

BEFORE Two independent commissioners
appointed by the Hurunui District Council

AND

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER of a publicly notified application under
section 95A

BETWEEN **UWC Limited**

The Applicant

AND

Hurunui District Council

Consent Authority

SECTION 42A OFFICERS REPORT PREPARED BY H BENNETT

INTRODUCTION

1. My name is Helga Bennett. I am employed as a Senior Planner by the Hurunui District Council (“the Council”). My qualifications include a Bachelor of Science in Geography and a Graduate Diploma in Rural Studies both from Massey University. I am an Associate member of the New Zealand Planning Institute.
2. I have been employed by the Council since 2002. During this time, I have primarily been involved in processing non-notified and notified resource consent applications and undertaking various policy projects including notifying and reporting on plan changes.
3. This report is prepared in accordance with section 42A of the Resource Management Act 1991 (“RMA”). The purpose of this report is to bring to the attention of the Hearing Panel all the relevant factual information and issues which should be considered in deliberating on the application sought by UWC Limited (“the Applicant”). The report provides an assessment of the proposal in accordance with the relevant matters specified in the RMA.
4. I confirm I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and I shall comply with this Code of Conduct.
5. For the avoidance of doubt, it should be emphasised that any conclusions reached, or recommendations made in this report are not binding on the Hearing Panel and it should not be assumed that the Hearing Panel will reach the same conclusions or recommendations having considered all the evidence brought before them at the hearing.
6. I have visited the application site prior to the preparation of this report and am familiar with the surrounding environment.
7. The application includes a number of technical reports. The full application is available for viewing via the Hurunui District Council’s webpage www.hurunui.govt.nz
8. This report is one of three reports prepared for the Council addressing this resource consent application. The other two reports have been prepared by Nikki Smetham of Rough Milne Mitchell Landscape Architects in relation to a landscape matters (attached as **Appendix A**), and Hayden Kent in relation to engineering matters (attached as **Appendix B**).

PROPOSAL

Subdivision consent (RC220060)

9. Consent is sought to subdivide a 32.7344 hectare 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 multi-staged residential development known as ‘The Clearing’ (refer to Figure 1). Stages 1-2 were granted subdivision consent under resource consent RC210185 which was approved on 28 May 2022. The current proposal will create Lots 124-324 for residential activities with lots ranging in size from 400 m² to 1,028 m² and a balance lot (Lot 5000). Lots 1002-1004 and Lot 1007 will be vested in the Council as road with Lots 1005 and 1006 to be vested as road with Waka Kotahi New Zealand Transport Agency. Lot 602 is an access lot. Lots 3004-3008 will be set aside as local purpose reserves (utility) to be vested in the Council.

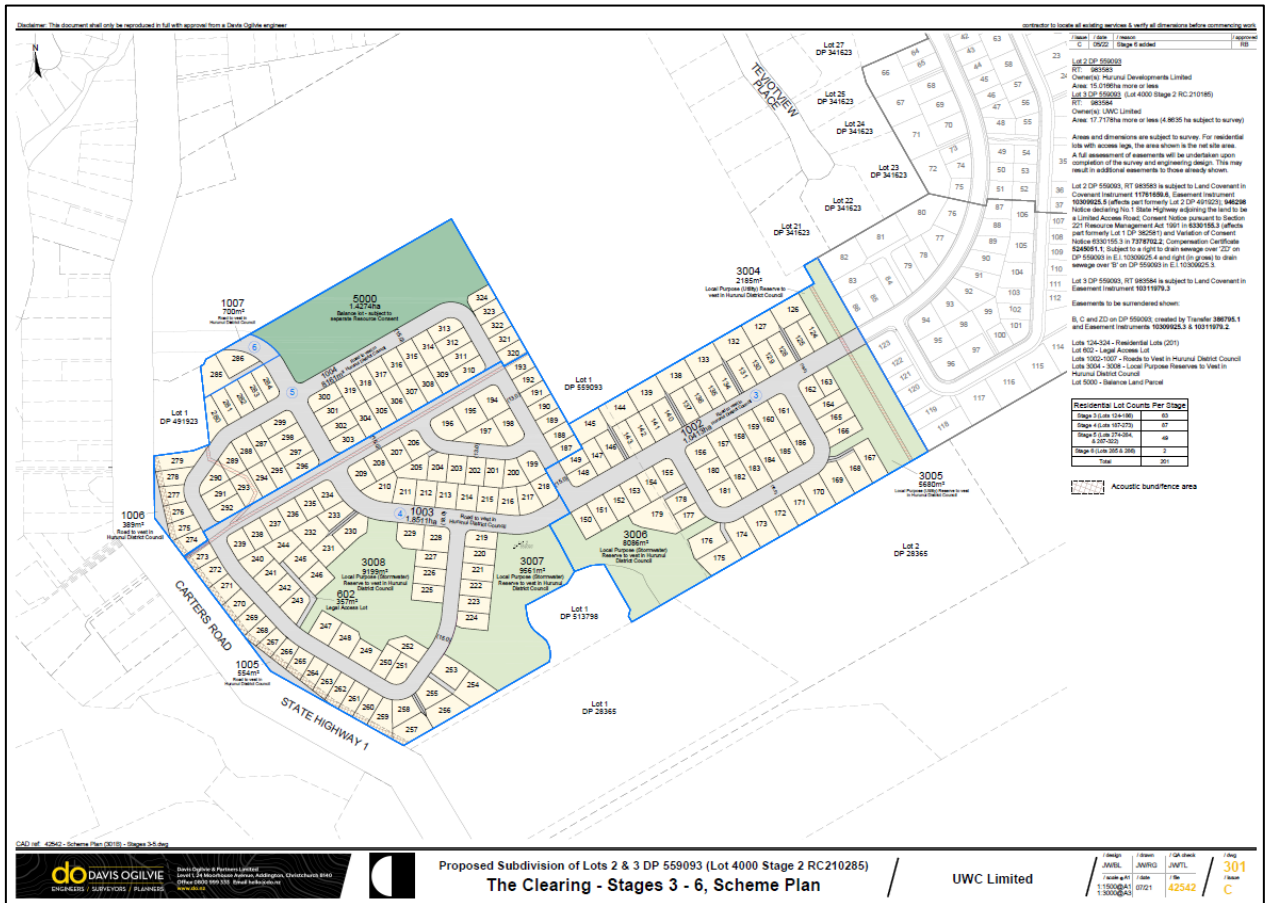


Figure 1: Overall subdivision scheme plan

10. The subdivision will be progressed in four stages as follows:

Stage 3

- 63 fee simple allotments with areas ranging between 400 m² and 1,028 m² (Lots 124 to 186);
- Three local purpose (utility) reserves to be vested in Council (Lots 3004 to 3006); and
- One road to be vested in Council (Lot 1002);

Stage 4

- 87 fee simple allotments with areas ranging between 400 m² and 771 m² (Lots 187 to 273);
- Two roads to be vested in Council (Lots 1003 and 1005);
- Two local purpose (utility) reserves (Lots 3007 and 3008); and
- One access lot (Lot 601).

Stage 5

- 49 fee simple allotments with areas ranging between 400 m² and 603 m² (Lots 274 to 284 and 287 to 322);
- Two roads to be vested in Council (Lots 1004 and 1006); and
- One balance allotment with an area of 1.14274 ha (Lot 5000) for future development.

Stage 6

- 2 fee simple allotments with areas ranging between 678 m² and 731 m² (Lots 285 to 286);
- Two roads to be vested in Council (Lots 1003 and 1005);
- Two local purpose (utility) reserves (Lots 3007 and 3008); and
- One road to be vested in Council (Lot 1007).

11. The proposed road network forms a continuation of the internal road network established as part of Stages 1 and 2, with the road providing a thoroughfare through the development. The Stage 3-6 development is proposed to access Carters Road (State Highway 1 (SH1)) via a planned new road and intersection to be established north of the application site at 175 Carters Road. The internal road network provides connections to the north via an extension of the main spine road east to west, which ultimately connects to SH1. Waka Kotahi has agreed in principle to proposed Stages 3-6 of the development (including traffic associated with the future development stage). This agreement and the road network are further detailed in the Traffic Impact Assessment which forms Appendix 5 of the application. The Stage 3-6 development will also access Amberley Beach Road through the internal road network approved for the Stage 1-2 development.
12. The proposal incorporates two stormwater management areas (Lots 3006 and 3008) and a number of greenways which connect to various parts of the development.
13. The proposed development will result in bulk earthworks in order to prepare the site for future development. The volumes comprise approximately 51,600 m³ of cut and 41,798 m³ of material to be deposited, resulting in a surplus of 9,802 m³. The Applicant notes that the finished site levels and earthworks volumes will be confirmed prior to construction.

Land use consent (RC220072)

14. Land use consent is also sought under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health to undertake earthworks on a contaminated site.

Site and locality

15. The 32.7344 hectare site is comprised of two properties located at 64 (formerly 52) Amberley Beach Road and 187 Carters Road. The property located at 64 Amberley Beach Road is currently subject to site preparation works for Stages 1 to 2 which were approved under resource consent RC210185. The property at 187 Carter Road is currently utilised for grazing and contains some cattle pens in the southern corner of the property.
16. An abandoned river meander known as Dry Gully forms incised channels through the southern half of the site. The site is otherwise generally flat lying, with an overall gradient toward the east. An approximately 0.2 ha area of dense bush (eucalyptus and thorn bushes) covers a hummocky area of ground on the western side of the site near the entrance off SH1. A drainage channel (Teviot's Drain) passes through the centre of the site.
17. The application site forms part of a larger greenfield area identified for future residential development. The existing environment in the general vicinity of the site is characterised by agricultural use, rural residential allotments with existing dwellings and residential development.
18. The application site is located on the southern outskirts of the Amberley Township. The site is bounded to the west by SH1, to the south by farmland and to the east by residentially zoned land currently under development as part of stages 1-2 of The Clearing. The land to the north 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.
19. The section of SH 1 adjacent to the application site is a limited access road (LAR). The state highway is the main transit route along the east coast of the South Island. The application site is located at the

southern approach to, or departure south from the Amberley Township. This section of SH1 is characterised by views to the east of wide mown grass verges, established planting alongside a sweeping 'S' bend in the road effectively slowing traffic approaching the township.

20. The Oakfields subdivision, Brackenfields Shopping complex and the Amberley Town Centre are located north of Amberley Beach Road.

Planning Framework

Hurunui District Plan

21. The Hurunui District Plan ("District Plan") was made operative on 21 June 2018.
22. The application site is zoned Residential 1A in the Amberley Settlement in the Hurunui District Plan. The planning maps indicate that there is a building restriction line along the south-eastern boundary of the site where it adjoins the Rural Zone.
23. I consider the following rules in Chapter 4 of the District Plan are relevant to the proposal:

Chapter 4 - Settlements

4.6 Standards for permitted activities

3. Yards

(a) *Minimum yard requirements are:*

Front yard – 4.5 m

All other yards – 1.0 m

(b) *[...]*

[...]

(e) *Where any building or structure is required to be set back from a boundary or other specified feature, the following controls shall apply:*

(i) *No building shall be erected in any yard or setback area; and*

(ii) *Where a new road or road widening is proposed under this District Plan, any front yard requirement shall be measured as though the proposed road boundary were the front boundary.*

7. Noise

(a) *[...]*

[...]

(d) *Construction noise – construction noise shall not exceed the recommended limits in, and shall be measured and assessed in accordance with, the provisions of NZS 6803P:1999 "Acoustics – Construction Noise".*

8. Temporary activities

(a) *Temporary activities ancillary or incidental to building and construction work are limited either to the duration of the project or for a period not exceeding 24 months, whichever is the lesser, except that the maximum duration of any temporary storage of building materials is 6 months.*

24. As noted above, there is a planning overlay on the site showing that there is a 7.5 m building restriction line from the south-eastern boundary of the site. I consider that Rule 4.6.3(e) applies to the building restriction line and as such no buildings are to be established within this setback area. I consider this

rule may be relevant in relation to some of the undersized lots located along the southern boundary, particularly with respect to being able to site a complying dwelling on the lot.

25. In terms temporary activities, the District Plan provides for temporary construction effects as a permitted activity under Rule 4.6, subject to meeting the standards under Rule 4.6.7 and 4.6.8. I note that the rule refers to the 'duration of the project' whereas the Applicant has advised that the construction period would not exceed a period of 24 months for each stage. My interpretation of the rule is that the proposal would not comply if construction were to exceed a total period of 24 months (for all stages). In this regard, I consider that the following rule is relevant:

4.8 Discretionary activities

Any activity below is a discretionary activity:

1. [...]
2. *Any permitted activity that does not comply with one or more of the standards for permitted activities under Rule 4.6 and is not listed as a restricted discretionary or non-complying activity.*

26. If the Hearing Panel were of a similar view, then this would mean that a land use consent would technically be required to exceed the 24 month construction period. However, given that the requirement for a land use consent in relation to this breach has not previously been identified, I consider that the pragmatic approach would be to consider the effects of the temporary construction effects under the subdivision consent application.

27. With respect to Chapter 5- Subdivision, I consider that the following provisions are relevant to the proposal:

Chapter 5 – Subdivision

Part B – Rules for subdivision in all other zones

5.5.8 Controlled activities

Unless specified as a restricted discretionary activity, a discretionary activity, a non-complying activity, or a prohibited activity, any subdivision that complies with the standards for controlled activities in Rule 5.5.9 is a controlled activity.

5.5.9 Standards for controlled activities

1. *Lot sizes*

The minimum allotment area requirements for the subdivision of land are to calculated on the net allotment are (exclusive of any access) as follow:

Zone of management area	Minimum lot area	Minimum average lot area
<i>Residential 1A</i>	<i>400 m²</i>	<i>700 m²</i>
<i>Residential 1A Zone, for lots created which adjoin Amberley Beach Road, or a Residential 3 Zone or Rural Zone [...]</i>	<i>1,100 m²</i>	

- (a) *In the Residential 1A Zone, only 20% of the lots in any subdivision may be less than 700 m² in area.*
- (b) *For any zone that has a minimum average lot area specified, any lot that is counted toward the average lot area but is more than twice the size of the minimum lot area specified shall be secured with a covenant or similar legal instrument to prevent the further subdivision or the erection of more than one dwelling on that lot.*

- (c) [...]
- (d) *For the subdivision of allotments in the Residential 1A Zone, the minimum allotment area for any allotment created which adjoins the south-eastern boundary of the Residential 1A Zone south of Amberley Beach shall be 1,100 m².*
- (e) *That landscaping is provided on any allotment adjoining the southern boundary of the Residential 1A Zone south of Amberley Beach Road.*

2. *Shape factor and frontage*

- (a) *Each allotment must be able to contain a square measuring 15 m by 15 m clear of any easement or water body, excluding an proposed allotment for multiple unit dwellings in the Business Zone at Hanmer Springs or any allotment within the retirement village in Morford Estate, in the location shown on the Outline Development Plan in Appendix 5.1.17.*
- (b) [...]

3. *Services*

- (a) *Any new allotment shall be served by a public water reticulation supply system.*
- (b) *Any allotment created shall comply with New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008.*
- (c) *Any new allotment created shall be served by a reticulated sewerage treatment and disposal system.*
- (d) *Any application for subdivision consent in respect of land in any Residential, Business or Industrial Zone in Amberley, shall include a stormwater management plan for the site showing how the rainfall run-off from the site from a 2% Annual Exceedance Probability (AEP) rainfall event will be detained on site. The stormwater management plan shall include the following information:*
 - (i) *The estimated rainfall run-off from a 2% AEP rainfall event from the site, once fully developed;*
 - (ii) *Where, how and for what length of time the rainfall run-off is to be detained and the anticipated rate of release in to the Amberley drainage system;*
 - (iii) *The anticipated rate of discharge of stormwater in to the Amberley drainage system and any possible surface flood flow paths for a rainfall run-off exceeding a 2% AEP rainfall event; and*
 - (iv) *Any proposed restrictions on site coverage or hard standing on the site to mitigate rainfall run-off.*

4. *Access*

- (a) *Any new allotment and balance allotment must have access to a legal road which is formed and maintained and complies with the vehicle access standards in Rule 8.4.3.4.*

28. The proposal does not comply with the standards for controlled activities in terms of lot sizes i.e. more than 20% of the lots in the subdivision will be less than 700 m² in area. In addition, the lots adjoining the south-eastern boundary of the site adjoining the Rural Zone will be less than 1,100 m² in area. There are also nineteen lots (Lots 124, 125, 128 – 131, 134 – 137, 140 –143 and 280 - 284) that do not comply with the shape factor requirement. Accordingly, the subdivision is not a controlled activity.

29. The relevant restricted discretionary activity provisions are set out below:

5.5.11 Restricted discretionary activities

- 1. *The following activities are restricted discretionary activities, provided they meet the relevant standards;*
 - (a) *Subdivision that results in the creation of three or more lots (including balance lots), whether or not as a staged development, or further subdivision of a Computer Freehold Register (Certificate of title) where the parent Computer Freehold Register (Certificate of title) has*

been subdivided into three or more allotments (including any balance lots) since 18 August 2003.

Standards and terms

- (i) The subdivision must comply with all the standards specified for controlled activities in Rule 5.5.9;*
- (ii) All subdivisions of more than 40 lots shall be carried out in stages of not more than 40 lots; and*
- (iii) For any subdivision of more than 20 lots, an outline development plan is prepared.*

30. The restricted discretionary provisions for multiple lot subdivision require that the subdivision must comply with all the standards specified for controlled activities in Rule 5.5.9 and that the subdivision is not carried out in stages of more than 40 lots. As noted above, the subdivision will not comply with the controlled activity standards with respect to lot sizes and the shape factor requirement. In addition, the subdivision will be carried out in stages of more than 40 lots. Accordingly, the subdivision is not a restricted discretionary activity. The following discretionary activity provisions are relevant:

5.5.12 Discretionary activities

1. *The following activities are discretionary activities, provided they meet the relevant standards:*

- (a) [...]*
- (b) Subdivision of contaminated land that complies with the standards for controlled activities in Rule 5.5.9.*

31. The proposal will result in the subdivision of contaminated land, however the proposal does not comply with the standards for controlled activities. Therefore the proposal is not a discretionary activity. The following non-complying activity standards are relevant:

5.5.13 Non-complying activities

The following are non-complying activities:

- 1. [...]
- 2. *Subdivision which does not meet any one or more of the following:*
 - (a) Subdivision that is listed as a restricted discretionary activity under Rule 5.5.11.1(a) and does not meet the listed standards.*
 - (b) [...]*
 - (c) In Amberley Township any subdivision that does not comply with any of Rules 5.5.9.1 or 5.5.9.1(a) (allotment sizes), Rule 5.5.11.1 (multiple lot subdivisions) and Rule 5.5.12 (discretionary activities).*
 - (d) Subdivision that does not comply with any of the other standards and terms for controlled activities under Rule 5.5.9.*

32. As noted earlier, multiple lot subdivisions are listed as restricted discretionary activities under Rule 5.5.11.1(a), however the proposal does not meet the listed standards. Furthermore, the subdivision is located within the Amberley Township and will not comply with Rules 5.5.9.1, 5.5.9.1(a) (allotment sizes) and Rule 5.5.11.1 (multiple lot subdivisions). In addition, the proposal will not comply with the shape factor standards. Accordingly, the proposal is a non-complying activity in terms of Rule 5.5.13.2(a), (c) and (d) of the District Plan.

33. The rules in Chapter 8 of the District Plan are also relevant to the subdivision proposal.

Chapter 8 – Transportation

8.4.3 Standards for permitted activities

- 3. *Minimum access way and roading requirements:*

(d) *In Settlement Zones the minimum legal width of any road reserve must be 20 m for any road classified as a local road and 10 m greater than the required carriageway width for any road with any other classification (see Appendix 8.1 for road classifications);*

(e) *In Settlement Zones any new public road shall have a footpath formed on both sides.*

8.4.5 Discretionary activities

1. *Any activity under Rule 8.4.2 that does not meet the conditions for permitted activities in Rule 8.4.3, and is not otherwise a restricted discretionary activity, is a discretionary activity.*

34. The proposed subdivision does not comply with the road width and footpath requirements under Rule 8.4.3.3 of the District Plan. As such the proposal is a discretionary activity in terms of Rule 8.4.5.1 of the District Plan.

Overall activity status

35. Overall, I consider the proposal is a **non-complying** activity in terms of Rule 5.5.13.2(a), (c) and (d) of the District Plan.

Resource consents required from the Canterbury Regional Council

26. The proposed site works provide for mass earthworks, a change in surface water catchments, and abandoning of a surface water attenuation pond provided for within the Amberley Global Stormwater Management Consent (CRC082988). The proposal also calls for the discharge of surface water directly into ground water, and a treatment chain not specified by the Global Consent. Furthermore, the site includes an activity identified in the Hazardous Activities and Industries List (“HAIL”) which is not covered by the Global Consent.

27. Due to these departures from the Global Consent, the Council considered it appropriate for the applicant to obtain site specific surface water discharge consent from the Canterbury Regional Council (“CRC”) for all the proposed surface water discharges from the development and that application for these consents should be made, prior to proceeding to a hearing in order to ensure that surface water could be adequately managed and discharged as a result of the development of the site. The application was subsequently deferred under section 91 of the RMA on 20 October 2022.

28. On 16 March 2023, Council received a letter from the Applicant advising that the following resource consent applications had been made to CRC:

- CRC233912 – To discharge construction-phase stormwater to land
- CRC233913 – To discharge operational-phase stormwater into surface water
- CRC233914 – To take groundwater for dewatering purposes
- CRC233915 – To discharge groundwater for dewatering purposes
- CRC233916 – To install a structure in a culvert
- CRC233917 - To undertake earthworks over an aquifer

29. The Applicants letter requested that Council proceed to a hearing regardless of whether CRC had been given the opportunity to assess the applications and determine whether these would be processed on a non-notified basis or not. In their letter the Applicant accepts the risk that the Hearing Panel may have concerns about granting the Councils consent without the CRC applications having progressed further. They note however that this is the Applicant’s choice (and its expert advice is that the risk to it of proceeding is low).

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

36. The National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (“NESCS”) came into effect in January 2012. The NESCS applies when a person wishes to carry out an activity described in regulation 5(2) to 5(6) on a piece of land described in regulation 5(7) or 5(8).
37. CRC’s Listed Land Use Register (“LLUR”) identifies the property at 64 (previously 52) Amberley Beach Road as having had an activity identified in the HAIL undertaken on it. The LLUR identifies this as site number: 236238, which relates to HAIL activity A10 – potential for persistent pesticide use. This is based on a plot of fruit trees that were previously planted in the eastern corner of the site. The part of the site containing this HAIL activity was assessed under the subdivision consent for Stages 1 and 2 (RC210185).
38. A Detailed Site Investigation (“DSI”) has been prepared by Davis Ogilvie & Partners Limited (“Davis Ogilvie”) and is attached as Appendix 2 to the application.
39. The DSI identified that the site subject to this application is located on land which has been identified as having potentially had the following HAIL activities occur:
- A8 – Livestock dip or spray race operations (soil samples collected from the historic sheep dip and footbath contain elevated concentrations of arsenic, which exceed the residential Soil Contaminant Standards (“SCS”) in some locations).
 - G3 – Landfill Sites. An historic borrow pit is considered likely to have been backfilled following excavation and may therefore contain uncontrolled fill of unknown origin. Davis Ogilvie note that no investigation was able to be undertaken in this area due to dense vegetation and that further investigation will be required.
 - I – Hazardous substance in sufficient quantity that it could be a risk to human health and the environment. Elevated lead, arsenic, copper, and zinc concentrations were identified in some topsoil in the vicinity of the historic buildings and burn area.
40. As described above, concentrations in excess of background are present in soils to be disturbed as part of the subdivision and subsequent development of the site. As concentrations in excess of background residential land use SCS have been detected, Davis Ogilvie considers that the NESCS Regulations apply to the proposed development. Therefore, the land contained at 187 Carters Road is considered to be a piece of land, as defined under Section 5(7) of the NESCS.
41. I consider the following regulations in the NESCS are relevant to the proposal:

8 Permitted activities

Disturbing soil

- (3) *Disturbing the soil of a piece of land is a permitted activity while the following requirements are met:*
- (a) *controls to minimise the exposure of humans to mobilised contaminants must—*
 - (i) *be in place when the activity begins:*
 - (ii) *be effective while the activity is done:*
 - (iii) *be effective until the soil is reinstated to an erosion-resistant state:*
 - (b) *the soil must be reinstated to an erosion-resistant state within 1 month after the serving of the purpose for which the activity was done:*
 - (c) *the volume of the disturbance of the soil of the piece of land must be no more than 25 m³ per 500 m²:*
 - (d) *soil must not be taken away in the course of the activity, except that,—*
 - (i) *for the purpose of laboratory analysis, any amount of soil may be taken away as samples:*

- (ii) *for all other purposes combined, a maximum of 5 m³ per 500 m² of soil may be taken away per year:*
- (e) *soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind:*
- (f) *the duration of the activity must be no longer than 2 months:*
- (g) *the integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.*

Subdividing or changing use

- (4) *Subdividing land or changing the use of the piece of land is a permitted activity while the following requirements are met:*
 - (a) *a preliminary site investigation of the land or piece of land must exist:*
 - (b) *the report on the preliminary site investigation must state that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land:*
 - (c) *the report must be accompanied by a relevant site plan to which the report is referenced:*
 - (d) *the consent authority must have the report and the plan.*

Consequence if requirement not met

- (5) *If a requirement described in any of subclauses (1) to (3) is not met, the activity is a controlled activity under regulation 9 while it meets the requirements in regulation 9(1).*
- (6) *If a requirement described in subclause (4) is not met, the activity is a controlled activity under regulation 9 while it meets the requirements in regulation 9(3).*

- 42. The requirements in relation to disturbing the soil are not met as the volume of the disturbance of the soil will be more than 25 m³ per 500 m². In addition, the DSI prepared for the site confirms that concentrations in excess of background residential land use SCS have been detected, therefore the proposal does not meet the requirements in subclause (4).
- 43. The controlled activity regulations for the NESCS are as follows:

9 Controlled activities

Removing or replacing fuel storage system, sampling soil, or disturbing soil

- (1) *If a requirement described in any of regulation 8(1) to (3) is not met, the activity is a controlled activity while the following requirements are met:*
 - (a) *a detailed site investigation of the piece of land must exist:*
 - (b) *the report on the detailed site investigation must state that the soil contamination does not exceed the applicable standard in regulation 7:*
 - (c) *the consent authority must have the report:*
 - (d) *conditions arising from the application of subclause (2), if there are any, must be complied with.*
- (2) *The matters over which control is reserved are as follows:*
 - (a) *the adequacy of the detailed site investigation, including—*
 - (i) *site sampling:*
 - (ii) *laboratory analysis:*
 - (iii) *risk assessment:*
 - (b) *how the activity must be—*
 - (i) *managed, which may include the requirement of a site management plan:*
 - (ii) *monitored:*
 - (iii) *reported on:*
 - (c) *the transport, disposal, and tracking of soil and other materials taken away in the course of the activity:*

- (d) *the timing and nature of the review of the conditions in the resource consent:*
- (e) *the duration of the resource consent.*

Subdividing or changing use

- (3) *If a requirement described in regulation 8(4) is not met, the activity is a controlled activity while the following requirements are met:*
 - (a) *a detailed site investigation of the piece of land must exist:*
 - (b) *the report on the detailed site investigation must state that the soil contamination does not exceed the applicable standard in regulation 7:*
 - (c) *the consent authority must have the report:*
 - (d) *conditions arising from the application of subclause (4), if there are any, must be complied with.*
- (4) *The matter over which control is reserved is the adequacy of the detailed site investigation, including—*
 - (a) *site sampling:*
 - (b) *laboratory analysis:*
 - (c) *risk assessment.*

Consequence if requirement not met

- (6) *If a requirement described in this regulation is not met, the activity is a restricted discretionary activity under regulation 10 while it meets the requirements in regulation 10(2).*

44. As noted above, the DSI concludes that soil contamination on the site exceeds the application standards in regulation 7, therefore the proposal does not meet Regulation 9(1)(b) and as such cannot be considered a controlled activity.

10 Restricted discretionary activities

- (1) *This regulation applies to an activity described in any of regulation 5(2) to (6) on a piece of land described in regulation 5(7) or (8) that is not a permitted activity or a controlled activity.*
- (2) *The activity is a restricted discretionary activity while the following requirements are met:*
 - (a) *a detailed site investigation of the piece of land must exist:*
 - (b) *the report on the detailed site investigation must state that the soil contamination exceeds the applicable standard in regulation 7:*
 - (c) *the consent authority must have the report:*
 - (d) *conditions arising from the application of subclause (3), if there are any, must be complied with.*
- (3) *The matters over which discretion is restricted are as follows:*
 - (a) *the adequacy of the detailed site investigation, including—*
 - (i) *site sampling:*
 - (ii) *laboratory analysis:*
 - (iii) *risk assessment:*
 - (b) *the suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination:*
 - (c) *the approach to the remediation or ongoing management of the piece of land, including—*
 - (i) *the remediation or management methods to address the risk posed by the contaminants to human health:*
 - (ii) *the timing of the remediation:*
 - (iii) *the standard of the remediation on completion:*
 - (iv) *the mitigation methods to address the risk posed by the contaminants to human health:*

- (v) *the mitigation measures for the piece of land, including the frequency and location of monitoring of specified contaminants:*
- (d) *the adequacy of the site management plan or the site validation report or both, as applicable:*
- (e) *the transport, disposal, and tracking of soil and other materials taken away in the course of the activity:*
- (f) *the requirement for and conditions of a financial bond:*
- (g) *the timing and nature of the review of the conditions in the resource consent:*
- (h) *the duration of the resource consent.*

...

45. A Remedial Action Plan received by the Council on 21 April 2023 identifies the proposed remedial works for the detected contamination within the site, and sets out management and monitoring requirements to be implemented during disturbance of soils at the site in order to mitigate potential adverse effects to human health and/or the environment. Provided the remediation of the contaminated areas on the site are carried out in accordance with the provisions of the RAP, I consider the land use consent would be a restricted discretionary activity under the NESCS.

Submissions

46. The application was publicly notified on 18 August 2022 with submissions closing on 16 September 2022. A total of 20 submissions were received, with the submission from Waka Kotahi New Zealand Transport Agency (“NZTA”) being received outside of the time period specified. Of these submissions, 17 opposed the application, one supported the application, and two remained neutral. Of the 20 submitters, seven indicated that they wished to be heard. Copies of the submissions are available for viewing via the Hurunui District Council’s webpage www.hurunui.govt.nz.
47. The Independent Commissioners will need to decide in the first instance whether the late submission from NZTA can be accepted. I note that the submission was sent by NZTA within the specified timeframe, however the email address was entered incorrectly. The late submission has not affected the timeline for the hearing. The Applicant confirmed on 11 October that they have no objection to the late submission being accepted. I note that the Hearing Panel will need to consider the effects on NZTA given that they are the acting authority for State Highway 1 (“SH1”).
48. Overall, I consider the interests of NZTA should be addressed and considered in the hearing process with their submission being formally accepted. This would also allow NZTA the opportunity to respond directly to any proposed mitigation measures. I therefore do not oppose the acceptance of the late submission and have addressed their submission below.
49. The following table provides a summary of the submitters:

Submitters Name	Support / Oppose	To be heard?
G Forbes	Opposition	No
D Sims	Opposition	No
V McPherson	Opposition	No
A F & L M Cropper	Opposition	No
A D R Pugh	Opposition	Yes
G W Lewthwaite	Opposition	Yes

R N McPherson	Opposition	No
J Kruse x3	Opposition	Yes
G May	Opposition	No
A C Meyer	Support	Yes
J McCombe	Opposition	No
Environment Canterbury	Neutral	No
J Thomas	Opposition	No
B M Yates	Opposition	No
J J E Reimink	Opposition	Yes
D J Reimink	Opposition	Yes
K Shaw	Opposition	Yes
K McCauley	Opposition	No
B A Draper	Opposition	No
Waka Kotahi NZTA	Neutral	No

50. No written approvals under section 95E of the RMA have been provided with the application.
51. Having reviewed the submissions, I consider that the matters raised can be summarised as follows:
- 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
52. To address these submissions and provide an assessment of actual and potential effects, I have assessed the submissions received according to the themes identified above, and have provided responses to those themes. Where I have addressed individual submitters, I have referred to the submitters by name.
53. I have not addressed some concerns raised by submitters as they fall outside of the scope of what can be considered in this process. Some of these concerns are:
- Social unrest / unsociable behaviour
 - Lack of social interaction
 - Personal and family social activity
 - Increased demand on existing community services (e.g. schools, medical centres)

Statutory Considerations

54. When considering an application for resource consent for a non-complying activity and any submissions received, the consent authority must have regard to the matters listed in sections 104 and 104B of the Resource Management Act 1991. The relevant parts of these sections are as follows:

104 Consideration of applications

- (1) *When considering an application for resource consent and any submissions received, the consent authority must, subject to Part 2 and section 77M, have regard to –*
- (a) any actual and potential effects on the environment of allowing the activity; and*
 - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) any relevant provisions of –*
 - (i) a national environmental standard;*
 - (ii) other regulations;*
 - (iii) a national policy statement;*
 - (iv) a New Zealand coastal policy statement;*
 - (iv) a regional policy statement or proposed regional policy statement;*
 - (vi) a plan or proposed plan; and*
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
- [...]
- (3) *A consent authority must not, –*
- (a) when considering an application, have regard to –*
 - (i) trade competition or the effects of trade competition; or*
 - (ii) any effect on a person who has given written approval to the application:*
- [...]

104B Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108.*

104D Particular restrictions for non-complying activities

- (1) *Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –*
- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (b) the application is for an activity that will not be contrary to the objectives and policies of –*
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

- (2) *To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.*

Consideration of application

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

55. In considering an application for resource consent, section 104(1)(a) of the RMA requires the consent authority to have regard to any actual and potential effects on the environment. Having reviewed the application, the submissions received and the District Plan, the key environmental effects to be addressed can be summarised as follows:
- Landscape character and visual effects
 - Amenity values
 - Reverse sensitivity
 - Traffic, roading and footpaths
 - Servicing
 - Contaminated soil
 - Natural hazard risk
 - Positive effects
56. In considering the effects on the environment, I have taken into account the relevant assessment criteria and in particular those contained in sections 5.7.1 (Subdivision), 5.7.2 (Multiple lot subdivision) 5.7.3 (Subdivision in the Residential 1A Zone), 8.5(a) (Traffic generation), and 15.5 (Natural Hazards) of the District Plan. A copy of these assessment criteria is contained in **Appendix C**.

Landscape character and visual effects

57. A number of submitters have raised concern regarding the effects on landscape character and visual effects. In particular, their concerns relate to the following:
- Visual impact of the rural / urban interface
 - Loss of country town character
 - Roof to land ratio
 - Visual effects of cluster housing next to SH1

Receiving environment

58. In terms of the receiving environment, the site is currently comprised of undeveloped land used for pastoral grazing. The land to the north and east of part of the site is zoned Residential 1A and is currently being developed as part of a previously consented retirement village. The remainder of the land to the east is zoned Residential 1 and is currently under development as part of Stages 1-2 of The Clearing. The land to the south is zoned Rural and consists of farmland and lifestyle block development. The site adjoins SH1 to the west with residential and industrial activities located on the opposite side of the state highway. As such, the application site is located at the edge of established suburban residential areas with a rural interface to south.

Density

59. In terms of density, the Residential 1A Zone requires a minimum lot area of 400 m² with a minimum average lot area of 700 m². In addition, Rule 5.5.9.1(a) requires that no more than 20% of the lots within a subdivision in the Residential 1A Zone shall be less than 700 m² in area. This seeks to provide for some diversity in lot sizes while ensuring that the country town character of Amberley is maintained as per Objective 4.2 of the District Plan.

57. In a landscape character study for Amberley prepared by Graham Densem in 2007¹, 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. Mr Densem also noted that section sizes of 700 m² enabled a gardened tree-clad small town atmosphere to be maintained. Mr Densem's report, informed Plan Change 13 which resulted in the current rules in the Operative District Plan.
58. The proposed subdivision creates 201 lots ranging in size from 400 m² to 1,028 m² with an overall average lot area of 542 m². In addition, the proposal provides for 87%, or 175 of the lots to be less than 700 m² in area. Furthermore, the District Plan also specifies that lots adjoining the Rural Zone are required to be a minimum of 1,100 m² in area. The twelve lots fronting onto the Rural Zone do not meet the minimum area requirement with these lots ranging in size from 703 m² to 771 m² and having an average area of 732 m². In addition, 19 of the lots will not meet the 15 m by 15 m shape factor requirement.
59. The rule requiring that lots adjoining the Rural Zone be a minimum of 1,100 m² in area were introduced to the District Plan as part of Plan Change 13 (PC13). The rule seeks to provide for an appropriate transition between these different zones i.e. from a low density area to a higher density area. This is supported by Policy 4.12 which seeks to provide for a low density residential environment at the outer edges of larger settlements, with single, detached dwellings on large allotments.
60. Furthermore, the rules introduced as part of PC13 imposed a 7.5 m building restriction line along the south boundary of the site and also the requirement for a landscape buffer along this boundary.
61. A landscape assessment (including a graphic attachment) prepared by Nikki Smetham of Rough Milne Mitchell Landscape Architects Limited is attached as **Appendix 1** to this report. The landscape report provides an assessment of the actual and potential landscape and visual effects of the proposed subdivision; an assessment of the proposal against the relevant objectives and policies of the District Plan relating to character and amenity values; and an assessment of the proposal in relation to the landscape values within the receiving environment. I have relied on Ms Smetham's professional judgement in regard to landscape character and visual effects.
62. Ms Smetham notes that the potential issues arising from the proposed subdivision relate to increased density, the urban / rural interface, retention of a country character of Amberley and rural amenity, including open vistas.
63. With respect to density, I note that the 20% threshold rule seeks to provide for a variety of section sizes while maintaining an overall spacious low density living consistent with the settlement pattern and country town character of Amberley. Ms Smetham notes that if the bulk of lots are less than the minimum average then adverse effects on privacy, outlook, sun / shading, rural character, and visual amenity may occur, for the following reasons:
- an inability for dwellings to be surrounded by garden
 - a reduction in space for tree planting, therefore less trees will be planted
 - that trees are more likely to cause shading and nuisance effects within small sections
 - a closer proximity to neighbours means less privacy and hence a greater reliance on tall fencing rather than post and rail and planting
64. She notes that while the subdivision would not meet the minimum average lot area, it does 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 is because the internal layout and design

¹ The Amberley Town Concept: a landscape character study, Graham Densem Landscape Architect (2007)

includes a generous amount of public open green space adjoining smaller lots and small residential blocks where roads provide some internal separation. In addition, she notes that a greater percentage of smaller lots will satisfy the general concerns relating to residential development sprawl over arable, productive farmland.

65. However, while Ms Smetham considers the subdivision can support a greater proportion of smaller lots the exception is along the urban rural interface and the boundary adjoining SH1 where an increased density inevitably reflects an urban outcome with adverse effects on a rural town character, reverse sensitivity issues and amenity both internal and external.

Rural / urban interface

66. In relation to the rural / urban interface, Ms Smetham is concerned that the two clusters of undersized lots along the southern boundary of the site, will introduce an urban outlook to the adjoining Rural Zone, will limit tree planting and may arise in potential reverse sensitivity effects. She notes that lots adjoining the Rural Zone can readily comply with the minimum lot size and should do so to reflect an open space character and transition to the adjoining rural landscape that is consistent with the balance of the peri-urban interface surrounding the Amberley Township.
67. I concur with Ms Smetham in this regard noting that the existing settlement pattern of Amberley tends towards larger properties around the rural urban interface. This type of development is supported by Policy 4.12 of the District Plan which seeks to provide for a low density residential environment at the outer edges of larger settlements, with single, detached dwellings on large allotments. The provision of larger lots on the urban rural interface, not only seeks to protect the landscape character and visual amenity from the adjoining Rural Zone, but also seeks to ensure that potential reverse sensitivity effects on existing rural land use are minimised (Policy 5.6).
68. The provisions in the District Plan which seek to maintain the rural urban interface, rely not only on the requirement for a minimum of 1,100 m² lot size, but also through the provision of a 7.5 m building restriction line and landscape buffer along the southern boundary of the site. While the proposed subdivision masterplan shows a planting strip along the entire length of the southern boundary, Ms Smetham notes that it is not clear whether there are any fencing restrictions along this boundary and / or how the landscape strip within the lots will be enforced or maintained with any degree of consistency. She notes that the type of fencing along the interface has the potential to reflect an urban character that is detrimental to rural character and amenity if a standard 1.8m paling fence is constructed. Furthermore, access for maintenance of the proposed buffer planting will be an issue. She therefore recommends that a post and rail or post and wire fence is constructed to maintain an appropriate rural / urban interface.
69. I concur with Ms Smetham in that I consider that the provision of a post and rail or post and wire fence along the southern boundary would be appropriate. While the proposed master plan shows a landscape buffer along the southern boundary of the site, it is not clear whether this is intended to be 5 m wide and what this planting will be comprised of. While I consider the provision of a landscape buffer and building setback, would go some way towards mitigating the effects of the increased lot density along the rural boundary, I do not consider that the proposal would protect the landscape character and visual amenity from the adjoining Rural Zone.

Building design

70. In relation to building design, Ms Smetham questions why the subdivision would be restricted to single storey detached dwellings when the maximum height under the District Plan is 8.0 m. The option of a two storey dwelling, while still subject to 35% site coverage and setbacks could potentially enable a larger area of a lot to be utilised as open space or planting while providing the option of a larger dwelling providing a greater diversity of built form.

Visual effects

71. In terms of visual effects, Ms Smetham notes that the obvious change arising from the proposed subdivision will be the removal of the existing cypress hedge and the infilling of the Dry Gully depression along the front part of the site bounding SH1, in addition to the potential effects on visual amenity from the acoustic barrier and dwellings that will be visible from the SH1 approach to Amberley Township. These effects include reduced visual amenity from viewer's travelling along the state highway, and a reduced rural character at the entrance to Amberley. She notes that these values are recognised by the Landscape Character Study and the District Plan as being of key importance to the development of Amberley township.
72. Ms Smetham is of the opinion that an acoustic barrier has the potential to reflect an urban rather than a rural character and is largely driven by spatial considerations, where available land is restricted in an urban setting. She notes that opposite the site to the west, the acoustic issues within the Residential Zone are mitigated by larger size lots, larger setbacks from the state highway, landscape strips and a narrow access road within the road reserve. This results in a low key, spacious and high amenity character to the entrance of Amberley befitting the rural environment where space is at a lesser premium than an urban situation.
73. Furthermore, Ms Smetham notes that the acoustic barrier is proposed to be located within the lot boundaries. In this regard, she refers to the NZTA Guide where for most types of barrier, access is required to both sides for maintenance and therefore locating a barrier on or within a cadastral boundary can be problematic. She notes that an acoustic barrier located within a cadastral boundary is a landowner's responsibility and the lack of direct access and varying ownership can result in an unsightly barrier when viewed from the state highway. She considers that the planting of appropriate vegetation over the bund by the developer is therefore key to a good outcome.
74. I note that the acoustic fence will consist of a 1.8m high timber paling fence designed to obstruct views into and out of the site and as such will afford a 391 m long blank edge to the state highway. This could potentially result in other issues such as the potential for graffiti to occur, litter traps and the creation of unsafe areas (refer Crime Prevention Through Environmental Design (CPTED)).
75. Overall, Ms Smetham considers that the lot layout and acoustic bund will not maintain a rural character to the approach and entrance to Amberley township nor provide a reasonable level of amenity for future residents. Therefore, she recommends a different strategy is applied to the subdivision design and layout to address the acoustic effects, while maintaining a rural character and amenity to the entrance of the Amberley township. She notes that the strategy may require consideration of the lot layout and orientation, larger lot sizes, landscaped setbacks and potentially acknowledge / integrate existing landscape features including the Dry Gully, which adjoins the state highway road boundary. She notes that this could also promote the option of providing future connectivity if the state highway status and or speed limit changes in the future.
76. Ms Smetham is also of the opinion that any acoustic barrier adjacent to the state highway should not be located within individual lots but rather that they be located within a council reserve. I note that if the Applicant were to take this approach, the new reserve and vesting thereof would need to be considered by the South Ward Committee particularly given that the proposed reserve would likely have a higher maintenance regime than other reserves, given the length of the proposed acoustic barrier, the potential for graffiti and the maintenance requirements of the fence and associated plantings.
77. In his character study, Mr Densem recommended that to maintain a rural feel, housing development should be kept back 20-40 metres from the east side of the state highway and to potentially create landmark tree area in the future. He referred to the attractive rural views east from the state highway

for traffic entering the town from the south. Given the matters discussed above, I consider that the proposal would not maintain the rural character and amenity to the entrance to the Amberley Township particularly in terms of the proposed acoustic barrier and the number and size of lots proposed in proximity to the state highway.

Internal fencing

78. In terms of fencing within the development, Ms Smetham notes that fencing materials are a key element of design and can affect the character of the street environment. she notes that the proposed subdivision acknowledges the character of Amberley recognising that front fences particularly in the older part of town are generally low or absent. Garden planting therefore merges visually with the street creating a sense of spaciousness. The application notes that fences up to 1.8m are restricted to internal boundaries and must be consistent with the materials of the dwelling assuming that adjoining neighbours dwellings are constructed of similar materials.
79. Ms Smetham notes that fencing along the open space reserve areas is proposed to be open style metal pool fencing. She considers that this is a typical hard, slick urban response and notes that in the newer areas of Amberley there is a prevalence of post and rail fencing, which achieves a similar outcome while providing a rural character. She recommends that boundary fencing along the stormwater management areas and open space reserves be restricted to post and rail or post and wire. She notes that fenced lots to contain dogs and children may be achieved through attaching wire mesh or similar to the inside of a post and rail fence without adverse visual effects.

Landscape planting

80. Ms Smetham describes Amberley as typically being a well treed town resulting in a green leafy character, softening the dominance of built form. She notes that the predominance of exotic species provides dramatic seasonal changes that contribute to the transient amenity values of the locality. The importance of the proportion of larger to smaller lots is discussed above, noting that the Landscape Character Study recommended lots of about 700 m² be required to accommodate tree plantings and retain the treed character of Amberley. She notes that smaller lots at 400 m² will tend to rely on public plantings in streets and parks for a treed character so an overabundance of small lots will mean less trees resulting in a more urban character.
81. The proposed subdivision includes generous open green reserve areas throughout the subdivision which Ms Smetham notes will afford the opportunity for large tree planting that will remain protected. The design guidelines for the subdivision refers to the Council's Parks and Reserves Species list for appropriate trees. These are mostly exotic deciduous trees, which Ms Smetham considers are appropriate for street trees but less appropriate for stormwater management areas / open space reserve areas, the SH1 road reserve boundary and the buffer along the rural boundary where she considers native species (trees, shrubs, grasses, and sedges) should dominate plantings to enhance natural character.

Recommendations

82. Overall, Ms Smetham considers that while the change in use from rural to residential activities is anticipated in this area, the adverse effects on the amenity and rural landscape values of the site and the receiving environment would not satisfy the District Plan provisions. However, she provides a number of recommendations that would enable the proposed subdivision to meet the District Plan provisions relevant to landscape values. These recommendations are as follows:
- 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 2 m in height.
 - Lots to be a minimum size of 1,000 m² along the SH1 boundary and setback to achieve a primary north or north west outdoor living area where the noise level is below the NZTA recommended guideline.

- Lots to be a minimum size of 1,100 m² along the rural boundary.
- Two storey dwellings up to 8 m permitted according to the District 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 reserve and 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 5 m, irrigated and maintained by individual lot owners to result in dense vegetation up to 2 m 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.

Amenity values

83. Amenity values are described under the RMA as being “those natural and physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”. The character of Amberley is specifically identified within the District Plan as having a country town character. Amenity values are addressed through minimum lot sizes, shape factor requirement, setback, and site coverage provisions.

Shape factor

84. As noted earlier, a number of the lots do not comply with the 15 m by 15 m shape factor requirement. The shape factor requirement seeks to ensure that lots consist of a practical shape that will allow for the construction of future dwellings that will comply with the amenity based standards in the District Plan such as setbacks, site coverage, recession plane and height. It also seeks to ensure that useable outdoor space will be readily accessible from future dwellings i.e. lots should be designed to be predominantly square or rectangular in shape, thus avoiding the creation of areas and shapes that do not contribute to the usability of the lot.
85. In this regards Ms Smetham notes that for the most part, the proposed subdivision indicates that it will be possible for the proposed lots to be surrounded by garden despite several lots not achieving the shape factor requirement. In addition, Ms Smetham notes that the application demonstrates the ability for some of the lots that do not comply with shape factor can readily accommodate a dwelling with a bespoke design. She notes that this would also introduce some diversity and avoid a line of similar typology dwellings on equally sized lots.
86. While the Applicant has demonstrated that some of the lots that do not comply with shape factor can accommodate a dwelling with a bespoke design, I consider that the proliferation of both undersized lots and lots that do not comply with the shape factor requirement will inevitably result in a series of land use consents being applied for to breach setback, recession plane and site coverage requirements as has been seen in other recently completed subdivisions. I note that the majority of building consents lodged with the Council are not for bespoke design dwellings but rather standard design plans from housing companies. Of particular concern are smaller lots located at the intersection of two roads where there is more than one road frontage (4.5 m setback required) for example in the case of Lot 290.

Lots adjoining SH1

87. With respect to lots located adjacent to SH1 and the proposed acoustic barrier, Ms Smetham considers that internal effects arising from a 3 m boundary wall to the west and 2 m internal boundary fencing, would include potential overshadowing, visual dominance and a restricted outdoor living area

occurring to 22 lots. She further notes that the small lot sizes along the western boundary with SH1 would severely constrain the ability to achieve a north facing outdoor living area with a noise level below the NZTA guideline levels. The lots are relatively small and narrow orientated east-west so the northern aspect of the dwelling will face directly towards the adjoining lot. The narrow setback to the north will be unlikely to provide a generous outdoor living area which means that these will be restricted to the northeast sides of the dwelling, which faces the street. She notes that outdoor living areas will therefore require some landscape treatment for privacy noting that no fencing is permitted within a 4.5 m setback from the road and the setback will also need to accommodate a driveway and offroad vehicle parking. Essentially effects are compounded by reduced setbacks, small lot size and the lot layout along the boundary with SH1.

88. These effects would effectively result in reduced levels of amenity for residents of these lots and would in my opinion not contribute to the country town character that the District Plan seeks to protect.

Reverse sensitivity

89. A number of lots are located within 100 m of the boundary with SH1 and as such there is the potential for reverse sensitivity effects relating to noise, headlight glare and vibration. An acoustic assessment prepared by Acoustic Engineering Services (“AES”) notes that road traffic noise and vibration can cause annoyance sleep disturbance and other adverse health effects. In order to mitigate these effects, the Applicant proposes to construct a 3.8 metre wide acoustic barrier along the boundary of Lots 257 and 259 to 279. The acoustic barrier would consist of a 1.0 m high planted earth bund with a 2.0 m high timber paling fence on the bund. The Applicant has advised that planting along the bund is proposed to consist of layered, texture planting, made up of native species such as Muelenbeckia, Corokia, Grislinia, and Phormium spp. All planting will be evergreen to ensure permanent foliage, colour and screening. Planting will be integrated and designed to accompany existing road reserve planting for consistency and cohesive visual amenity.
90. The acoustic assessment reviews potential traffic noise and vibration issues for those lots located within 40 m of the SH1 (Lots 257-279) and those located between 40 - 100 m of SH1 (Lots 238-256, 280-283, 285-286 and 288-293). Based on the proposed subdivision layout and traffic information provided from NZTA, AES confirms that the NZTA internal noise limits of 40 dB $L_{Aeq(24)}$ for the sleeping and living areas and 57 dB $L_{Aeq(24)}$ for outdoor living areas would be achievable with 3.0 m high acoustic fencing to State highway 1 and 2.0 metre high for internal subdivision boundaries as shown in figure 1.1. of their report. AES note that the NZTA vibration guidance will also be achievable, however the dwellings on some lots may require acoustic upgrades and ventilation systems, and in limited cases, may require specific foundation design to reduce vibration. AES propose a number of conditions that they consider would be appropriate to help mitigate reverse sensitivity effects from the proximity of the state highway.
91. While I have some concerns regarding the visual impact of the proposed acoustic barrier and the proposed size and location of lots in vicinity to the state highway as referred to earlier in my report, given the findings in the AES report, I am satisfied that reverse sensitivity effects in relation to noise and vibration could be adequately mitigated through conditions of consent.

Reserves

92. The proposal incorporates a number of reserves, stormwater management areas and greenways which connect to various parts of the development. An initial landscape concept prepared by Novo Group notes that the stormwater ponds are to have naturalised edges and meandering borders to create a softer appearance and aesthetic with offset planting where possible. They note that informal pathways and tracks leading through or around the stormwater ponds will promote public movement and pedestrian flow through green spaces. I consider that the proposed reserve areas and treatment thereof will maintain the amenity values on the site and provide for pedestrian linkages within the site.

Geotechnical

93. A geotechnical investigation of the site was undertaken by Davis Ogilvie to assess potential natural hazards, identify the underlying ground conditions, assess geotechnical constraints, and provide geotechnical design criteria for future residential development on site. Their investigation indicates a relatively uniform soil profile comprising topsoil underlain by silt and sand that generally showed an increase in consistency/density with depth, and then medium dense to very dense gravel with varying sand and silt content. Groundwater was generally encountered within the underlying gravel between 2.6 m to 3.1 m below existing ground level (“EGL”) across the flat areas of the stie. Standing water was also noted in the lower reaches of Dry Gully with groundwater between 0.9 to 1.8 m below EGL within the higher reaches.
94. Good ground was achieved within 1.0 m of the ground surface across a significant proportion of the site, however in areas within and either side of Dry Gully, 300 kPa was not confirmed until depths of 1.1 – 1.9 m. They note that uncontrolled fill is likely to be present in the former borrow pit, therefore Good Ground is also precluded from that location, and additional testing in this area is required. They noted that a reduced bearing capacity of 200 kPa was typically encountered between 0.2 – 0.7 m below EGL.
95. Davis Ogilvie note that NZS 3604:2011 foundations (tied slab-on-grade foundation or a shallow pile / foundation wall system) or a proprietary TC1 waffle slab can be used in the areas of the site where Good Ground was achieved at shallow depths. However, foundation construction in remaining areas will either require specific engineer designed foundations, or may be in accordance with NZS3604 with stipulated restrictions as detailed in their report.
96. They recommend lot specific geotechnical testing to confirm the bearing capacities and foundation requirements at building consent stage, and minimum finished floor levels should be confirmed with the Council prior to construction.
97. The report concludes that the site is suitable for subdivision under section 106 of the RMA under the following conditions:
 - Lot-specific geotechnical investigation at building consent stage will be required to determine the depth to an appropriate bearing capacity and foundation requirements at the location of each dwelling.
 - Specific engineer designed foundations, observation and certification will be required on lots where Good Ground has not been confirmed.
 - Appropriate stormwater control measures must be incorporated in the subdivision design to ensure that there is no undue flood risk to properties, particularly those adjacent to Teviots Drain.
 - Finished floor levels are to be confirmed during the consenting process by the Council and/or CRC.
 - An Erosion and Sediment Control Plan must be prepared for the proposed earthworks. This must ensure that surface water flow paths on the site are appropriately designed and managed to minimise potential erosion, particularly on the banks of Dry Gully.
98. I note that Figure 9 of the Davis Ogilvie report identifies three different areas in relation to geotechnical ultimate bearing capacities in accordance with NZS3604:2011 definition for “Good Ground”. My understanding is that the green areas do not require further geotechnical investigation and that standard foundations under NZS3604 would apply in these areas. The orange areas (including the borrow pit) would require specific geotechnical investigations at building consent stage and the yellow areas would require the removal and placement of fill due to deep good ground up to 1.0 m or alternatively specific engineering design for foundations would be required if not excavating the low bearing material.

99. Generally where further geotechnical investigation is required or additional works are required, such as in the orange areas, Council would secure these works by way of a consent notice registered against the record of title for the lots. As such, it would be useful if Figure 9 were provided with an overlay of the lots so that is clear which lots require additional works in relation to foundation design. Further to this, I note that mass earthworks are to be carried out across the site which may potentially alter the existing ground conditions and foundation requirements.
100. The submission from CRC seeks to highlight the potential flood risks at the site of the proposed subdivision. Based on the information provided by the Applicant, CRC notes that flooding is the main natural hazard of concern at the site. They note that while the site is not located within an area that could be affected by flooding from major rivers and/or streams, there is the potential for surface flooding at the site during significant local rainfall events.
101. CRC note that for most areas of the site that are proposed to be developed into residential sections, this is likely to be relatively shallow in nature. However, flooding has the potential to be deeper in parts of the site such as the remainder of Dry Gully, the land immediately adjacent to Teviots Drain, and the eastern corner of the site. CRC note the Applicant intends to leave these sites undeveloped or utilise them for stormwater management. They consider that an assessment of Teviots Drain should be undertaken to evaluate its capacity for the subdivision size, and to ensure it will not overflow onto surrounding sections in a flooding event.
102. In the applications to CRC, the Applicant notes that Teviots Drain flows from the eastern corner of the site to the southeast after a short dog leg. It then turns southwest and discharges to Dry Gully. The Applicant notes that Teviots Drain will only take runoff from the green space adjacent to it and with a significantly reduced catchment it will have a reduction in flooding issues.
103. Both the geotechnical report submitted with the application to the Council and the resource consent applications lodged with CRC note that finished floor levels are to be confirmed during the consenting process by the Council or that modelled stormwater flows on the site will determine minimum floor levels and that these will be confirmed at the time of engineering design. Davis Ogilvie considers this a practical and pragmatic approach noting that the site is not located in an identified flood zone.
104. I note that where minimum finished floor levels (“FFL”) are required for future dwellings, this is generally identified in the consent application so that any requirement for FFL are subject to conditions on the subdivision and secured by consent notice on records of title for the relevant lots. I am unsure how minimum FFL levels would be captured otherwise. Furthermore, in their submission, CRC note that the Applicant has not specifically stated that floor levels will meet the standard of mitigation required by the Canterbury Regional Policy Statement (“CRPS”).
105. As such, from the information provided to date, it is unclear whether the floor levels will meet the standard of mitigation required by the CRPS and how any requirement for minimum floor levels, if necessary, will be secured such that future owners of the lots are aware of their requirements in terms of meeting these floor levels.

Earthworks / Temporary construction effects

106. In terms of temporary construction effects, while the proposed construction works for the entire subdivision development may potentially extend over a period of more than 24 months, I note that the application site is large and that the proposed development is to be constructed over four stages. In this regard, I note that earthworks would be progressed across the site as the different stages were progressed. I further note that the later stages of the proposed subdivision would be located away from existing residential areas and as such any actual and potential effects on adjoining residential properties would lessen over subsequent stages.

107. I further note that if consent were to be granted, conditions of consent generally require a Construction Management Plan be provided. This would need to be prepared prior to work commencing on site to ensure any potential noise and dust effects are managed.
108. The proposed site works provide for mass earthworks to allow for the stormwater secondary flow network to function correctly and to achieve sufficient cover over the gravity sewer network. I note that final design, volumes, plans and an erosion and sediment control plan (ESCP) will be provided to the Council during the engineering approval process for each stage of development.
109. I further note that earthworks will need be carried out in accordance with the following documents to ensure that the best practicable options are used to achieve stable fill for the construction of residential dwellings and services without subsequent detrimental movement:
- Erosion and sediment control plans
 - Site management and/or construction management plans
 - Traffic management plan
 - NZS4431: 1989 Code of Practice for Earthfill in Residential Development
 - NZS6803: 1999 Acoustics - Construction Noise
 - CRC Regional Consents.
110. Provided the proposal complies with these requirements, I consider that any actual and potential effects in relation to earthworks and temporary construction effects would be adequately mitigated.

Contaminated land

111. As noted earlier, land use consent is required under the NESCS as the DSI for the site identified that soil samples collected from the historic sheep dip and footbath contain elevated concentrations of arsenic, which exceed the residential SCS 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. Davis Ogilvie note that no investigation was able to be undertaken in this area due to dense vegetation and that further investigation will be required. The DSI also identified that elevated lead, arsenic, copper, and zinc concentrations were identified in some topsoil in the vicinity of the historic buildings and burn area.
112. A copy of the DSI was sent to the Contaminated Land team at CRC for their review given that they have the expertise in this matter. They note that a data gap exists in the characterisation of the site which requires further investigation. Based on the extent of the subdivision, the data gaps related to uninvestigated HAIL areas, and the lack of details regarding remediation and management, CRC considered that further site investigation and a Remedial Action Plan (“RAP”) should be submitted along with the consent application. Alternatively, they considered that the Council could make provision of an RAP, site validation report (“SVR”) and on-going site management plan a condition of consent before the subdivision consent is granted and/or records of title are issued.
113. A RAP was provided to the Council on 21 April 2023. The RAP details proposed remedial works for the detected contamination within the site, and sets out management and monitoring requirements to be implemented during disturbance of soils at the site in order to mitigate potential adverse effects to human health and/or the environment. To address the presence of heavy metals at the site, the RAP includes:
- Details recommended for the remedial methodology and procedures for contaminated soil removal.
 - Details of the controls to be implemented during redevelopment works to protect site workers and the surrounding residential receptors.
 - Monitoring requirements during remedial earthworks.
 - Details the means of transport and disposal locations for the various waste streams from the site.

- Provides soil validation criteria to be completed during and post remediation to confirm the remedial goals have been met.
114. The RAP identifies four areas of soil contamination above adopted human health acceptance criteria (SCS – residential land use, 10% produce) and notes that these areas will require remediation or management during the proposed development. In addition to the four remedial areas, the RAP identifies several other areas that contain contaminants of concern above background soil concentrations but below proposed land use criteria. The RAP notes that although remediation of these area is not necessary, management of the soil during redevelopment will be required to ensure it is handled, stored, and re-used or disposed of appropriately. The RAP notes that should this soil be re-used on a proposed residential lot the new owner will need to be made aware of the status of this soil. If the soil is disposed of then the soil is not considered to meet the current definition of cleanfill and is unlikely to be accepted as waste at cleanfill disposal sites.
 115. With regard to the four areas of soil contamination that present a potential significant risk to human health for proposed residential land use receptors, the RAP identifies four primary remedial options to resolve the identified contamination on the site. The RAP identifies the preferred remedial option is to excavate the soil containing contaminants of concern over the residential (10% produce consumption) standards and dispose of this soil to Kate Valley Landfill or another appropriate managed fill site.
 116. The RAP notes that during these works, more contaminated material may be exposed and would also require remediation. It notes that this is particularly true of the borrow pit which could only be partially investigated during the October 2022 DSI due to the presence of established trees and thick vegetation.
 117. In terms of remediation activity, the RAP notes that the contaminated areas would be excavated to the required depth within each remedial area in order to remove soil which contains contaminants of concern above residential SCS. Soil will be either loaded directly into trucks in order to transport to an off-site landfill or will be temporarily stockpiled under controlled conditions to allow further assessment of the contaminant properties. The volume of in-situ contaminated material underlying the site estimated to be contaminated at concentrations above residential standards and require removal is approximately 2,200 m³.
 118. The RAP sets out the remediation methodology that must be followed to manage the risks related to disturbing contaminated soil during the remedial works and has been prepared in accordance with the Ministry for Environment's guidance document Contaminated Land Management Guidelines No.1: Reporting on Contaminated Sites in New Zealand.
 119. Provided that the remediation of the contaminated areas are carried out in accordance with the requirements of the RAP, I am satisfied that any actual and potential effects on human health and the environment in relation to contaminated land could be adequately mitigated through conditions of consent.

Servicing

120. The Applicant provided a Preliminary Services Report as part of the application documents and has subsequently provided additional information in relation to servicing matters through the processing of the application. This information has been assessed from an engineering perspective by Mr Hayden Kent on behalf of Council. Mr Kent's report in relation to engineering matters is attached as **Appendix B**. I have relied on Mr Kent's professional judgement in regard to engineering matters.

Water supply

121. With respect to water supply, the Councils Three Waters Team confirmed in a letter dated 6 April 2022 that the water network would need to be upgraded to progress development of the site for Stage 3 onwards. The Council is currently undertaking the required upgrade of the towns water infrastructure with the installation of a new water main in SH1 from the Kowai River Road pumping station into the Amberley township. Mr Kent notes that on completion of these works, there will be sufficient capacity in the water main to service the development. Mr Kent further notes that the applicant will be required to provide a minimum 150 diameter water main through the development from the newly laid main in SH1, through to the newly laid mains in the adjacent 'Clearing Stage 1-2' site and that the water main will need to be completed within the first stage of the development.

Wastewater

122. With respect to wastewater, the Council has recently upgraded Amberley's main sewer outfall that runs adjacent to the site on its eastern boundary, and through the adjoining 'Clearing Stage 1-2' site. Mr Kent confirms that the upgraded main would provide capacity for the proposed subdivision. Mr Kent also notes that based on an early review of the further information provided by the Applicant on 27 and 28 April 2023 that wastewater from the development can be routed to discharge by gravity to the existing Council trunk main by re-routing and/or upgrading an existing 150 diameter wastewater main that crosses the site falling from SH1 eastward to the new upgraded mains within the adjacent retirement village site.
123. Mr Kent notes that should final design provide for prohibitive earthworks requirements, the Council may consider low pressure sewer installations with individual on-site private pumping systems discharging to a pressure main installed in the road.

Stormwater

124. In terms of stormwater, the application site is located within Amberley stormwater management area ("SMA") for which the Council holds a global discharge consent from the CRC (CRC082988). The discharge of stormwater from the subdivision and subsequent development of the site is unable to be accepted under the Council's global discharge consent as the proposal would result in the alteration of existing catchments and routing of water from the Teviot's Drain catchment to Dry Gully. Furthermore, the site contains a known HAIL activity and as such any discharge from the site would not be in accordance with conditions (3)(b) and (3)(c) of the global discharge consent.
125. As noted earlier, the Applicant has now made application to the CRC for consents including discharge of operational stormwater. The applications to the CRC propose a different surface water system that that identified in the subdivision application documents. The application to the CRC notes that the site will be drained via a traditional system of pipes and inlet sumps with drowned outlets to a gross pollutant trap, then first flush through a proprietary 'Filterra Bioscope' (raingarden) by Stormwater 360.
126. Mr Kent is of the opinion that the proposed raingarden would not be appropriate given that the size of the treatment area causes concern in respect of design, installation, and maintenance costs. He notes that the Filterra system requires regular maintenance of bespoke media, mulch, and plantings to ensure its ongoing treatment efficacy. Filterra indicate that biannual maintenance would be required due to the annual rainfall of the district. In addition, irrigation of plantings would be required.
127. Mr Kent notes that the installation and maintenance requirements would be unique to the district and that the Council is not resourced to undertake this specialist work. He notes that no whole of life costs and maintenance schedules/costs have been provided.

128. With respect to the attenuation pond, Mr Kent notes that the CRC application identifies that there are no proposals for earthworks within Dry Gully other than culverting and damming to provide for the requisite attenuation volume. The damming is proposed to provide for a maximum water depth of 2.75 m. It is Mr Kent's opinion that should the attenuation pond form part of the qualitative treatment chain, then its depth should be no greater than 1.0 m to prevent resuspension of settled solids. He further notes that this water depth, albeit temporary in nature, is considered unsafe due to both its depth and the steep sides of the gully. He notes that it is not good practice to have pond depths in excess of 1.0 m with side slopes greater than 1 in 4.

Electricity / Telecommunications

129. MainPower New Zealand have confirmed that there is capacity in the network to supply the proposed subdivision with electrical reticulation and Chorus have confirmed that telecommunications connections are available.

Conclusion on servicing

130. Overall, I note that servicing of the subdivision will generally be designed in accordance with the Council's Development Engineering Standards and engineering best practice. Based on the evidence of Mr Kent, I am satisfied that the subdivision can be adequately serviced with the exception of stormwater. In particular, Mr Kent is concerned about the proposed raingarden design given that this would be unique to the district and that the Council is not resourced to undertake this specialist work.
131. In addition, Mr Kent considers that the depth of the attenuation pond would be unsafe and that if the pond were to form part of the qualitative treatment chain, then its depth should be no greater than 1.0 m to prevent resuspension of settled solids.

Roading / Access / Traffic

117. Concerns were raised by submitters in relation to the reduced road widths, pedestrian safety, access to and from the subdivision and traffic safety at the new SH1 intersection. The following provides an assessment of the roading, access and traffic effects and has regard to the concerns raised by submitters.
132. An Integrated Transport Assessment ("ITA") prepared by Novo Group Limited ("Novo Group") was submitted in support of the application. The ITA describes the transport environment in the vicinity of the site, describes the transport related components of the proposal and identifies compliance issues with the transport provisions in the District Plan.
133. 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.
134. The primary road through the Stages 3-6 development will mirror that provided through the majority of the Stages 1-2 development, comprising an 11 m carriageway within an 18 m road corridor. A 1.5 m footpath is to be provided on both sides of the primary road.
135. The secondary road network typically provides for 15 m wide road corridors to accommodate 9 m wide carriageways with a 1.5 m footpath on one side of the road only. The road corridor servicing Lot 197 and Lots 200-205 will have a proposed width of 13 m, accommodating a 7.5 m wide carriageway and a 1.65 m wide footpath on one side of the road only.
136. Mr Kent has reviewed the roading provisions and is satisfied that the roading network is logically laid out and provides good connectivity both internally and to the external roading network. Mr Kent notes

that the reduced road widths as proposed would be consistent with those approved in Stages 1-2 of the development with the exception of the small crescent accessing Lots 197 and Lots 200-205. He considers that the departure from the standard is considered suitable for the level of service required for seven lots.

137. In terms of footpaths, the District Plan requires a footpath on both sides of the road, however clause 3.B.1.2 of the Hurunui District Council Development Engineering Standard (“HDC-DES”) requires a minimum of a 1.5 m wide footpath on one side of the road, preferably the western side of the road. The proposal provides for two footpaths on either side of the primary road, and one footpath on all secondary roads therefore, while the provisions of a footpath on one side of the road only does not comply with the District Plan standards, it does align with the HDC-DES. I further note that most of the recent subdivisions within Amberley have been developed with a footpath on only one side of the road, so the proposed development is considered consistent with recent subdivision developments in this regard.
138. I note that the proposal will provide additional pedestrian connections through the proposed reserves to complement the footpath network along the primary and secondary roads.
139. In terms of parking, the ITA considers that the site will be self-sufficient with regards to car parking, noting that each lot could provide car parking. Furthermore, car parking can be provided along both sides of the primary road and there are opportunities to provide indented parking bays along the secondary loop road (if required). I note that any future development on the proposed lots will be required to provide one carpark per residential activity able to comply with all the relevant transport related requirements of the District Plan. This includes adequate parking, access and manoeuvring for each residential dwelling on each new lot. Failure to comply with any of these standards would result in the requirement for additional resource consent approval.
140. In terms of traffic generation, the ITA estimates that the overall proposed development (including Stages 1-2 and a future stage on the balance lot which could create up to 50 lots) could generate around 3,00 vehicle trips per day (374 lots x 8 trips each per day = 2,992). Novo Group note that this level of traffic generation would not occur immediately but over time as the site was developed. They noted that initially, all site generated traffic would have to enter and exit the site via the new intersection at Rosewood Drive / Amberley Beach Road, however eventually, once the later stages are completed, the wider site would have access to SH1.
141. The ITA notes that based on the adopted traffic generation and distribution assumptions, future traffic volumes through the new SH1 intersection, as well as through the existing intersection of SH1/Amberley Beach Road, are expected to be similar (if not less than) those already considered by Council and NZTA in conjunction with the consented Stage 1-2 and Amberley retirement village developments.
142. In their submission, NZTA note that they have been consulted by the Applicant on the planning for Stages 3-6 and that they have assessed traffic modelling undertaken for proposed Stages 3-6 of the development. In a letter to the Applicant dated 2 May 2022, NZTA included the following advice:
 - a) *An assessment was made relying on information including:*
 - *Estimated traffic generation volumes and assumed traffic distribution scenarios*
 - *Resultant estimated future intersection volumes*
 - *Comparison of estimated future intersection volumes against those modelled and/or accepted in the previously consented retirement village and Stage 1-2 development for ‘The Clearing’*

- *Masterplan images showing all consented, proposed and future stages of 'The Clearing' development in the context of the surrounding road network and retirement village complex.*
- b) *Waka Kotahi agrees in principle to the proposed Stage 3-5 development (including traffic associated with the future Stage 6 proposal). Waka Kotahi considers that the planned new intersection design associated with the consented retirement village development will accommodate the estimated traffic generation associated with that development. As such, Waka Kotahi does not require further traffic modelling at this stage.*
- c) *For avoidance of doubt, this agreement in principle is on the basis that there is to be no direct access for development traffic to Carters Road (SH1).*

143. Their submission goes on to say that they support the intention that no direct access will be provided to the state highway from any of the lots created as shown on the proposed subdivision plan, noting that this section of SH1 has been declared limited access road ("LAR") with access being further controlled by the provisions of the Government Rounding Powers Act 1989.
144. NZTA requests that if the Council is of a mind to approve the subdivision application that, in addition to imposing a condition requiring general compliance with the submitted plans, a condition be added to the effect 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.
145. While some submitters have raised concerns regarding the proposed safety of the new intersection with SH1, I note that SH1 is a LAR at this location and as such NZTA controls vehicle access to and from the highway under the Government Rounding Powers Act 1989. In their submission, NZTA indicate that they are agreeable in principle to the provision of access to SH1 via the proposed new intersection associated with the retirement village development and that the proposed new intersection will be able to accommodate the estimated traffic generation associated with the subdivision.
146. However, I note that the new road connection to SH1 is predicated on the new road and intersection being formed as part of the adjoining retirement village development (refer to Figure 2). However, I note that the retirement village consent was for a land use consent only and as such there is currently no mechanism that I am aware of to ensure that the proposed new road to the intersection will be vested in Council as this usually occurs by way of a condition on a subdivision consent. The conditions of consent for the retirement village require that only stages 1-4 (or 100 units) may be developed and occupied until such time as the formation of the intersection of the internal road and SH1 have been completed and operational. I understand that at this time, only stage 1 has been completed and approximately half of the units in stage 2 have been granted building consent (a total of 27 units have been consented to date).
147. As such, the construction of the new road and intersection with SH1 may still be some time off and there is currently no provision for the new road to be vested in Council as public road, thereby providing the link referred to in the application Mr Kent notes that there is no indication on when the link through to SH1 will be required for the proposed roading network to function safely. Nor has the Applicant provided agreement from the adjoining landowner or demonstrated how construction of this link and associated vesting of road reserve will be secured. Mr Kent notes that a condition of consent could be imposed to restrict development on the application site beyond a specific level until such time that new road and intersection to SH1 have been constructed and the road vested in Council as public road.
148. While I have some concerns regarding the timing and provision of the link through to the new road and intersection with SH1 to be created as part of the adjoining retirement village, I am otherwise

satisfied that any actual and potential effects in relation to roading and traffic matters will be adequately mitigated and can be addressed through conditions of consent.

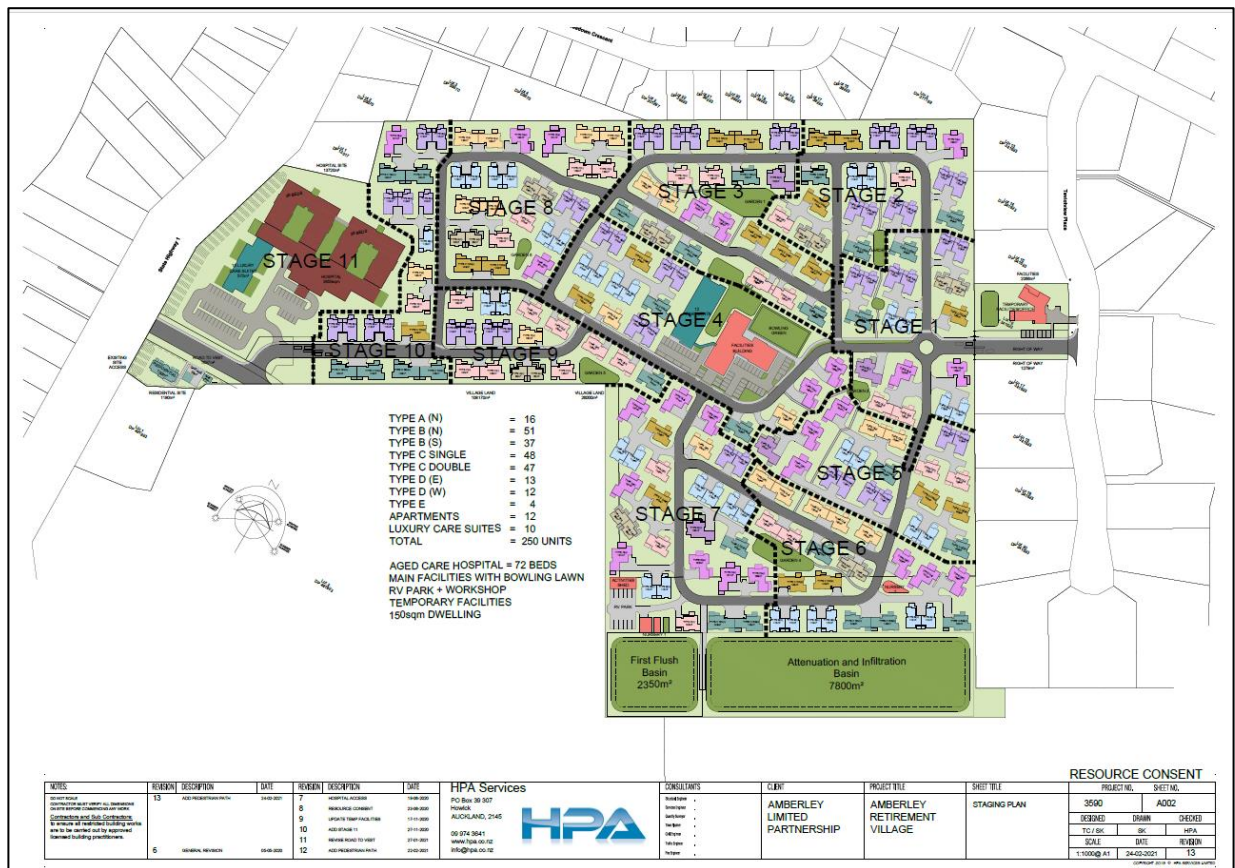


Figure 2: Site and staging plan for retirement village on adjoining land to the north

Cultural effects

149. The site is not identified in the District Plan as containing any heritage sites, archaeological sites, wahi tapu or wahi taonga. The site is located in the takiwā of Ngai Tūāhuriri Rūnanga. I note that they did not make a submission on the proposal.
150. The proposed development can be adequately serviced in terms of water and wastewater. With respect to stormwater, the Applicant has lodged resource consents with the CRC who will determine whether there are any adverse cultural effects associated with the discharge of stormwater.
151. I consider that if consent were granted, an accidental discovery condition should be included. This would provide an effective mechanism to ensure that if any koiwi (human skeletal remains), taonga or artefact material was uncovered during construction activities, the discovery would be appropriately managed.

Summary

152. It is my opinion that the proposed subdivision does have the capacity to provide for a greater percentage of smaller lots particularly where these are located around the proposed reserve areas where open space values can be 'borrowed' from the adjoining reserve land. However, the exception to this is along the rural / urban interface and the boundary with SH1 where I consider the increased density will inevitably reflect an urban outcome with adverse effects on rural character, and amenity values.

153. In regard to the acoustic barrier along the boundary with SH1, it is my opinion that this would not maintain rural character and amenity to the entrance to Amberley. Furthermore, there may be potential effects in terms of maintenance matters with respect to the fence, associated planting and graffiti.
154. I consider that post and rail or post and wire fencing along with a 5.0 m wide landscaping buffer comprising of native plant species should be provided along the south boundary of the site to maintain an appropriate rural / urban interface.
155. In terms of amenity values, I have concerns regarding the size and shape of some of the proposed lots and their ability to provide for a complying dwelling. Furthermore, I consider that there would be a reduced level of amenity for residents of the lots adjoining SH1, even though any adverse effects in relation to noise and vibration from the state highway could be mitigated.
156. In relation to geotechnical matters, I consider that further information is required to identify which lots may require specific foundation design or additional works on site to ensure that "Good Ground" is achieved. In addition, it is unclear whether a minimum finished floor level is required for any of the lots and if so, how this requirement will be secured.
157. With respect to the contaminated land, provided that the remediation of the contaminated areas are carried out in accordance with the requirements of the RAP, I am satisfied that any actual and potential effects on human health and the environment in relation to contaminated land could be adequately mitigated.
158. In terms of servicing, I am satisfied that the subdivision can be adequately serviced with the exception of stormwater. There are some uncertainties around the proposed raingarden design and whether Council is prepared to take these over as assets. In addition, Mr Kent considers that the depth of the attenuation pond would be unsafe and that if the pond were to form part of the qualitative treatment chain, then its depth should be no greater than 1.0 m to prevent resuspension of settled solids.
159. With respect to roading, I consider that the proposed internal road layout would be appropriate and that the existing roading network would be able to absorb the proposed traffic generated as a result of the subdivision and subsequent development of the site. My only concern in this regard is 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. There is some uncertainty around how this link is going to be provided given that the proposed link road has not been vested in Council and there are no conditions on the retirement village consent requiring this given that consent was granted for land use only.
160. Given the above matters, I consider that further information is required to be provided to the Council to determine the actual and potential effects of the activity and to ensure that robust conditions of consent can be drafted, were the Hearing Panel of a mind to grant consent.
161. Overall, at the time of writing my report and based on the information provided to date, it is my opinion under section 104D(1)(a) that the adverse effects of the activity on the environment would be more than minor.

Relevant objectives, policies, and other provisions of a plan or proposed plan (s.104(1)(b))

Hurunui District Plan

162. The District Plan sets out a number of objectives and policies, which I consider relevant to the application. These are outlined and discussed below.

Chapter 4 – Settlements

General Policies

Objective 4

Adaptive, vibrant, and healthy settlements that meet the economic, social, and cultural needs of the district and North Canterbury; while retaining their own character, environmental quality, and sense of community.

Policy 4.7

To manage growth of settlements by recognising the need for adaptability, efficient use of infrastructure (especially when publicly funded) and consolidation within the existing form of settlements.

Policy 4.8

To maintain each 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, provided multiple lot subdivision is undertaken in accordance with an approved concept plan.

Policy 4.9

To maintain and enhance the character of residential areas includes to maintain the predominance of residential activities and areas.

Policy 4.11

To provide for high density residential developments in close proximity to the town centres of Hanmer Springs and Amberley, provided such developments are designed to maintain a sense of spaciousness and greenery, and are undertaken in accordance with an approved concept plan.

Policy 4.12

To provide for a low density residential environment at the outer edges of larger settlements, with single, detached dwellings on large allotments.

163. The proposed subdivision will create 201 residential lots in addition to six roads to vest, one access lot, five local purpose reserves and balance land over four stages. Residential lots will range in size from 400 m² to 1,028 m². While the District Plan provides for up to 20 % of the lots to be less than 700 m², the proposal shows 87% of the lots will be less than 700 m². In addition, nineteen of the lots will not meet the 15 metre by 15 metre shape factor requirement. The subdivision application notes that a complying subdivision would yield 155 lots at an average of 700 m².
164. In terms of Policies 4.7 and 4.8, I consider the proposed subdivision does have the capacity to provide for a greater percentage of smaller lots particularly where these are located around proposed reserve areas where open space values can be 'borrowed' from the adjoining reserve land. However, it is my opinion that the proposed smaller lots along the rural / urban interface and the boundary with SH1, along with some of the lots that do not meet the shape factor requirement, would not maintain the traditional residential character of Amberley. Furthermore I consider that the proposal would not be in accordance with Policy 4.12 which seeks to provide for a low density residential environment at the outer edges of larger settlements, with single, detached dwellings on large allotments. I consider that the smaller lots along the south boundary of the site and along the SH1 boundary would not retain the country town character of Amberley.

165. With respect to Policy 4.9, I consider that that the proposed subdivision will generally achieve this policy given that the majority of lots being created are for residential purposes. Furthermore, the proposal provides for reserve areas and a streetscape that allows enough space for grass berms and street tree planting which will enhance the residential character and amenity of these areas.
166. In terms of Policy 4.11, the proposal provides for higher density residential development in close proximity to the town centre of Amberley. While the proposal seeks to maintain a sense of spaciousness and greenery particularly through the provision of reserve areas and planted streetscapes, I consider that the higher density residential development along the rural / urban interface and the boundary with SH1 would not maintain a sense of spaciousness and greenery, particularly in terms of the proposed acoustic barrier. Overall, I consider that high density development in these two areas would be inappropriate and not in general accordance with Policy 4.11.

Open Space Policies

Policy 4.19

To promote the establishment of an integrated pattern of greenways and open spaces through the settlements.

Policy 4.20

To provide for open space zones to meet recreational requirements within settlements, which maintain and enhance amenity values and provide connectivity and public access.

167. The proposal incorporates a number of reserves, stormwater management areas and greenways which connect to various parts of the development. An initial landscape concept prepared by Novo Group notes that the stormwater ponds are to have naturalised edges and meandering borders to create a softer appearance and aesthetic with offset planting where possible. They note that informal pathways and tracks leading through or around the stormwater ponds will promote public movement and pedestrian flow through green spaces. As such, I consider that the proposal will be in accordance with Policies 4.19 and 4.20.

Amberley Policies

Objective 4.2

Amberley is a vibrant, rural township providing residential and business facilities and associated infrastructure and support services, to meet the economic, social, and cultural needs of the Hurunui District and North Canterbury; while retaining its country town character, sense of community and connectivity with its rural surroundings.

Policy 4.34

To recognise and manage the potential for reverse-sensitivity effects caused by residential and other sensitive activities located in close proximity to State Highway 1, the Main North Line, or industrial or business activities.

Note: The NZ Transport Agency is the road controlling authority for the State Highway. Refer to the NZTA Planning Policy Manual, or its successor, for guidance on reverse sensitivity around State Highways.

Policy 4.37

To recognise State Highway 1 as an integral part of Amberley Township, and work in partnership with the NZ Transport Agency and the community to manage its dual functions as a local road and part of the State Highway network.

Policy 4.38

To ensure an integrated transport network for Amberley Township, with all new residential and business developments occurring in a way that both recognises and reflects the principles of connectivity underlying the Hurunui District Council's Amberley Rooding, Cycleway and Walkway strategies.

Policy 4.39

To require any stormwater flow within Amberley's drainage system to be managed in accordance with the principles of the Hurunui District Council's Amberley Stormwater Management Plan; and to avoid any increase in peak stormwater flow within Amberley's drainage system.

168. In terms of Policy 4.34, the proposal provides for a 3.0 m high acoustic barrier alongside the boundary with SH1 and 2.0 m high internal fencing for lots adjoining the state highway. In addition, the report prepared by AES recommends a number of conditions that may be appropriate to further mitigate the effects of noise and vibration for those lots located within 100 m of the state highway. I note that NZTA did not raise reverse sensitivity as an issue of concern in their submission.
169. With respect to Policy 4.37, the Applicant has consulted with NZTA who have confirmed that they agree in principle to the proposed subdivision and the linkage through to the new intersection with SH1. It is noted that the agreement is on the basis that there will be no direct access for development traffic to the state highway.
170. The proposal provides for a road network that is logically laid out and provides good connectivity both internally and externally. The proposal also provides for either one or two footpaths on all roads and includes additional connections through proposed reserves to complement the footpath network along the primary and secondary roads. In this regard, the proposal is in accordance with Policy 4.38 however there is some uncertainty around when and how the road link through to SH1 will be secured. I consider that this link is necessary to ensure the proposed subdivision provides for an integrated transport network. If this link cannot be secured, the proposal would effectively result in a large cul-de-sac servicing up to 201 lots with all traffic being directed to Amberley Beach Road. This would result in a level of traffic on Amberley Beach Road that has not been considered in the subdivision.
171. With regard to Policy 4.39, the proposed stormwater regime for the development will not comply the Council's global consent and as such the Applicant has lodged consents with CRC. Mr Kent has confirmed that the principles of the consents lodged with CRC, are in line with the Amberley Stormwater Management Plan and overall the proposal would not result in any additional flows within Amberley's drainage system. As such, the proposal is considered to be in accord with Policy 4.39.
172. Objective 4.2 seeks to ensure that Amberley is a vibrant, rural township providing for residential and business facilities [...], while retaining its country town character, sense of community and connectivity with its rural surroundings.
173. The retention of open vistas at the entrance to the Amberley township is identified in the District Plan (assessment matter 4.24.16(a)) as being an important part of the town character and amenity. I consider that the proposed subdivision would not achieve open vistas across the site due to the proposed 3.0 m high acoustic barrier alongside SH1. Ms Smetham notes that vistas and noise mitigation could be improved through design including larger lots, increased building setback and incorporating the existing Dry Gully feature as an open space reserve extending from the SH1 boundary. Ms Smetham notes that while the proposal shows that part of Dry Gully will be set aside as open space and stormwater management reserves throughout the site, she considers that if these areas were reworked then positive benefits to amenity, natural and rural character values from SH1

could result without undue effects on lot yield to meet town character and amenity values assessment matter and associated objectives and policies.

174. As noted previously, I consider that the higher density residential development along the rural / urban interface and the boundary with SH1 would not retain the country town character of Amberley and its connectivity with its rural surroundings. In this regard, I consider that the proposal is not in accordance with Objective 4.2.

Chapter 5 – Subdivision

Objective 5

Subdivision and its subsequent development is designed to ensure that the adverse effects on the environment are minimised, and the character of an area is maintained.

Policy 5.1

To require that allotments 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.

Policy 5.2

To ensure the costs of the effects of new subdivision and development on the district's infrastructure are fully addressed and fairly apportioned.

Policy 5.3

To require a pattern of subdivision that protects environmental values and systems and the potential of resources to meet the reasonably foreseeable needs of future generations.

Policy 5.4

To ensure that subdivision and subsequent development 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 which may include:

- *Physical characteristics.*
- *Natural character of the coastal environment, indigenous wetlands, lakes and rivers and their margins.*
- *Indigenous biodiversity and ecological values.*
- *A sense of openness and a predominance of productive activities in rural areas.*
- *Landscape values.*
- *Archaeological, cultural and heritage resources, including resources with Ngāi Tahu cultural values.*
- *Specific values and sites of significance to Ngāi Tahu.*
- *Amenity values and sense of place.*
- *Infrastructure such as roads, water supply and stormwater management facilities.*
- *Water and soil quality.*
- *Mineral resources.*
- *Human health and safety including from known natural hazards.*

Policy 5.5

To manage the density of development, particularly in residential zones, through specifying minimum lot sizes and ensuring compliance with those densities through the subdivision process.

Policy 5.6

To ensure that subdivision is designed to avoid, remedy, or mitigate potential reverse sensitivity effects on other land uses.

175. In terms of Policy 5.2, I am satisfied that the subdivision can be adequately serviced with the exception of stormwater. The proposal requires a number of resource consents from CRC in relation to stormwater discharge. These consents have been lodged however no decision has been made in relation to the processing of these applications. Furthermore, some of the methods proposed in the consent applications for stormwater management such as the proposed raingardens would be unique to the district and as such Council is not resourced to undertake the specialist work required to maintain these assets.
176. In addition, based on Mr Kent's evidence there is some concern that the depth of the attenuation pond would be unsafe and its suitability as part of the qualitative treatment chain is not appropriate.
177. With respect to Policies 5.2 and 5.3, the Applicant will be required to provide the associated infrastructure needed to service the development at their cost. In addition, if consent were to be granted, development contributions would be taken for any new unit of demand to provide for other capital works set out in the Council's Long Term Plan.
178. Policies 5.4 seeks to ensure that subdivision and subsequent development 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. In addition, Policy 5.5 seeks to ensure that the density of development, particularly in residential zones, through specifying minimum lot sizes and ensuring compliance with those densities through the subdivision process is managed.
179. As noted previously, the proposed subdivision provides for a higher density of residential development than anticipated in the District Plan for the Residential 1A Zone. While I consider some increase in density is appropriate where smaller lots are located internally within the site and in particular in association with green spaces, I consider that the higher density residential development along the rural / urban interface and the boundary with SH1 would not be appropriate for Amberley's country town character.
180. In terms of natural values, Ms Smetham notes that with the exception of that part of Dry Gully to be filled in near SH1, elsewhere the subdivision layout and design utilises the natural topography of the site by incorporating Dry Gully. She further notes that the use of reserves and stormwater management areas that coincide with this existing natural feature is a positive aspect of the proposal and affords a unique identity and contributes high amenity values within the subdivision by provision spatial separation within a suburban setting, a natural green outlook, and recreational connections throughout the site.
181. The proposed subdivision will protect and enhance some of the physical features of the site through the creation of reserves, associated plantings and the creation of walkways associated with the Dry Gully feature. However, as noted above I consider that the proposal would not maintain the country town character and amenity values of the Amberley township. As such, I consider that the proposal is not entirely consistent with policies 5.2 and 5.3 of the District Plan.
182. With respect to Policy 5.6, the proposal has demonstrated that reverse sensitivity effects associated with noise and vibration from SH1 can be adequately mitigated. In terms of reverse sensitivity effects associated with other land use activities within the rural environment, these have not been addressed in any detail. I note that the presence of smaller lots along the southern boundary would potentially mean that there may be more residential activities along this boundary and that dwellings would be located in closer proximity to the rural boundary and neighbouring rural activities which may have the potential to result in increased reverse sensitivity effects.

Chapter 8 – Transportation

Objective 8.1

A safe and efficient transport network that services the current and future needs of all users.

Policy 8.1

To provide for the safe and efficient use and development of the land transportation network.

Policy 8.2

To ensure that the roading network within urban areas is sufficiently wide to provide adequate space for on-street parking, walkways, cycleways, open space character, services, and amenity planting.

Policy 8.4

To require footpaths and cycleways in urban areas, and to encourage walkways and cycleways in rural areas, while maintaining the safety and functionality of the road network.

Policy 8.5

To require on-site parking, loading, manoeuvring and access to provide for the needs of each activity while maintaining the safety and efficiency of the road network.

Policy 8.6

To manage the cumulative effects of multiple lots accessing the roading network at a single access point.

183. I am satisfied 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. As noted earlier there is some uncertainty around when and how the road link through to SH1 will be secured. In terms of road design, while the proposed roads do not meet the minimum widths in the District Plan, I consider that overall the road carriageways will be able to accommodate two way traffic, parking, walkways, services, and amenity planting.

Summary

184. I consider that while the proposal is in accordance with some of the objectives and policies of the District Plan, there are other objectives and policies that I consider the proposal is contrary to.
185. I consider that the provision of further information in regard to stormwater, geotechnical and roading matters may potentially address some of the matters in relation to the objectives and policies.
186. At the time of writing my report, with respect to section 104D(b)(i), I consider that overall the proposal is contrary to the objectives and policies of the District Plan.

Other relevant Statutory Documents (s.104(1)(b))

National Environmental Standards

187. There are currently nine National Environmental Standards (“NES”) in effect. These are the NES for Air Quality 2004, NES for Sources of Drinking Water 2007, the NES for Electricity Transmission Activities 2009, the NES for Telecommunication Facilities 2016, the NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011, the NES for Plantation Forestry 2018, the NES for Freshwater 2020, and the NES for Marine Aquaculture 2020, and the NES for Storing Tyres Outdoors 2021.
188. I have addressed the NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 earlier in my report. I do not consider that any of the other NES are applicable to this application.

National Policy Statement

189. There are currently six national policy statements in effect under the RMA: The National Policy Statement on Electricity Transmission 2008, the New Zealand Coastal Policy Statement 2010, the National Policy Statement on Renewable Electricity Generation 2011, National Policy Statement on Freshwater Management 2020, the National Policy Statement on Urban Development 2020 (“NPS-UD”), and the National Policy Statement for Highly Productive Land 2022 (“NPS-HPL”).
190. The government has also released a draft National Policy Statement for Indigenous Biodiversity.
191. The application site is located outside of the Coastal Environment Area and the activity does not involve the generation or transmission of electricity, freshwater or indigenous biodiversity. In addition, the application site is located within the existing urban boundary for Amberley and as such the provisions of the NPS-HPL are not relevant.
192. With respect to the NPS-UD, this NPS applies to all local authorities that have all or part of an urban environment within their district or region and planning decisions by any local authority that affect an urban environment. An urban environment is defined under the NPS-UD as meaning any area of 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.
193. I do not consider that the NPS-UD is relevant to the proposal as Amberley does not meet the definition of an urban environment under the NPS-UD.

Regional Policy Statement and Regional Plans

194. The District Plan was made operative on 21 June 2018 and gives effect to the higher order instruments referred to in section 104(1)(b), including the Canterbury Regional Policy Statement and regional plans. I have no reason to consider there is any illegality, uncertainty, or incompleteness in the District Plan. Accordingly, I have not addressed the higher order instruments specifically in this decision.

Relevant other matters (s104(1)(c))

Amberley Town Concept Plan

195. The Amberley Town Concept: a landscape character study, was prepared by Graham Densem Landscape Architect in 2007. The Amberley Town Concept Plan is not a statutory document so holds no legal weight, however the concept plan informed Plan Change 13 which resulted in the current rules in the Operative District Plan.

Part 2 Matters

196. Part 2 of the RMA contains the purpose and principles of the RMA. The purpose of the RMA is to “promote sustainable management of natural and physical resources.”
197. Section 5 sets out the purpose of the legislation being the sustainable management of natural and physical resources. Sustainable management means “*managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people or communities to provide for their social, economic and cultural well-being, and for their health and safety while –*
- (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.”*

198. Sections 6 and 7 of the RMA contain Matters of National Importance and Other Matters. Those considered to be relevant are:
- 6(h) the management of significant risks from natural hazards*
 - 7(b) the efficient use and development of natural and physical resources;*
 - 7(c) the maintenance and enhancement of amenity values;*
 - 7(f) maintenance and enhancement of the quality of the environment*
199. The District Plan has recently been reviewed. Its provisions were prepared under the higher order planning documents and, through its preparation and the process of becoming operative, have been assessed against the matters contained within Part 2.
200. Given the conclusions reached elsewhere in this report, I am unable to conclude whether the proposal supports the purpose of the RMA.

Conclusion and Recommendation

201. Based on the information provided to date, it is my opinion that under section 104D(1)(a) that the adverse effects of the activity on the environment would be more than minor.
202. Furthermore, I have concluded with respect to section 104D(b)(i), that the proposal is contrary to the objectives and policies of the District Plan.
203. Having considered all the relevant matters under sections 104, 104B and 104D, it is my opinion that consent should be declined.
204. If the commissioners were of a mind to grant consent, I consider that further information is required to ensure that robust conditions of consent can be drafted. However, an initial set of draft conditions will be circulated prior to the hearing.



Helga Bennett
Senior Planner
5 May 2023