the matters listed in s 104(1)(a), (b), and (c) is for the decision maker, on the evidence. Flexibility is important when approaching this task, in the sense that the relative importance that various considerations have, and the manner in which they interrelate, will vary according to context.²¹

[63] In accordance with this guidance, I record that I have approached my assessment of the policy and plan provisions engaged by the Application by giving greatest weight to the most specific relevant provisions, namely those in the PDP. Together, these provisions can be assumed to “give effect to” the Hawkes Bay Regional Policy Statement (**RPS**) and so comprise the most refined or detailed manifestation of those policies in relation to the natural and physical resources affected by the proposal and their sustainable management.

[64] I have then considered the RPS and the NZCPS as the next most contextually relevant, higher-order policy documents.

[65] I have not considered the provisions of the NPS:FW, for the reasons noted above, nor the National Policy Statement for Highly Productive Land, on the basis that the Site does not meet the definition of highly productive land in that policy statement.

5.2 Section 104(1)(a) and 104(2)

[66] It is well established that when assessing the effects of activities on the environment under s 104(1)(a), effects authorised by an unimplemented resource consent that is likely to be given effect to must be treated as part of the environment that the effects of a proposed resource consent is assessed in relation to. In this regard, based on the evidence of Mr Yule, I find that subdivision consent RM220210 (referred to above), which allows the subdivision of the Site into two lots, with each lot having a right to construct a dwelling in roughly the same locations as Lots 7 and 10, forms part of the environment for the purpose of assessing the effects of the Application. That is, I must disregard the effects of the buildings able to be developed on those two lots, and the creation of one of the proposed additional titles (on the basis that RM220210

²⁰ *Foodstuffs (South Island) Ltd v Christchurch CC* (1999) 5 ELRNZ 308; [1999] NZRMA 481 (HC).

²¹ *Albert Road Investments Ltd v Auckland Council* [2018] NZEnvC 102. See also *The Warehouse Ltd v Dunedin CC* EnvC C101/01; *R v CD* [1976] 1 NZLR 436.

allows the creation of one additional site from the current title).

- [67] With respect to the lots able to be created by RM220210, given their size in excess of 50ha and the lack of any limitation in the consent itself as to the number of dwellings able to be built, it appears as if each of these lots could be developed under Rule GRUZ-R1 with three residential units and one minor residential unit. These additional residential units would all have to be contained within each of the nominated building platforms.
- [68] Section 104(2) gives consent authorities the discretion to disregard adverse environmental effects of a proposed activity if the applicable plan permits an activity with that effect.
- [69] Neither the Report nor the Applicant's planning evidence contended that there was a relevant 'permitted baseline' of effect that could be disregarded when assessing the effects of the Application. This follows from the fact that there is no permitted subdivision of the Site allowed under the PDP. I agree with this position.
- [70] However, as one of the outcomes of the Application is to enable residential units to be established on each of the lots, it is reasonable to enquire what the Site's permitted entitlement for residential units is. On the basis of the size of the site being in excess of 100ha, Rule GRUZ-R1 would appear to allow up to four residential units and one minor residential unit to be established, provided they were able to achieve the GRUZ standards.
- [71] Mr McKay undertook a similar exercise in his evidence,²² agreeing with that permitted entitlement but concluding that a more conservative, or 'non-fanciful' permitted development, outcome for the Site was two residential units and one or more visitor accommodation units to a maximum floor area of 100m². Mr McKay noted that the only constraints on these residential buildings were GRUZ Standards S2, S3, S4 and S5, implying that they could be achieved. However, no mention of compliance by this form of permitted land use with GRUZ-S8 Transport (Access, Parking, Loading) was made. As compliance with this standard is not possible under the current Application because of the posted 100kph speed limit on Williams Road, I can only assume that it would not be possible under the permitted scenario. That is, resource consent would be required to establish any residential units or visitor accommodation on the Site, even though the buildings themselves would otherwise be permitted.
- [72] In summary, therefore, there is no relevant permitted baseline of effect that I can disregard under s 104(2), but the existing environment includes the additional lot authorised by RM220210 and the built development that is otherwise permitted to occur on those lots under the PDP, albeit within the constraints of that consent.

5.3 Part 2

- [73] The consideration of applications under s 104(1) is "subject to Part 2", the meaning of which is well settled.²³ The extent to which express recourse to Part 2 may be required when considering an application for resource consent will depend on whether the relevant plan(s) have been prepared having regard to Part 2 and include a coherent set of policies designed to achieve clear environmental outcomes. If not, or if in doubt, it will be appropriate and

²² Evidence P McKay, 11 June 2024, para 35 et seq

²³ *R J Davidson Family Trust v Marlborough DC* (2018) 20 ELRNZ 367 at [73] – [76].

necessary to refer to Part 2.

[74] In the case of this Application, with the PDP now being ‘freshly minted’ and its provisions beyond challenge as they relate to the Site and the Application, I find that it is coherent, comprehensive and covers all relevant issues. I therefore find that it is not necessary to resort directly to Part 2 to determine the Application.

5.4 Section 104B

[75] My jurisdiction in respect of the Application is set out in s 104B: after considering the application I may grant or refuse consent. It is trite that I must exercise this discretion for a proper purpose, namely, to promote the sustainable management of natural and physical resources.

5.5 Section 106

[76] Section 106 is relevant to the Application because it involves an application to subdivide land. The section states:

(1) A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that—

(a) there is a significant risk from natural hazards; or

(b) [Repealed]

(c) sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.

(1A) For the purpose of subsection (1)(a), an assessment of the risk from natural hazards requires a combined assessment of—

(a) the likelihood of natural hazards occurring (whether individually or in combination); and

(b) the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and

(c) any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).

(2) Conditions under subsection (1) must be—

(a) for the purposes of avoiding, remedying, or mitigating the effects referred to in subsection (1); and

(b) of a type that could be imposed under section 108.

[77] In this case it is accepted that the Site is land which is at significant risk of natural hazards due to its coastal location and geology. An assessment of that risk, in the manner prescribed by s 106(1A), was included with the AEE and reviewed by technical specialists engaged by the

Council. The result of these risk assessments is an agreed view that, with appropriate conditions, the natural hazard risks associated with the Site can be managed to an acceptable level. I return to this matter below.

5.6 Section 108

[78] If I grant consent, I may impose conditions under s 108, provided they comply with s 108AA. This latter section prevents a consent authority imposing a condition unless the applicant for the consent agrees to it, or the condition is “directly connected” to an adverse effect of the activity on the environment and/or an applicable district or regional rule or a national environmental standard. Conditions may also be imposed if they relate to administrative matters that are essential for the efficient implementation of the resource consent.

[79] An important component of the Application is the conditions proposed by the Williams Trust to manage the actual and potential adverse effects of the subdivision to an appropriate level. I have treated the Applicant’s final revised condition set produced in reply as the conditions that it would agree to for the purposes of s 108AA(1)(a). Any amendments that I might consider necessary or appropriate to these conditions arising from my consideration of the evidence etc will therefore need to meet the requirements of s 108AA(1)(b) or (c).

6. RELEVANT POLICY STATEMENTS AND PLANS

[80] In considering and determining the Application, I find that s 104(1)(b) requires me to have regard to relevant provisions of the following policy statements and plans:

- (a) The New Zealand Coastal Policy Statement (**NZCPS**);
- (b) National Policy Statement: Highly Productive Land 2022 (**NPS:HPL**);
- (c) The Hawkes Bay Regional Policy Statement (included within the Hawkes Bay Regional Resource Management Plan (2006); and
- (d) The Proposed District Plan (Operative in Part, August 2024).

[81] Due to the currency of the PDP and the presumption that it properly complies with s 75(3) (i.e., it has given effect to the NZCPS, NPS:HPL and RPS), I find that for the purposes of this decision and my consideration of the principal issues in contention, it is its provisions that are of greatest relevance for the purposes of s 104(1)(b).

[82] I have found it helpful to identify and categorise the relevant provisions of the PDP into three tiers. In the first tier are those provisions that relate to process and an applicant’s obligations in this regard. The majority of the objectives and policies in the Tangata Whenua chapter fall into this tier. In the second tier are those provisions that relate to the broad, macro-level direction of the plan as it relates to subdivision and development in the GRUZ and Coastal Environment (**CE**) area generally. These provisions speak to the overall appropriateness of the subdivision activity and its effects in the location proposed and whether it should be approved. The third tier of provisions are those that are technical or activity focussed and address how certain activities, if appropriate in the location proposed, should be undertaken.

[83] As there is no evidence that the relevant provisions of the Tangata Whenua chapter have not

been fulfilled and the Applicant is proposing conditions to achieve Policy TW-P9, I make no further comment about the first-tier provisions.

[84] The third tier of provisions are those relating to Sustainable Subdivision and Building, a number of the Subdivision, Natural Hazard and GRUZ provisions relating to design, servicing and buildings,²⁴ Transport, Earthworks and Lighting – provisions that are, in my experience, usually able to be achieved by appropriate design and conditions of consent.

[85] The strategic planning issues in contention with the Application all appear to arise out of the second tier of PDP provisions. I set these out below.

Part 2 - Strategic Direction²⁵ – RLR Rural Land Resource	
RLR-O4	Residential and other activities that are unrelated to primary production are directed to locations zoned for those purposes and that are not situated on highly productive land.
RLR-P3	To minimise fragmentation of the District’s rural land resource through directing lifestyle subdivision to the Rural Lifestyle Zone and limiting lifestyle subdivision in the General Rural Zone and, particularly, in the Rural Production Zone.
Part 2 – Hazards and Risks – NH Natural Hazards	
NH-O2	The significant risks from natural hazards and the effects of climate change on the community are minimised.
NH-O3	Any significant risk to people, property, infrastructure and the environment from the effects of natural hazards should be avoided and any other increase in risk should be avoided, remedied or mitigated.
Part 2 – SUB Subdivision	
SUB-O1	Subdivision of land is consistent with the objectives and policies of the relevant zones and district-wide matters in the District Plan, including those relating to: <ol style="list-style-type: none"> 1. safeguarding the rural land resource of Central Hawke’s Bay District from inappropriate subdivision (RLR – Rural Land Resource provisions in the District Plan); 2. ...
SUB-O4	Reverse sensitivity effects of subdivision and its resulting future land use activities on existing lawfully established activities are avoided where practicable, or mitigated where avoidance is not practicable.
SUB-O5	Avoidance of subdivision in localities where there is a significant risk from natural hazards on land or structures, including in relation to any likely subsequent use of the land.
SUB-P16	To avoid where practicable, or otherwise mitigate, potential reverse sensitivity effects of sensitive activities (particularly residential and lifestyle development) establishing near existing primary production activities, including intensive primary production activities, rural industry, industrial activities and/or existing network utilities.

²⁴ NH-P3, NH-P4, NH-P5, NH-P9, NH-P10, SUB-O2, SUB-O3, SUB-P4, SUB-P7, SUB-P8, SUB-P9, SUB-P11, SUB-P13, GRUZ-P4 and GRUZ-P10.

²⁵ “The strategic direction part of the Plan sets out the key and/or significant matters for the District and provides District-wide considerations to guide decision making at a strategic level.” (PDP, Part 1, General Approach)

Part 2 – CE Coastal Environment	
CE-O1	<p>Preservation of the natural character of the coastal environment of Central Hawke’s Bay, comprising the following distinctive landform of:</p> <ol style="list-style-type: none"> 1. rugged eroding grey mudstone cliffs; 2. steep limestone outcrops; 3. remnant dunelands and associated interdunal wetlands, small lakes and associated vegetation; 4. wide sweeping beaches; and 5. small settlements, recessed into bays, adjoining a number of sheltered beaches.
CE-O2	<p>Protection of the natural character of the coastal environment of Central Hawke’s Bay from inappropriate subdivision, use and development, and identify and promote opportunities for restoration or rehabilitation.</p>
CE-P2	<p>To avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on the natural character of the coastal environment area (particularly in the areas of high natural character identified on the Planning Maps and in CE-SCHED7); including adverse effects resulting from the following activities:</p> <ol style="list-style-type: none"> 1. drainage of coastal flats and wetlands; 2. earthworks within dunes and coastal escarpments; 3. buildings outside of the Large Lot Residential Zone within the coastal environment; 4. plantation forestry; and 5. use of vehicles on beaches and adjacent public land; <p>particularly where these have been identified as a threat to the values of a particular area of high natural character.</p>
CE-P3	<p>To avoid sprawling or sporadic subdivision and development in the coastal environment area.</p>
CE-P4	<p>To manage the activities that can occur in the coastal environment area, including:</p> <ol style="list-style-type: none"> 1. expansion and consolidation of existing coastal settlements; 2. the scale, location, design and use of structures, buildings and infrastructure; 3. earthworks; and 4. subdivision.
CE-P6	<p>To require that proposed activities within the coastal environment area demonstrate that the activity is located appropriately, having regard to its effects and:</p>

	<ol style="list-style-type: none"> 1. the particular natural character, ecological, historical or recreational values of the area; 2. the extent to which the values of the area are sensitive or vulnerable to change; 3. opportunities to restore or rehabilitate the particular values of the coastal environment of the area; 4. the presence of any natural hazards and whether the activity will exacerbate the hazard and/or be vulnerable to it; 5. the impacts of climate change; 6. appropriate opportunities for public access and recreation; 7. the extent to which any adverse effects are avoided, remedied or mitigated; and 8. consistency with underlying zoning and existing land use, such as farming.
CE-P7	<p>To require that proposed activities within the coastal environment area minimise any adverse effects by:</p> <ol style="list-style-type: none"> 1. ensuring the scale, location and design of any built form or land modification is appropriate in the location; 2. integrating natural processes, landform and topography into the design of the activity, including the use of naturally occurring building platforms; 3. limiting the prominence or visibility of built form; and 4. limiting buildings and structures where the area is subject to the impacts of climate change and the related impacts of sea level rise, sea temperature rise and higher probability of extreme weather events; and 5. restoring or rehabilitating the landscape, including planting using local coastal plant communities.
CE-P8	To encourage restoration and rehabilitation of natural character, indigenous vegetation and habitats, landscape features, dunes and other natural coastal features or processes.
Part 3 – GRUZ General Rural Zone	
GRUZ-O1	The General Rural Zone is predominantly used for primary production activities (including intensive primary production) and ancillary activities.
GRUZ-O2	<p>The predominant character of the General Rural Zone is maintained, which includes:</p> <ol style="list-style-type: none"> 1. overall low-density built form, with open space and few structures; 2. a predominance of primary production activities and associated buildings, such as barns and sheds, post-harvest facilities, seasonal workers

	<p>accommodation, and artificial crop protection structures and crop support structures, which may vary across the district and seasonally;</p> <ol style="list-style-type: none"> 3. the sounds, smells, and traffic associated with primary production activities and established rural industries, anticipated from a working rural environment; 4. existing rural communities and community activities, such as rural halls, reserves and educational facilities; 5. a landscape within which the natural environment (including farming and forest landscapes) predominates over the built one; and 6. an environmental contrast and clear distinction between town and country (including a general lack of urban infrastructure, such as street lighting, solid fences and footpaths).
GRUZ-O3	Activities are managed to ensure rural character and amenity and, where applicable, the natural character and amenity values present within the coastal environment are maintained.
GRUZ-O4	The primary productive purpose and predominant character of the General Rural Zone are not compromised by the establishment of potentially incompatible activities.
GRUZ-P2	<p>To provide for non-primary production related activities that have a functional or operational need for a rural location, and/or that support the function and wellbeing of rural communities and/or the enjoyment of the rural environment, and contribute to the vitality and resilience of the District's economy, and where they are managed to ensure that:</p> <ol style="list-style-type: none"> 1. their scale, intensity and built form are in keeping with the rural character of the General Rural Zone; 2. they maintain a level of amenity in keeping with the rural character of the General Rural Zone; 3. they minimise reverse sensitivity effects on activities otherwise anticipated within the General Rural Zone; and 4. adverse effects are avoided, remedied or mitigated.
GRUZ-P5	To require sufficient separation between sensitive activities and existing primary production and intensive primary production activities, and between new intensive primary production activities and property and zone boundaries, in order to avoid, remedy or mitigate potential adverse effects, including reverse sensitivity and land use conflict.
GRUZ-P8	To limit residential and rural lifestyle subdivision that results in fragmentation of the rural land and/or that restricts the use of rural land for productive purposes.

[86] I note that each of the chapters of the PDP referred to above, and indeed all of the PDP chapters, include specific issues that the provisions in the relevant chapter are intended to address and set out the environmental results anticipated from the policies and methods included. These additional provisions helpfully assist the task of interpreting the objectives

and policies by providing a context for their inclusion in the PDP and what it is they are intended to achieve when implemented via the policies and methods.

7. ISSUES NOT IN CONTENTION

[87] Section 113 requires identification of the principal issues that were in contention with the Application and the findings reached thereon. Before identifying these issues I set out the aspects of the Application that, based on the expert evidence presented to the hearing, I am satisfied were not in contention (i.e., were agreed) and about which specific findings are therefore not required. A useful summary of these matters was included in Mr Lawson's opening legal submissions for the Applicant.²⁶ I have reviewed this list in detail and returned to it following the hearing of evidence and questioning of witnesses to ensure their accuracy. For the record I find that the following matters raised by the Application were not in dispute based on the expert evidence provided:

- (a) The Application is for a discretionary activity.
- (b) The proposal will not result in the loss of highly productive land, that the effects of the use of rural land (LUC 6 and 7) for the subdivision will be less than minor, and the proposal achieves PDP objectives RLR-O1 and RLR-O3.
- (c) The proposal will not result in unacceptable reverse sensitivity effects.
- (d) Any potential adverse traffic effects of the proposal on the safe and efficient operation of the roading network can be appropriately mitigated by consent conditions to an acceptable level.
- (e) The proposed buildings on the lots can be adequately serviced, and adverse effects on the environment in relation to infrastructure servicing can be appropriately mitigated by consent conditions to an acceptable level.
- (f) Should a discharge of stormwater to the area now identified as a potential natural inland wetland not be possible (either through being unable to obtain consent or otherwise being undesirable), an alternative option to dispose of stormwater as a permitted activity exists.
- (g) The potential adverse effects relating to geotechnical and natural hazards can be sufficiently mitigated through appropriate consent conditions to an acceptable level.
- (h) Potential construction effects will be localised and can be managed via consent conditions to be no more than minor on the environment or on any person.
- (i) The proposal is consistent with PDP SUB-AM13(8) as it will avoid adverse effects on archaeological sites and the potential for accidental discovery or disturbance will be covered by appropriate consent conditions.
- (j) The proposal is generally consistent with the relevant provisions of the PDP relating to cultural matters and tangata whenua values.

²⁶ Opening Legal Submissions, 25 June 2024, para. 8.

- (k) The effects of the proposal on coastal processes will be less than minor and acceptable.
- (l) The proposal will be consistent with the overarching objective and relevant policies in the NPS:HPL.
- (m) With the proposed conditions of consent imposed, the natural hazard risks associated with the site can be managed, such that s 106 is not a bar to a grant of consent.

[88] I acknowledge that most of the submitters would not agree with these findings and would vigorously maintain disagreement to some (or even all) of these statements. As noted above, based on the issues raised in submissions and the evidence presented by submitters personally, much of the Application and its claimed effects were disputed. However, as resource consent applications involve assessments of future states of affairs, those assessments are heavily reliant on the opinions provided by experts who have suitable qualifications and experience in environmental effects assessment. This is because the rules of evidence applying to judicial and quasi-judicial enquiries generally disallow reliance on opinion evidence unless it is given by qualified persons. This is why resource management decision makers invariably prefer expert opinion over non-expert opinion when making findings about the actual and potential effects on the environment of activities.

[89] This is not to say that non-expert opinions about such matters are inadmissible or not relevant; by virtue of s 276 they undoubtedly are. But when they are inconsistent with or not supported by expert opinion, they can be given little weight. In practice, the most helpful contributions that lay submitters make to resource consenting processes is their evidence about the environment as it is and what they value about it, as this provides an evidential base for experts (and decision makers) to base their assessments of the future effects of activities on. The evidence put forward by submitters in the present case was no exception and assisted my assessment of the Application and its potential effects on the environment, especially in relation to the amenity values presently enjoyed, that all of them believed would be imperilled if the Application was approved.

[90] Where issues raised by the Application were the subject of qualified opinion evidence, though, I have placed most weight on the opinions of the expert witnesses. It is their opinions on which I have made my findings above in relation to the issues that were not in dispute. In that regard, I record that I have relied on the expert evidence of the following witnesses:

- (a) Activity status and consistency with certain plans and policies; reverse sensitivity effects; construction effects; coastal process effects; archaeological effects - Phil McKay (Bachelor of Regional Planning (Hons); MNZPI) and Ryan O'Leary (Bachelor of Resource Management and Environmental Planning (Hons); MNZPI);
- (b) Land instability, geotechnical risks, natural hazards, s 106 – Tom Bunny (B.E.; Post-Graduate Diploma in Engineering Geology; CPEng; CMEngNZ), Rick Wentz (B.Eng (Civil); M.Eng (Civil); CPEng; PE; GE), and Lee Paterson (B.Sc (Civil Engineering, Geology);
- (c) Stormwater and wastewater management, services – Simon Gabrielle (Diploma in Civil Engineering), Wayne Hodson (B.E (Civil); CPEng); and

- (d) Transportation and traffic effects – George Eivers (B.E. (Civil); CPEng; IntPE; CMEngNZ) and Chris Rossiter (B.Sc; B.A; CPEng).

[91] I acknowledge that submitter Mike Smith provided evidence that relied on his engineering qualifications and considerable experience. However, because he is a submitter in opposition to the Application, he is unable to provide independent, un-biased opinions, or comply with the Code of Conduct for Expert Witnesses. Notwithstanding that, I am satisfied that Mr Gabrielle's response²⁷ to the technical issues raised by Mr Smith demonstrated appropriate consideration for them and provided me with confidence that all relevant matters had been properly considered and that the final assumptions used to design the stormwater management systems for the Application were sufficiently robust.

8. PRINCIPAL ISSUES IN CONTENTION

[92] On the basis of the Report and the detailed expert evidence, submissions and representations presented at the hearing, I find the Application raises the following principal issues that are contentious:

- (a) Appropriateness of the proposal in the GRUZ / CE generally ('planning efficacy');
- (b) Landscape, natural and rural character and visual effects; and
- (c) Effects on amenity values.

[93] I address and make findings on these issues below.

8.1 Planning efficacy

[94] The planning evidence to the hearing presented two alternative interpretations of the overall intent and purpose of the PDP in the face of the Application.

[95] In paragraphs 4.16 to 4.36 of the Report, Mr O'Leary set out his analysis of the provisions of the PDP, noting that, collectively, they were seeking to limit rural lifestyle subdivision in the GRUZ and minimise fragmentation of the rural land resource. After referring to the various provisions of the RLR, SUB, CE and GRUZ chapters, including the subdivision rule structure and assessment matters, Mr O'Leary concluded that:²⁸

...the proposed subdivision is at odds with the Strategic Direction of the PDP which intentionally seeks to locate multiple rural lifestyle lot developments which are unrelated to primary production activities in zones more suitable for that purpose, such as Large Lot Residential Zone (Coastal), Settlement Zone, and Rural Lifestyle Zone (RLR-04 and RLR-P3). I consider that the proposed subdivision is not commensurate with the environmental outcomes anticipated in the GRUZ. I consider that the proposal is contrary to RLR-04, RLR-P3 and GRUZ-08 and is not appropriate with regard to the assessment matters in SUB-AM13 (5), (6) and (7).

²⁷ Summary Statement of Simon Gabrielle, 25 June 2024.

²⁸ Report, para 4.28.

[96] After considering Mr McKay's contrary conclusions in the AEE, Mr O'Leary opined:²⁹

In my view, the cascade of provisions under the PDP which provide direction on the scale and intensity of subdivision weigh against this subdivision proposal when assessing this application on its merits. I accept that all subdivision consent applications shall be assessed on a case-by-case basis, however, I consider that the granting of the consent would significantly impair the Council's ability to limit rural lifestyle subdivision in the GRUZ in future.

[97] In his evidence to the hearing, Mr McKay agreed with the Report that the PDP establishes a broad cascade of provisions from the general (RLR) to the specific (GRUZ/CE), but unlike Mr O'Leary he considered that their overriding intent was to limit and minimise subdivision in order to protect highly productive land, with additional aspirations being to protect the primary production capacity and amenity of the rural land resource and to protect the former from reverse sensitivity.³⁰ The implication of Mr McKay's analysis was that a subdivision proposal that achieved these outcomes, was thus not inappropriate, did not need to be limited per se, and should be assessed on its merits at the location proposed. He noted:³¹

In my opinion the cascade of PDP provisions from the strategic direction to the specific zones direct significantly more restrictive subdivision provisions for the Rural Production Zone as compared to the General Rural Zone. I consider that this direction indicates that rural lifestyle subdivision applications in the General Rural Zone should be considered on their merits including against the policies seeking to limit such subdivision. In contrast, such subdivisions in the Rural Production Zone are non-complying and the relevant policy directs that rural lifestyle subdivision be avoided.

[98] In his rebuttal evidence, Mr O'Leary reiterated his analysis of the PDP provisions and why he considered Mr McKay's analysis misconstrued the intent of the plan for rural lifestyle subdivision. He summarised his over-riding concerns in his opening comments to the hearing as follows:³²

Ultimately my concerns lie with the consistency of the proposed subdivision with the policy direction of the PDP which seeks to specifically limit this type of development in this zone and in this overlay, and my concern regarding the precedent effect flows from my view that this application is not consistent with the objectives and policies.

To find that this application is consistent with the PDP's objectives and policies and grant it consent, in my opinion, may negatively impact the effectiveness of the new policy direction.

[99] The key difference between the planning witnesses thus comes down to a difference of opinion as to the use of the terms 'limit' and 'minimise'. Mr McKay considers that these directives need to be administered in context, i.e., with their intended purpose kept in mind. For Mr McKay, limitation for its own sake is unnecessary where those purposes are not imperilled. In contrast, Mr O'Leary, considers that they are directives in their own right and ought to be applied as a

²⁹ Report, para 4.36.

³⁰ Evidence P McKay, para 45.

³¹ Ibid, para 51.

³² Opening Statement of Ryan O'Leary – Planning, 27 June 2024, paras 22-23.

policy bar for all rural lifestyle subdivision in the GRUZ, even when it does not threaten highly productive soils, productive rural activity, rural amenity or create potential reverse sensitivity effects.

Findings

- [100] When interpreting plan provisions, it is important to remember the legal relationship between objectives and policies. Objectives are outcome statements for a region or district as a whole, whereas policies (and rules) are the provisions which the plan will use to implement (i.e., put into effect) the objectives. The role of these provisions is often confused in practice, with objectives commonly being treated as policies, ignoring that the plan has (or should have) already identified the means of implementation.
- [101] In the case of the PDP, RLR-O4 seeks a district wide outcome that residential activity unrelated to primary production is directed to zoned locations that are not on highly productive land. How does the plan envisage that outcome being achieved? Through avoiding unplanned urban expansion into the Rural Production Zone (RLR-P2) and by directing lifestyle subdivision to the Rural Lifestyle Zone and limiting lifestyle subdivision in the GRUZ and, particularly, in the Rural Production Zone (RLR-P3). When read together, these strategic provisions for the rural land resource do not seek to avoid lifestyle subdivision in the GRUZ; rather, they seek to limit it. It is the next layer of provisions in the PDP – the Subdivision, Coastal Environment and GRUZ provisions - that contain the machinery to achieve that limitation. This is the only logical way in which the PDP strategic objectives can be interpreted.
- [102] Put another way, if the true intent of the plan was to avoid rural lifestyle development in the GRUZ, more constraining policing language, and less generous subdivision rules would have been expected. In this regard, it is worth noting that the PDP allows rural lifestyle lots to be created as a controlled activity in the GRUZ at a rate of one per three years. This is not a rule that limits the overall number of rural lifestyle lots able to be created in this zone (and thus their individual local effects); rather, it is a rule that limits the rate at which rural lifestyle lots may be created, which focusses on the overall rate of change that the cumulative effects of such lots are experienced across the GRUZ. Although this rule does not apply to GRUZ land that is also within the CE, where all rural lifestyle subdivision is discretionary, it is nonetheless important to an understanding of how the PDP intends to 'limit' rural lifestyle subdivision in the GRUZ.
- [103] When it comes to the Subdivision, Coastal Environment and GRUZ chapters, SUB-O1 seeks to ensure that subdivision is consistent with the objectives and policies of the relevant zones and district-wide matters, including (relevantly in this case), safeguarding the rural land resource of the district from inappropriate subdivision. In this context, I interpret 'inappropriate subdivision' to be subdivision that threatens the district's highly productive land resource and its use for productive purposes, either by way of subdivision of such land for non-productive purposes, or by subdivision of land that creates potential reverse sensitivity effects for adjacent productive activities.
- [104] In cases where proposed subdivision is not 'inappropriate' for the purposes of SUB-O4(1), the sole objective guiding its consideration is therefore ensuring it is consistent with the objectives and policies of the relevant zones and district-wide matters. If after careful analysis it is not considered to be consistent with those provisions, then the PDP is indicating that it ought not be allowed to proceed.

[105] Users of the PDP must next look to the location of the proposed subdivision and its zoning to ascertain the appropriateness of a particular proposal. This exercise can be complicated in situations where, as here, there is an 'underlying' zone and a district-wide 'overlay'. This is because some of the outcomes sought for the Coastal Environment are different from the outcomes sought for the underlying zone. This tension must be resolved in favour of the CE provisions in my assessment. In addition to the interpretative maxim *generalia specialibus non derogant*, the CE provisions are intended to give effect to the NZCPS, a policy of national importance, and so ought to be given more weight in any instances of policy conflict.

[106] A careful reading of the CE and GRUZ provisions indicates that the provisions broadly fall into two tiers: those that speak to appropriateness of location at a general level; and those that speak to appropriateness of location at a design and implementation level. In the first tier I place GRUZ-O1, O4, P5 and P8 and CE-P3, because inconsistency with them would tend to signal that the proposed development at that location was generally inappropriate regardless of design etc. The second tier of provisions are those that require more proposal-specific evaluation to determine whether it is appropriate or not at the site proposed. That is, by reference to the applicable provisions, the questions to be asked are, does the proposal:

- (a) Preserve and protect natural character (CE-O1, O2 and P2)?
- (b) Manage activities and their effects in the coastal environment (CE-P4, P6 and P7)?
- (c) Encourage restoration and rehabilitation of natural character (CE-P8)?
- (d) Maintain the predominant character of the GRUZ and manage activities to maintain rural character and amenity, and natural character and amenity values in the coastal environment (GRUZ-O2, O3 and P2)?

[107] If the location of a particular proposal is generally appropriate (i.e., it gets through the first-tier of 'flags'); and due to its specific design and implementation can demonstrate attainment of the second tier outcomes, then in my assessment it is appropriate and thus provided for by the PDP.

[108] After considering the PDP provisions in detail, as well as the opinions of the planning experts as to how they ought to be interpreted and applied in relation to the Application, I prefer the overall approach taken by Mr McKay as it better reflects the structure and language of the PDP which I have also examined in detail. I accept that the PDP sets up a strategic direction of limiting rural lifestyle lots in the GRUZ. However, for subdivision in that zone that is not controlled, that limitation is driven by location, rather than 'pure' policy. If the location does not threaten the productive rural land resource, or the other evaluative criteria applied to that specific location, then the plan does not present a policy bar to such subdivision.

[109] The evidence in this case is that the Application will not threaten the district wide limitation on rural lifestyle subdivision being located so as not to impact highly productive soils, constrain rural productivity or result in reverse sensitivity on productive activities. In my assessment, it therefore satisfies the first tier of criteria that go to its appropriateness at the location proposed.

[110] Whether it satisfies the second tier of criteria requires a assessment of the evidence presented in relation to these matters, to which I turn next.

8.2 Landscape, natural character, rural character and visual effects

[111] The AEE included a detailed assessment of the effects of the proposal on landscape, natural character and visual amenity.³³

[112] With respect to landscape effects, the assessment considered that the overall landscape effects were low because:³⁴

The proposal is located within a highly modified landscape and introduces dwellings at a small, scattered scale within a confined site. Proposed design controls, including height, colour, materiality and footprint will ensure that such dwellings are contained to a scale relative to existing built form. Most notably, poor quality farmland will be replaced by a collectively managed framework of coastal native vegetation that can be considered as restorative enhancement to the coastal character of the site and landscape...

[113] In relation to natural character, the AEE notes that there is no district³⁵ or regional policy or mapping that identifies the Site as having outstanding or high natural character. At the physical level, it goes on to reiterate that the Site is highly modified from many years of farming and any historical native landcover has long been removed, with the only area of natural value being the recovering dune area behind the beach.³⁶ With respect to natural character the AEE continued:³⁷

The waterways on the site are largely incised overland flow paths, including overflow from a small farm reservoir. All of the waterways are highly modified and have little, if any, natural character value. Undoubtedly coastal bird species will make use of the Poplar and Macrocarpa trees for some shelter, but it is unlikely that these provide any useful, sustainable food or habitat.

Therefore, overall, the site is largely devoid of any physical (biotic or abiotic) natural character. Whilst it is clearly part of the coastal environment, the experiential values are derived from the outlook to the beach (where visible) and ocean, alongside its sound and smell.

Given the above, Wayfinder consider the establishment of a significant framework of coastal native species is an overall enhancement to natural character. The proposed planting will provide stability to the landforms, particularly along the waterways, whilst creating appropriate native habitat and food sources for coastal fauna. The planting will also provide a sense of naturalness, enhancing the coastal experience.

According to the Wayfinder Assessment the proposed built form is unlikely to diminish from the experience of naturalness. The wider landscape already contains built form, alongside human modifications by way of fences, roads and plantation forestry. The proposal is not attempting to fully restore the landscape to a natural state, but rather swing the balance away from highly modified. It is considered that the proposed dwellings, and the continued operation of the farm through the centre of the site, will

³³ AEE Appendix D1.

³⁴ Ibid, page 12.

³⁵ The Site is not included in CE-SCHED 7 in the PDP.

³⁶ AEE, section 5.3.2.

³⁷ Ibid.

achieve this balance.

Wayfinder therefore consider that any adverse effects on natural character resulting from the proposal will be very low. Rather, they consider that the proposal will have positive effects on natural character as with the establishment of the coastal native vegetation framework, the site will feel more natural than it does currently, and this is likely to enhance the wider coastal landscape experience.

[114] To assess visual amenity effects, the assessment completed by Wayfinder³⁸ undertook a viewpoint analysis from Williams Road, Okura Road, Lower Williams Road, Mangakuri Beach and several private residential properties. Overall, the assessment concluded that, while the proposed new dwellings will be visible from various public and private locations:³⁹

...the visual effects resulting from this change are not necessarily adverse. The extensive vegetative framework will enhance the naturalness of the site and help to visually integrate each of the dwellings. Further proposed design controls, will help to recess any built form, and the site is well contained within the landform (mostly below the skyline ridge). There is unlikely to be any shading or privacy effects.

[115] The visual amenity assessment was supplemented by a photographic visualisation (using Photoshop) of what the implemented development might look like from Mangakuri Beach set amongst the existing vegetation on the Site as well as amongst the future vegetation to be planted.⁴⁰ The visualisation generally shows all of the buildings proposed on the new lots sitting below ridgelines and integrated amongst vegetation. Only the proposed dwelling on Lot 8 appears to sit away from the other lots, and above the ridgeline.

[116] In her technical memorandum for the Report, Ms Griffiths undertook a detailed review of the assessments in relation to these matters and summarised her conclusions as follows;⁴¹

The proposed subdivision will introduce 8 rural lifestyle lots into the rural coastal landscape with associated benching, sidling cutting, stormwater interventions, private landscape areas, driveways, and surrounding landscape enhancement areas. Overall, in my opinion, the landscape assessment does not provide substantive information to enable a conclusion whereby effects on natural coastal character, rural character, and visual amenity is very low or low.

Although I consider the methodology and design-led approach to the development to demonstrate best practice and that the reasoning within the assessment underscores the associated conclusions on effects, I am not in agreement with the findings.

The project is uniquely located and seeks to juggle various constraints, from geomorphology and natural hazards to archaeology and coastal processes, including an array of natural seeps. It relies heavily on the proposed landscape enhancement areas to 'balance' the adverse effects of development with the positive effects of coastal

³⁸ AEE, Appendix D1.

³⁹ Ibid, page 17.

⁴⁰ AEE, Appendix D2, Sheets 05 and 06. Visualisations from three other locations, albeit without the same degree of visualisation of future vegetation, were also prepared by Mr Bray and included within a 'Graphical Attachment' to his hearing evidence.

⁴¹ Report, Memorandum of E Griffiths, undated.

restoration. However, despite these potential positive vegetative framework outcomes, the scheme will alter the character of the upper ridge adjacent to Williams Road and the prominent spur from an overtly rural landscape dominated by coastal and natural processes to one defined by human Intervention. Supporting a shift in landscape characterisation and expression from rural to lifestyle or coastal lifestyle is not directed by the ODP or PDP.

It is my opinion that there remains potential for moderate adverse landscape effects to be generated on rural and natural character. The mitigation measures currently offered by the Applicant do not illustrate in enough detail how adverse effects on the rural and natural character will be avoided, remedied, or mitigated to the point where the development can be integrated with the receiving environment so that landscape, rural, and natural character take precedence. In this vein, the development does not align with the strategic direction of the PDP to preserve rural and natural character.

[117] Mr Bray structured his evidence to the hearing to respond to Ms Griffith's concerns in detail. He helpfully identified where he agreed with Ms Griffith and where he did not. The following extracts from his evidence capture his responses:

In my opinion, it is too simplistic and too small a scale to consider the proposed site as having the rural amenity or rural character values that Ms Griffith identifies. The landscape is broader than just farmland and cannot be not defined by a single site. Not only is the site and context devoid of the more obvious rural processes and activities (at best it is a selection of degraded, poorer quality paddocks at the back of a farm, without any supporting rural buildings), Ms Griffith's assessment also downplays the wider built landscape which is the most prominent feature of Mangakuri.⁴²

In my opinion, the site is part of this landscape – it reaches up behind the row of houses but feels intrinsically a part of the coastal settlement character. It contributes to the sense of enclosure, shelter and connectedness between the arrival point on Williams Road (where it crosses the ridgeline), the existing dwellings and the beach. Its form is modified, with vehicle tracks and exotic vegetation, and it addresses the coast in the same way as the settlement, immediately adjacent and in the same aspect.

In my view, this character extends to the upper ridgelines behind the development area of the site, where the balder pastoral landscape that Ms Griffith refers to begin to dominate, and to the south beyond the last ridgeline of the site where the landscape opens up to the highly eroded hillslopes to the south (Photographs 03 & 04). These areas form the boundary of the rural settlement and signal the start of the broader, productive landscape that extends inland.

Within this context, I therefore cannot place the same degree of emphasis on open, natural, wild and undeveloped values as Ms Griffith does. In my view, the site is an intrinsic part of the rural coastal settlement landscape, dominated by built forms and highly modified landforms, tucked in against a tightly concaved landform that wraps around a small portion of the beach. It is part of what people know as Mangakuri, a coastal rural settlement, a destination for residential, vacation and leisure activities rather

⁴² Statement of S Bray, 11 June 2024, para 26.

*than a remote pastoral farming landscape. This broader rural landscape, in my opinion, begins above the site on the skyline ridges above and to the south, and extends southward beyond the existing settlement area.*⁴³

[118] With respect to visual effects, Mr Bray notes that he and Ms Griffith are generally agreed that, apart from the view from Mangakuri Beach, the visual effects of the proposed new dwellings will be low to very-low.⁴⁴ With respect to the view from the beach, Mr Bray maintains his opinion that visual effects will be low due to:⁴⁵

- (a) The taming effect on the beach landscape of the existing built form;
- (b) The extensive network of trees to be retained and planted;
- (c) The design controls for the buildings; and
- (d) The overall prominence and scale of the beach landscape.

[119] In his conclusion, Mr Bray summarised his overall position on landscape, natural, rural and coastal character, and visual effects as follows:⁴⁶

Discussion on rural amenity values is common in the work I undertake. Often, the focus is on the retention of a perceived amenity that includes wide open pasture, farm buildings and lack of built form. But this is not a definitive definition of rural character – as evident in the landscape of Mangakuri, rural can also mean residential activity, leisure activities and reduced production. The existing settlement is, under no uncertain terms, rural, but it derives its character from its sense of remoteness, the eclectic nature of dwellings, and the feeling of community.

In my opinion, the site is part of this settled rural character. Whilst the development area is, in itself, pastoral, it is strongly connected to the existing built form by the form of the topography and the framework of existing vegetation. It is not rural in the sense of productive, or of strongly rural processes, but because of its openness and its highly modified nature.

In my opinion, the proposal sits comfortably in this context. It does not have urban characteristics (it's not a row of lots directly adjacent to each other), and nor is it disconnected from existing built form (the site is directly adjacent and the vegetation framework is designed to strengthen the connection). The lots are organically located where the landform allows, on building platforms that are designed to work with the natural contours.

Dwellings will be visible, but to a lesser degree than the existing settlement that flanks the beach. Design controls will help buildings be recessive, and the vegetation framework buffers the development, "blurring the detail" (to use Ms Griffith's words).

Landscape change is inevitable. Along with the effects of climate change, how we utilise

⁴³ Ibid, paras 33-35.

⁴⁴ Ibid, paras 36 to 43.

⁴⁵ Ibid, para 44.

⁴⁶ Ibid, paras 89-94.

our rural landscapes for productive purposes is also changing. In recent years there have been significant shifts in rural land use towards forestry and other activities. Some of this is driven by necessity, where pastoral land is poor quality and difficult to manage, and where it is showing obvious signs of erosion and movement. In my opinion, this proposal has the potential to deliver longer term positive landscape change, whereas other potential alternatives are likely to be considerably more adverse.

I recognise the special characteristics that make Mangakuri what it is. This is a special place, particularly for the people who know its secret. It is remote, tucked away, with a quiet, but connected nature where there is a strong sense of community. These values are derived from its landscape setting, from the wildness of the beach and coastal edge, the enclosed, concave nature of the landforms and the boldness of the skyline to the south of the site. In my opinion, the proposal will not change these values. It is small scale, designed to integrate into the landscape, and become an intrinsic part of this coastal settlement.

[120] In her rebuttal evidence Ms Griffith conceded that the reason for the difference in opinions between herself and Mr Bray was mostly due to the fact that her starting point for assessment was different to Mr Bray's. In her words:⁴⁷

Where Mr Bray sees a degraded, highly modified, stressed, low value, and broken landscape 'at the back of the farm' that is somewhat 'divorced' from the coast, my assessment, in landscape terms, is underpinned by the value assigned to the site by the PDP.

[121] From this statement, Ms Griffith goes on to acknowledge that the Site has not been assigned a high natural character value by the PDP, but in her view it still retains 'moderate to high' levels of naturalness. Furthermore, she confirms that her analysis is based on her understanding of the intent of the provisions of the PDP, namely to "*protect and maintain rural character, natural character and amenity values present within the coastal environment*", and that this requires a limitation on development in the current location. In her view, the policy context of the application site (particularly concerning lots within the CE) sets a 'high bar' for discretionary activities to get over.⁴⁸

[122] With respect to visual effects, after reviewing Mr Bray's additional photographs and materials, Ms Griffith indicated that she was "more comfortable" with a low-moderate (minor) visual effect rating for most of the subdivision, although she remained concerned at how prominent the proposed dwelling on Lot 8 would appear on the skyline.

[123] Overall, Ms Griffith maintained her stance that the proposed development was not appropriate in this location due to the PDP policy framework and would adversely affect the rural and coastal character exhibited by the site and locality in its current form. That said, she concluded by saying:⁴⁹

I support the outcomes of land stability, protection of hydrology, and habitat creation. I also support ensuring that in the mid-to-long term, the subdivision will achieve a greater

⁴⁷ Rebuttal Evidence of E Griffith – Landscape, 21 June 2024, para 5.

⁴⁸ Ibid, para 6

⁴⁹ Ibid, para 30.

affinity with what the PDP and NZCPS aims to achieve. Screening, visually buffering, and applying the restoration rationale to greater proportions of the proposal is more likely to result in a framework that can achieve a subdivision that is subservient and complementary to its unique coastal character.

Findings

- [124] I acknowledge the detailed evidence of both of the landscape architects and understand the basis for their opinions about the effects of the Application. Overall, I prefer the analysis and conclusions of Mr Bray with respect to the landscape, natural character, rural character and visual effects. This is partly because I find his professional experience with the rural and coastal landscapes of the Central Hawkes Bay in particular yields a more considered basis for his opinions about this specific proposal, but also because I find Ms Griffith's analytical starting point of interpreting what the planning provisions are trying to achieve and then using her conclusions to assess the effects of the proposal, is methodologically flawed and has led her to put the proverbial 'cart before the horse'. In contrast, Mr Bray's starting point, of viewing the site as it is and then assessing what is proposed, then cross referencing back to the plan provisions and what they say, is the more appropriate one for a landscape architect in my experience.
- [125] In essence, I agree with Mr Bray that Mangakuri is a special place, that is remote, with a quiet, but connected nature, where there is a strong sense of community. These values are derived from its landscape setting; from the wildness of the beach and coastal edge; the enclosed, concave nature of the landforms and the boldness of the skyline to the south of the site. The proposal will not change these values. It is small scale and well designed to integrate into the landscape and become an intrinsic part of this coastal settlement.
- [126] In my assessment of the evidence, I find that if implemented in accordance with the proposed consent conditions, which propose detailed controls on the design and layout of the lots and future buildings, and coastal restoration planting, landscape effects will be low, effects on natural character will be positive, effects on rural character will be neutral, and effects on visual amenity and views will be minor, decreasing overtime as planting matures.

8.3 Effects on amenity values

[127] The Act defines amenity value as:

"those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes"⁵⁰ ...

[128] The "environment" includes "amenity values" for the purposes of the Act.

[129] In *Schofield v Auckland Council*⁵¹ the Court said:

The topic of amenity can be emotionally charged, as this case has revealed. People tend to feel very strongly about the amenity they perceive they enjoy. Whilst s 7(c) of the RMA

⁵⁰ Section 2.

⁵¹ [2012] NZEnvC 68 at [51].

requires us to have particular regard to the maintenance and enhancement of amenity values, assessing amenity values can be difficult. The Plan itself provides some guidance, but at its most fundamental level the assessment of amenity value is a partly subjective one, which in our view must be able to be objectively scrutinised. In other words, the starting point for a discussion about amenity values will be articulated by those who enjoy them. This will often include people describing what an area means to them by expressing the activities they undertake there, and the emotions they experience undertaking that activity. Often these factors form part of the attachment people feel to an area or a place, but it can be difficult for people to separate the expression of emotional attachment associated from the activity enjoyed in the space, from the space itself. Accordingly, whilst the assessment of amenity values must, in our view, start with an understanding of the subjective, it must be able to be tested objectively.

[130] The natural and physical qualities and characteristics of Mangakuri Beach and the Mangakuri settlement that contribute to submitters appreciation of its pleasantness, and cultural and recreational attributes include:

- (a) its unique and special character; its isolation and remoteness; the small size of the community; the longstanding relationships between residents (V and G Williams);
- (b) its special character; the caring relationships amongst residents (D and L Keighley);
- (c) the view from the crest of Williams Road on arrival, and the feeling of relaxation it brings; the sense of remoteness one has when there; its small and family-oriented community; the lack of busyness even over busy times (M and J Chatfeild);
- (d) the beach is a place to 'unplug' and 'escape' (M Smith);
- (e) its special character; its isolation; the fact that it does not change much, and this creates a feeling of security (K Stothart);
- (f) the unbuilt nature of the hillside; the very inclusive community (A and N Salmond); and
- (g) the calm and peace; the sense of arrival; the rural outlook (M McClelland).

[131] The emotional attachment that submitters have with Mangakuri and its community was a common theme of submitters who opposed the Application. The way they all feel about this special place came through in everything they said.

[132] Standing back from that emotion, as the law requires me to, and looking objectively at the effects the proposal would have on the natural and physical qualities enjoyed by submitters, I find the effects will be minor overall. The Application will not decrease the remoteness of Mangakuri, its isolation, or its uniqueness. I accept that the landscape will change with the addition of more houses and planting, and this will be visible in varying degrees when driving to and from the settlement, or while on the beach, but for the majority of the time, existing residents' spectacular outlooks and connection with the beach from their homes will be unchanged.

[133] I also see nothing arising from the Application that should change submitters' feelings about this place unless they allow it to. Feelings such as a sense of arrival, peace and quiet, escape

and inclusivity within a community are all personal thus susceptible to freewill. Yes, the size of the community resident at the beach will likely increase, but the scale of that increase is modest in the broader scheme. In any event, I do not see how the addition of more houses in the settlement could diminish their appreciation and love for it.

[134] As noted by Mr Yule, this settlement has grown incrementally over the past 75 years. In 1952 there were two buildings; in 1964 there were 15; today there are 24. When viewed over that timescale, this is not a place of rapid change and in my view the addition of another eight houses, to be developed over the next decade, will not threaten that history or the feelings the community associate it with it. Change is not an adverse effect.

[135] Overall, I am satisfied that under the RMA, the adverse effects of the Application on amenity values will be minor and that the character of Mangakuri Beach will be maintained.

9. OVERALL ASSESSMENT OF MATTERS AGREED AND MATTERS IN CONTENTION

9.1 Assessment of Application

[136] In this section of my decision, I bring together my findings on the various s 104 matters that I must have regard to.

Actual and potential effects on the environment (s 104(1)(a))

[137] The principal effects on the environment of the Application that were contested were those relating to landscape, natural and rural character effects, effects on visual amenity, and effects on other amenity values enjoyed by existing residents. In considering the evidence presented, I have discounted the effects on the environment of development of the Site in accordance with RM220210 (i.e., the creation of an additional lot and the ability to construct new dwellings on the resultant lots, generally in the same location as proposed Lots 7 and 10). This exercise effectively reduces the overall yield of potential new development on the Site via the Application by two lifestyle lots. I record that this discounting exercise has assisted with, but not proven determinative, of my findings on the effects of the Application.

[138] In relation to the contested effects, I have preferred the evidence of Mr Bray. I agree with his analysis that, if implemented in accordance with the proposed consent conditions, which propose detailed controls on the design and layout of the lots and future buildings, and coastal restoration planting, landscape effects will be low, effects on natural character will be positive, effects on rural character will be neutral, and effects on visual amenity and views will be less than minor, decreasing to become neutral as planting matures.

[139] With respect to effects on amenity values, I find these too will be minor. The Application will not reduce the remoteness or isolation of the Mangakuri Beach settlement or any of the other natural or physical features enjoyed by those who live there to a more than minor degree. Overtime, the proposed revegetation will change the nature of the hinterland from a barren and disregarded coastal facing rural hillside, to a rehabilitation, cared for landscape. I am confident that the nature of the community will continue as it is, and that the new residents will be welcomed into it, as they have in the past.

Relevant planning provisions (s 104(1)(b))

[140] Focussing first on the PDP, with respect to the contested policy matters, I am satisfied that the Application:

- (a) Appropriately limits lifestyle subdivision in the GRUZ (RLR-P3; GRUZ-P8) and achieves RLR-O4;
- (b) Preserves the natural character of the coastal environment of the district and protects it from inappropriate subdivision (i.e., I find that the subdivision proposed is an appropriate development in the location proposed (CE-O1 and O2);
- (c) Avoids significant adverse effects and avoids, remedies and mitigates adverse effects on the natural character of the coastal environment (CE-P2);
- (d) Is not sprawling or sporadic subdivision in the coastal environment (CE-P3);
- (e) Manages its proposed activities as required by CE-P4, has demonstrated that it is appropriately located by reference to the matters in CE-P6, has minimized its adverse effects by incorporating the policy directives in CE-P7, and includes provision for the restoration and rehabilitation of natural character, indigenous vegetation and habitats, and other natural coastal features (CE-P8);
- (f) Due to its scale, does not threaten the overall objective (GRUZ-O1) that the GRUZ be used predominantly for primary production, and maintains the predominant character of the GRUZ (GRUZ-O2); and
- (g) Manages its effects so as to maintain rural character and amenity, and the natural character and amenity values present within the coastal environment (GRUZ-O3, P2).

[141] By reference to the questions set out at paragraph xx, I find that the Application answers each of them positively.

[142] In relation to the higher order policy content of the RPS and NZCPS, based on my findings in relation to the effects of the Application and its consistency with the policy framework of the PDP, I am satisfied that it properly achieves the directives of these documents.

Other matters (s 104(1)(c))

[143] I have not found it necessary to take into account any other matters in order to determine the Application.

Part 2

[144] I find that the Application will promote the sustainable management of natural and physical resources (s 5), provides for the preservation of the natural character of the coastal environment (s 6(a) and the management of significant risks from natural hazards (s 6(h)), and provides for the ethic of stewardship (s 7(aa), the efficient use and development of natural and physical resources (s 7(b), the maintenance and enhancement of amenity values and the quality of the environment (s 7(c) and (f)), and the effects of climate change.

[145] Overall, I am satisfied that this Application at this location, implemented in accordance with the conditions to be imposed and offered by the Applicant, including its constraints on future development of adjoining land merits approval.

9.2 Precedent and district plan integrity

[146] Throughout the hearing, Mr O'Leary maintained a concern that granting consent to the Application would create an unpalatable precedent that would lead to a multitude of other applications being submitted for similar proposals to the Council, who would be powerless to refuse them. In his view, this outcome would fundamentally threaten the strategy of the PDP in relation to the management of subdivision in the GRUZ and CE. Although I have earlier found in this decision that Mr O'Leary's interpretation of the strategy of PDP is misconstrued, the issue of precedent and 'plan integrity' is worthy of further comment.

[147] The starting point is that the Application is for a discretionary activity. In *Doherty v Dunedin City Council*⁵² the Environment Court held:

[36] The distinction in this case, as it was in Plain Sense, is that in providing for the activity as a discretionary activity in the zone it cannot, by definition, be contrary to the objectives and policies of the Plan. As a discretionary activity it is accepted as being generally appropriate within the zone but not on every site. The exhaustive assessment criteria in 6. 7 can act as a checklist or guide to the issues that the Council sees as being particularly relevant in considering such applications. This is overlain by the provisions of the Act and Part II in particular.

[148] Similarly, in *Maclachlan v Hutt City Council*⁵³ the Environment Court held:

[20] Be that as it may the core question about the plan provisions is whether, viewed overall, this proposal is compatible with the provisions of the Plan. It is important to bear in mind that this is not a non-complying activity, and one thus needs to be careful about not imposing upon it tests or thresholds which do not really exist. Given that this is a discretionary activity, it can be taken that it will not, per se, be contrary to (in the sense of ... in conflict with) the Plan. But there can of course be degrees of inability to comply with standards...

[149] As submitted by Mr Lawson, a discretionary activity sits "in the middle" of the spectrum between permitted activities and prohibited activities, and because consent to it is able to be given or not, it cannot as a matter of logic be contrary to the objectives and policies of the plan. That is not to say that discretionary activities should be allowed to be undertaken on every site within the zone. The PDP manages this potential through the provisions relating to significant natural areas, outstanding natural landscapes, or high natural character areas. Mr Lawson noted in this regard that an inspection of the coastal boundary of the Central Hawke's Bay District, reveals that the vast majority of the coastline is covered by one or more of the PDP's Natural Environment overlays. However, the Site is not subject to such an overlay.

[150] When it comes to concerns with precedent and plan integrity, the legal position remains as

⁵² Decision No. C6/2004.

⁵³ Decision No. W062/08.

stated by the Court of Appeal in *Dye v Auckland Regional Council*⁵⁴:

The granting of a resource consent has no precedent effect in a strict sense. It is obviously necessary to have consistency in the application of legal principles, because all resource consent applications must be decided in accordance with a correct understanding of those principles. But a consent authority is not formally bound by a previous decision of the same or another authority. Indeed in factual terms no two applications are ever likely to be the same; albeit one may be similar to another. The most that can be said is that granting one consent may well have an influence on how another application should be dealt with. The extent of that influence will obviously depend on the extent of the similarities.

[151] Further, as noted by the Court in *Beacham v Hastings District Council*:⁵⁵

*[24] We have said before, and must say again, that the floodgates argument does tend to be somewhat overused, and needs to be treated with some reserve. The short and inescapable point is that each proposal has to be considered on its own merits. If a proposal can pass one or other of the s104D thresholds then its proponent should be able to have it considered against the s104 range of factors. If it does not match up, it will not be granted. If it does, then the legislation provides for it as a true exception to what the District Plan generally provides for. Decision-makers need to be conscious of the views expressed in cases such as *Dye v Auckland RC* that there is no true concept of precedent in this area of the law. Cases such as *Rodney DC v Gould* also make it clear that it is not necessary for a site being considered for a non-complying activity to be truly unique before Plan integrity ceases to be a potentially important factor. Nevertheless, as the judgment goes on to say, a decision maker in such an application would look to see whether there might be factors which take the particular proposal outside the generality of cases.*

[25] Only in the clearest of cases, involving an irreconcilable clash with the important provisions, when read overall, of the District Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined.

[152] The proposal is for a discretionary activity, not a noncomplying activity. In my assessment, there are no irreconcilable clashes with provisions of the PDP. Rather, I find it is consistent with all of the relevant provisions and achieves important strategic and coastal restoration outcomes for the District. In that regard, if this decision sets a precedent, it will be a precedent that encourages consolidation of development on current existing coastal settlements, and which is consistent with the objectives and policies of the CE and GRUZ, provides for the restoration of rural coastal farmland with diminished natural character, and avoids development on Highly Productive Land.

9.3 Proposed consent conditions

[153] Notwithstanding the Report's recommendation that consent not be granted, it helpfully included

⁵⁴ [2002] 1 NZLR 337, at [32].

⁵⁵ Decision No. W075/09.

draft conditions of consent to be imposed in the event that I determined that approval was merited. These suggested conditions were discussed by the Applicant's witnesses in their evidence filed in advance of the hearing, with various recommended changes proposed. Mr McKay noted in his evidence that a tracked change version of the conditions would be tabled at the hearing, showing the changes sought to them by the Applicant's witnesses. A tracked change version of the conditions, dated 25 June 2024, was provided to me at the hearing and was discussed throughout the hearing.

[154] At the close of the hearing, Mr O'Leary advised that he was generally 'OK' with the Applicant's proposed changes, but also happy to discuss them further. After the hearing was adjourned, Mr McKay and Mr O'Leary continued to discuss and make changes to the conditions. On 12 July 2024, Mr Lawson filed the Applicant's submissions in reply noting that there were only two areas of disagreement with the Council about the conditions, those being building height and the design for the stormwater discharge to the north of Williams Road. No updated conditions set was included with the reply. Some days later, on 16 July 2024, I was provided with a further tracked change version. The version included a handful of comments on specific conditions where agreement had not been achieved. However, the recorded items of disagreement were more extensive than alluded to by Mr Lawson in his submissions.

[155] In relation to the two disclosed matters of disagreement identified by Mr Lawson, I am satisfied that the Applicant's proposed conditions are reasonable for the reasons set out in the reply submissions.⁵⁶

[156] It is unclear why the additional matters of disagreement on aspects of the conditions raised by Ms Griffith, which were provided to Mr McKay and Mr Lawson the day before the reply was filed,⁵⁷ were not referred to in that reply. By reference to the document eventually provided to me, in addition to the matter of building height (noted above), Ms Griffith suggested proposed amendments to:

- (a) Design control/consent notice (c) so that no buildings or pools can be located beyond the final and identified building platform area on the lots;
- (b) Design control/consent notice (g) relating to materiality of downpipes and clarification around light reflectivity value;
- (c) Design control/consent notice (j) so that no retaining walls would be allowed on any of the lots except Lot 1;
- (d) Design control/consent notice (k) relating to the location and screening of water tanks; and
- (e) Design control/consent notice (u) relating to the removal of exotics and replanting on Lot 11.

[157] The position with respect to these conditioning matters is disappointing. Ms Griffith did not raise these issues in her memo included within the Report (where she raised a number of other condition suggestions), in her rebuttal evidence, or in her presentation to the hearing. They

⁵⁶ Submissions in Reply, 12 July 2024, paras 70 to 73

⁵⁷ Refer email exchange forwarded to Ms Lord on 15 July 2024 by Mr McKay.

were raised in discussions with the Applicant's planner after the hearing was concluded, but not were not addressed in reply. Some of the suggested changes were accompanied by explanatory comments, but the Applicant's response to them can only be inferred from the fact that they were not adopted in their final condition set.

[158] I am not prepared to make substantive determinations on important condition matters in the absence of considered evidence. In the case of items (a), (c), and (e) above therefore, I have retained the Applicant's preferred wording and rely on the evidence of Mr Bray to the effect that the conditions as whole will satisfactorily avoid, remedy or mitigate adverse landscape, natural character and visual effects. Items (b) and (d) are more straightforward in my assessment and appear to be uncontentious changes that are consistent with the intent of the conditions. In this regard, there were a number of other minor suggestions put forward by Ms Griffith in relation to the design control/consent notice conditions which I also find to be appropriate for the same reason.

[159] In relation to the proposed conditions generally, I have substantially restructured them to ensure they are logical, clear and enforceable.

[160] Finally, I record that I have accepted the Applicant's *Augier* offers with respect to placing constraints on the future subdivision potential for the balance lots and for land under its ownership but not within the scope of the Application. This offer is a distinguishing feature of this proposal and has satisfied me that, in terms of the district wide limitation evident in the '1 every 3 years' rule for rural lifestyle lots development, the proposal will not generate more rural lifestyle lots within the district than is already anticipated by the PDP.

10. DECISION

[161] Pursuant to sections 104, 104B and 108 of the RMA, for the reasons set out above, resource consent is granted to the Application in the form included in **Appendix A**.

Signed:

A handwritten signature in blue ink, appearing to read 'KRM Littlejohn', with a long horizontal flourish extending to the right.

K R M Littlejohn

Independent Commissioner

9 September 2024

APPENDIX A

RESOURCE CONSENT RM230016

This Resource Consent authorises the subdivision of Lot 2 DP 481291 (being part of Record of Title 674477), at 42 Okura Road, Kairakau, Elsthorpe, under section 11 of the Resource Management Act 1991, into 11 fee simple freehold lots consisting of:

- 8 rural lifestyle allotments (Lots 1, 3, 4, 6, 7, 8, 9 and 10);
- 2 balance rural allotments (Lots 11 and 12); and
- a boundary adjustment lot (Lot 13) to be amalgamated with the adjoining property at 38 Okura Road (legally described as Lot 1 DP 25627).

Under sections 108 and 108AA of the Resource Management Act 1991 this resource consent includes and is subject to the conditions in Schedule 1.

SCHEDULE 1

INTERPRETATION AND DEFINED TERMS

1. The following terms used in these conditions have the following meanings:
 - (a) **“Act”** or **“RMA”** means the Resource Management Act 1991;
 - (b) **“AEE”** means the application and accompanying assessment of environmental effects dated 23 February 2023, revised 14 August 2023, and all additional materials submitted by the Williams Trust in support of the application for the Development;
 - (c) **“AS/NZS 1547:2012”** means Australia/New Zealand Standard 1547:2012 On-site domestic wastewater management;
 - (d) **“certify”** or **“certification”** in relation to actions required, plans or management plans means assessed by Council staff acting in a technical certification capacity, and in particular as to whether the action, document or matter is consistent with, or sufficient to meet, the conditions of this resource consent, and certified in writing as such for the purposes of the conditions of this resource consent;
 - (e) **“condition”, “conditions”, “Condition”** or **“Conditions”** means the conditions of this Resource Consent imposed under ss.108, 108AA and 220 of the RMA, or offered by the consent holder, and included in Schedule 1 to the resource consent;
 - (f) **“consent holder”** means the Williams Trust or its successors in title;
 - (g) **“Council”** means the Central Hawke’s Bay District Council;
 - (h) **“CTMP”** means Construction Traffic Management Plan;
 - (i) **“Development”** means the proposed subdivision of the Site into 11 lots as described in the AEE for Application RM230016;
 - (j) **“ESCP”** means the Erosion and Sediment Control Plan;
 - (k) **“HBRC”** means the Hawke’s Bay Regional Council;
 - (l) **“HBRC ESC Guidelines”** means the Hawke’s Bay Waterway guidelines— Erosion and Sediment Control” prepared by the Hawkes Bay Regional Council, ISBN No: 1-877405-35-3, dated April 2009 (Reference: 1 (hbrc.govt.nz));
 - (m) **“HNZPT”** means Heritage New Zealand Pouhere Taonga;
 - (n) **“Landscape Plan”** means the Landscape Plan, Sheet 03, Revision 1, dated 10 June 2024, prepared by Wayfinder Landscape Planning and Strategy Limited;
 - (o) **“LPMP”** means Landscape Planting and Maintenance Plan;
 - (p) **“NZS4404:2010”** means New Zealand Standard 4404:2010 Land Development and Subdivision Infrastructure;
 - (q) **“OMP”** means Operation and Maintenance Plan;

- (r) **“RCM”** means the Central Hawkes Bay District Council’s Resource Consents Manager (or nominee);
 - (s) **“resource consent”** means the resource consent under s 11 of the RMA granted to the Williams Trust to undertake the Development;
 - (t) **“RRMP”** means the Hawke’s Bay Regional Council Regional Resource Management Plan, or any replacement for that plan;
 - (u) **“Scheme Plan”** means the Subdivision Consent Plans, Drawing no 4698-30, Sheets 1 and 2, prepared by Surveying the Bay, dated August 2023;
 - (v) **“site”** means the land at 42 Okura Road, Kairakau, Elsthorpe, legally described as Lot 2 DP 481291 (being part of Record of Title 674477);
 - (w) **“SMP”** means Stormwater Management Plan;
 - (x) **“Staging Plans”** means the Staging Plan, Drawing no 4698-31, Sheets 1 to 6, prepared by Surveying the Bay, dated August 2023; and
 - (y) **“Williams Trust”** means the S R & B J Williams Charitable Trust Board.
2. Any reference to a number of days in this resource consent refers to working days as defined in s 2 of the RMA.

GENERAL SUBDIVISION CONDITIONS

3. The subdivision must proceed in general accordance with the Scheme Plan. Associated land development and infrastructure works must proceed in general accordance with the AEE and all other additional information submitted in support of the Development. In the event of any conflict between the Scheme Plan, Staging Plans and other information, and the conditions, the conditions prevail.
4. Under s 125, this resource consent lapses five years after the date it commences unless:
- (a) A survey plan is submitted to Council for approval under s 223 of the Act before the lapse date, and that plan is deposited within three years of the date of approval of the survey plan in accordance with s 224(h) of the Act; or
 - (b) An application under s 125 of the Act is made to the Council before the lapse date to extend the period after which the consent lapses, and the Council grants an extension.
5. The Development may be staged. If staged, it must proceed in accordance with the Staging Plans.

SURVEY PLAN APPROVAL (S 223) CONDITIONS

6. Prior to requesting approval under s 223 of the Act, the cadastral survey dataset for each stage must be prepared or amended as necessary to show the final location and extent of:
- (a) The identified building platform, privately managed landscape area, effluent field area, and landscape enhancement area for each allotment (refer Scheme Plan and Landscape Plan);
 - (b) The no build zones within the building platform of each allotment lot comprising a building setback of:
 - (i) 5m from the break in slope (slope crest) for all building platforms formed on cut where ground slopes away exceeding 20 degrees; and
 - (ii) 5m from the toe of the slope where the ground rises above the building platform for Lot 1.

(refer RDCL Report titled: "Geotechnical Assessment Report, Revision R19385B-05", dated 21 December 2023)

7. Prior to the Council signing the survey plan pursuant to s 223 of the Act, all the easements shown as Proposed Easements on the Scheme Plan shall be duly granted or reserved. The consent holder must provide a written statement by a professional surveyor to Council, to the effect that all services are confined to their respective lots or provision has been made for suitable easements to be granted or reserved and endorsed in the cadastral survey dataset.

8. The following amalgamation condition must be endorsed on the cadastral survey dataset:

That Lot 13 hereon be transferred to the owners of Lot 1 DP 25627 and that one Record of Title be issued to include both parcels.

DEVELOPMENT WORKS CONDITIONS

9. The consent holder shall be responsible for all contracted operations involved in the implementation of this resource consent, and must ensure contractors are made aware of the relevant conditions of this resource consent and are complied with.

10. A copy of this resource consent and all certified management plans must be kept onsite at all times during the construction works and must be produced without unreasonable delay upon request from the RCM.

11. The consent holder must notify the RCM before conducting any works in any existing legal road.

Final Earthworks Plans and Methodology

12. No less than twenty (20) days prior to any earthworks or construction commencing, final details of all proposed earthworks must be submitted to the RCM for written, technical certification. The Final Earthworks Plans and Methodology must be designed to ensure all temporary and permanent earthwork cuts or fills remains stable and must:

- (a) Outline how the final earthworks methodology incorporates the recommendations set out in Appendix E2 - Geotechnical Assessment Report, Revision R19385B-05, including:
 - (i) Building platforms proposed at the top of existing slopes (Lots 3, 4, 6, 7, 8, 9, 10) should be formed entirely within cut (Natural ground).
 - (ii) Building platforms proposed at the toe of existing slopes (Lot 1) shall be setback from the toe, and excavations should be controlled or retained.
 - (iii) Engineered Fill may be utilised to form larger building platforms provided stability is confirmed as suitable.
 - (iv) To address the risk of expansive soils, all building platforms shall be tested for expansive properties at or during the completion of the building platform.
 - (v) Foundations exposed to risk of expansive type soils as defined in NZS3604 are subject to Specific Engineering Design (SED). Foundation design should also consider slope stability and setback conditions as well as usual requirements.
 - (vi) Expansive soils may be modified by Lime or Cement additives.
 - (vii) Engineered fill should comprise material as approved by a geotechnical

engineer, placed in accordance with NZS4431:2022.

- (viii) Road access to building platforms shall be designed to take advantage of resistant outcrops and keep away from wet, boggy terrain unless adequate drainage and ground improvement is installed and consider the following:
 - Variable subgrade strength and future traffic loads including construction traffic;
 - The carriageway should be designed to consider subsoil drainage and stormwater discharge.
- (ix) All roads should collect stormwater by appropriate collection points using side drains, kerb and channel and discharge to appropriate discharge areas.
- (b) Ensure that all earthworks are consistent with AEE Appendix H - Cut Fill Plan, Job Number: 5864, Sheet C150, Revision 3.
- (c) Specifically define excavation levels for lowered building platforms.

In accordance with this condition, the consent holder must ensure:

- (i) Lots 3 to 11 building platforms are excavated to form a level building platform to the defined excavation level and to reduce the risk of further land instability.
- (ii) Lot 1 should not be subjected to excavation at the toe of the slope due to risk of land stability.
- (iii) Lot 1 may be subjected to fill in accordance with the recommendations and advice of the appointed geotechnical engineer.
- (iv) All cut slopes shall be formed at a maximum of 1V:1.5H for cuts and 1V:2H for fills.

Erosion and Sediment Control

13. No less than twenty (20) days prior to commencing any earthworks onsite (including implementation of any erosion and sediment control measures), the consent holder must provide to the RCM for certification a finalised Erosion and Sediment Control Plan (**ESCP**) prepared by a suitably qualified and experienced person. The purpose of the ESCP is to set out the measures to be implemented to avoid or mitigate adverse effects from earthworks on the environment, including waterways and neighbouring properties. The finalised ESCP must, as a minimum, be based upon and incorporate those specific principles and practices which are appropriate for the earthworks proposed contained within the HBRC ESC Guidelines and must include the following as a minimum:
- (a) Details of all procedures and practices that will be implemented to undertake erosion and sediment control to minimise the potential for sediment discharge from the site;
 - (b) The design criteria, supporting calculations, dimensions and contributing catchments of all key erosion and sediment control structures, including (but not limited to) diversion bunds/channels and decanting structures;
 - (c) A site contour plan of a suitable scale to identify;
 - (i) the locations of waterways;
 - (ii) the extent of soil disturbance and vegetation removal;
 - (iii) any “no go” and/or buffer areas to be maintained undisturbed adjacent to watercourses;
 - (iv) areas of cut and fill;
 - (v) locations of topsoil stockpiles;

- (vi) all key erosion and sediment control structures;
 - (vii) the boundaries and area of catchments contributing to all erosion and sediment control devices;
 - (viii) the locations of all specific points of discharge to the environment; and
 - (ix) any other relevant site information.
- (d) A construction timetable for the erosion and sediment control works and the earthworks proposed;
 - (e) Specific design and construction details (including erosion and sediment controls) for all earthworks;
 - (f) Measures for the management of topsoil stockpiles;
 - (g) Measures to stabilise areas of exposed earth to minimise sediment runoff and erosion;
 - (h) The timetable and nature of progressive site rehabilitation and re-vegetation proposed;
 - (i) Maintenance, monitoring and reporting procedures;
 - (j) Rainfall response and contingency measures including procedures to minimise adverse effects in the event of extreme rainfall events and/or the failure of any key erosion and sediment control structures;
 - (k) Procedures and timing for review and/or amendment to the ESCP; and
 - (l) Identification and contact details of personnel responsible for the operation and maintenance of all key erosion and sediment control structures.
14. No earthworks or earthworks related activities shall commence on the site until the RCM has certified in writing that the ESCP meets the requirements of condition 13.

ADVICE NOTE: Certification from the RCM (or withholding of certification) shall be based on an assessment of whether the matters being considered reasonably achieve the objective of minimising sediment discharges from the site to the extent practicable. If certification of the submitted ESCP is withheld due to its failure to meet the requirements of condition 13, the consent holder shall submit a revised ESCP addressing the reasons for non-certification.

15. Any amendments proposed to the ESCP after it has been certified must be notified to the RCM in writing by the consent holder and must not be implemented until the RCM has certified in writing that the amended ESCP meets the requirements of condition 13. The amended ESCP shall thereafter be the certified ESCP for the purpose of these conditions.
16. The consent holder must undertake all earthworks on the site associated with this resource consent in accordance with the certified ESCP.
17. The consent holder must ensure that all erosion and sediment controls are inspected and in good working order at least once per week and within 24 hours of each rainstorm event that is likely to impair the function or performance of those controls. The consent holder must further ensure that all erosion and sediment controls are maintained such that optimal sediment capture efficiency is achieved at all times.
18. The consent holder must ensure those areas of the site where earthworks have been completed shall be stabilised against erosion (i.e., stabilisation works shall be commenced) as soon as practically possible and within a period not exceeding 14 days after they have

been completed. Stabilisation shall be undertaken by providing adequate measures (vegetative and/or structural) in accordance with the certified ESCP. The consent holder must monitor and maintain the site until vegetation is established to such an extent that it minimises erosion and sediment from entering any water body.

ADVICE NOTE: *For the purposes of condition 18, 'minimise' means to reduce to the smallest amount reasonably practicable.*

19. All earthmoving machinery, pumps, generators and ancillary equipment must be operated in a manner which ensures spillages of fuel, oil and similar contaminants are prevented, particularly during refuelling and machinery servicing and maintenance. Refuelling and lubrication activities must be carried out away from any water body, ephemeral water body, or overland flow path, such that any spillage can be contained and does not enter surface water, including stormwater systems.
20. The consent holder must ensure that, as far as practicable, all clean water run-off from stabilised surfaces is diverted away from the exposed areas via a stabilised system to prevent erosion. The consent holder must also ensure the outfall(s) of these systems are protected against erosion.
21. The consent holder must ensure that reasonably practicable measures are implemented to control dust on-site during construction works and until the earthworks areas are stabilised in an erosion resistant state. Exposed areas of earthworks must be regularly wetted to ensure that there is no discharge of airborne particulate matter that is objectionable to the extent that it causes an adverse effect beyond the boundary of the site.
22. Prior to commencing any earthworks activities on the Site the consent holder must provide to the RCM a copy of the Archaeological Management Plan, including its accidental discovery protocols, approved by Heritage New Zealand Pouhere Taonga under Condition 3 of Archaeological Authority No: 2023/218, dated 18 November 2022.

ADVICE NOTES: *In the event that human remains are found the police should be contacted immediately and all works shall cease in the area of the discovery until advice is given that works can recommence. Any taonga Māori/ taonga tūturu found are to be excavated in an appropriate way, reported to the hapū, registered under the Protected Objects Act 1975 and returned to tangata whenua.*

Earthworks Hours of Operation

23. All earthworks and associated works on the site, including the transport of excavated material on to or off the site, must only occur within the following hours:
 - Monday to Saturday 7.30am to 6pm, except that quiet setting up of site (not including running of plant or machinery) may start at 6.30am.
 - No work is to be carried out on Sundays or Public Holidays, apart from urgent erosion and safety control works.

ADVICE NOTE: *these hours have been selected from Table 2 NZS 6803: 1999 "Acoustics – Construction Noise". The standard applies in all other respects, including the permitted noise levels in Table 2, and all persons undertaking earthworks and management of the*

site must adopt the best practicable option to control noise to a reasonable level.

Clean up of earthworked materials tracked onto the roading network

24. The consent holder must ensure that all vehicles and earthmoving machinery exiting the site do not carry earthworked materials onto the surrounding roading network (including legal roads and shared private accessways). In the event material is tracked onto the road, the consent holder is responsible for cleaning and repairing the road back to its original condition.

Construction Traffic Management Plan

25. No less than twenty (20) days prior to the commencement of any earthworks or construction activities on the site, the consent holder must submit a Construction Traffic Management Plan (**CTMP**) prepared by a suitably qualified and experienced practitioner to the RCM for certification. The purpose of the CTMP is to set out the measures and methods to be used to minimise and mitigate the effects of construction related traffic on the surrounding roading and pedestrian environment (legal roads and private shared access roads) during construction. The CTMP must include the following information as a minimum:
- (a) Purpose and scope of the plan;
 - (b) Plans indicating all road signs, markings and guidance proposed for the new roads
 - (c) Relationship with other management plans;
 - (d) Hours of construction traffic activity;
 - (e) Estimated numbers and sizes of construction vehicles;
 - (f) Details of the estimated earthwork material volumes to be carted off-site;
 - (g) Controlled internal and external access routes;
 - (h) Parking locations for construction staff;
 - (i) How safety risks on the land transport network can be minimised;
 - (j) Contact details for construction manager;
 - (k) Construction site security and safety measures;
 - (l) Details of planned construction works including locations and programming;
 - (m) Procedures for incident management;
 - (n) Procedures for dealing with adverse weather events;
 - (o) Procedures for managing construction vehicles when encountering potential rural activities within the roading network (such as the movement of livestock);
 - (p) Procedures to minimise vehicles and earthmoving machinery exiting the site carrying earthworked materials onto the surrounding roading network (including legal road and shared private accessways);
 - (q) Access and delivery locations, including swept path analysis for largest vehicles;
 - (r) Likely construction access routes to and from the site;
 - (s) Management of oversize loads;
 - (t) Wheel cleaning and covering of loads; and
 - (u) Management of any complaints.
26. No construction activities shall commence on the site until the RCM has certified in writing that the CTMP meets the requirements of condition 25 above.

ADVICE NOTE: *Certification from Council (or withholding of certification) shall be based on its assessment of whether the CTMP meets the purpose of this condition. If certification of*

the submitted CTMP is withheld due to its failure to meet the requirements of condition 25, the consent holder shall submit a revised CTMP addressing the reasons for non-certification.

27. Any amendments proposed to the CTMP after it has been certified must be notified to the RCM in writing by the consent holder and shall not be implemented until the RCM has certified in writing that the amended CTMP meets the requirements of condition 25. The amended CTMP shall thereafter be the certified CTMP for the purpose of these conditions.
28. The consent holder must comply with the certified CTMP at all times during site construction activities relating to the Development.

Investigation of Existing Pond within Proposed Lot 11 and Input to Design of Dry Ponds

29. Prior to any earthworks or construction commencing, the consent holder must provide an assessment by an appropriately qualified and experienced geotechnical engineer to assess the structural integrity of the existing pond within proposed Lot 11. This assessment must include site investigations and testing of the existing dam embankments and surrounding land, to confirm it as being satisfactory for use as a detention storage. The testing results and a report outlining the professional opinions of the appointed geotechnical engineer must be provided to the RCM.

In the event that the existing pond is not satisfactory for its intended purpose, the geotechnical engineer must set out their recommended actions for remedial works to achieve its intended purpose.

30. The design and construction of all dry ponds and any remedial work required at the existing pond shall be certified by an appropriately qualified professional to ensure the ponds are designed and constructed to meet the detention requirements and are constructed generally in accordance with *Hawke's Bay Waterway Guidelines Small Dam Design (2009)*, or any subsequent revision.

ADVICE NOTE: *Full details of these recommendations must be provided to the RCM in accordance with condition 31.*

Stormwater Management Plan

31. No less than twenty (20) days prior to any construction activities commencing on site, the consent holder must submit a Stormwater Management Plan (**SMP**) prepared by an appropriately qualified person to the RCM for certification.

This purpose of the SMP is to achieve stormwater neutrality for the subdivision works to implement the Development and to effectively manage the potential adverse effects of stormwater from the site to avoid or mitigate adverse effects downstream of the site.

The SMP must be in accordance with Appendix G1 and G2, submitted with RM230016. Specifically, the final SMP must include, but is not necessarily limited to:

- (a) Final detailed design of all stormwater features (including pipework, bubble-up trenches and outlets) intended to be constructed/installed prior to s 224 certification, accompanied with supporting plans and details as necessary to confirm how:

- (i) run-off will be redirected from Lots 6, 7 and 8 platforms – conveying this to the west for Lots 6 and 7 and south for Lot 8;
 - (ii) the existing pond within Lot 11 will be modified so a portion of the pond volume is utilised for stormwater detention and restrict flow rates in Catchment B;
 - (iii) any recommendations from the geotechnical engineer have been incorporated as per conditions 29 and 30 above.
 - (iv) the dry stormwater detention pond (dry pond A) will be constructed to restrict flow rates in Catchment C.
 - (v) the dry stormwater detention pond (dry pond B) will be constructed to restrict flow rates from Catchment A.
 - (vi) the location, size, and capacity of the bubble-up trench to serve Lots 1, 3, 4, 6, 7, 8, 9 and 10 to disperse the stormwater flow over a wider area. These are proposed to be installed in a level line across the slopes, below the toe of any engineered fill.
- (b) Hydraulic calculations to confirm stormwater neutrality will be achieved and measures to ensure that the attenuation and disposal of stormwater does not exceed pre-development discharge rates, with the exception of the discharge north of Williams Road in accordance with the Strata Group Land Development Report Rev C.
 - (c) Time of concentration for design of culverts, channels and overflows which shall be based on the time of concentration calculated in accordance with the method detailed in NZBC E1/VM1 Section 2.
 - (d) Measures to ensure that the development shall mitigate stormwater runoff to pre-development rates in accordance with the HBRC Waterway Guidelines for the 2-year and 10-year ARI events and less than 80% of the 100-year event using the future climate rainfall intensity from RCP8.5 2081-2100. The required detention volumes and outlet details shall be confirmed through pond routing using a flow routing programme for a range of storm durations from 10 minute up to 24 hours in duration. Ponds should drain within an acceptable period in accordance with the HBRC waterway guidelines.
 - (e) The location and details of all cut-off drains which shall be formed with minimum depths to achieve appropriate freeboard to peak design water levels in accordance with NZS 4404:2010.

ADVICE NOTE: *The designer shall demonstrate that adequate freeboard has been allowed for. Where overtopping of any drains may cause significant erosion or potential flooding a freeboard of 500mm height may be appropriate to allow for uncertainties (i.e. channel roughness, debris in channel during an event, or part of the embankment not being up to the full height).*

- (f) Erosion protection in accordance with the preliminary design submitted with the consent application, NZS4404:2010 and the HBRC ESC Guidelines.
- (g) The location and cross-sectional profiles, stormwater management design and sizing and details of discharge points complete with details of scour prevention for all discharge points.
- (h) Demonstrate that the proposed outlet arrangements and capacities, and any primary and secondary (spillway) controls to cater for the possibility of blockage of the primary outlet and / or during over-design events.
- (i) Confirmation of the locations of secondary flow paths.
- (j) Identify the methods for stabilising and revegetating the banks of the stormwater detention pond.
- (k) Identify which works are required for which stage.
- (l) Any other details as required by these conditions.

- (m) Outline all recommendations necessary for future owners of Lots 1, 3, 4, 6, 7, 8, 9, 10, 11 and 12 to comply with the SMP on an on-going basis, including any ongoing maintenance requirements of shared stormwater infrastructure. This is to be provided in a separately referenced addendum that is to be attached to the Record of Title of each allotment as per condition 47 below.

ADVICE NOTE: *The consent holder is required to obtain all necessary resource consents from the Hawke's Bay Regional Council for stormwater discharges, if required.*

32. No stormwater works shall be constructed on site until the RCM has certified in writing that the SMP meets the requirements of condition 31.

ADVICE NOTE: *Certification from the RCM (or withholding of certification) shall be based on an assessment of whether the matters being considered reasonably achieve the objective of minimising sediment discharges from the site to the extent practicable. If certification of the submitted SMP is withheld due to its failure to meet the requirements of condition 31, the consent holder must submit a revised SMP addressing the reasons for non-certification.*

33. Any amendments proposed to the SMP after it has been certified must be notified to the RCM in writing by the consent holder and must not be implemented until the RCM has certified in writing that the amended SMP meets the requirements of condition 31. The amended SMP shall thereafter be the certified SMP for the purpose of these conditions.
34. The consent holder must undertake all stormwater management works on the site associated with this resource consent in accordance with the certified SMP.
35. Prior to requesting approval under s 224(c) of the Act for any stage of the Development, the consent holder must fully implement the SMP as it relates to the works required for that stage.

Pre-Construction Safe System Audit

36. Prior to any earthworks or construction activities commencing, the consent holder must complete a Safe System Audit (**SSA**) of Williams Road between Mangakuri Road and Okura Road, prepared by a suitably qualified transport expert. The Safe System Audit must be in accordance with the New Zealand Transport Agency/Waka Kotahi "Safe System audit guidelines for transport projects", published October 2022 and by completed by a Suitably Qualified Professional Engineer. The purpose of the SSA is to provide an assessment of the existing road conditions and identify warning sign mitigation works or changes to speed limits (which would need to be implemented by the Council) to address potential safety concerns.
37. The consent holder must pay for the installation of any new signage (e.g. warning signage or changes to speed limits) identified as necessary by the Safe System Audit. This signage must be installed prior to construction or earthworks activities commencing on site.

Engineering Approval

38. No less than twenty (20) days prior to commencing any earthworks or construction activities on site, the consent holder must have all technical engineering and infrastructure

design/construction drawings prepared by a suitably qualified and registered chartered engineer and submit these details to the RCM for certification.

The technical engineering and infrastructure design/construction drawings must be based on the Engineering Report and Plans submitted with the AEE (Appendix G1 and G2) and shall be designed in accordance with NZS4404:2010, or as otherwise amended by the conditions of this resource consent.

The technical engineering and infrastructure design/construction drawings must outline all works: within legal road (including vehicle crossings and other off-site work); shared accessway(s); earthworks; and stormwater infrastructure (including culverts, ponds, pipe conveyance and discharge). The information design/construction drawings must as a minimum include the following:

- (a) The final design detailing the earthworks and drainage works to be carried out, cross sectional profiles, location of cut and fills, overland flow paths and proposed finished ground levels within the Development.
- (b) The location of vehicle crossing(s) have a minimum width of 3.5m and detail all works required to be completed within legal road to ensure a minimum sight distance from vehicle accesses of 97m in both directions.
- (c) The provision for access to each lot in accordance with NZS4404:2010, including details or widths and gradients.
- (d) Details of any consultation with Fire and Emergency New Zealand and, how any emergency vehicle access will meet SNZ PAS 4509:2008, including:
 - (i) demonstrating that all access remains sufficient to accommodate the vehicle tracking of an 8-metre-long fire appliance in the event that the access width is less than 4m and has a gradient greater than 16%.
 - (ii) outline how firefighters may continue to efficiently work around the fire appliance and safely access and operate the hoses and pumps.
 - (iii) ensure a clear vehicle crossing of no less than 3.5m wide should be provided as at site entrances, internal entrances and between buildings.
 - (iv) all accessways must be formed to a minimum width of 3.5m unless otherwise approved by a Fire and Emergency New Zealand representative. Seal widening must be provided at curves as necessary to ensure that an 8m long fire appliance can travel along the accessway without leaving the carriageway.
 - (v) ensure a height clearance at vehicle crossings and along carriageways should not be less than 4m.
 - (vi) ensure that each lot is capable of operate pumping appliances from a hard standing capable of withstanding the fully laden weight of a fire appliance from which fire operations for a structure are conducted.
- (e) Integration of all stormwater infrastructure within the SMP.
- (f) Integration of all erosion and sediment control measures to be implemented during construction under the ESCP.
- (g) Details of all proposed utility services for the Development, including:
 - (i) Provision for any in-ground ducts to electrical cables and telecommunication connections within the access corridors during construction to service future development.
 - (ii) Details of where any existing underground telecommunications cables within the identified building platform areas for Lots 1, 3, 4, and 11 will be relocated to.
 - (iii) The new location of the repeater station (if proposed to be relocated and not removed), which is currently located within the identified building platform for Lot 8.

- (h) Test results of in-situ ground for the portion of new pavement to be constructed and for the existing formation, and details of the surface treatments to be constructed.
- (i) Completed Form Schedule 1A of NZS4404:2010.

All infrastructure must be designed, constructed and completed in accordance with:

- The approved plans and documents referred to in condition 3;
- NZS4404:2010;
- NZS 4431 Earth Fill for Residential Development; and
- The recommendations of the SSA required under condition 36.

ADVICE NOTE: *The RCM may seek a peer review of any roading design at the consent holder's expense.*

39. No earthworks or construction activities shall occur on site until the RCM certifies in writing that the requirements of condition 38 have been met. If certification is provided on a staged basis, any earthworks or construction activities must be limited to that applicable stage for which certification is given.

Landscape Planting and Maintenance Plan

40. No less than twenty (20) prior to any earthworks or construction activities commencing on site, the consent holder must submit a Landscape Planting and Maintenance Plan (**LPMP**) to the RCM for certification. The purpose of the LPMP is to mitigate the potential adverse landscape and visual effects from built development and earthworks through re-vegetation measures within the site. The LPMP is to be prepared by a suitably qualified and experienced landscape architect, must be in general accordance with the Landscape Plan, and must include the following:
- (a) A plant species list to be planted comprising of New Zealand native plants (including botanical name) that are appropriate to the Central Hawke's Bay coastal environment;
 - (b) A planting plan showing the planting areas, species mixes, plant spacing, and specifying minimum planting size;
 - (c) A full planting specification setting out all materials (plant stock, soils, compost, mulches, stake types), ground preparation and, installation methodology.
 - (d) Practical guidance for future landowners on how to successfully maintain each landscape enhancement planting area on their lot;
 - (e) Landscape detailing plans, including fences, signage and accessway designs;
 - (f) Details of any pathways through Lot 11 to provide access to the beach;
 - (g) A documented 24-month planting maintenance programme post final completion outlining all maintenance, watering, and feeding requirements per calendar month to ensure successful establishment of all types of landscape plantings;
 - (h) A pest plant and animal control plan;
 - (i) Any other information considered necessary to achieve a high-quality landscape outcome;
 - (j) A specified species list for planting near to earthworked areas or on land identified as unstable in the RDCL "Geotechnical Assessment Report, Revision R19385B-05", dated 21 December 2023;
 - (k) Details of all exotic vegetation to be removed and a staging plan for its removal co-ordinated with the progressive revegetation of the site;
 - (l) The measures to ensure that all planting within the landscape enhancement areas within balance Lots 11 and 12 is undertaken by the consent holder; and

- (m) The measures to ensure that all planting within the landscape enhancement areas identified within Lots 1, 3, 4, 6, 7, 8, 9, and 10 are undertaken by the owners of those lots prior to obtaining building consent for any residential unit.
41. No earthworks or construction activities shall commence on site until the LPMP has certified in writing that the LPMP meets the requirements of condition 40.
- ADVICE NOTE:** *Certification from the RCM (or withholding of certification) shall be based on an assessment of whether the matters being considered reasonably achieve the objective of minimising sediment discharges from the site to the extent practicable. If certification of the submitted SMP is withheld due to its failure to meet the requirements of condition 40, the consent holder must submit a revised SMP addressing the reasons for non-certification.*
42. Any amendments proposed to the LPMP after it has been certified and prior to the issue of Records of Title for the lots, must be notified to the RCM in writing by the consent holder and must not be implemented until the RCM has certified in writing that the amended LPMP meets the requirements of condition 40. The amended LPMP shall thereafter be the certified LPMP for the purpose of these conditions.
43. The planting works required by the LPMP must be implemented prior to s 224(c) certification, except for:
- (a) The planting work to be co-ordinated with the staged removal of exotic vegetation on Lot 11, which is to be completed on that lot in accordance with the consent notice to be registered under condition 55(s); and
 - (b) Planting in the landscape enhancement areas identified within Lots 1, 3, 4, 6, 7, 8, 9, and 10 which is to be undertaken by the owners of those lots prior to obtaining building consent for any dwelling in accordance with the consent notice to be registered under condition 55(t).

Certification of Completed Works

44. Prior to requesting approval under s 224(c) of the Act for any stage of the Development, the consent holder must fully implement the works required for that stage, including all services, roads, accesses and stormwater infrastructure required under the SMP to the satisfaction of the RCM. When requesting approval, the consent holder shall submit to the RCM:
- (a) a written statement from a suitably qualified person (as defined in Section 1.7 of NZS4404:2010), that the physical works have been carried out in accordance with the approved engineering plans. Form Schedule 1C of NZS 4404:2010 must be completed and submitted along with this written statement;
 - (b) geotechnical reporting identifying the building platform setback requirements and no build areas in accordance with the recommendations of the Preliminary Geotechnical Report prepared by RDCL, Geotechnical Assessment Report, Revision R19385B-05, dated 21 December 2023 (Appendix E2 of the AEE); and
 - (c) a statement of professional opinion from a Chartered Professional Engineer acceptable to Council, that the land is suitable for subdivision and residential development. This statement must be made in accordance with NZS 4404:2010 Schedule 2A and must include a completion report confirming that:
 - (i) the land is suitable for residential development;

- (ii) there are suitable building sites on all allotments; and
 - (iii) all restrictions on the land's suitability for subdivision and/or residential development are identified.
- (d) All works required by the SMP and LPMP have been carried out in accordance with those plans.

Ongoing Maintenance of Shared Infrastructure

45. Prior to requesting approval under a s 224(c) of the Act, the consent holder must prepare and submit to the RCM for certification an Operation and Maintenance Plan (**OMP**) for all shared infrastructure and communal areas within the Development. The OMP must provide for and require, by suitable legal mechanism to the satisfaction of the RCM, the ongoing management, operation, and maintenance of all shared infrastructure by the registered proprietor of Lot 11.

CONSENT NOTICE CONDITIONS

Water Supply

46. Pursuant to s 221 of the Act, a consent notice must be registered on the Records of Title for Lots 1, 3, 4, 6, 7, 8, 9, 10, 11 and 12 advising the registered proprietors thereof of the requirement that prior to the occupation of any dwelling within this allotment, potable drinking water supply must be provided from a suitable rainwater collection system and any application for building consent must include provision for a rain water collection and storage system for this purpose. The system must be installed in accordance with the relevant manufacturer's specifications and any other such requirements and maintained in good working order thereafter.

Stormwater

47. Pursuant to s 221 of the Act, a consent notice must be registered on the Records of Title for Lots 1, 3, 4, 6, 7, 8, 9, 10, 11 and 12 advising the registered proprietors thereof of the following requirements:
- (a) Stormwater runoff originating from impervious areas on the site, including (but not necessarily limited to) driveways, paved areas, roof runoff etc, must be collected and piped in a controlled manner. Concentration of surface water flows must be avoided.
 - (b) All stormwater infrastructure must be installed in a manner that does not result in any scouring or erosion at or downstream of the discharge point. Any uncontrolled stormwater must not be allowed to saturate the ground.
 - (c) Stormwater detention must be always maintained in operating condition at the minimum required volumes, including regular clearing of outlets, control orifices and inlet screens in accordance with the OMP provided with the development.
 - (d) The registered proprietors must, on an on-going basis, comply with the requirements of the addendum to the SMP referred to in condition 31 which outlines the maintenance requirements of shared stormwater infrastructure.
 - (e) For Lots 1, 3, 4, 6, 7, 8, 9 and 10, all roof area and rainwater tank discharges within the lots shall be via bubble up trenches.
 - (f) For buildings with building area coverage greater than 300m², or where the proposed detention is in underground tanks, a specific design by a Civil Engineer is required to

meet the same objectives of restricted outflows equal to or less than those shown in the AEE Civil Design Report and Plans – Appendix G1 and G2 of RM230016. Any other stormwater discharge from the building platforms must be installed in a manner that does not result in any scouring or erosion at or downstream of the discharge point.

- (g) Stormwater detention must be installed in accordance with the following requirements:
- (i) The top 700mm of one 25,000L tank, or top 350mm of two 25,000L tanks shall remain available for detention at all times for Lots 1, 6, 7, 8, 9, and 10.
 - (ii) The top 500mm of two 25,000L tank (or equivalent to achieve 11,000 litres detention) shall remain available for detention at all times for Lots 3, and 4.
 - (iii) The registered proprietors must achieve the Target Restricted Outflow from the Tank (L) as applicable for each Lot, as outlined in the table below:

LOT	WATER TANK VOLUME REQUIRED FOR DETENTION (L)	DETENTION CONDITION REQUIRED	APPLICABLE TIME OF CONCENTRATION (VOL. REQ. = INFLOW-OUTFLOW x T.O.C) IN MINUTES	TARGET RESTRICTED OUTFLOW FROM TANK (L)
1	7800	A	10	0.87
3	11000	B	30	0.74
4	11000	B	30	0.74
6	7800	A	10	0.87
7	7800	A	10	0.87
8	7800	A	20	0.87
9	7800	A	30	0.87
10	7800	A	10	0.87

Water Supply for Firefighting Purposes

48. Pursuant to s 221 of the Act, a consent notice must be registered on the Records of Title for Lots 1, 3, 4, 6, 7, 8, 9, 10, 11 and 12 advising the registered proprietors thereof of the following requirements:
- (a) All dwellings must demonstrate compliance with SNZ PAS 4509:2008 Firefighting Water Supplies Code of Practice. This must be achieved through either:
 - (i) the provision of individual water supply tanks for each residential dwelling; or,
 - (ii) shared provision for water supply for fire-fighting purposes in a manner compliant with SNZ PAS 4509:2008. In the event that this option is elected for, the registered proprietors shall include with their building consent details of any consultant which has occurred with Fire and Emergency New Zealand with respect to achieving compliance with SNZ PAS 4509:2008.
 - (b) The registered proprietors must ensure that water supply for firefighting purposes will be physically available in accordance with (a)(i) or (ii) above prior to the occupation of any building on the respective lot.
 - (c) All on-site water tank systems will be fitted with a 100 mm diameter firefighting coupling for firefighting purposes.
 - (d) All dwellings shall be provided with access for firefighting appliances that complies with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

ADVICE NOTE: Consultation and agreement on an alternative firefighting water supply

such as water sprinklers or communal supplies and associated access (to the water supply and dwelling) will need to be sought from Fire and Emergency New Zealand and evidence of this agreement provided to Central Hawke's Bay District Council for its consideration and agreement when determining whether the consent notice relating to the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 has been satisfied.

- (e) The provision for water supply and access for fire-fighting purposes must remain available on an ongoing basis.

On-site Domestic Wastewater

49. Pursuant to s 221 of the Act, a consent notice shall be registered on the Records of Title for Lots 1, 3, 4, 6, 7, 8, 9, 10, 11 and 12 advising the registered proprietors thereof of the following requirements:

Lots 1, 3, 4, 6, 7, 8, 9 and 10:

- (a) The location of any wastewater disposal area must be entirely contained within the area of each allotment identified on the approved survey plan.
- (b) At the time of building consent and prior to installation of any wastewater system, the registered proprietors must provide details of the proposed domestic effluent treatment system to the RCM and confirm that there is sufficient and suitable land application area for effluent disposal within the proposed allotment.

Lots 11 and 12:

- (c) Prior to installation of any wastewater system for any dwelling in Lots 11 or 12, the consent holder must submit a report to the RCM from an appropriately qualified person on the location, specifications and design details of any wastewater treatment system located within that allotment.

All Lots (except Lot 13 to be amalgamated):

- (d) The wastewater design for each lot must be provided via an on-site management system for each individual lot. This system must be designed and installed as part of the building development to meet the requirements of the AS/NZS 1547:2012 and comply with the RRMP.
- (e) Effluent disposal areas on all lots must be setback a minimum of 20m from any surface water (including watercourses, artificial drains, channels or dams).
- (f) Wastewater disposal systems must utilise approved wastewater-pressured compensated drip-line irrigation for the discharge of treated effluent.
- (g) The registered proprietors must install, operate, and enter into a maintenance contract with an HBRC-approved on-site wastewater contractor and keep records in accordance with manufacturer's specifications.

Ongoing Maintenance of Infrastructure

50. Pursuant to s 221 of the Act, a consent notice must be registered on the Record of Title for Lot 11 advising the registered proprietors thereof of their ongoing obligation to manage and maintain all stormwater infrastructure on the lot installed for the benefit of Lots 1, 3, 4, 6, 7, 8, 9, and 10 of the Development, including the stormwater ponds and associated outlet structures and conveyance channels located within Lot 11, in good working order suitable

for its intended purpose and in accordance with the OMP.

51. Pursuant to s 221 of the Act, a consent notice shall be registered on the Records of Title for Lots 1, 3, 4, 6, 7, 8, 9, and 10, advising the registered proprietors thereof of their ongoing obligation to manage and maintain all stormwater infrastructure on their lot installed for the benefit of their lot and the other lots in the Development, including the bubble-up trenches and associated conveyance channels located within their lot boundaries, in good working order suitable for their intended purpose and in accordance with the OMP.

Reverse Sensitivity

52. Pursuant to s 221 of the Act, a consent notice shall be registered on the Records of Title for Lots 1, 3, 4, 6, 7, 8, 9 and 10 advising the registered proprietors thereof of the following requirements:
 - (a) That each Lot Owner acknowledges that the Lot is located in a productive rural area where agricultural management practices such as agrichemical spraying, use of farm machinery, the operation of bird scarers, stock crossing and/or other similar activities occur.
 - (b) That each Lot Owner shall not bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the uses on rural land in the general vicinity:
 - (i) make nor lodge; nor
 - (ii) be party to; nor
 - (iii) finance nor contribute to the cost of any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation of operations or any rural activity on rural land in the general vicinity, including without limitation any action to require the registered owner or occupier of rural land in the general vicinity to modify the rural operations carried out on rural land in the general vicinity.

Geotechnical

53. Pursuant to s 221 of the Act, a consent notice shall be registered on the Records of Title for Lots 1, 3, 4, 6, 7, 8, 9 and 10 advising the registered proprietors thereof of the following requirements:
 - (a) Future development must have regard to the findings and conclusions of the preliminary Geotechnical Report prepared by RDCL, Geotechnical Assessment Report, Revision R19385B-05, dated 21 December 2023 submitted with AEE Appendix E2.
 - (b) All materials excavated from the site in preparation for being used as engineered fill should be tested to confirm the presence of expansive clay soils in accordance with NZS3604:2011.
 - (c) Where land falls below the building platform a minimum building setback of 5 m is required inside the break in slope (slope crest) for all building platforms formed on cut where ground slopes away exceeding 20 degrees, being the area identified on the approved survey plan as a "No Build Zone".
 - (d) Where land rises above the building platform a minimum building setback of 5m from the toe of slope is required where ground rises above the building platform (Lot 1), being the area identified on the approved Survey Plan as a "No Build Zone".
 - (e) Building Platforms (for dwellings) must be formed entirely within Natural ground (Cut).

However, engineered fill may be appropriate for minor structures and landscaping only unless modified and certified acceptable. Expansive clay soils can only be reused if modified and confirmed as suitable by the consent holder's appointed geotechnical engineer.

- (f) Subsoil drains must be installed where seepage occurs relative to the building footprint or fill placement and in particular on the eastern side of the building platform and where appropriate for road access where seepage is observed.
- (g) Cut-off drains must be installed above building platforms and cuts for vehicle access.
- (h) All cut and fill slopes and stormwater and effluent discharge areas are to be planted with small shrubs and shallow rooting plants.
- (i) Large tree species may not be planted within a horizontal distance equivalent to the mature tree height of any pertinent structure (house, road, stormwater, drainage).

Future Building Platform for Lots 11 and 12

54. Pursuant to s 221 of the Act, a consent notice shall be registered on the Records of Title for Lots 11 and 12 advising the registered proprietors thereof of the following requirements:
- (a) No dwelling shall be established unless any application for building consent is accompanied by:
 - (i) a Geotechnical Report from a suitably qualified engineer verifying the appropriateness of the proposed building platform and associated access way for a residential dwelling; and
 - (ii) an Archaeological Report from a suitably qualified archaeologist verifying that the proposed building platform and associated access will not modify or destroy any known archaeological sites.
 - (b) The Geotechnical Report and Archaeological Report required by (a) above must be provided to Council prior to an application for building consent for review and technical certification that the requirements of (a) have been met.
 - (c) Construction of any dwelling on Lots 11 or 12 may only occur in the location certified by Council in accordance with (b) above.

Design Controls and Building Restrictions

55. Pursuant to s 221 of the Act, a consent notice shall be registered on the Records of Title for Lots 1, 3, 4, 6, 7, 8, 9, 10, and 11 advising the registered proprietors thereof of the following requirements:
- (a) Future development on the lot must comply with the following building, fencing, and landscaping design controls at all times, and must demonstrate compliance at the time of application for building consent (where a building consent is required).

Location and Number of Buildings

- (b) Only one residential unit is permitted on each of Lots 3, 4, 6, 7, 8, 9, and 10. No more than one residential unit and one minor household unit can be established on Lots 1 and 11. Visitor accommodation may be established on Lot 11 as an alternative to a minor household unit.
- (c) Buildings or structures may only be constructed within the identified building platform shown on the approved survey plan, with the exception of garden sheds or garden pergolas up to a maximum combined footprint of 16m², and in-ground swimming or spa pools up to a maximum footprint of 40m², which may be in the identified privately managed landscape area. No buildings or pools may be constructed in the identified

landscape enhancement zone.

Maximum height and area controls

- (d) The combined footprint of all buildings on any of Lots 3, 4, 6, 7, 8, 9, and 10 must not exceed 250m², and on Lot 1 and 11 must not exceed 350m².
- (e) The maximum height of any building on Lots 3, 4, 6, 7, 9, 10 and 11 must be single storey and no greater than 6.5m in height above finished ground level. The maximum height of any building on Lot 8 shall be 5m above finished ground level.

Building materials

- (f) Building cladding and joinery must be timber or coloured steel/aluminium, or greywacke stone.
- (g) All buildings (including roof, facades and joinery), structures, downpipes/guttering and retaining walls must be finished in dark, earthy tones and have a reflectivity value of no more than 25% Light Reflectance Value.
- (h) All glass, including windows and fences, must incorporate a dark tint.
- (i) Building materials other than glass must be limited to those that have the potential to develop a natural patina over time, namely natural stone, timber, powder-coated zincalume/colour steel products, and rammed earth.

Accessory structures, retaining walls and fences

- (j) Retaining walls must be no greater than 900mm in height, and there must be at least 2.0m separation between any two retaining walls.
- (k) All water tanks are to be positioned or screened such that they are located behind any buildings when seen from the reserve area adjacent to the intersection of Okura and Williams Roads. Water tanks are to be coloured dark grey or black only.
- (l) No commercial activities or buildings, including commercial or industrial sheds, are to be constructed on the site, except that Lot 11 may have visitor accommodation.
- (m) No fences are to be constructed between lots. Fences are only permitted at the boundary between the residential lots and the retained farmland, or incorporated into the building design to provide screening or privacy within the approved building platform zone.
- (n) No boundary fencing shall be permitted on Lots 3, 4, 6, 7, 8, 9, and 10. Wire or electric perimeter zones can be installed where fencing is necessary to control domestic pets. Post and rail, post and wire, or mesh fencing may occur between the farm and the lots/landscape enhancement zones but should only be sufficient to keep stock from browsing over and under fencing.

Lighting and Utilities

- (o) All external lighting shall be hooded and cast down to avoid adverse night and nuisance lighting effects.
- (p) Lighting levels external to buildings (including attached to the external envelope of a building) must be for 'wayfinding' purposes only and shall not seek to uplift, emphasise, or illuminate outdoor spaces that will enable light spill. All security lighting must be on a timer basis and shall not be left on for sustained periods.

- (q) Lighting shall not be directed toward oncoming traffic.
- (r) All utilities and services shall be located below ground. No above ground wiring is permitted, except for the existing above ground lines on Lot 11. Aerials, satellite dishes and other utilities must be kept within the maximum building height.

Landscaping

- (s) The staged removal of exotic species and replacement planting identified within LPMP must be undertaken by the owners of Lot 11 in accordance with the LPMP.
- (t) All planting within the approved landscape enhancement zones on Lots 1, 3, 4, 6, 7, 8, 9, and 10 must be undertaken by the owners of those lots in accordance with the LPMP prior to obtaining building consent for any residential unit, and thereafter retained and maintained in perpetuity in accordance with the LPMP.

Limitation on Further Subdivision

- 56. Pursuant to s 221 of the Act, a consent notice shall be registered on the Record of Title for Lot 12 advising the registered proprietor thereof of the requirement that no lifestyle lot can be subdivided from this site under Rule SUB-R5 of the Proposed Central Hawke's Bay District Plan within a period of 9 (nine) years from the date that the Record of Title is issued.
- 57. Pursuant to s 221 of the Act, a consent notice shall be registered on the Record of Title for Lot 11 advising the registered proprietor thereof of the requirement that no lifestyle lot can be subdivided from this site under Rule SUB-R5 of the Proposed Central Hawke's Bay District Plan, and nor can a residential site be created in the Large Lot Residential Zone, from the date that the Record of Title is issued. For the avoidance of doubt, this restriction does not apply to the creation of the lifestyle sites authorised by the resource consent.

LAND COVENANT

- 58. Pursuant to section 108(2)(d) of the Act, prior to the issue of s 224(c) certification of the first stage of the subdivision authorised under the resource consent, a land covenant in gross must be registered on the Records of Title for Pt Lot 1 and Lot 2 DP 4588 (RT HB K2/396), Lot 1 & 2 DP 25804 and Lot 3 DP 481291 (RT 675091), and Lot 2 DP 582622 and Pt Lot 3 DP 4588 (RT 1090915) prohibiting the subdivision of each title for a lifestyle site under Rule SUB-R5 of the Proposed Central Hawke's Bay District Plan for a period of at 9 (nine) years from the date this land covenant is registered on each record of title.

ADVICE NOTE: *This condition has been volunteered by the applicant on an Augier basis.*