

**RESOURCE MANAGEMENT ACT 1991**

**DECISION OF THE HURUNUI DISTRICT COUNCIL**

**ON A RESOURCE CONSENT APPLICATION**

**APPLICATION REFERENCES:** RC220060 and RC220072

**APPLICANT:** UWC LIMITED and Hurunui Developments Limited

**SITE ADDRESS:** 64 Amberley Beach Road and 187 Carters Road (SH1)

**LEGAL DISCRIPTION:** Lots 2 and 3 DP 559093

**PROPOSAL:** To subdivide a 32.73 hectares site into 201 residential lots, six roads to vest, one access lot, five local purpose reserves and balance land in four stages. The proposal forms stages 3-6 of a staged development known as 'The Clearing'.

**ZONING:** Residential 1A

**TYPE OF ACTIVITY:** Subdivision and Land Use

**DATE OF HEARING:** 29 May 2023

**COMMISSIONERS:** Dean Chrystal (chair) and David Smith

**APPEARANCES:** Applicant  
Mr Earl Hope–Pearson, Applicant  
Mr James Gardner Hopkins, Applicant Representative  
Mr Gary Stevenson, Civil Engineer  
Mr Wayne Gallot, Traffic Engineer  
Ms Anne Wilkins, Landscape Architect and Urban Designer  
Mr David Compton-Moen, Landscape Architect and Urban Designer  
Ms Damienne Donaldson, Planner

Council  
Mr Hayden Kent, Engineer  
Ms Nikki Smetham, Landscape Architect  
Ms Helga Bennett, Planner

Submitters  
Ms Alison Pugh and Mr Graeme Lewthwaite

**DECISION** **Approved**

## 1.0 Introduction

1.1 Pursuant to instructions from the Hurunui District Council (HDC or Council) we were appointed as Commissioners to review and determine the above application for resource consent (subdivision and land use).

### The Proposal

1.2 The proposal, as notified, was to establish a 201 residential lot subdivision including roads, local purpose reserves and balance land in four stages on a 32.73ha Residential 1A (within the Amberley Settlement) zoned site. The proposal forms stages 3-6 of a multi-staged residential development known as 'The Clearing' located at 187 Carters Road/State Highway 1 (SH1) and 52 Amberley Beach Road, Amberley.

1.3 The site is primarily flat and undeveloped land currently used for pastoral grazing. There is a deep gully running through the southern part of the site known as Dry Gully. There are some existing structures on the site including two farm storage sheds on 52 Amberley Beach Road and cattle pens in the southern corner of 187 & 193 Carters Road.

1.4 The proposal, as notified, included:

- 201 fee simple allotments (Lots 124 to 324) over 4 stages
- One balance Lot (Lot 5000)
- Two local purpose (utility) reserves to vest (Lot 3004 and 3005)
- One access lot to vest (Lot 602)
- Three local purpose (stormwater) reserves to vest (Lots 3006 to 3008) and
- Six roads to vest (Lots 1002 to 1007).

1.5 The internal road network is proposed to provide connections to the north via an extension of the main spine road east to west. This main spine road is proposed to ultimately connect to Carters Road (SH1). The connection to SH1 would be via a link provided for as part of (RC200045) for an adjoining retirement village development located at 175 Carters Road and 10 Teviotview Place.

1.6 The development is proposed to also access Amberley Beach Road through the internal road network approved by the Stages 1-2 development (Stages 1-2 have already been consented and are not part of this application).

1.7 Reserves are included as part of the proposal with the primary reserve focussed on the Dry Gully area, which includes a playground. A cycling / pedestrian pathway is also provided for through the Dry Gully area. The Teviot Drain area on the eastern side of the proposed subdivision is to become a landscaped feature and will provide separation from the Stage1-2 development. Street trees are proposed on all the new roads, a green/vegetated swale is proposed along part of the southern rural boundary with the remainder of that boundary landscaped.

1.8 The applicant is proposing a Filterra stormwater system which will discharge into Dry Gully. The development will connect to Council owned wastewater and water systems.

1.9 An acoustic feature involving a 1m high landscaped bund and 2m high acoustic fence is proposed along the state highway boundary. In other places a 2m high acoustic fence is proposed. We note here that this was supported by an acoustic report.

- 1.10 In the proposal, as notified, the development was proposed in four stages, known as stage 3-6.
- Stage 3 contained 63 allotments, two local purpose (utility) reserves, one local purpose (stormwater) reserve and one road.
  - Stage 4 contained 87 allotments, two roads, two local purpose (stormwater) and one access lot.
  - Stage 5 contained 49 fee simple allotments, two roads and one balance allotment with an area of 1.4274ha.
  - Stage 6 contained 2 fee simple allotments and one lot to be vested in Council.

#### Regional Consents

- 1.11 We were advised that consents were also being sought concurrently from the Canterbury Regional Council in respect of discharges (operational and construction) and earthworks.

#### Background

- 1.12 A previous subdivision consent (RC210185), granted May 2022, provided for Stages 1 and 2 of the subdivision. The Applicant is currently undertaking site preparation works for those stages.
- 1.13 The proposal incorporates a proposed internal roading network that will in time connect to SH1 via a planned new road and intersection to be delivered as a condition of consent (RC200045) for the retirement village development currently under development on the adjoining land to the north, and to Amberley Beach Road via the consented Stage 1-2 road network.

#### Surrounding Area

- 1.14 The application site is part of a larger greenfield area identified for future residential development. The existing environment includes agricultural use and rural residential allotments to the south and further east. The site is bounded to the west by established residential housing and SH1. Land to the north at 175 Carters Road is zoned residential and is currently being developed as a comprehensive retirement village. The site incorporating Stages 1-2 bounds Amberley Beach Road to the north which is identified as a Collector Road in the District Plan's roading hierarchy.
- 1.15 The section of State Highway 1 adjacent to the application site is a limited access road (LAR) with a posted 80/hr speed limit, with Waka Kotahi NZ Transport Agency (Waka Kotahi) being the road controlling authority.
- 1.16 Oakfields subdivision, Brackenfields Shopping complex and the Amberley Town Centre are located further afield to the north of Amberley Beach Road.

#### Notification and Process

- 1.17 The land use application was publicly notified on the 18<sup>th</sup> of August 2022 and submissions closed on 16 September 2022. A total of 20 submissions were received on the application, of which 17 were opposed, one was in support and two (Waka Kotahi and Environment Canterbury) were neutral.
- 1.18 The submitters in opposition raised the following issues:
- Landscape character and visual effects
  - Amenity values

- Traffic, roading and footpaths
- Housing density
- Provision of services
- Reserve areas
- Contaminated soil
- Social concerns
- Natural hazard risk

1.19 We note here that some of the matters raised in submissions were outside the scope of matters we are able to consider.

1.20 The neutral submitters raised the following matters:

- Waka Kotahi agrees in principle to the proposal stating:
  - They consider that the planned new intersection design associated with the consented retirement village development will accommodate the estimated traffic generation associated with that development.
  - No direct access shall be provided to the state highway from any of the lots fronting SH1.
  - A condition be added that access to SH1 for the lots within the subdivision be only by the local road connection to the state highway near the retirement village.
- Environment Canterbury states the purpose of their submission is to:
  - highlight potential flood risks at the site of the proposed subdivision.
  - note that activities occurring as part of the proposed subdivision may require resource consent from the Regional Council.

1.21 We confirm that we have read the application, submissions, the s42A report and the Applicants evidence as part of our decision. We have also undertaken a site visit where we walked across the entire site and we looked at where development would occur. We also drove around the eastern side of Amberley in the vicinity of the proposal site to gauge the level of development occurring and what land was still to be developed.

#### **Decision on Late Submission**

1.22 The submission from Waka Kotahi was received outside of the time period specified for submissions. Ms Bennett noted that the submission was sent by Waka Kotahi within the specified timeframe, however the email address was entered incorrectly. She also considered the late submission had not affected the timeline for the hearing and that the Applicant had confirmed on 11<sup>th</sup> October 2022 that they have no objection to the late submission being accepted.

1.23 On the basis of the above, we consider that the submission by Waka Kotahi should be accepted, noting that the lateness of the submission appears to be as a result of an error in administration rather than the submission being deliberately sent in late.

## **Application Status**

### *District Plan*

- 1.24 The application site is zoned Residential 1A in the Hurunui District Council Operative District Plan (the District Plan). The notified proposal breaches provisions relating to:
- Lot sizes and shape.
  - Subdivision stages have more than 40 lots.
  - Road width and footpath requirements.
  - Subdivision of contaminated land.
- 1.25 It is also noted that, whilst no buildings are proposed, a rule regarding a 7.5m building line restriction from the south-eastern boundary is relevant, due to the undersized lots located along the southern boundary.
- 1.26 Overall, the status of the activity proposed is a non-complying activity which was agreed by both the Applicant and the Council planner Ms Bennett.

## **2.0 Reports and Evidence**

### **S42A report**

- 2.1 Ms Bennett's s42A report under the Resource Management Act (the Act or the RMA) addressed the details of the proposal and the non-compliances, undertook a thorough assessment of the effects on the environment of the proposal, and considered it against a suite of objectives and policies and Part 2 of the Act.
- 2.2 Ms Bennett's report was supported by evidence from Ms Smetham (Landscape) and Mr Kent (Engineer).
- 2.3 Ms Smetham considered whether the proposal delivered the outcomes sought by the District Plan and addressed matters raised through submissions. She provided a description of the receiving environment and of the site. She stated that the site was an important and memorable part of the southern approach to the Amberley township and that the flat and open space character of the site affords a scenic outlook over pastoral farmland and helps contribute to the perception of a rural working landscape with a pleasant open character.
- 2.4 In her assessment against the relevant statutory provisions, Ms Smetham stated that the objectives, policies, rules and assessment matters are inter-related and seek to ensure the rural country character and amenity outcomes will be achieved. With regards to the streetscape design, whilst the road widths do not comply with the District Plan, she said that the primary road reserve will be sufficiently wide to provide a 1.5m footpath, a grass berm and tree planting to either side and that the secondary roads would provide a 1.5m footpath and 1.5m berm to one side and a 3m berm opposite with opportunity for street tree planting. Ms Smetham considered that a green leafy outcome was recognised by substantial street tree planting and within the green space reserve / stormwater management areas and tree species would be consistent with the HDC Tree Management Policy.
- 2.5 Ms Smetham considered that the proposal would not achieve open vistas across the site due to the proposed 3m high acoustic barrier and that the retention of open vistas at the entrance to the township was an important part of the town character and amenity. However, she felt that vistas and noise mitigation could be improved by including larger lots, increased building setbacks and incorporating the existing Dry Gully feature as an open space reserve extending from the SH1 boundary. She said that the use of reserves and storm water management areas

that coincide with the existing natural feature known as Dry Gully was a positive aspect of the proposal and affords it a unique identity and contributes high amenity values within the subdivision.

- 2.6 Ms Smetham considered there were two areas of the site where the size of lots was of concern. These are where lots are located along the SH1 boundary and along the adjoining rural boundary. Both areas have potential for reverse sensitivity and adverse effects on rural character and amenity. In this regard, she said the proposed subdivision layout did not meet the intended outcome relating to the rural urban interface and mitigation of reverse sensitivity effects.
- 2.7 Ms Smetham said that the proposal generally provided an easily accessible and well-connected internal layout with a rational hierarchy of roading and that the submitted landscape plans, generally incorporated the District Plan rules applicable to the zone. She had some concerns regarding the material palette chosen and the restrictions on the use of galvanised corrugated iron for fencing.
- 2.8 Ms Smetham suggested that the type of fencing be altered as post and rail or post and wire fencing along reserves and the rural boundary would be more appropriate to maintain a rural character while remaining open for safety purposes.
- 2.9 With regards to density, Ms Smetham said that the bulk of the lots were 400m<sup>2</sup> to 700m<sup>2</sup>. Her concerns arising from the density of the lots related to adverse effects on privacy, outlook, sun / shading, rural character and visual amenity. However, she said that although the subdivision would not meet the minimum average lot sizes under the District Plan, it did have capacity to provide a greater percentage of smaller lots (and lots that do not meet the shape factor requirement) without adverse effects on amenity. This was due to the generous amount of public open green space and because the Applicant had demonstrated that a dwelling could be accommodated on the lots that did not comply with the shape factor.
- 2.10 Ms Smetham was concerned about the urban rural interface and the boundary adjoining SH1, where she said an increased density reflected an urban outcome. She considered the acoustic fencing combined with the small lot size and orientation, would severely constrain the ability to achieve a north facing outdoor living area with a noise level below the Waka Kotahi guideline levels. She further stated that an acoustic bund and fencing typically afford an engineered functional outcome that is contrary to maintaining rural character. Other issues included the potential for graffiti to occur on a continuous paling fence, litter traps and the creation of unsafe areas.
- 2.11 Overall, Ms Smetham concluded that the lot layout and acoustic bund would not maintain a rural character to the approach and entrance to Amberley township, nor provide a reasonable level of amenity for future residents. She suggested that amendments to the lot layout and orientation as well as noise barriers be located within a reserve and not on the individual sections. She concluded that the proposal currently did not satisfy the District Plan provisions and made the following recommendations:
- Acoustic treatment to SH1 be provided within a reserve area for ease of maintenance to enable a consistent dense cover of native vegetation up to at least 2m in height.
  - Lots to be a minimum size of 1000m<sup>2</sup> along the SH1 boundary and setback to achieve a primary north or north west outdoor living area where the noise level is below the Waka Kotahi recommended guideline.
  - Lots to be a minimum size of 1100m<sup>2</sup> along the rural boundary.

- Two storey dwellings up to 8m be permitted according to the Plan provisions except on lots that will be affected by noise restrictions.
- Fencing along the rural boundary to be post and rail or post and wire.
- Fencing along the reserve, open space boundaries to be post and rail or post and wire.
- Fencing materials on lots to include corrugated iron and timber.
- Planting along the rural boundary to consist of native species, a minimum width of 5m, irrigated and maintained by individual lot owners to result in dense vegetation up to 2m in height.
- Planting within reserves and storm management areas to include a balance of native and exotic trees to result in a prevalence of natural character, visual amenity and address safety issues where public access is provided.
- Provide a potential pedestrian / cycle connection to Carters Road in the event the road status changes in the future.

2.12 Mr Kent provided engineering evidence on behalf of HDC. With regards to stormwater management, he noted that little detail was provided by the Applicant on the specific design of the system, and he had concerns regarding the size of the treatment area and the maintenance cost of the Filterra devices. He said the installation and maintenance requirements of the treatment system proposed were unique to the district, Council was not resourced to undertake this specialist work and no whole-of-life costs and maintenance schedules/ costs had been provided. Mr Kent also raised concerns relating to the steepness of the banks and depth of water ponding in the attenuation basins with potential safety concerns and the prevention of resuspension of settled solids.

2.13 Mr Kent considered that the application provided for a roading network which was logically laid out with good connectivity. Due to no indication being provided by the Applicant on when the link through to Carters Road (SH1) would be required for the proposed network to function safely, Mr Kent proposed that no more than 50% of the lots be issued with record of titles until the roading link had been constructed.

2.14 Overall, Mr Kent said that he did not support the stormwater management system proposed and that further clarification/confirmation as to how the roading link through the neighbouring property was to be secured was needed.

2.15 In terms of effects on the environment, Ms Bennett concluded that:

- Whilst there was some capacity to provide for a greater percentage of smaller lots, particularly where these were located around reserve areas, she considered that the increased density would reflect an urban outcome with adverse effects on rural character and amenity values along the rural / urban interface and the boundary with SH1.
- The acoustic barrier along the boundary would not maintain rural character and amenity to the entrance to Amberley and there may be potential effects in terms of maintenance matters with respect to the fence, associate planning and graffiti.
- In terms of amenity values, she had concerns regarding the size and shape of some of the proposed lots and their ability to provide for a complying dwelling and that there would be a reduced level of amenity for residents of the lots adjoining SH1.

- More information was required in relation to geotechnical matters, to identify which lots may require specific foundation design or whether a minimum finished floor level is required.
- She was satisfied that contaminated land can be adequately mitigated.
- That the subdivision can be adequately serviced, with the exception of stormwater.
- That the proposed internal road layout would be appropriate and the existing roading network would be able to absorb the proposed traffic generated as a result of the subdivision. However, she was concerned around the constraint and timing of providing a link through to the proposed new road and SH1 intersection.

2.16 Ms Bennett considered the proposal was contrary to the objectives and policies of the District Plan. She went on to say that in her opinion the proposal did not pass the tests of s.104D of the RMA and therefore she recommended that consent be declined.

#### **Applicant's Evidence**

2.17 In response to the s42A report a number of amendments were proposed by the Applicant to address concerns raised by Council officers. These included:

- An updated Masterplan containing:
  - The addition of a length of green space running from SH1 along the immediate southern rural boundary interface, which was to be a stormwater reserve.
  - The amendments of lots in the above southwest area, which were increased in size and reduced from six lots to four lots only in this area, such that the development has a revised total of 199 residential lots.
  - A post and rail fence and the addition of a 3m wide planting strip along the remaining rural boundary interface.
- No longer proposing to discharge roof water to ground.
- Allowing up to 8m high two-storey dwellings.

2.18 The updated Masterplan included a 1.2m high bund and 1.8m high acoustic fence along the boundary with SH1 for acoustic mitigation purposes. The bund was proposed to be planted on both sides of the fences.

2.19 These matters were addressed in the evidence of Ms Wilkins. She considered that the key considerations for the proposal regarding character and amenity included:

- The anticipated landscape character is a modified residential environment.
- No large areas of vegetation or key trees are to be removed. The proposal will introduce large areas of planting and tree-lined streets.
- Amenity values were enhanced by the extensive public green spaces proposed.

2.20 The Applicant, Mr Hope–Pearson stated that through the development and sales process of Stages 1 and 2, it was apparent that many purchasers experienced affordability and lifestyle challenges, with a strong demand and appetite for smaller, more affordable lots. He said that this along with the soaring costs of development, namely direct construction costs had influenced the proposed development form for Stages 3+.



- 2.21 Mr Hope–Pearson said he strongly believed an average lot size in excess of 550m<sup>2</sup> was far from being dense and in fact was generous in the context of current land development forms being delivered across the country. He went on to say that whilst there are many who hold onto the romance of the quarter acre section, these days are simply over and as a community we need to respond to the challenges in front of us practically and ensure what is developed will not only protect what is important to us today but also into the future.
- 2.22 In terms of amenity Ms Wilkins stated that the size of the reserves proposed would range between 7,500m<sup>2</sup> to 17,500m<sup>2</sup>. These would also act as a storage basin for excess waters and could be used as a reactional facility through dry months of the year. The reserves were designed to include the sweeping form of the natural gully areas and existing mature trees.
- 2.23 Ms Wilkins considered that the proposal aligned with the aims of the District Plan and Township guides relating to landscape and urban design. She said the development provides for a unique, high quality residential area, as anticipated under the District Plan, that has been suitably designed in alignment with urban design protocols and principal. She also noted that lots below 700m<sup>2</sup> were offset by the areas outlined for open public green space across the subdivision.
- 2.24 Regarding the smaller lots along the State Highway interface, Ms Wilkins was of the view that these would be well screened and would be controlled by design guides to contain areas of open space within each yard. She also noted that the views of these lots will be experienced at speed by transient viewers traversing the road corridor which tend to be less sensitive than fixed viewers. She said any discernible visual change created by the increased density will be in passing and temporary in nature. She said that in any case, the site is zoned residential, and the character of this interface was not anticipated to be that of rural under the District Plan.
- 2.25 Ms Wilkins noted that the length of the rural interface was upwards of 580m in total with just over half of the boundary dedicated to residential allotments and in her opinion 13 sections along this boundary would be easily absorbed and provide a highly acceptable outcome for this interface.
- 2.26 Overall, she concluded that the different lot options proposed provide an adaptable community that ensured a range of living arrangements.
- 2.27 Mr Compton-Moen noted that Amberley's population had grown significantly since the Town Concept Character Study was developed by Mr Densem in 2007 and while that study had value it did require updating to make it more relevant. He considered the development area naturally extended the residential development in Amberley towards the south as a continuation of residential dwellings at a similar or slightly higher density when compared to the broader context. He said that the development proposed was still considered low density when compared to many recent residential developments, albeit these were closer to Christchurch. He said in his opinion, the proposed density was a balance between adding significant development capacity that contributes to a well-functioning urban environment whilst also achieving the desired urban character for Amberley.
- 2.28 Mr Compton-Moen considered that the proposal would result in a development with a high level of internal amenity with the proposed design controls, albeit with a higher density than anticipated. He said that when comparing a complying design with the proposed design, the magnitude of change/difference was considered very low.
- 2.29 In addressing the entrance to Amberley, Mr Compton-Moen said the proposal with the landscaped bund and acoustic fence would not have an effect on its quality. He did not think the intention should be to maintain a rural character to this space, given it was zoned

residential, but said it was possible to provide a high level of amenity for residents by 'internalising' the development away from the state highway. He noted that the limited access nature of the state highway meant internalising the development was the best design outcome with the road unlikely to become a slow speed environment at any stage in the near future.

- 2.30 Mr Compton-Moen did not consider it was necessary to limit the lots along the southern boundary to 1,100m<sup>2</sup> to address amenity or interface concerns. He considered that the setback (7.5m) combined with the proposed landscape treatment was sufficient to mitigate any potential amenity concerns. He considered the magnitude of change for adjoining rural properties was Very Low with a less than minor effect.
- 2.31 Overall, Mr Compton-Moen considered that the proposal would result in a well-functioning urban environment and achieved the outcomes anticipated for Amberley.
- 2.32 Mr Gallot said the full development (Stages 3-6) was estimated to generate 1,608 vehicle movements per day and 181 vehicle movements per peak hour. Combined with consented Stage 1-2 (123 lots) and potential future development of 50 additional dwellings on balance Lot 5000, the total combined site generated traffic volume is estimated to be around 2,992 vehicle movements per day and 337 vehicle movements per peak hour.
- 2.33 He stated that additional traffic modelling had been undertaken in response to Council's concerns regarding the potential issue with timing of development and public vesting of the planned new road link to SH1. He concluded that he was satisfied that the transport effects of the proposed activity would maintain an acceptable level of service even without the Carters Road (SH1) direct link in place.
- 2.34 Mr Gallot acknowledged that there were minor departures from District Plan and/or Hurunui District Council Engineering Standards in regard to road corridor widths and footpath provisions, but that there was general agreement with Council's Consents Engineer that the proposed internal road layout was fit for purpose and would provide an appropriate level of service.
- 2.35 Overall, Mr Gallot considered that the proposed development could be supported from a transportation perspective.
- 2.36 Mr Stevenson stated that the Filterra Bioscape stormwater treatment system proposed was more efficient than a first flush basin and would over the life of the discharge consent cost a similar amount to that preferred by Council. He considered it was likely that these devices would be increasingly approved by Environment Canterbury. He said ultimately the stormwater solution should be determined by Environment Canterbury and that HDC should provide for either option.
- 2.37 Mr Stevenson went on to note that the steepness and depth of the attenuation basin had been addressed by grading wetted banks at 1 in 4 and providing a 1m wide refuge at a level above ponding level.
- 2.38 Mr Stevenson considered groundwater was now unlikely to be an issue with the removal of on lot soak pits and that conditions could resolve the finished floor level requirements. He said water supply pressure was addressed by installation of new mains by Council and that wastewater could be accommodated in the existing system.
- 2.39 Ms Donaldson raised a specific matter around the applicability of the 7.5m building restriction line adjacent the south-eastern boundary, stating that while she agreed that this line was shown on the planning maps, there was no associated rule or plan notation within the District Plan. As such, she differed from Ms Bennett's view that this was relevant as a non-compliance.

- 2.40 On the matter of density, Ms Donaldson said that there were mitigating factors. The subdivision design ensured a variety of section sizes and shapes were provided, which in turn can result in variability in the design in dwellings. She considered that the variation in allotment areas was beneficial and that by spreading smaller lots throughout the development it reduced the ability to notice the overall density. She also noted the retention of the sites natural landforms and their incorporation into dual purpose reserve areas, for stormwater, recreation, and amenity purposes which resulted in generous areas of open space where smaller allotments could be located alongside to provide an informal extension to the site.
- 2.41 Ms Donaldson considered that, in terms of effects, most of the effects identified by the Council Planner were those that were anticipated by or consistent with the zoning of the site, and its intended urbanisation and that the effects were further able to be mitigated so as to be no more than minor.
- 2.42 Ms Donaldson did not consider the proposal to be contrary to the objectives and policies of the District Plan and considered that Ms Bennett had not undertaken a fair appraisal of the objectives and policies as a whole.
- 2.43 Subsequent to the lodging of evidence by the Applicant team and at our request, an initial set of proposed conditions was prepared by Ms Bennett and circulated prior to the hearing on the 19<sup>th</sup> of May 2023.

### **3.0 Hearing and Post Hearing**

- 3.1 The hearing took place at Hurunui District Council offices in Amberley on Monday 29<sup>th</sup> of May 2023.

#### **Applicant**

- 3.2 At the hearing Mr Gardner-Hopkins, made representations on behalf of the Applicant. He noted that there did not appear to be any major Part 2 “contest” arising in respect of the application. He said that section 7(b) was of particular relevance: *“the efficient use and development of natural and physical resources”*, as part of the enabling aspects of Section 5 in respect of enabling *“people and communities to provide for their social, economic, and cultural well-being”*. Noting that in a world where there has been significant population growth and a major housing shortage, it would be a highly efficient use of the land to grant consent for the project.
- 3.3 On the basis of its evidence, Mr Gardner-Hopkins said the Applicant says that the effects of what it proposes, assessed against the context of the District Plan and the Environment (properly understood) are clearly no more than minor and therefore the first gateway test under s104D is met.
- 3.4 In response to the s42A report Mr Gardner-Hopkins, said that the evidence on density in response is simply that no third party will have any concept of the increased density and it will not be apparent at the “edges”, nor will it be apparent from a traffic generation perspective. In terms of the amenity of the acoustic barrier along the boundary with SH1, he said acoustic barriers were very much “par for the course” and are a routine mitigation measure for development alongside a State Highway. They are not, he said, with appropriate planting, an adverse effect requiring the decline of consent.
- 3.5 In terms of the stormwater system Mr Gardner-Hopkins said that there are some uncertainties as to whether the Council was prepared to take over the system as an asset. He said this can easily be “conditioned”. He went on to say that in a sense, the Council will get what it’s given, and any ongoing maintenance costs can be addressed through rates. But he contended that it

was the Applicant's position that what it was proposing is efficient and effective, and appropriate for the long term, in particular (and will be accepted by Environment Canterbury in terms of its consent process). He also said it would be a simple matter for the Council to "upskill" and maintain the new stormwater asset (with costs recovered through rates, if not development contributions).

- 3.6 In terms of the concerns and uncertainty around the constraint and timing of providing a link through to the proposed new road and SH1 intersection which is to be constructed as part of the adjoining retirement village development, Mr Gardner-Hopkins said in time this is considered inevitable.
- 3.7 For the above reason Mr Gardner-Hopkins considered the effects gateway was met.
- 3.8 In terms of the National Policy Statement on Urban Development (NPS-UD), having initially been raised as being of relevance in Ms Donaldson's evidence, Mr Gardner Hopkins said given that the definition of "urban environment" refers to an area that is "intended to be" part of a housing and labour market of at least 10,000 people, HDC would qualify. Another view put forward, was given that the Amberley area is, or is intended to be, predominantly urban in character (given, eg its zoning as a settlement), then it would also qualify for that reason. He stated that even if the site does not qualify as an "urban environment", the principles of the NPS-UD are still relevant, given the subject nature of the application (ie a housing project in a zoned opportunity).
- 3.9 We initially questioned the Applicant and their witnesses. Major points of relevance were:
- i. Mr Hope-Pearson responded that:
    - there was a disconnect between the market and the District Plan.
    - rental properties were unavailable in Amberley.
    - medium-density terraced housing would be a major departure from the District Plan.
    - he understood that there was limited land supply.
    - the intentions for the balance lot were smaller lots for elderly people.
  - ii. Mr Gallot responded that:
    - a scenario of not connecting to SH1 had not been discussed with Waka Kotahi.
    - he did not consider there was a poor level of service necessitating the SH1 connection.
    - he had not been on site to observe the evening peak period.
    - traffic modelling did not take into account the retirement village.
    - he did not consider the lack of a SH1 connection was an impediment to walking and cycling.
  - iii. Mr Stevenson responded that:
    - there was no size restriction on a proprietary system.
    - a 1:50 year rainfall event would take 46 hours to dissipate.
    - four lots would be lost if the Councils first flush basin system was preferred.
    - limited areas would need to be fenced to address safety concerns.
    - it was preferable not to have on-site tanks as there was enough capacity in Dry Gully.

## iv. Ms Wilkins responded that:

- design guidelines would be enforced through covenants whereby purchasers would need to submit a proposal including material etc.
- the playground on the masterplan would need to be moved if the proprietary system was used.
- the site layout reflects the natural contours of the land which provides a unique point of difference.
- the pattern of development aligns with other developments in the area including the retirement village.
- she accepted that the character of Amberley was set by the the Town Concept Character Study and the provisions of the District Plan but considered this was no longer appropriate for the character sought by this development.

## v. Mr Compton-Moen responded that:

- the 700m<sup>2</sup> rule was a basic tool and on its own it did not create character.
- the acoustic fence was designed to be low maintenance so would require minimal attention.
- he accepts that in terms of this site the proposal is a step change, but not so in terms of the wider context with reference to the Residential 2 zone.
- in term of outdoor living space in the front yard for those lots along the state highway boundary, he considered this should try to be avoided, but noted that it did occur at times. Considered issues of privacy could be resolved through planting and that safety was unlikely to be an issue.

## vi. Ms Donaldson responded that:

- she had not considered the extent of vacant land within Amberley and accepted that the District Plan potentially provided sufficient residential land.
- the difference in density level, in terms of the 20% allowance for lots below 700m<sup>2</sup> in the District Plan, was in her view a reasonable change in terms of the proposed percentage and potentially significant.
- she accepted that the proposal might create a precedent in terms of density but noted that it was a large greenfield site.
- she did not consider the stormwater basin would create a safety issue, noting that a depth of 2.3m was not unusual.
- in terms of the outdoor living space in the front yard, noted that there would be a restriction on front fences via a covenant rather than a condition.
- in relation to specific objectives and policies of the District Plan we referred to, noted that the proposal maintained openness and spaciousness in relation to Objective 4.2; noted that the lots on the outer edge of the subdivision were greater than 700m<sup>2</sup> which would be considered large allotments in terms of Policy 4.12; accepted that the proposal was not entirely consistent with Policy 5.5 in relation to density; and considered Policy 8.6 relating to the cumulative effects of multiple lots accessing the roading network at a single access point, was met.
- the proposal would negate further expansion onto high productive land.

### **Submitters**

- 3.10 Ms Pugh considered that there were already a lot of traffic delays on Amberley Beach Road which would only increase with this development. She said mornings and weekends were the worst time to turn right out of Amberley Beach Road.
- 3.11 Ms Pugh considered such high-density housing would not maintain the rural country town character. She considered in this context character to mean open space, trees and an open rural outlook. She also considered the proposed use of Dry Gully was dangerous.
- 3.12 Mr Lewthwaite expressed concern about the additional traffic movements being focussed on a single entrance. He said a new access on to SH1 would help to relieve the turning traffic issue. He also raised concerns about the proposed road widths associated with the development.
- 3.13 Mr Lewthwaite expressed concerns about the density of housing proposed and the size of lots. He questioned where people occupying these new houses were going to work. He also considered that the rural/urban interface should contain larger sections with smaller sections centralised within the site.

### **Council**

- 3.14 Ms Smetham said one of the saving graces of the proposal was the use of Dry Gully as part of the proposal. She considered it was a great asset and provided plenty of opportunity for passive recreation and achieved Policy 4.20.
- 3.15 Ms Smetham was not concerned about the higher density proposed provided it was arranged more internally, however as it stood, she considered the rural town character was not achieved. She said in her view larger lots should be located along the state highway boundary which would also help in ensuring they were not so compromised by acoustic matters. She said she was not in favour of outdoor living space in the front yard.
- 3.16 In relation to the design guide, Ms Smetham considered it was necessary provided it was enforceable.
- 3.17 Mr Kent said he had seen little evidence of the proposed Filterra stormwater system being used within a community of this scale. He remained concerned about the life cycle costs of the system, the costs to the Council and the uncertainty associated with the system. He also expressed concerns regarding the frequency with which weather events may result in the attenuation ponds reaching a depth of 1m or more and the potential safety impacts of this.
- 3.18 Mr Kent considered a road link to SH1 was necessary but was unclear at which stage this should occur. He did note however that such a link was indicated in the Councils Amberley Infrastructure Strategy.
- 3.19 Ms Bennett indicated that the Council were in the process of preparing a spatial plan for Amberley and that further growth was anticipated. She also indicated that consents had previously been granted for subdivisions below the minimum standards and subsequently provided examples of those and the level of non-compliance.
- 3.20 In terms of design guides, Ms Bennett said these were not usually conditioned as part of resource consents.
- 3.21 Ms Bennett said she was now comfortable with the smaller than required lots along the rural boundary and that her main concern was around the small lots along the state highway boundary.

3.22 In terms of the objectives and policies, Ms Bennett said her view was unchanged, noting that the key provisions were Objective 4.2, and Policies, 4.34, 4.38 and 5.5. Ms Bennett also accepted that there could be an issue around plan integrity associated with the breach of the density standards.

3.23 Overall, Ms Bennett considered the site was capable of absorbing the level of development proposed but that the smaller lots needed to be internalised and there needed to be fewer of them.

#### **Post Hearing**

3.24 After the completion of the hearing, we issued a minute (Minute 3) providing directions. This included a series of questions for the Applicants acoustic expert; a response from Waka Kotahi as to whether they had any concerns regarding the potential for all traffic from the proposed subdivision to utilise the SH1/Amberley Beach Road intersection and raised questions which were unable to be answered during the hearing and/or areas that we sought further information on.

3.25 We followed Minute 3 up with two further minutes providing additional directions and seeking further information in relation to the initial information received. A summary of all information and responses received is provided below.

#### Applicant Response

3.26 A response was received from the Applicant, which included an updated masterplan. The revised masterplan showed in particular the replacement of the originally proposed smaller lots on the SH1 boundary with larger lots, each over 700m<sup>2</sup>. This reduced the total yield from 199 to 191 residential lots. Mr Gardner Hopkins said that while the Applicant, and, more importantly, its experts, were satisfied that these smaller lot sizes were appropriate, and would still achieve good amenity and urban design outcomes, the Applicant is prepared to now amend its proposal in that regard.

3.27 Associated with the masterplan were updated scheme plans and in particular an amended Stage 5 boundary. The Applicants position was that the amended Stage 5 boundary, could be adopted if the Panel determined that there should be a “hold point” to limit further development to Stage 4 only until the Carters Road/SH1 link becomes operational. The Applicant’s position was that it did not consider this “hold point” was necessary but wished to provide the option for the Panel if it decided otherwise.

3.28 The updated masterplan also included:

- rearranged lots 175 and 176,
- an acoustic fence around lots 253-256 & 279, 280 and 285,
- the relocation of the playground,
- identification of the Filterra system location,
- confirmation of the location of a first flush basin treatment should this be installed in preference to the Filterra system, and
- a 1.8m timber paling fence along the boundary of Lots 167-176.

3.29 In the Applicants response, Mr Gardner Hopkins addressed the extent to which the proposal might create a precedent or undermine the integrity of the plan. He referred to case law in

Dye<sup>1</sup> and Gould<sup>2</sup>. He said this suggests that the focus should be on the statutory tests under s104D, rather than any “overlays”. In that regard, the idea of any requirement that a non-complying activity be an exception (also mentioned in the course of the hearing) is “unhelpful”.

- 3.30 Mr Gardner Hopkins also addressed the issue of a plan change, stating that *“there is no need or requirement under the RMA to seek a plan change, if a proposal can meet one or other of the s104D gateway tests”,* and that *“it would be an unduly onerous requirement (and contrary to the scheme of the RMA itself) for an applicant to have to request a private plan change for every material departure from a standard, where the effects are minor, or the proposal is not contrary to the objectives and policies as a whole. It would add considerably to delays and costs, for both the developer and, ultimately, the future home owners.”*
- 3.31 In relation to transportation matters, Mr Gallot confirmed, having undertaken further traffic surveying modelling, that the surrounding road network would continue to operate at acceptable levels of service during both the AM Peak and PM peak periods with full development of Stages 1-6 of The Clearing regardless of whether or not the planned new Carters Road (SH1) link road and intersection were in place and operational.
- 3.32 Mr Gardner Hopkins said the Applicants view in relation to the stormwater system was that it is appropriate to have the final stormwater treatment design resolved by the Regional Council, as it is the consent authority for such matters. He said the District Council would be entitled to participate in that consent process and put its concerns in respect of the proprietary system that is proposed by the applicant to the Regional Council. He said the District Council will then be required (unless it were to appeal the Regional Council’s decision) to accept the Regional Council’s decision, and, ultimately, the vesting of either the proprietary system or first flush basins in it.
- 3.33 Mr Stevenson provided further information in the form of a table regarding the expected frequency that water would pond to a depth of 1m or more in the proposed attenuation basin depending on the average recurrence interval event (ARI). The times ranged from 10-15 minutes to 1 hour (depending on the ARI) to reach 1m or more.
- 3.34 Mr Stevenson also addressed the costs of the Filterra system compared to a first flush basin over a term of 25 years. He concluded that there was a difference of \$62,340 (an extra cost of \$5,000 per annum) between the two options representing the additional cost of the Filterra in today’s dollars when assessed over a 25 year term.
- 3.35 Ms Hilliker from AES addressed acoustic questions we posed around the proximity of lots to the state highway and related amenity effects. She considered a condition of consent was required for lots directly adjoining the state highway requiring the installation of ventilation and cooling systems; that mitigation for noise exceeding Waka Kotahi standards in outdoor locations could be mitigated by orienting outdoor living area to the north-east, lot-owners installing additional localised fencing or providing a higher bund; and that a speed limit reduction from 80kph to 60kph on SH1 would provide a 1 – 2 dB L<sub>Aeq(24h)</sub> reduction.

#### Council Response

- 3.36 Ms Smetham considered the decrease in lot numbers and increase in lot sizes along SH1 was a positive amendment and in her opinion these larger lots would achieve better flexibility for positioning a dwelling while providing some outdoor living where noise can be mitigated.

<sup>1</sup> Dye v Auckland Regional Council [2002] 1 NZLR 337

<sup>2</sup> Rodney District Council v Gould [2006] NZRMA 217 (HC)



- 3.37 Ms Smetham considers that the 1.8m timber paling fence on the rural boundary was not warranted noting that while the fence may mitigate potential reverse sensitivity effects for properties within the subdivision, it would reduce rural and natural character at the rural / urban boundary.
- 3.38 Mr Kent considered that the proposed first flush basin maintenance cost was nearer to \$3,600 per annum under Council's protocols which suggests that the extra annual maintenance cost is nearer to \$10,000 per annum (rather than \$5,000 per annum). He also noted that it was unclear as to the depreciated value of the Filterra structure versus the first flush basin. He also reiterates his concern in respect of resourcing and training staff to undertake this activity which would be unique in the district.
- 3.39 Ms Bennett received a response from Waka Kotahi that they were comfortable, from a safety perspective, with the proposed subdivision progressing without the SH1 intersection being constructed immediately given the modelling from Mr Gallot. They noted that if the Commissioners considered a staging approach was required in relation to Stages 5 and 6, they would be supportive of that approach. Waka Kotahi also indicated they supported the use of the acoustic bund and fence to help to mitigate reverse sensitivity effects from highway noise.
- 3.40 In her second supplementary report Ms Bennett noted that if reserve and open space areas were to be taken into consideration in calculating density, this would result in an overall dwelling density of approximately one dwelling per 1,435m<sup>2</sup>. Therefore, while the proposed subdivision would result in 80% of the lots being less than 700m<sup>2</sup> in area, overall dwelling density would be offset by the large open space and reserve areas to be established around the natural gully features of the site. She said this supported her opinion that the proposal does have capacity to provide for a greater percentage of smaller lots without adverse effects on amenity values.
- 3.41 Ms Bennett went on to say that the decrease in the number of lots and the increase in the size of the lots adjacent to SH1 was a positive amendment. She said the amended size and shape of the proposed lots would provide greater flexibility to site a dwelling and potentially provide for north facing outdoor living areas. While the acoustic barrier was not ideal in terms of visual effects, she considered that the proposed planting of the bund would help to soften these effects and over time it was likely that the acoustic fence and buildings located beyond the fence would not be readily visible (as was the case with the acoustic barrier and associated landscaping constructed at the northern entrance to Amberley).
- 3.42 In terms of the rural/urban boundary Ms Bennett noted that the rule in the District Plan requiring a landscape buffer along this boundary sought to ensure that the visual effects of residential development as viewed and experienced from the adjacent Rural Zone would be mitigated. She considered that the required landscape planting would help to soften the visual effects of residential development however the presence of a 1.8m high timber paling fence would create a hard visual barrier doing little to maintain rural character. Furthermore, she said given that the reserve areas located to the east and west of the proposed cluster of residential lots are required to be fenced with post and rail fencing. She considered that the timber paling fence along the south boundary of the residential lots would be incongruous with the intervening reserve areas and overall, it would not maintain the landscape character and visual amenity from the adjoining Rural Zone.
- 3.43 Mr Kent stated in his second supplementary report that he retained safety concerns relating to the frequency with which the attenuation ponds retained over 1m of water and produced his own rudimentary analysis for 2 year and 10 years ARI events.

- 3.44 Overall, Ms Bennett considered the amendments to the proposal were positive and as such the proposal would align with the country town character the District Plan seeks to maintain, with the exception of the proposed fence along the southern boundary of the site. She indicated she was satisfied that the proposal would generally be in accordance with the objectives and policies relating to settlements with the exception of Policy 4.38 in terms of connectivity. The objectives and policies in relation to subdivision, would generally be met with the exception of Policy 5.4 in relation to loss of natural and rural character due to the proposed southern boundary treatment. She considered stages 5 and 6 of the subdivision should be deferred until the SH1 link was established.

#### **Hearing Closure**

- 3.45 Upon receipt of the further information and having reviewed it, we were satisfied that the hearing did not need to be reconvened and that we did not require any further information. We closed the hearing on the 26<sup>th</sup> of July 2023.

### **4.0 Assessment**

- 4.1 The application is to be considered under Section 104 of the Act having regard to Part 2 and 104B. Conditions may also be imposed pursuant to s.108. As a non-complying activity, the application first has to pass one of the s.104D 'threshold test' as to whether the effects on the environment are minor, or it is not contrary to the objectives and policies of the District Plan. There are also no restrictions, and we are able to consider all aspects of the proposal.
- 4.2 Should the applicant pass the s.104 'threshold test' the relevant matters in terms of s104 matters include:
- any actual and potential effects on the environment of allowing the activity; and
  - any relevant provisions of the district plan, national environmental standard, national policy statement or regional policy statement; and
  - any other matter we consider relevant and reasonably necessary to determine the application.
- 4.3 In assessing any proposal, we are also able to have regard to the nature and scale of activities that might be permitted as of right on the site in terms of Section 104(2) of the Act (the permitted baseline). As neither planner pursued this, we have not taken it any further other than to acknowledge that the site could contain a reasonable level of residential development.
- 4.4 In terms of the *Davidson decision*<sup>3</sup> the Court of Appeal found that the High Court erred when it determined the Environment Court was "not able or required to consider Part 2 of the Resource Management Act 1991" when undertaking its decision-making role in accordance with section 104 of the RMA. The decision means that when considering resource consent applications, decision-makers "must have regard to the provision of Part 2 when it is appropriate to do so": [47]. In this context while the District Plan is relatively recent, for reasons detailed later in this assessment we have undertaken an assessment under Part 2.
- 4.5 For the record we noted that there are no s6 (RMA) matters of national importance nor any s8 (RMA) Treaty of Waitangi matters associated with the proposal that we need to consider.

#### **Effects on the Environment**

- 4.6 Having considered the application, the evidence and responses received and the answers to our questions, we consider the following are the key potential effects we need to consider:

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<sup>3</sup> R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316

- i. Transportation
- ii. Stormwater
- iii. Density
- iv. Landscaping and Design
- v. Acoustic treatment
- vi. Reserve Sensitivity
- vii. Positive Effects

4.7 These are addressed in turn below.

Transportation

- 4.8 There were two transportation-related issues which were inter-related:
- i. the timing of and requirement for a future connection to Carters Road (State Highway 1) through the retirement village connection; and
  - ii. the extent of connectivity of the application site to the wider transport network.
- 4.9 Concerns were raised by submitters with respect to access to, and the operation of, the Carters Road (State Highway 1) and Amberley Beach Road intersection, with locals experiencing delays and difficulty turning right in the morning (around school drop off) and at times on weekends and holidays. Additional traffic generated by the proposal was expected to exacerbate this.
- 4.10 The lack of entry and exit points was also raised through submissions, as was a recommendation to improve pedestrian and cycle connectivity to SH1 by Ms Smetham<sup>4</sup>. Additional discussion at the hearing raised the potential that without the future Carters Road connection the spine road effectively becomes a very large cul-de-sac, as it is reliant on a single external connection via Amberley Beach Road.
- 4.11 Mr Gallot presented a transportation modelling assessment of the Carters Road (SH1) and Amberley Beach Road intersection performance during the evening peak period in evidence and in response to a request from the Panel undertook a corresponding morning peak traffic survey and modelling assessment. Mr Gallot concluded that *“the surrounding road network will continue to operate at acceptable levels of service during both the AM peak and PM peak periods with full development of Stages 1-6 of The Clearing regardless of whether or not the planned new Carters Road (SH1) link road and intersection are in place and operational”*<sup>5</sup>.
- 4.12 Notwithstanding the above the Applicant<sup>6</sup> has now offered a deferment such that Stage 5 and 6 will not be developed until such time as the connection to Carters Road is available through the adjacent retirement village. This includes a revised Stage 5 boundary which seeks to reduce Stage 5 from 46 to 32 lots. There was no clear explanation as to why Stage 5 has been reduced in size and no assessment of how this relates to the deferment offered with respect to effects. The combined Stages 5 and 6 corresponds to 34 or 48 out of 191 lots and therefore is approximately 18% or 25% of the total residential development capacity.
- 4.13 Mr Gallot’s assessment has been shared with Waka Kotahi as the road controlling authority. The Waka Kotahi response confirms that their safety engineers *“are comfortable, from a safety perspective, with the proposed subdivision progressing without the intersection being*

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<sup>4</sup> Page 23 of Landscape Assessment Report – The Clearing dated 8 November 2022

<sup>5</sup> From Paragraph 18 of Mr Gallot’s Supplementary Statement dated 14 June 2023

<sup>6</sup> Paragraphs 17-19 of Mr Gardner-Hopkins Representations in Reply dates 22 June 2023

*constructed immediately*” and on the basis that the intersection is to be completed by the retirement village consent holder, they consider it is not necessary for the Applicant to construct the intersection. Waka Kotahi further support consideration of a staging rule (should the Panel consider this to be appropriate) deferring development until such time that the intersection was constructed.

- 4.14 Ms Bennett’s assessment<sup>7</sup> concludes that in the absence of this link, the application is not consistent with Council’s Infrastructure Strategy for Amberley, and the lack of a connection would discourage the uptake of walking and cycling and require more circuitous travel to reach Amberley facilities and amenities. We have reviewed the corresponding strategy and agree with Ms Bennett’s view in that respect. Connectivity within a settlement is an important feature in enabling access and encouraging alternative modes of transport and we consider without the link to SH1 such connectivity for this subdivision will not be achieved. We also note from discussions at the hearing that a long cul-de-sac design and circuitous route to access households is not desirable with respect to emergency vehicle access. However, we are not aware of any assessment being undertaken by relevant experts of relevant standards in that regard.
- 4.15 Ms Bennett states that in her opinion Stages 5 and 6 should be deferred until the new roading link is available. The rationale behind the staging of the deferment (that is following Stage 4 and prior to Stages 5 and 6) is unclear as this has not been assessed by any of the experts but is a matter of potential agreement between Council and the Applicant, with Waka Kotahi also in support.
- 4.16 It is unclear whether Ms Bennett’s or Waka Kotahi’s assessment of this matter have been based on the reduced scale of Stage 5 (32 lots) or the original scale of Stage 5 (46 lots). This is not acknowledged by either party and the references in the updated condition set appended to Ms Bennett’s supplementary evidence continue to reference the 46 lots so there is some likelihood that the reduced scale of Stage 5 has not been clear and obvious to other parties and not considered on that basis. We have calculated that 32 lots corresponds to 18% of the development capacity and in essence defers only a very small amount of development from occurring before the new SH1 link is operational. We reiterate there is a lack of assessment to provide an evidence-based staging threshold and note that Mr Kent was suggesting 50%. We consider that the 46 lots (or 25% of developed) initially proposed in Stages 5 and 6 is a practical minimum threshold on the extent of development held back until the SH1 connection is available.
- 4.17 We note that Stages 5 and 6 represent those lots located the furthest away from the Amberley Beach Road access. They would therefore be most adversely affected by the lack of a direct connection in terms of access to facilities and amenities. In lieu of more assessment to support the specific staging of the deferment, we agree that this it is appropriate to restrict any development of Stages 5 and 6 until the new connection is available.
- 4.18 We further consider that the reduced scale of Stage 5 if the deferment were to be implemented through conditions, has not been justified by the Applicant, is minimal in terms of scale and any such deferment should be based on the scale of Stages 5 and 6 as stated in the application. On this basis we accept Ms Bennett’s originally proposed level of deferment in her updated conditions.
- 4.19 Ms Bennett concludes that *“the proposal will provide for the safe and efficient development of the transportation network, provided that the proposed link through to SH1 is established”*. We

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<sup>7</sup> Paragraphs 28-30 of Ms Bennett’s Supplementary Section 42A Report dated 24 July 2023

agree that all other transportation-related matters are able to be resolved, and there are no potential adverse effects arising from the proposal subject to the inclusion of a deferment condition which we support.

#### Stormwater

- 4.20 There are two points of difference between experts relating to stormwater as follows:
- i. choice as to the type of first flush treatment and associated maintenance costs; and
  - ii. potential safety effects relating to the ponding of water in the attenuation basin system.
- 4.21 Mr Stevenson proposes a Filterra system and in response to a request from the Panel has provided an assessment of the lifetime costs of the system as well as Mr Kent's preferred solution, being a first flush basin. Mr Stevenson concludes that the additional cost of the Filterra system has a net present value of \$62,340 over a 25 year period<sup>8</sup>.
- 4.22 Mr Kent provided a response to the assessment presented in Mr Stevenson and considers that the annual difference in cost is nearer \$10,000<sup>9</sup> compared to the undiscounted annual cost difference of \$5,000 assumed by Mr Stevenson. Mr Kent further states concerns relating to uncertainty around the suitability of the Filterra maintenance costs, depreciated value of the Filterra structure and resourcing and training requirements for Council staff.
- 4.23 While the Regional Council is the consenting authority for the treatment and disposal of stormwater, we consider that in this case Hurunui District Council should have the opportunity to work with the consent holder in respect of their concerns relating to the maintenance of the Filterra system, should that be the preferred treatment.
- 4.24 In our view the Council should be able to review and approve the management plan and maintenance regime for the stormwater system along with the engineering plans required for certification given it will take responsibility for the system. It is reasonable in our view that should Council retain concerns as to the appropriateness of the Filterra system and associated maintenance costs, this can be addressed between the consent holder and Applicant through this engineering approval process.
- 4.25 The Applicant has illustrated that should a first flush basin be the outcome, approximately six lots (specifically Lots 150-154 and 179) would be undevelopable as the basin would need to be extended into this area<sup>10</sup>. We note that the removal of these lots has not been assessed through expert evidence, however we are of the view that the removal of these six lots would not substantially change the nature of the application. There would be a small reduction in the overall density of the development and density-related effects would accordingly be reduced.
- 4.26 Mr Kent raised concerns at the hearing in relation to the frequency with which weather events may result in the attenuation ponds reaching a depth of 1m or more. The nature of these concerns were with respect to effects to prevent re-suspension of settled solids<sup>11</sup> and personal safety as a result of depths of over 1m occurring at more regular intervals<sup>12</sup>.
- 4.27 There has been no additional evidence tabled in relation to the re-suspension of settled solids. In relation to personal safety, Mr Stevenson specifies that "*mitigation of safety concerns, subject to Engineering Approval could include landscaping, fencing and egress points cut into the bank at minimum gradients*". We consider that an engineering approval which can be

<sup>8</sup> Paragraph 12 from Mr Stevenson Supplementary Statement dated 13 June 2023

<sup>9</sup> Paragraph 1.3 of Mr Kent Response to Supplementary Statement

<sup>10</sup> Drawing 301 Issue E attached to the Representations in Reply

<sup>11</sup> Paragraph 3.16 of Mr Kent evidence dated 5 May 2023

<sup>12</sup> Page 1 of Mr Kent Response to Minute 5

conditioned enables these safety matters to be addressed to the satisfaction of Council and provides a mechanism for any outstanding technical concerns such as the re-suspension of settled solids to be resolved in the design process.

- 4.28 We are satisfied that stormwater-related effects can be satisfactorily addressed through conditions, noting that engineering approval processes provide the opportunity to resolve any outstanding points of difference to the satisfaction of Council.

Acoustic treatment

- 4.29 The effects relating to noise from traffic on SH1 on neighbouring lots is proposed to be mitigated through the construction of a 2m acoustic fence on a 1m acoustic bund, coupled with further controls on dwelling height for lots backing onto the SH1 boundary and conditions relating to the construction of dwellings within the 57 dB  $L_{Aeq(24h)}$  contour based on a noise modelling assessment.
- 4.30 Acoustic treatment was therefore of some significance in this proposal and an acoustic assessment had been prepared by Mr Chen as part of the application. It was therefore somewhat surprising to us that no acoustic witness then appeared at the hearing. We subsequently raised several questions post-hearing which were then addressed by Ms Hilliker in her memo dated 13 June 2023. In the absence of any further acoustic evidence, we are generally satisfied with the responses in Ms Hilliker's memorandum.
- 4.31 The modelled noise levels on the western portion of lots adjacent to SH1 (between the dwellings and the acoustic bund) is 60-65 dB  $L_{Aeq(24h)}$  which is noted to be above the 57 dB  $L_{Aeq(24h)}$  Waka Kotahi guidance at which Mr Chen considered "*noise levels would be appropriate for residential use without further consideration*"<sup>13</sup>.
- 4.32 The potential effects arising from the noise levels experienced by these lots relates to the ability to create an acceptable internal residential amenity, and the ability to establish outdoor living areas (with an acceptable level of amenity) on these lots.
- 4.33 While the acoustic fence and bund was proposed as the primary source of mitigation, conditions were also put forward to address the internal design noise level and the primary outdoor living area. To address the internal acoustic situation, it was proposed that any dwelling or habitable building on Lot 256 and Lots 259 – 270 and 279 be single storey, and Lots 237 – 256 and Lots 259 – 270 and 279 – 295, and Lots 298 – 299 be designed, constructed, and maintained to achieve a design noise level of 40 dB  $L_{Aeq(24h)}$  inside all habitable spaces. The 40 dB  $L_{Aeq(24h)}$  level was to take into account the future permitted use of SH1 as well as the noise mitigation achieved through the construction of the acoustic fences and bund. If windows had to be closed to achieve this design noise level, the dwelling was required to be designed, constructed, and maintained with a ventilation and cooling system.
- 4.34 We were comfortable with the level of mitigation proposed in order to address the internal acoustic situation.
- 4.35 In terms of outdoor amenity Mr Chen had recommended that for lots 259-270 and Lot 279, the site layout design must allow for *a primary outdoor living area to be located in a position where the noise level is below the NZTA guideline level of 57 dB  $L_{Aeq(24h)}$* <sup>14</sup>. Ms Hilliker had then stated additional mitigation measures could be applied in the form of a higher acoustic barrier, additional localised fencing around outdoor areas or designing and orienting outdoor areas to the northeast of dwellings.

<sup>13</sup> Page 3 of Memo prepared by Mr Chen dated 21 March 2022.

<sup>14</sup> Page 10 of Memo prepared by Mr Chen dated 21 March 2022.

- 4.36 We raised two further questions of Ms Hilliker relating to the robustness of the mitigation with respect to the posted speed on the State Highway and the larger lots now proposed by the Applicant along the State Highway boundary. Ms Hilliker's response was that the impact of any future speed reduction is likely to be imperceptible, and that with larger lots, locating living areas to the northeast of dwellings would adequately screen noise from SH1.
- 4.37 We accept Ms Hilliker's view that there is adequate mitigation available in the form of installing local fencing around outdoor living areas that maybe located to the rear of sections, and options are also available to locate outdoor living to the northeast of the dwellings. However, given the larger lots now proposed we do not consider it is necessary nor appropriate to condition the location of outdoor living space. Indeed, we consider purchasers of these lots will be aware of the state highway and will be able to make their own choice how to best locate their outdoor living space and provide any additional acoustic screening.
- 4.38 With the size of the lots along the SH1 boundary (lots 259-270) being increased from the original application such that all lots are greater than 700m<sup>2</sup>, Ms Bennett now considered that *"the amended size and shape of the proposed lots would provide greater flexibility to site a dwelling and potentially provide for north facing outdoor living areas"*<sup>15</sup>. We accept Ms Bennett's view in this regard.
- 4.39 The practical implication of orienting outdoor areas to the northeast of the dwellings is that the outdoor living area would be "on the front lawn" between the dwelling and the road with a potential loss of privacy. We note in the Urban Design Guidelines (which were required to be adhered to as per the proposed land covenant prepared by the Applicant) dwellings are not permitted to have any form of front yard fences<sup>16</sup>. This situation in our view would limit the extent to which residents can gain privacy by visually screening outdoor living areas to the front of their properties.
- 4.40 At the hearing, questions were raised relating to the maintenance of the acoustic bund which is located on private property and not on Council-land or the road reserve. It is understood that the maintenance will be undertaken by the Consent Holder for the first two years and thereafter the maintenance will be the responsibility of the lot owners. We accept that approach.
- 4.41 We are therefore satisfied that acoustic-related effects can be satisfactorily addressed as far as practical through conditions.

#### Density and Design

- 4.42 The density of the proposal was initially a key concern of Ms Bennett, however upon receipt of the amended masterplan reducing the number of lots along the state highway boundary and as a result increasing their size, she changed her position.
- 4.43 The changes made to the masterplan effectively internalise visual effects arising from the higher density proposed, leaving lower density section around the edges. We consider this is a positive change and more in keeping with what the District Plan anticipates. We also note and accept Ms Bennett's commentary around the extent of reserve and open space areas offsetting the overall density and enabling the capacity to provide for a larger percentage of smaller lots without impacting on amenity values.
- 4.44 We had serious concerns about the ultimate amenity of the lots along the state highway had the initial masterplan been pursued particularly with regards to outdoor living space. We note

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<sup>15</sup> Paragraph 9 of Supplementary S42A dated 24 July 2023

<sup>16</sup> Page 29 of Ms Wilkins' evidence Appendix 1 – Part 3

that even some of the Applicants experts<sup>17</sup> appeared to have reservations about requiring outdoor living space in the front yard being an acceptable design solution to the noise impact from the state highway. We agree with Ms Smetham that the large lots would provide better flexibility for positioning dwellings while providing some outdoor living where noise can be adequately mitigated.

- 4.45 The internalisation of the smaller lots means that the increase in density will be less noticeable when viewed from the state highway and the adjoining rural area, while most of the remaining site boundary adjoins the establishing retirement village which will itself have a relatively dense appearance. We also accept that a greater percentage of smaller lots will address to some extent concerns relating to residential development sprawl over arable, productive farmland.
- 4.46 In terms of design, we noted that there seemed to be a heavy reliance by Ms Wilkins on a proposed design guide, however as we understood it this did not form part of the application and we acknowledge that the Council were reluctant to have any conditions associated with such a guide. Therefore, while we accept that a design guide appears likely to be imposed by the Applicant on the development through property covenants, we have not considered it further.
- 4.47 Having reviewed Ms Wilkins evidence we are comfortable that dwellings can be developed within the proposed lots which do not meet the shape factor. We also note here that we agree with Ms Bennett that Rule 4.6.3© applies to the building line restriction on the southern boundary.
- 4.48 In conclusion, we do not consider the increased level of density will of its own create any adverse effects and we consider any effects associated specifically with density and design are now less than minor.

#### Landscape

- 4.49 We agree that Dry Gully provides a unique natural feature upon which the subdivision has been designed and that this is a positive aspect of the proposal contributing to high amenity values.
- 4.50 In relation to the acoustic bund, we agree with Ms Bennett that while the proposal would not maintain the open rural views on the southern approach to the Amberley township, it would result in a vegetated approach to the township, one which would soften the visual effects of the acoustic barrier over time and the buildings beyond. We consider this is an inevitable consequence of having land zoned for residential purposes adjoining the state highway. Furthermore, we accept that the increase in the size of lots adjacent to the state highway will provide the potential for larger trees to be planted within the lots adding to the proposed landscaping along the acoustic bund.
- 4.51 Finally, with regards to the timber paling fence along the southern boundary we agree with Ms Bennett and Ms Smetham that this creates a hard visual barrier and would reduce rural character. Ms Bennett considered that the rule in the District Plan requiring a landscape buffer along this boundary sought to ensure that the visual effects of residential development as viewed and experienced from the adjacent Rural Zone would be mitigated. We agree that landscape planting along this boundary is necessary to soften the visual effects of residential development on this interface however the provision of a 1.8m high timber paling fence would seem to undermine this by creating a hard visual barrier. We consider a post and rail or post and wire type of fencing along this boundary is a more appropriate response, and we note this is what Ms Donaldson indicated was proposed in her evidence at paragraph 49.

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<sup>17</sup> Mr Compton-Moen considered this should try to be avoided.



- 4.52 On the basis of the above we consider landscape effects to be less than minor subject to the removal of the timber paling fence along the southern boundary.

Reserve Sensitivity

- 4.53 Potential reverse sensitivity effects were associated with the close proximity of the subdivision to SH1 and the potential for effects on adjoining rural land uses.
- 4.54 We accept that it has been demonstrated that reverse sensitivity effects associated with noise and vibration from SH1 can be largely mitigated by limiting dwellings to a single storey, requiring internal acoustic standards and providing a bund/fence solution along the SH1 boundary. We also consider reducing the density along this boundary thus enabling greater flexibility in dwelling location is an important part of that mitigation, although we accept there may still be some potential impacts from traffic noise on outdoor living.
- 4.55 We are however assured by the fact that Waka Kotahi did not raise reverse sensitivity as an issue of concern in their submission and supported the use of the acoustic bund and fence.
- 4.56 In terms of reverse sensitivity effects associated with land use activities within the rural environment we note that section sizes along the rural boundary have been increased, there is a 7.5m setback and landscaping (some of which already exists) and fencing is proposed. We consider that together these measures will mitigate any potential reverse sensitivity effects.
- 4.57 We note that Ms Smetham considers that while a close-boarded fence may mitigate potential reverse sensitivity effects for properties within the subdivision, it would reduce rural and natural character at the rural / urban boundary. As already discussed, we have some sympathy for those concerns particularly given that effects which might result in complaints are more likely to relate to visual amenity, dust and odour rather than noise.
- 4.58 Overall, we consider reverse sensitivity effects will at worst be no more than minor.

Positive Effects

- 4.59 The application indicated that the proposal would have a positive social impact on the Hurunui District through the enhancement of housing choice by facilitating an increase in housing supply and that it would provide high quality residential land that was well connected, well designed, and provide a variety of allotment sizes to cater for a range of living needs.
- 4.60 Ms Donaldson in evidence contended that the proposal would also enable delivery of high quality, affordable homes ensuring on-going affordability, which would have positive effects on social wellbeing of purchasers and their families. She said a range of section sizes would result in greater diversity across the development and that the variety of housing would reach a demographic that extended from first home buyers through to retirees. She considered that this design approach would support the creation of a diverse community, which could in turn positively affect social wellbeing<sup>18</sup>.
- 4.61 We accept that the proposal will have positive effects in terms of increasing the ability for housing supply and choice in terms of section sizes. The incorporation of the existing Dry Gully natural feature is also a positive aspect of the proposal and provides a unique identity that contributes higher than normal amenity values.
- 4.62 We also acknowledge that a design guide for the subdivision could well ensure increased amenity values and quality of design, however this did not form part of the resource consent application as such.

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<sup>18</sup> Paragraphs 165-166 of Ms Donaldsons evidence

- 4.63 In our view positive claims about connectivity could only be delivered with the connection to the state highway and we received no specific evidence with regards to affordability so have not taken that into account.

Overall Conclusion on Effects

- 4.64 Overall, we have concluded that the effects of the proposal will be no more than minor which is sufficient to pass the first of the section 104D (of the RMA) thresholds.

**Relevant Provisions**

National Policy Statements

- 4.65 Two National Policy Statements in particular have been considered by the planning witnesses. We accept that the National Policy Statement on Highly Productive Land is, given the site is zoned Residential 1A, of no relevance.

- 4.66 In terms of the National Policy Statement on Urban Development (NPS-UD) we agree with Ms Bennett that it is not of relevance in this situation.

- 4.67 The application of the NPS-UD is referred to in Clause 1.3. It states:

*This National Policy Statement applies to:*

- (a) *all local authorities that have all or part of an urban environment within their district or region (ie, tier 1, 2 and 3 local authorities); and*
- (b) *planning decisions by any local authority that affect an urban environment.*

- 4.68 The term 'urban environment' is then defined and is limited to *land (regardless of size, and irrespective of local authority or statistical boundaries) that:*

- (a) *is, or is intended to be, predominantly urban in character; and*
- (b) *is, or is intended to be, part of a housing and labour market of at least 10,000 people*

- 4.69 This is a conjunctive test and Amberley does not meet (b) and therefore the NPS-UD does not apply. In this context we note that some other smaller Councils around the country have also acknowledged this. While Mr Gardner Hopkins suggested that Hurunui and/or Amberley would qualify under the definition of "urban environment" we consider that is stretching the definition.

- 4.70 Therefore, while it contains directive objectives and policies around improving housing affordability through competitive land and development markets, there is (perhaps somewhat unfortunately) in our view no ability to test the proposal against the NPS-UD or even take this into account as suggested by Ms Donaldson.

Regional Policy Statement

- 4.71 We do not consider the Regional Policy Statement is of particular relevance in this circumstance given it has been given effect to by the District Plan.

National Environmental Standards

- 4.72 One National Environmental Standard has been considered relevant, being the NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NESCS). Land use consent is required under the NESCS as a Detailed Site Investigation for the site has identified that soil samples collected from the historic sheep dip and footbath contain elevated concentrations of arsenic, which exceed the residential Soil Contaminant Standards in some locations. Furthermore, the site contains an historic borrow pit which is considered likely to

have been backfilled following excavation and may therefore contain uncontrolled fill of unknown origin.

4.73 The Applicant had provided a Remediation Action Plan (RAP) identifying proposed remedial works for the detected contamination within the site and setting out management and monitoring requirements to be implemented during the disturbance of soils so as to mitigate any potential adverse effects on human health and/or the environment. All earthworks on site are to be undertaken in accordance with the RAP as set out in the conditions.

4.74 Provided the remediation of the contaminated areas is carried out in accordance with the provisions of the RAP, we consider any effect on the environment will be adequately mitigated.

District Plan

4.75 Both Ms Donaldson and Ms Bennett referred to a number of objectives and policies. We accept those identified are relevant in relation to the proposal.

4.76 The key provisions identified seek to provide for:

- a vibrant township that meets the economic, social and cultural needs of the district whilst retaining its country town character, sense of community and connectivity with its rural surroundings.
- managing growth by recognising the need for adaptability, efficient use of infrastructure and consolidation within the existing form of settlements.
- maintenance of a settlement's traditional, residential character in Residential 1 zones with a predominance of detached dwellings on individual lots while allowing flexibility in lot sizes within each subdivision.
- a low-density residential environment at the outer edges of larger settlements, with single, detached dwellings on large allotments.
- the recognition and management of the potential for reverse-sensitivity effects caused by residential and other sensitive activities located in close proximity to State Highway 1.
- an integrated transport network for Amberley Township with new residential developments occurring in a way that both recognises and reflects the principles of connectivity underlying the Hurunui District Council's Amberley Roading, Cycleway and Walkway strategies.
- subdivision and development designed to ensure that the adverse effects on the environment are minimised, and the character of an area is maintained.
- allotments that are served or are capable of being adequately served with appropriate levels of infrastructure in order to avoid, remedy or mitigate adverse effects on the environment.
- costs of the effects of new subdivision and development on the district's infrastructure are fully addressed and fairly apportioned.
- subdivision and development that results in a pattern and density of land use which protects, and where appropriate enhances, the character, values and natural and physical resources of the environment.
- the management of development density, particularly in residential zones, through specifying minimum lot sizes and ensuring compliance with those densities through the subdivision process.

- subdivision that is designed to avoid, remedy, or mitigate potential reverse sensitivity effects on other land uses.
  - the safe and efficient use and development of the land transportation network that services the current and future needs of all users.
  - the management of the cumulative effects of multiple lots accessing the roading network at a single access point.
- 4.77 Having considered these provisions, we accept that the proposal will help in the efficient use of infrastructure and consolidation of the existing form of Amberley (Policy 4.7). It also provides flexibility in lot size, although we consider it is difficult to conclude that it maintains traditional residential character in Residential 1 (Policy 4.8) given that a high percentage of the lot sizes proposed would not be considered traditional. However, there is nothing to suggest that this proposal will notably diminish the country town character, sense of community and connectivity with the rural surroundings of Amberley (Objective 4.2).
- 4.78 We consider the proposal meets the intent of Policy 4.12 in enabling the provision of a low-density residential environment at the outer edges of Amberley and sufficiently addresses reverse sensitivity issues associated with SH1 and the rural interface (Policies 4.34 and 5.6).
- 4.79 In our view the deferment of further development at Stage 5 until such time as a connection is provided to SH1 ensures that Policy 4.38 regarding an integrated transport network for Amberley Township is met. Without the provision of this link, we are of a view that there was a reasonable degree of inconsistency with this provision and also potentially with Policy 8.6 relating to a single access point.
- 4.80 We consider subdivision provisions around ensuring appropriate levels of infrastructure (Policy 5.1), a pattern of development that protects environmental values and systems to meet the reasonably foreseeable needs of future generations (Policy 5.3) and which protects, and enhances, the character, values and natural and physical resources (Policy 5.4) are all met.
- 4.81 We consider there is a level of discomfort with Policy 5.5 which appears to us to be reasonably directive in managing *the density of development, particularly in residential zones, through specifying minimum lot sizes and ensuring compliance with those densities through the subdivision process* [emphasis added]. We were somewhat surprised that this wasn't expressly addressed in any detailed way by the planners although we note Ms Bennett reached a contrary position initially and that Ms Donaldson upon questioning accepted that the proposal was not entirely consistent with the policy. In her supplementary evidence Ms Bennett had changed her opinion and in terms of Policy 5.5 relied on the large areas of reserve and open space, providing a mitigating factor in considering that overall, the development was appropriate for the residential zoning of the site.
- 4.82 On the face of it, in our view the proposal is at best inconsistent with Policy 5.5 and on a plan reading of the words contrary to it. While we accept that the large areas of reserve and open space, provides a mitigating factor, that is against the assessment of the density effects rather than an assessment against this policy.
- 4.83 Finally, we are satisfied that the remaining relevant transportation provisions were met.
- 4.84 We consider the proposal as now constituted meets the intent of the relevant objectives and policies, aside from Policy 5.5. However, given the directive nature of Policy 5.5 we find that we are unable to conclude overall that the objectives and policies are met.

### Other Matters

- 4.85 Section 104(1)(c) enables us to take into account other matters we consider relevant and reasonably necessary to determine the application. These are addressed below.

#### Amberley Town Centre Concept Plan

- 4.86 The Amberley Town Centre Concept Plan (Concept Plan) prepared in 2007 was essentially a character study for Amberley in which it was noted that Amberley's country town character was defined by its spaciousness, open vistas, and in particular the low impact from fencing, a predominance of grass, and a frequency of trees. The author, Mr Densem, noted that section sizes of 700m<sup>2</sup> enabled a gardened tree-clad small-town atmosphere to be maintained. Ms Bennett advised us that the Concept Plan informed Plan Change 13, which resulted in the current rules in the Operative District Plan.
- 4.87 While we acknowledge the criticism from Ms Wilkins that the Concept Plan is somewhat dated it has formed the basis of the controls which are currently in place in the District Plan. Given that position we are not of a view that we need to consider the Concept Plan further.

#### Amberley Infrastructure Strategy 2017

- 4.88 The Amberley Infrastructure Strategy 2017 provides strategic direction as to how infrastructure in Amberley township should be developed including water supply, wastewater, stormwater, and a roading and footpath strategy with corresponding objectives and principles. The strategy aligns with Council's 30 year Infrastructure Strategy. We consider that this is particularly relevant to this proposal as it seeks an integrated approach to development in the township including indicative future roading plans which show a link curving around from Amberley Beach Road through the subject site to SH1. Should the link not be provided we consider the proposal would not be consistent with the Infrastructure Strategy, and as we have already identified such an outcome would in our view reduce connectivity within Amberley.

#### Other Mechanisms

- 4.89 We raised with the planners as to whether the resource consent mechanism was in this case the appropriate approach rather than seeking a change to the District Plan due to the significant density standard breaches, the associated non-complying status and Ms Bennett's initial conclusion that the proposal was contrary to the objectives and policies.
- 4.90 Mr Gardner Hopkins stated that there is no need or requirement under the RMA to seek a plan change, if a proposal can meet one or other of the s104D gateway tests and that such an approach would be onerous.
- 4.91 While we acknowledge the above comments and generally agree with the sentiments, we are not convinced that s104D provides the appropriate tests in such instances and we consider the matter in this case relates more to the issue of plan integrity as we have discussed below. Given our findings there the issue is now a moot point.
- 4.92 However, we note that Mr Hope-Pearson as the Applicant considered that there was a disconnect between the property development market and the District Plan. Ms Wilkins questioned the appropriateness of the 700m<sup>2</sup> lot size outlined in the Landscape Character Study (which the basis of the density controls in the District Plan) and Mr Compton-Moen said the 700m<sup>2</sup> rule was a basic tool. These comments all raise the question - are the current provisions of the District Plan outdated or inappropriate? If that is the case, in our view the appropriate way to test that (and potentially fix the situation) would be via a plan change rather than a resource consent and we therefore consider we were justified in asking the question.

### Plan Integrity and Precedent

- 4.93 We consider plan integrity and precedent is a matter for our consideration given our findings on the objectives and policies. The Environment Court has addressed these matters on numerous occasions and Mr Gardner-Hopkins referred to a number of such cases, referred to above in his response.
- 4.94 A non-complying activity in this situation would therefore normally need to show some unusual or unique circumstances in order for a precedent not to be set or bring the integrity of the District Plan into question. In this context we found Mr Gardner Hopkins reference to *the idea of any requirement that a non-complying activity be an exception is "unhelpful"* to run against the tide of other Court decisions which have addressed this issue.<sup>1920</sup>
- 4.95 Ms Donaldson's position was that even if there was an element of precedent, it did not automatically follow that the grant of consent would threaten the integrity of the plan or confidence in its administration. Notwithstanding this she considered the site was unique in that it was the only large undeveloped greenfield area identified for future development within the Amberley Settlement. Therefore, it was unlikely that these factors would be common in other areas of the district and would not create any precedent effects.
- 4.96 We further tested the planners on the precedent issue at the hearing with both accepting that there could be an issue around precedent and plan integrity associated with the breach of the density standards. We note here that there is no tiered system associated with the density standards as a whole. The rules simply go from permitted to non-complying and given what we consider is a reasonably directive policy in 5.6, it is difficult to see how the question of plan integrity and precedent does not come into play.
- 4.97 In terms of uniqueness of distinguishing features, we acknowledge Ms Donaldson's comments above regarding the site being the only large undeveloped greenfield area identified for future development within the Amberley Settlement. While we accept it might be the largest greenfield area, our site visit to the surrounding township showed it was not the only greenfield land left as we viewed undeveloped residentially land off Courage Road. However, we accept development of the Courage Road area may be more difficult due to title fragmentation. The other, and perhaps more unique factors, were highlighted by Ms Smetham and Ms Bennett.
- 4.98 Ms Smetham considered the use of Dry Gully, a natural feature, as part of the proposal was a saving grace and a great asset and unique identity providing plenty of opportunity for passive recreation. We consider within Amberley such a feature incorporated in a subdivision has a degree of uniqueness.
- 4.99 Ms Bennett calculated that if reserve and open space areas (primarily Dully Gully) were taken into consideration in calculating density, this would result in an overall dwelling density of approximately one dwelling per 1,435m<sup>2</sup> and therefore, while the proposed subdivision would result in 80% of the lots being less than 700m<sup>2</sup> in area, overall dwelling density would be offset by the large open space and reserve areas. Again, we accept that this is somewhat unique.
- 4.100 Of further relevance was the information provided by Ms Bennett of other examples of subdivisions within the Amberley township which had breached the density standard since the District Plan became operative in 2018. While none of these breaches were to the same extent

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<sup>19</sup> Harris v Papakura District Council Env Crt A060/05 the Court stated "*In evaluating whether the application is in fact an exception, we must consider whether the proposal possesses "an evident unusual" quality before we can be satisfied that the proposal has no precedent effect*".

<sup>20</sup> Foster v Rodney District Council A123/09 the Court stated "*The question for this Court is: How does this application represent unusual qualities or a true exception within its comparative area?*"

as proposed here, all were in excess of the District Plan standards by some margin. These had been approved in Oakfields, Courage Road, Stages 1-2 of The Clearing and Tekoa Estates.

- 4.101 Concerns with regards to precedent and about like cases being treated alike are seen as matters that can be considered, as the decision of Baragwanath J in *Murphy v Rodney District Council* [2004] 3 NZLR 421 emphasised:

*If A's neighbour B is allowed to subdivide into sites a tenth of the size provided by Change 55 and a third of what Proposed Plan 2000 provisionally provides, the ordinary New Zealander would require some very good reason for refusing similar treatment to A. That is a matter of simple justice.*

- 4.102 In the end we consider the integrity of the District Plan in terms of its density controls in Amberley has been somewhat compromised by the previous consents granted and, in that context, given the directive nature of Policy 5.5, the precedent has already been set. There is a reasonable expectation that applications will be treated similarly, and we consider that is the case here. Having said that we also consider there are some unique features about the site and reiterate that any effects due to higher density lots associated with the proposal have been internalised.

#### Spatial Plan

- 4.103 Ms Bennett provided us with a link to the resources and information currently available to the public in relation to the Amberley Spatial Plan. Having reviewed the limited documentation currently available we do not consider it is particularly relevant to this decision.

#### **Part 2 and Conclusion**

- 4.104 Given the above discussion on precedent and plan integrity we consider an assessment under Part 2 should be undertaken to ensure completeness.
- 4.105 Firstly, with regards to matters under section 7 of the Act, taking into account the zoning of the land, we considered the proposal would, with the landscape treatment proposed and recreational areas available, enhance amenity values and the quality of the environment as sought by sections 7(c) and (f). Further, and perhaps importantly, we consider the proposal will result in an efficient use of the land resource (section 7(b)), and in a way that is more efficient in terms of density than anticipated by the District Plan. In this context we also note that by having a denser development in this situation it offsets to some extent the need to develop on the highly productive land which surrounds Amberley.
- 4.106 We are satisfied overall that the proposal is in accordance with Part II of the Act in promoting sustainable management whilst avoiding or mitigating any adverse effects on the environment. While we accept that the proposal will result in a change in the environment, in our view there would be no effects which would impact in an adverse way which could be seen as any more than minor or which are not appropriately mitigated through conditions.
- 4.107 On that basis we consider the environment overall would be better served by a granting of consent and in this context, we consider it meets the requirements of Part 2 of the Act.

#### **5.0 Determination.**

- 5.1 For the forgoing reasons set out above, having regard to Part II of the Act, and in accordance with the provisions of ss104, s104D and 104B of the RMA, we have determined that resource consents RC220060 and RC220072 for land use and subdivision to create 191 residential lots, six roads to vest, one access lot, five local purpose reserves and balance land in stages at 64

Amberley Beach Road and 187 Carters Road (SH1), Amberley be granted subject to the conditions set out in **Appendix A**.



**Commissioner D Chrystal**  
16<sup>th</sup> August 2023



**Commissioner D Smith**  
16<sup>th</sup> August 2023



**CONDITIONS OF CONSENT RC220060****ALL STAGES****General**

1. The activity shall proceed in general accordance with the plans prepared by Davis Ogilvie (reference no: 42542/301-304, Revision E, dated 06/23), the Masterplan (REVISION B POST HEARING MARKUPS - AMBE-DRG-LA-101, dated 06/23) and details submitted with the application and referenced as RC220060 in Council records. In particular, the activity shall proceed in four stages as follows:

## Stage 3

- 63 fee simple allotments (Lots 124 - 186);
- Three local purpose (utility) reserves to be vested in Hurunui District Council (Lots 3004 - 3006); and
- One road to be vested in Hurunui District Council (Lot 1002).; and
- Balance land.

## Stage 4

- 80 fee simple allotments (Lots 187 - 256 and Lots 259 - 268);
- One road to be vested in Hurunui District Council (Lot 1003);
- One road to be vested in Waka Kotahi New Zealand Transport Agency (Lot 1005)
- Two local purpose (utility) reserves (Lots 3007 and 3008) to be vested in Hurunui District Council; and
- One access lot (Lot 602); and
- Balance land.

## Stage 5

- 46 fee simple allotments (Lots 269 - 270, 279 - 284 and 287 - 324);
- Two roads to be vested in Hurunui District Council (Lot 1004 & 1007);
- One road to be vested in Waka Kotahi New Zealand Transport Agency (Lot 1006); and
- Lot 5000 for future development; and
- Balance land.

## Stage 6

- 2 fee simple allotments (Lots 285 - 286).

2. Design and construction shall be in accordance with the requirements of the Hurunui District Plan and the Hurunui District Council Development Engineering Standard 2017 unless otherwise agreed by Hurunui District Council.

**Easements**

3. All services and accessways serving more than one lot, or traversing lots other than those being served and not situated within an existing or proposed public road, shall be protected by easements shown in a memorandum on the survey plan and duly granted and reserved.

Easements over wastewater lines to be vested in Hurunui District Council and located within private rights of way, shall cover the entire width of the right of way.

#### **Construction management**

4. The Consent Holder shall appoint a single representative who shall be responsible for liaising with Hurunui District Council, submitting information required for consent, preparing engineering plans, monitoring, and supervising construction works, and certifying the works and as-built information. The Consent Holder's representative shall be suitably qualified and experienced and hold the relevant insurances. The person's name and contact details shall be provided to Hurunui District Council.
5. The hours of operation for construction activities shall be limited to 7am to 7pm Monday to Saturday (excluding public holidays).
6. All construction works shall proceed in accordance with the construction noise standard NZS 6803:1999 'Acoustics – Construction Noise'.

#### **Earthworks**

7. All earthworks on site shall be undertaken in accordance with the Remediation Action Plan ("RAP") Version 2 prepared by Davis Ogilvie dated 21 April 2023. Any changes to the RAP shall be submitted to Hurunui District Council for certification, prior to the changes taking effect and the works commencing / recommencing on site.
8. On completion of earthworks, a suitably qualified and experienced contaminated land practitioner shall prepare a Soil Validation Report ("SVR"). The SVR shall be written in accordance with the Ministry for the Environment's ("MfE") Contaminated Land Guidelines No.1 and No.5. A copy of the SVR shall be provided to Hurunui District Council.
9. All earthworks on site shall be undertaken in accordance with the sediment and erosion control and dust management plans certified by Hurunui District Council under **condition 14b**.
10. All earthworks filling over 300 mm deep shall be carried out in accordance with the requirements of NZS 4431:2022 Engineered fill construction for lightweight structures with clean fill and controlled compaction.
11. In the event that an unidentified archaeological site is located during works, the consent holder shall:
  - (a) Cease work immediately at that place and within 20m around the site.
  - (b) Ensure that all machinery is shut down and the area is secured and immediately notify the Heritage New Zealand Pouhere Taonga Archaeologist. Further assessment by an archaeologist may be required.
  - (c) Immediately notify appropriate iwi groups or kaitiaki representative of the discovery if the site is of Māori origin, and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act 2014, Protected Objects Act).
  - (d) If human remains (koiwi) are uncovered, immediately advise the Heritage New Zealand Archaeologist, New Zealand Police, and the appropriate iwi groups or kaitiaki representative and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act 2014, Protected Objects Act). Remains are not to be moved until such time as iwi, NZ Police and Heritage New Zealand have responded.
  - (e) Not resume works affecting the archaeological site and any human remains (koiwi) until Heritage New Zealand has given written approval for work to continue. Further assessment

by an archaeologist may be required. Heritage New Zealand will advise if an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.

- (f) Provide where iwi so request, any information recorded as the result of the find, such as a description of location and content.
12. Prior to commencing work, the consent holder shall ensure that all persons involved in, or supervising works onsite are familiar with the requirements of **condition 11**.
  13. The requirements of **condition 11** shall be clearly displayed and accessible on site at all times during work under this consent.

#### **Engineering Plans**

14. Prior to commencement of any works the following shall be provided to and certified by Hurunui District Council:
  - a) Plans, specifications, and calculations showing all works including standard details.
  - b) A sediment and erosion control and dust management plan (including associated drawings showing proposed stockpile locations).
  - c) A Surface Water Report demonstrating the qualitative and quantitative treatment of on-site stormwater. The report shall include.
    - a. Proposed attenuation system design.
    - b. Proposed treatment system design.
    - c. Proposed surface water pipe network design.
  - d) A copy of Canterbury Regional Council consents for the development.
  - e) A stormwater system operations and maintenance report for the stormwater network including the stormwater management area.
  - f) A design certificate in the form of NZS 4404:2010 Schedule 1A.
  - g) A quality management plan specifying construction and materials testing methodologies and inspection frequencies.
  - h) A landscaping plan (refer to Hurunui District Council's Tree Management Policy). The landscape plan shall also include the existing and proposed planting along the southern boundary of the site to ensure that a 3 m wide planted buffer is provided.
  - i) A street lighting proposal and plan (as prepared in consultation with Hurunui District Council and the power supply authority).

#### **Stormwater**

15. The Consent Holder shall provide to Hurunui District Council a copy of the Canterbury Regional Council consent for the treatment and disposal of surface water from the site.
16. A surface water treatment and disposal system shall be provided that meets the requirements of Canterbury Regional Council.
17. The stormwater system shall include a treatment chain of vortex type gross pollutant trap device(s), an offline first flush treatment basin or device and an attenuation basin.
18. Basin design shall provide for all weather vehicular access to control structures for maintenance.

19. Each roadside lot shall be provided with a kerbside inspection box and kerb outlet and a 100 millimetre lateral terminating 1.0 m inside the main body of the lot.
20. The Consent Holder shall provide details for approval for surface water discharge from lots served by rights of way.
21. A management plan illustrating the operation of the stormwater network including the attenuation basin, as well as the maintenance regime required, shall be submitted to the Hurunui District Council for certification along with the engineering plans. The maintenance regime shall include the requirement that the attenuation basin system is inspected at least once every six months and any accumulated sediment and/or litter is removed to prevent blockages from occurring.
22. The Consent Holder shall be responsible for all maintenance and operating costs of the stormwater management area for a minimum period of two years or as agreed between the Consent Holder and Council following the issue of the 224(c) certificate or for a period following 90% of all residential lots within the subdivision having dwellings constructed and compliance certificates issued under the Building Act 2004, whichever is the shorter period. The operation and maintenance of the utility areas shall be transferred to the Hurunui District Council following this period and approval of the performance and condition of the sites.

#### **Wastewater**

23. Each lot shall be connected to the Amberley wastewater network in accordance with the certified engineering plans.
24. Lots shall have gravity connections or, have provision for a low-pressure pumping system to discharge to the main gravity network. Individual gravity connections shall be 100 mm diameter, laid to a point at least 1 metre inside the lot and at least 1.0 m deep cover for gravity and minimum 0.6 m deep for Low Pressure Sewer (LPS) cover at the lot boundary.
25. Individual LPS sewer laterals shall be provided from 1 m inside the main body of lots to a discharge chamber, or to a pumping main.
26. The owners of lots where a gravity connection is not provided shall be advised that:
  - a) At the time of building on the lot, an approved private in-ground wastewater pump unit (consisting of a heavy duty E/One or Aquatec submersible grinder pump in an underground polyethylene tank, or similar system as approved by Hurunui District Council) shall be installed and connected to the lot's lateral to cater for wastewater disposal from the lot; and
  - b) The owner of the lot shall be responsible for all costs associated with the installation and on-going operation, repairs, and maintenance of the wastewater system on the lot including the service lateral connecting to Council reticulation.
27. **Condition 26** shall be secured by consent notice registered on the records of title of the lot.
28. All wastewater infrastructure laid under proposed roads, vehicle crossings, or rights of way shall be hardfill backfilled to subgrade level (with GAP65, pit run or similar approved granular material).
29. A CCTV survey shall be carried out on all new wastewater lines to be vested in Hurunui District Council.

**Water**

30. Each lot shall be connected to the Amberley water supply network in accordance with the certified engineering plans. Connections shall be a minimum 20 mm diameter and include associated meter boxes and fittings (excluding meters). Meter boxes within rights of way shall be located adjacent to the lot boundary.
31. All water infrastructure laid under roads, vehicle crossings or rights of way shall be hardfill backfilled to subgrade level (with GAP65, pit run or similar approved granular material), and ducted where necessary.

**Roading**

32. Roads shall be constructed in accordance with the certified engineering plans, generally as follows:
- a) General
    - i) Road and right of way minimum widths and layout shall be in general accordance with submitted drawing 42542 Drawing 301-304 Issue E dated 07/23 and Drawing PS1 Issue P1 dated 05/22.
    - ii) Centreline radii shall be an absolute minimum of 20 m and shall provide for a minimum stopping sight distance of 40 m.
    - iii) Road gradients shall be no flatter than 1:250 (0.4%).
  - b) Footpaths
    - i) Footpaths shall be a minimum of 1.5 m width.
    - ii) Mobility crossings including tactile pavers shall be provided at intersections.
    - iii) Footpaths shall be constructed with a 100 mm thick layer 20 MPa concrete on a minimum of 50 mm AP20 on a suitable subgrade, unless otherwise approved by Hurunui District Council.
    - iv) Concrete construction shall be in accordance with NZS 3109:1997 Concrete Construction
      1. Surface finish shall be Class U5 (screeded, floated, then hard or soft broomed to provide shallow texture).
      2. Concrete shall have a black oxide additive at a rate of 2kg/m<sup>3</sup> of concrete unless noted and agreed otherwise with the Hurunui District Council.
      3. Path edges and expansion/contraction joints shall have a 50 mm width smooth trowelled finish.
  - c) Berms
    - i) Grass berms shall consist of screened topsoil lightly compacted and raked to a minimum depth of 75 mm. The topsoil shall be free of clods, stones, and other debris. The areas shall be evenly sown with grass seed mix at a rate of 30 grams grass seed / square metre. The seeded surface shall be lightly rolled and watered.
    - ii) Grass seed shall consist of Chewings Fescue 'Dawson Ref 70% and Brown Top NZ Certified 30%
  - d) Vehicle crossings
    - i) Rights of way and access legs shall be provided with a vehicle crossing in accordance with the certified engineering plans.
33. Benkelman Beam testing shall be carried out on all roads and rights of way prior to surfacing. Tests shall comply with the Hurunui District Council Development Engineering Standard 2017.

**Street Lighting**

34. Approved LED street lighting shall be installed in accordance with AS/NZS1158 and the certified engineering plans.

**Power and telephone**

35. Each lot shall be provided with the ability to connect to a telecommunications and electrical supply network at the road boundary of the lot.

**Landscaping**

36. Landscaping shall be established in accordance with the certified landscaping plans.

**Works inspections**

37. Works inspections will be carried out to ensure the work is completed in accordance with the certified plans and specifications and to Hurunui District Council standards. These inspections will be undertaken by Council engineering staff for a fee as defined in Council's Schedule of Fees and Charges, payable by the Consent Holder. The Consent Holder shall notify Council at least two working days prior to commencing various stages of the works to enable inspections to be carried out. Any other works directly associated with the development shall also be charged at the rates defined in Hurunui District Council's Schedule of Fees and Charges. The minimum level of inspection shall be as follows:

- Engineering/landscaping plan checking and certification – prior to commencement of works.
- Roads, rights of way and vehicle crossings:
  - following excavation to subgrade / prior to placement of sub-base metal.
  - following placement of sub-base metal / immediately prior to pouring of kerbs.
  - following compaction of basecourse metal / immediately prior to surfacing.
- Footpaths:
  - following excavation to subgrade / prior to placement of sub-base metal.
  - following compaction of basecourse metal / immediately prior to surfacing.
- Wastewater, stormwater and water reticulation:
  - water or air pressure testing of pipes including laterals and manholes.
  - bedding / prior to backfilling of trenches.
  - disinfection and flushing of lines.
- Power and telecom trenches:
  - bedding / prior to backfilling of trenches.
- Whole of works – prior to issue of a section 224(c) certificate.

Where additional inspections are required because of faulty workmanship or work not being ready contrary to the receipt of a notification, such inspections will be carried out for an additional fee, in accordance with Hurunui District Council's Schedule of Fees and Charges.

**Engineering Completion**

38. On completion of works the following shall be provided to Hurunui District Council:
- a) Completion certificates in the form of NZS 4404:2010 Schedules 1B, 1C, and (for any filling over 300mm deep) 2A;
  - b) Electronic plans in a suitable format showing all works and information as detailed in NZS 4404:2010 Schedule 1D and using NZTM2000 projection with levels to NZGD2000

(Lyttleton 1937) datum. Plans shall be certified by a suitably qualified person stating that they are a true and accurate record of what has been constructed.

- c) Written confirmation from telecommunications and electrical suppliers that each lot has been connected to the respective networks.
- d) Copies of all quality assurance testing and inspection records, including CCTV footage of the new drainage lines to vest in Hurunui District Council; and
- e) A schedule of quantities for all completed works to be vested in Hurunui District Council (to enable valuation of assets to vest and maintenance bonds).

#### **Maintenance Period**

39. The Consent Holder shall be responsible for the maintenance of all subdivision and associated works for a period of 12 months following the date of the issue of the section 224(c) certificate. A bond equal to 5% of the cost of construction works as calculated under **condition 38(e)** shall be lodged with Hurunui District Council for the same period, and maintenance shall include repair of any damage or defects in any of the works or services, however caused, associated with the development of the subdivision.

#### **STAGE 3 - Lots 124 – 186, Lots 3004 – 3006, Lot 1002, and balance land.**

##### **Roading**

40. Lot 1002 shall be vested in Hurunui District Council as road.

##### **Reserves**

41. Lots 3004 to 3006 shall be vested in the Hurunui District Council as local purpose reserves (utility).

##### **Fencing**

42. Open post and rail fencing, including a mowing strip shall be constructed along the boundaries of Lots 124, 126, and 163-167, 150-152, 176-177 and 179, where they adjoin reserve (Lots 3004-3006).
43. Open post and rail or post and wire fencing shall be constructed along the south boundary of Lots 3005-3006 and Lots 167-176.
44. A fencing covenant shall be registered against the records of title for proposed Lots 124, 126, and 163-167, 150-152, 176-177 and 179 to ensure that Hurunui District Council is not liable for fencing costs adjoining any reserve (Lots 3004-3006). The Council's solicitor shall prepare the covenant and any costs of registration shall be met by the consent holder.

##### **Landscaping**

45. The 3.0 m wide landscaping buffer along the southern boundary of Lots 167-176 shall be maintained by the lot owners with any dead, damaged, or diseased plants being immediately replaced with the same or similar species on failure.
46. **Condition 45** shall be secured by consent notice registered on the records of title for Lots 167-176.

##### **Water**

47. A min DN180 water main shall be installed that provides reticulation through the development connecting the main in State Highway 1 through to the adjacent 'Clearing Stage 1-2' site.

**STAGE 4 – Lots 187 – 256, Lots 259 – 268, Lot 1003, Lot 1005, Lots 3007 - 3008, Lot 602, and balance land.**

**Amalgamation condition**

48. That Lot 602 (Legal Access) hereon be held as to three undivided one-third shares by the owners of Lots 244, 245 and 246 hereon as tenants in common in the said shares and that individual Records of Title issued in accordance therewith (CSN Request 1793904).

**Roading**

49. Lot 1003 shall be vested in Hurunui District Council as road.
50. Lot 1005 shall be vested in Waka Kotahi New Zealand Transport Agency as road.

**Reserves**

51. Lots 3007 and 3008 shall be vested in the Hurunui District Council as local purpose reserves (utility).

**Fencing**

52. Open post and rail fencing, including a mowing strip shall be constructed along the boundaries of Lots 219-227, 229-231, 246-250 and 252 and Lot 602, where they adjoin reserve (Lots 3007-3008) and along the eastern boundary of Lot 253.
53. Open post and rail fencing shall be constructed along the south boundary of Lot 3007.
54. A fencing covenant shall be registered against the records of title for proposed Lots 219-227, 229-231, 246-250 and 252-256 to ensure that Hurunui District Council is not liable for fencing costs adjoining any reserve (Lots 3007-3008). The Council's solicitor shall prepare the covenant and any costs of registration shall be met by the consent holder.

**Acoustic mitigation**

55. A 3.0m high acoustic barrier shall be constructed along the boundary of State Highway 1 and Lots 259 – 268 and balance land (Lots 269, 270 and 279). The acoustic barrier shall consist of a 1.0m high by approximately 5.5m wide earth bund and a 2.0m high acoustic fence. The acoustic fence shall conform to the following minimum specifications:
- Surface mass – at least 10 kg/m<sup>2</sup>
  - The fence shall be comprised of overlapping timber palings with a sleeper rail connecting the base of the palings to the ground. The timber palings shall have a minimum thickness of 25 mm.
56. A 2.0m high acoustic fence shall be constructed along the southern boundary of Lots 253-256. The acoustic fence shall be constructed in accordance with the specifications as set out in **condition 55**.
57. The acoustic fence required by **conditions 55 and 56** shall be continuous and maintained with no gaps or cracks.
58. Any dwelling or habitable building on Lot 256 and Lots 259 – 268 shall be single storey. If the dwelling is to be located less than 20m from the nearest marked traffic lane of State Highway 1, the design of the dwelling shall be reviewed by an acoustic expert to ensure that vibration levels within the dwelling will not exceed 0.3 mm/S<sub>Vw95</sub>.
59. Any dwelling or habitable building on Lots 237 – 256 and Lots 259 - 268 shall be designed, constructed, and maintained to achieve a design noise level of 40 dB L<sub>Aeq (24h)</sub> inside all habitable spaces. The 40 dB L<sub>Aeq (24h)</sub> shall take into account the future permitted use of State Highway 1 as



well as the noise mitigation achieved through the construction of the acoustic barriers as required by **conditions 55 and 56**. If windows must be closed to achieve the design noise level of 40 dB  $L_{Aeq(24h)}$ , the dwelling shall be designed, constructed, and maintained with a ventilation and cooling system. The ventilation and cooling system shall meet Clause G.04 of the New Zealand Building Code for habitable spaces.

- 60. **Condition 57** shall be secured by consent notice registered on the records of title for Lots 253-256 and 259–268.
- 61. **Condition 58** shall be secured by consent notice registered on the records of title for Lot 256 and Lots 259 – 268.
- 62. **Condition 59** shall be secured by consent notice registered on the records of title for Lots 237 - 256 and Lots 259– 268.

#### **Landscaping**

- 63. Landscaping shall be established on the acoustic bund in accordance with the certified landscaping plans.
- 64. The Consent Holder shall be responsible for the maintenance of the acoustic barrier and the associated landscaping located on the western side of the acoustic fence for a period of two years following the issue of the section 224(c) certificate.
- 65. The lot owner shall be responsible for the maintenance of the landscaping on the acoustic bund. Any dead, damaged or diseased plants shall be replaced with the same or similar species as soon as practicable.
- 66. There shall be no direct vehicular access onto State Highway 1.
- 67. **Conditions 65 and 66** shall be secured by consent notice registered on the records of title for Lots 259-268.

#### **STAGE 5 and 6 – Lots 269–270, Lots 279–324, Lot 1004, Lot 1006, 1007, and Lot 5000**

##### **Deferment**

- 68. The section 224(c) certificates for Lots 269-270, Lots 279–324 and Lot 5000 shall not be issued until such time that a road link is formed to connect to the new intersection on State Highway 1 and that intersection is fully operational.

##### **Roading**

- 69. Lots 1004 and 1007 shall be vested in Hurunui District Council as road.
- 70. Lot 1006 shall be vested in Waka Kotahi New Zealand Transport Agency as road.

##### **Acoustic mitigation**

- 71. A 2.0 metre high acoustic fence shall be constructed along the northern boundary of Lots 279 and Lots 285-286, and the western boundary of Lots 280 and 285. The acoustic fence shall be constructed in accordance with the specifications as set out in **condition 55**.
- 72. The acoustic fence required by **condition 71** shall be continuous and maintained with no gaps or cracks.

73. Any dwelling or habitable building on Lots 269-270 and 279 shall be single storey. If the dwelling is to be located less than 20m from the nearest marked traffic lane of State Highway 1, the design of the dwelling shall be reviewed by an acoustic expert to ensure that vibration levels within the dwelling will not exceed 0.3 mm/s<sub>Vw95</sub>.
74. Any dwelling or habitable building on Lots 269 - 270 and 279 – 295, and Lots 298 - 299 shall be designed, constructed, and maintained to achieve a design noise level of 40 dB L<sub>Aeq</sub> (24h) inside all habitable spaces. The 40 dB L<sub>Aeq</sub> (24h) shall take into account the future permitted use of State Highway 1 as well as the noise mitigation achieved through the construction of the acoustic barriers as required by **conditions 55 and 71**. If windows must be closed to achieve the design noise level of 40 dB L<sub>Aeq</sub> (24h), the dwelling shall be designed, constructed, and maintained with a ventilation and cooling system. The ventilation and cooling system shall meet Clause G.04 of the New Zealand Building Code for habitable spaces.
75. The lot owner shall be responsible for the maintenance of the landscaping on the acoustic bund. Any dead, damaged or diseased plants shall be replaced with the same or similar species as soon as practicable.
76. There shall be no direct vehicular access onto State Highway 1.
77. **Condition 72** shall be secured by consent notice registered on the records of title for Lots 279 - 280 and balance land (future Lots 285-286).
78. **Conditions 57, 73, 75 and 76** shall be secured by consent notice registered on the records of title for Lots 269-270 and 279.
79. **Condition 74** shall be secured by consent notice registered on the records of title for Lots 269 - 270 and 279– 295, and Lots 298 - 299.

## ADVICE NOTES

### Works inspections

Works inspections are an important component of the works. Please ensure contractors are aware of the inspection requirements outlined in this consent.

### Works Access Permit

A Works Access Permit needs to be obtained prior to any works commencing within any road reserve. This can be applied for online at [www.beforeyoudig.co.nz](http://www.beforeyoudig.co.nz) or by ringing 0800 248 344. Part of this process involves preparation and approval of a Traffic Management Plan.

### High speed broadband readiness

It is recommended that allowance is made for highspeed broadband connections as part of this development (the cost of installing the necessary ducting, cabling, and other infrastructure for this is significantly higher if retrofitted instead of being installed at subdivision stage).

### Power and telephone

There are often significant delays with getting telecom and power service provider approvals and signoffs. The consent holder is advised to contact the relevant service providers early on in the process.

### Development contributions

Development contributions are required to be paid for each new lot on the plan of subdivision or for each new unit of demand constructed. Development contributions must be paid prior to the issue of a certificate pursuant to section 224 of the Resource Management Act 1991 for development contributions charged as part of a resource consent. These contributions are currently:

Reserves

\$620 for the Queen Mary Development

\$1,850 for Amberley Township Reserves

\$2,120 for Amberley Rating Area Reserves

Network Infrastructure

\$3,240 for District Sewer

\$1,630 for District Urban Water

\$1,100 for Amberley Stormwater

(Please note that a separate connection fee applies in addition to the above costs)

Community Infrastructure

\$660 for Amberley Walking & Cycling Routes

resulting in a total of \$11,220 for each new unit of demand.

Note: The development contributions payable are those shown in the current Hurunui Long Term Community Plan (The Long Term Council Community Plan developed by the Hurunui District Council in compliance with the Local Government Act 2002).

While development contributions are not required to be paid until immediately prior to the issue of a certificate pursuant to section 224 of the Resource Management Act 1991, please note the following:

- If a 224 certificate is applied for within 2 years of the subdivision approval, or the development contributions are paid within the above period, the development contributions payable are those indicated in the subdivision decision above.
- If the development contributions are not paid within the two-year period, then the development contributions payable are those indicated in the Hurunui Long Term Community Plan current at the time the 224 certificate is applied for. These may vary from those indicated above.

**Please note that there are no conditions relating to the land use consent RC220072. Conditions relating to contaminated land have been incorporated into the conditions of the subdivision consent.**