

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a resource consent application by **VACO INVESTMENTS (WAIPU PROJECT) LTD** to the **WHANGAREI DISTRICT COUNCIL** and **NORTHLAND REGIONAL COUNCIL** under section 88 of the Act to develop and operate a BP service station, QSR and rural service centre 47 Millbrook Road, Waipu, and including subdivision to facilitate the development.

STATEMENT OF EVIDENCE OF HAMISH FIRTH

1. INTRODUCTION

Qualifications and experience

- 1.1 My name is Hamish Firth. I am a director and planner at Mt Hobson Group ("MHG").
- 1.2 I hold the degrees of Bachelor of Science (1994) and Master in Planning Practice (1996), both from the University of Auckland.
- 1.3 I have been a planning consultant since 1997. My professional experience includes providing planning advice and obtaining resource consents and plan changes in relation to a broad range of development projects. I have also been involved with the resource consent applications for a number of BP services stations and service centres throughout New Zealand.

Involvement in project

- 1.4 MHG was engaged by Vaco Investments (Waipu Project) Ltd ("Vaco") in 2021 to provide planning advice on the development of a BP service centre and rural development catering for the travelling public, rural production activities and rural communities on a portion of the site at 47 Millbrook Road, Waipu ("the site").

- 1.5 Keren McDonnell of MHG was the principal author of the Assessment of Environmental Effects (AEE) report that was prepared in support of the resource consent application; I oversaw that work and have been closely involved throughout the application and further information process.
- 1.6 I last visited the site and surroundings on 1 June 2024, and have undertaken a number of visits throughout the application process. As a consequence, I am familiar with the site and its surroundings, such that I able to provide a qualified assessment of the proposal from a planning perspective.

Purpose and scope of evidence

- 1.7 A comprehensive description of the site, the proposal and the reasons for consent has been provided within the submitted application and in the Council's section 42A report. The purpose of my evidence is to provide a summary of the consent process to date, describe the development for which consent is sought, identify the relevant statutory plans and reasons for consent, identify the issues raised, assess the environmental effects, analyse the consistency of the proposal against the relevant statutory provisions and provide an overall assessment of the proposal
- 1.8 Specifically, my evidence will:
- (a) Summarise the background to the proposal (section 3 and 4)
 - (b) Identify the resource management issues to be addressed (Section 5 and 6);
 - (c) Provide a summary of the assessment of environmental effects (including positive effects), including by reference to the evidence provided by the other witnesses and demonstrate that any adverse environmental effects would be no more than minor (Section 7)
 - (d) Assess the development against the provisions of the relevant statutory documents demonstrating that the proposed activity is consistent with the overall intent of those relevant statutory provisions (Section 9);
 - (e) Provide an assessment of the proposed activity against Part 2 of the RMA and an overall assessment of the activity (Section 13);
 - (f) Address matters raised in submissions (Section 14);

(g) Comment on the Section 42A Report and proposed conditions of consent (Section 15 and 16)

(h) Provide a brief conclusion (Section 17).

1.9 A summary of my evidence is contained in Section 2.

1.10 As specified in more detail through my evidence, my evidence either relies on or is complemented by the evidence of:

(a) Derek Kerr, BP

(b) Kin Leung, Lumeon8 Ltd (L8) – Lighting

(c) Richard Knott, Richard Knott Limited (RKL) – Landscape and Visual Amenity

(d) Todd Langwell, Traffic Planning Consultants (TPC) – Transportation

(e) Ian Hanmore, Hanmore Land Management (HLM) – Soil Resource

(f) Stuart Ford, The Agribusiness Group (TAG) – Productivity and Farm Viability

(g) Adam Thompson, Urban Economics (UE) – Economic Impact

(h) Madara Vilde – Wilde Ecology - Ecology

Expert Witness Code of Conduct

1.11 I have read the Code of Conduct for Expert Witnesses, contained in the Environment Court Consolidated Practice Note (2023) and I agree to comply with it. I can confirm that the issues addressed in this statement are within my area of expertise and that in preparing my evidence I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. SUMMARY OF EVIDENCE

Proposal

2.1 The proposal seeks a combined land use, discharge and subdivision consent to provide for the establishment of the Waipu Service Centre, primarily catering for

the commercial needs of the travelling public and supporting the surrounding rural production activities of the wider area.

- 2.2 The proposed range of activities include a BP service station and truck stop, 2 x QSR and 2x cafes/general food outlets catering for the passing-by market, as well as light industrial/commercial activities that support rural production activities and/or rural communities.
- 2.3 The proposed development is not intended to draw customers for Waipu township, but purely cater for the travelling public, stopping for fuel and convenience or requiring rural services that are best placed close to the rural communities they service and with good access to SH1. All references to providing more generalised food stores, general retail or commercial services that do not relate to rural and tourism activities have been removed from the proposal.
- 2.4 A two staged subdivision of the underlying lot, and then further subdivision around the respective buildings is proposed to facilitate the development, with options of either onsite or offsite wastewater treatment depending on what infrastructure is available at the time of construction.

Background to the proposal

- 2.5 Initial assessment undertaken by TPC in 2021, resulted in the preparation of an application that included the proposed service station and truck stop, QSRs and a lesser number of commercial buildings. The proposed access provided for north bound travellers to gain access from SH1 and exit the site at Millbrook Road, and southbound travellers entering and exiting the site at Millbrook Road. This proposal covered a 4ha area.
- 2.6 This proposal was put to NZTA-WK in February 2022 to initiate early consultation, and a number of further meetings ensued. At the meeting of 26 May 2022, NZTA-WK_WK noted that the applicant's proposal to use the Millbrook Road/SH1 intersection and SH1 access via a slip road was considered unacceptable for safety reasons, particularly for right hand/left hand given the proximity of the Braigh. NZTA-WK advised that a roundabout south of Millbrook Road/The Braigh intersection was the best option and should be investigated.
- 2.7 The applicant and TPC then designed and modelled the updated proposal (which forms this application), to include a roundabout south of Millbrook Road. This proposal was also presented to NZTA-WK, along with SIDRA modelling data. The proposed development was increased in size from approximately 4ha to 5.9162ha, primarily because of the need to recoup the costs associated with the development of the roundabout in this location.

- 2.8 The agreed meeting minutes confirmed that “the roundabout in proposed location is an acceptable solution to access to and from SH1 to the site in terms of public safety.” NZTA-WK confirmed they were in principle supportive of the roundabout subject to further information on the impact of the development on The Braigh intersection and an assessment of the linked trips to show worst and best case scenario. This information was provided in further S92 memorandums to the current proposal.
- 2.9 The applicant has continued to have discussions with NZTA-WK in regard to the proposed access to SH1, including the discussion in regard to a draft set of conditions which are attached to my evidence as **Appendix 1**.
- 2.10 As part of that discussion, NZTA-WK requested the applicant undertake a Safety Audit of the proposed roundabout, which has been delivered to NZTA-WK for review. The results of the Safety Audit are presented and discussed in the evidence Mr Langwell.

Reasons for consent

- 2.11 The proposed development requires resource consent in accordance with the provisions of the Whangarei District Council (operative in Part) District Plan (“District Plan” or “WDP”) and the Northland Regional Council’s Regional Plan (“Regional Plan” or “RNP”).
- 2.12 The site is zoned Rural Production (“RPROZ”) zone under the WDP, and requires resource consent for a variety of land use and subdivision matters which were set out in the AEE, and in section 5 of my evidence, so have not been repeated here.
- 2.13 Of note however, is that reference to the need for a discretionary resource consent under Rule RPROZ-R20 for the proposed storage and warehousing activities associated with rural production, rural communities including recreation and tourist based activities is also required, given the WDP definition of nested industrial activities. This specific reference was omitted from the application documents, although the activity type and description was included and encompassed in the application.
- 2.14 Under the Proposed Northland Regional Plan, the proposal requires both S9 and S15 resource consent for earthworks and the discharge of treated wastewater and associated odour to land.
- 2.15 Overall, and as a result of the bundled application and inclusion of the initial subdivision providing the parcel of land for the development, the application is to be assessed as a non-complying activity.

Assessment of effects

Appropriateness of the activity in this location

- 2.16 The site is located adjacent SH1, and within the RPROZ, which enables rural production activities including intensive livestock farming, horticulture and forestry activities as permitted activities. Small scale commercial activities that have a direct connection with the rural resource and support rural production activities and/or rural communities including recreation and tourist-based activities are also provided for as permitted activities in the zone. Where these activities do not comply with the standards of the plan they are provided for as discretionary activities, as are industrial activities such as storage and warehousing.
- 2.17 The RPROZ zone also seeks the protection and enhancement of biodiversity, landscapes, historic heritage and significant ecology, whilst protecting productive rural land resources, character and amenity. It does this by providing for subdivision and resulting development where a proposal demonstrates that there is a Net Environmental Benefit from allowing the activity.
- 2.18 The proposed development seeks consent for a service centre primarily catering for the travelling public on SH1, and a rural commercial service centre that caters for the wider rural communities and rural production activities including those associated with recreation and tourism, in Waipu and surrounding areas.
- 2.19 As part of the application, and having considered the submissions received, the issues raised in the CEA, and addressing the landscape as a whole, the applicant proposes to protect and enhance remnant indigenous vegetation along the riparian margins of Ahuroa River as part of the initial subdivision. The protection and enhance of this area is of ecological significance and creates a positive effect which can be used to offset the potential effects of the proposed subdivision and resultant development as is provided for within the RPROZ provisions of the plan.
- 2.20 As such, I consider that the proposed activity is appropriate in this location, and the effects of the land use activity need to be considered on its merits.

Effects on the Environment

- 2.21 The evidence of Mr Kerr outlines the importance of the proposal to BP, and how the hazardous substances will be managed on site to avoid, remedy and mitigate adverse effects on the environment.
- 2.22 The evidence of Mr Langwell, and the Safety Audit referenced in his evidence, concludes that the proposed Service Centre can be safely and be compatibly integrated in the traffic environment.

- 2.23 The evidence of Mr Leung confirms that the proposed lighting will meet the standards of the WDP, and any residual lighting effects can be further mitigated by the use of dimmable LEDs on the site.
- 2.24 The effects associated with construction noise and vibration, and the operation of the proposal have been appropriately addressed within the Acoustic and Vibration report which formed part of the application. This report confirmed that the effects of noise and vibration would be consistent with that considered acceptable under the provisions of WDP.
- 2.25 The evidence of Mr Knott confirms the distinctive and modified rural character of the site, and that the proposed development, subject to mitigative landscaping will not give rise to less than minor to minor adverse effects on the rural character and amenity of the landscape.
- 2.26 The evidence of Mr Hanmore and Ford confirms that the proposal will not have an adverse effect on highly versatile soils (given the site lacks them) or on highly productive soils, given the existing constraints of the site.
- 2.27 The evidence of Mr Thompson confirms the need for and lack of available land for a service centre supporting the district's rural productive land uses. Mr Thompson's evidence also confirms that any positive economic benefit to the proposed land use in this location will not affect the rural productive capacity of the land.
- 2.28 The evidence of Ms Vilde confirms the significant ecological values afforded by protecting and enhancing the indigenous vegetation riparian margins of the Ahuroa River as part of the subdivision application. Ms Vilde also concludes that when weighed about against the potential effects of the proposal on ecological matters, the protection and enhance of 2.28ha will result in a Net Environmental Benefit.
- 2.29 The archaeological and cultural effects of the proposal have been addressed in the CVA prepared by Patuharakeke Iwi Trust Board and Clough & Associates, as well in the NZHPT issue of an authority to modify. The recommended condition from these reports have been incorporated in the draft consent conditions attached as **Appendix 1** to my evidence.
- 2.30 The infrastructure effects of the proposal have been addressed in the technical reports of CKL that were attached the AEE, and form part of the proposed activity. Conditions of consent proposed by NRC in regard to earthworks and discharge consents have been agreed to by the applicant and included in the draft conditions.
- 2.31 A preliminary assessment of the construction effects of the proposed roundabout have been included in the attached **Appendix 3** to my evidence and conclude that

the effects of construction can be appropriately managed through detailed Management Plans and Engineering Approvals required at the time of implementation.

- 2.32 The effects of subdivision have been addressed in my evidence, to which I conclude that the subdivision will not give rise to any adverse effects on the environment.

Issues raised by submitters

- 2.33 Matters of concern raised by submitters have been comprehensively addressed by the relevant experts and as such, the issues they have raised have not altered my opinion that the proposal is appropriate in the planning context.

Relevant ODP provisions

- 2.34 All relevant statutory and plan provisions have been the subject of careful review in light of the expert advice received. Under the WDP, commercial activities and industrial activities that support rural production activities and/or rural communities are anticipated within the RPROZ, either as small scale permitted activities or discretionary activities, where the Council can exercise full discretion as to whether or not to grant consent and what conditions to impose, if consent is granted.
- 2.35 Other permitted and discretionary activities in the RPROZ include intensive livestock farming, farm quarrying, forestry through to industrial activities, places of assembly, recreation facilities, retirement villages, supported residential care. Hospitals are also provided for as non-complying activities in this zone.
- 2.36 Assessed overall, I consider that when viewed in a holistic manner this proposal is not contrary to the relevant statutory documents addressed in my evidence. I disagree with the conclusions reached by the Reporting Planner, Mr Hartstone, and I am satisfied that, relying on the advice provided by highly qualified independent experts, that the proposal is also appropriate from a planning perspective.

Overall assessment

- 2.37 Based on the analysis contained within my evidence, which has relied on the evidence of a range of technical experts, I consider that any potential adverse effects of the proposed development on environment are no more than minor.
- 2.38 It is also my view that the proposed development is appropriate having regard to the relevant objectives and policies of the WDP and NRP, and the higher planning documents.

- 2.39 The proposed development will provide for the social and economic wellbeing of the rural community and travelling public by providing appropriate services that support wider tourism/recreational and rural production activity, whilst maintaining the amenity and character of the RPROZ, in accordance with relevant objectives and policies for the zone.
- 2.40 My assessment is that the sustainable management of resources will be better promoted by granting consent than declining it and that, on that basis, the proposal is worthy of the grant of consent subject to conditions, as recommended within Section 16 and **Appendix 1** of my evidence.

3. **SITE DESCRIPTION AND CONTEXT**

Site description

- 3.1 A description of the Site and the surrounding environment has been included in the AEE, and has been accepted and adopted for the purposes of Mr Hartstone's s42A Report. It has also been described in the evidence of a number of the Applicant's experts and therefore I do not repeat it here.
- 3.2 Instead from a planning perspective, the key features of the site are as follow:
- (a) The flat site is approximately 31.8184 ha in area and comprised in a single allotment Lot 1, DP 44163, NA 26A/257. The land is currently apportioned into large paddocks demarcated with hedging, fencing and farm tracks with some small farm buildings dotted on the existing site. An existing farmhouse is located approximately 500m from the intersection of Millbrook Road and State Highway 1.
 - (b) The Ahuroa River, with remnant indigenous forest adjoins the western boundary of the property and forms the visual framing of views towards Mareretu Forest and Brynderwyn Hills. The northwestern portion of the site, adjacent the Ahuroa River is susceptible to flooding, as is the land to the south of the site adjacent the Waipu River.
 - (c) The site is located on the north-western side of State Highway 1 (known as the Waipu Bypass to Whangarei), at its intersection with Millbrook Road, and the Braigh which is a connector road to Waipu and Maungawhai Heads. The site is approximately 123 kms north of Auckland and 38km south of Whangarei.
 - (d) The site is dissected diagonally with the Northpower Critical Electricity Line ("CEL") running north to the south, and there are two existing vehicle

accesses to the site off Millbrook Road, and one vehicle access off State Highway 1 towards the southwest corner of the site.

Surrounding development

- 3.3 The immediately surrounding locality is predominantly farmland with occasional rural services in larger shed like buildings (as is directly opposite at 8 Millbrook Road) and residential dwellings, either within farmland and set back from SH1 with substantial vegetation surrounds, or in smaller residential lots adjacent the Braigh.
- 3.4 Further to the east (approximately 800m) is the township of Waipu, a small rural services town located along the Waipu River, and approximately 2.6m from the coast. Residential styled development of the RPROZ land emanated from Waipu extends along the Braigh to its intersection with SH1 opposite the site.
- 3.5 The wider environment contains farmland and pockets of "rural residential subdivisions" characterised by small clusters of lots and evidence of residential development on SH1, Glenmohr Rd and Millbrook Road for example. The smaller settlements of Waipu Cove and Langs Beach.
- 3.6 The predominance of SH1 both in this location, and as part of the wider SH1 roading corridor through the RPROZ zone up from the Brynderwyn Hills to the outskirts of Whangarei is evident, as too are the more "urban" characteristics associated with a busy roading corridor. This includes traffic (larger volumes and faster travelling speeds), lighting, noise, signage and businesses and services such as dairies and cafes, service stations, mechanics, schools, truck depots, industrial and commercial activities which seek to locate in close proximity to transportation links and potential customers travelling past.

Zoning of the Site

- 3.7 The proposal is located within the RPROZ, which covers the vast majority of land in the Whangarei District and is in close proximity to the Waipu Settlement Zone which encapsulates the Waipu settlement proper.

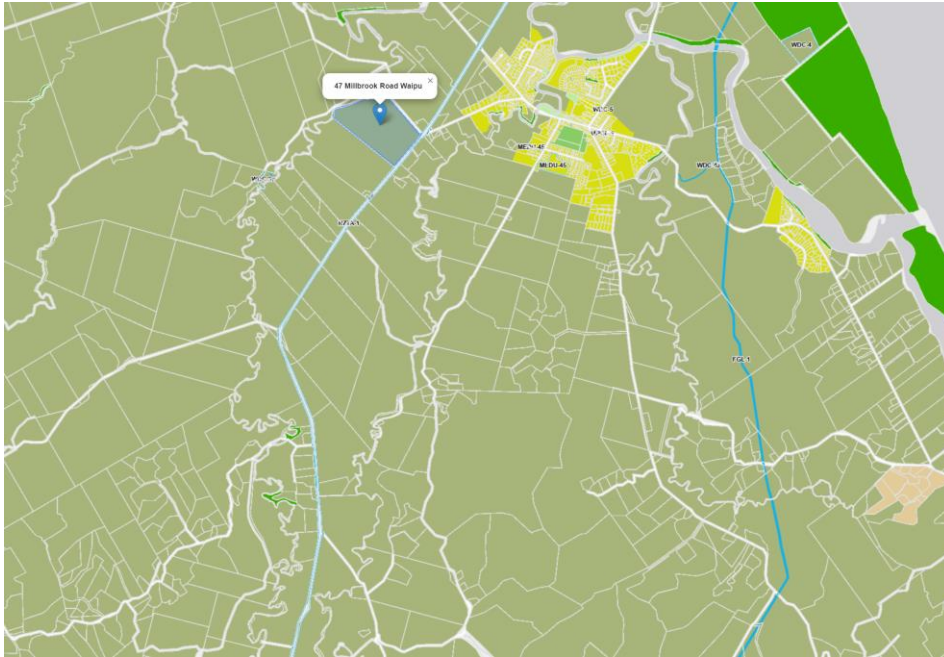


Figure 1: The site in the wider planning context (Rural Production zone (khaki green), Settlement zone (yellow) Source: WDC Eplan)

3.8 The preamble from the Issues section of the RPROZ within the District Plan, describes the zone as:

The Rural Production Zone (RPROZ) encompasses a large area of the Whangarei District. The purpose of the Rural Production Zone is to sustainably manage the natural and physical resources of the rural area in order to:

- *Protect, sustain and promote rural production activities as well as those activities that support rural communities.*
- *Protect areas of significant ecological and biodiversity values (such as indigenous bush and wetlands)*
- *Enable the rehabilitation of ecological and biodiversity values.*
- *Maintain rural amenity and character.*

The zone comprises a varied array of topography, landforms, soil types, biodiversity and catchments. It is important that the ecological and landscape values of the Rural Production Zone are recognised and where appropriate are protected and enhance.

...

The Rural production Zone provides for commercial activities and industrial activities that have a functional need to service rural production activities and/or rural communities or provide location based recreation and tourist activities.

...

Urban and rural residential types of development can erode the viability of rural productivity and can create reverse sensitivity impacts on productive uses through the visual effect of large scale buildings and incidental structures, increased traffic generation, loss of amenity including privacy, rural outlook, spaciousness, and quietness, particularly when a new incompatible activity is located near an existing activity, with resulting conflicts.

- 3.9 The RPROZ issues statement highlights the need for protection of productive viability of rural land, together with the maintenance and, where appropriate, protection of rural character and amenity, and significant ecological, biodiversity, landscapes and historic heritage. This includes protecting productive land resources from reverse sensitivity effects from residential subdivision and development. It does this by restricting the scale and nature of subdivision and resultant land use, unless a Net Environmental Benefit is provided to the District.

4. **OVERVIEW OF THE PROPOSAL**

- 4.1 The description of the Proposal is detailed in Section 4 of the Revised AEE, dated 9 August 2024. In summary the proposal involves:

Subdivision

- 4.2 Subdivision Stage 1: An initial two lot subdivision of the underlying land Lot 1 DP44163, NA26A/257 to provide:

- (a) Lot 200, 5.9169ha; and
- (b) Lot 100, 25.9009ha the balance lot.

- 4.3 Subdivision Stage 2: A further 15 lot subdivision of Lot 200 (around an approved development and undertaken in two Stages) to create:

- (a) 11 commercial lots;
- (b) Public road – Lot 50 (Land to be State Highway)
- (c) Drainage reserves – Lots 21 and 22 which would be owned by an incorporates society, who would then manage the interests of this common area with the interest of each individual site listed on the title as an encumbrance.
- (d) Easements for right of way, to convey and drain water, to drain sewage and convey electricity and telecommunications.

I note that the S42A report queried the status of the shared access rights by way easements over Lot 23 in Stage 2. Lot 23 has been added to the Scheme Plan – Overview detail together with the further easements/partial cancellations. An

updated Scheme Plan, showing these amendments has been prepared by Everest Surveyors¹ and is attached to my evidence as **Appendix 2**.

Stage 1 Activities

4.4 Service Station and Truck Stop:

- (a) The applicant proposes a BP petrol station and truck stop service centre within proposed buildings 1 -9. The details of the proposed petrol station and service centre are set out within the AEE, and the design, materials and detailing is consistent with other BP service stations and shown within the Architectural Drawing ²set. It is intended that the service centre is operative 24 hours/7 days per week.
- (b) Illuminated signage for the BP petrol station will be attached to the facades of the building and forecourt, utilising internally lit LEDs to comply with the Councils lighting standards.
- (c) Standalone signage in the form of 1x 13.5m site identifier sign on the SH1 frontage, and a smaller 9m BP plinth within will be incorporated into the internal landscaping and drive through facilities.

4.5 Food and Beverage Outlets:

- (a) Two x 260m² QSR restaurants (e.g. Burger King, McDonalds type restaurants) with drive throughs are proposed in Areas 11 and 23. The QSR restaurants will be operational 24 hours/7 days per week with servicing/deliveries occurring within those hours.
- (b) Two x 148m² cafes (e.g. Starbucks, Sierra, St Pierre's Sushi) are proposed in Areas 12 and 23. The cafes will be operation 7am-6pm/7 days per week, with servicing/deliveries occurring outside of these hours.
- (c) Illuminated signage for the premises will be attached to the facades of each of the buildings, and either be internally lit or using face mounted LEDS designed to comply with the Councils lighting standards. Standalone signage and display plinths will be incorporated into the drive through facilities internal to the site.

¹ Appendix 2 – Revised Scheme Plans

² Revised AEE 09/08/2024

4.6 The details of the indicative building design are set out within the AEE, and shown within the Architectural Drawing set². Finalised design details and materials of the buildings will be subject to conditions of consent.

Stage 2 Activities

- 4.7 Stage 2 of the development will cater for commercial and light industrial activities that support the activities of the surrounding rural production zone providing rural services and supplies, as well as those catering for recreation and tourist based activities that contribute to the District's economy.
- 4.8 The proposed activities are contained within 6 (Stage 2-Option 1) or 7 (Stage 2 – Option 2) buildings ranging in height from 5m – 7.8m in height. The buildings have a rural vernacular comprising materials such as long run metal profile roofing, precast concrete panels, horizontal metal cladding, coloursteel roller doors and limited glazing and will be painted in recessive colours.
- 4.9 These activities may include, but not be limited to:
- (a) Marine and farm vehicle sales and servicing;
 - (b) Rural real estate agencies
 - (c) Rural services such as veterinary practices, agricultural consultants
 - (d) Garden centres
 - (e) Bulk agricultural supplies
 - (f) Storage, logistics and warehousing
 - (g) Rural supplies and services

Site Development

Site works and infrastructure

- 4.10 Bulk earthworks of 24,800m³ of cut and fill is required over an area of 5.92ha to stabilise the ground for building platforms and necessitate the new infrastructure to service the site, which includes water tanks, stormwater ponds, swales and wastewater fields. The details of these works have been provided in the Civil Drawings attached to the AEE.

Lighting

- 4.11 Lumen8 Ltd have prepared an amended Lighting Plan which reflects the removal of the two entry totem signs, which is attached to the evidence of Mr Leung, and confirmed that the proposal can comply with the District Plan's lighting requirements.
- 4.12 Notwithstanding compliance with the District Plan standards for lighting, Mr Leung has also recommended that the lighting effects of the Stage 2 of the development can be further mitigated by providing dimmable LED lighting, that are only triggered by motion detectors.

Construction Noise and Vibration

- 4.13 SLR Consulting have provided a Noise and Vibration Report³ for the proposal which confirmed that construction and vibration on the site would comply with the relevant standards of the WDP, and would comply in the most part to the applicable noise standards during operation of the site.

Landscaping

- 4.14 Landscaping is proposed around and within the site, as illustrated in the Landscape Plans prepared by NK Landscapes Ltd, and referenced in the reports and evidence of Mr Knott. Key features of the Landscape Plans are:
- (a) Placement of groups of trees and specimen trees and planting along boundaries to provide a natural appearance;
 - (b) Built stone walls reflecting the heritage of the area, and providing a gateway into the development; and
 - (c) Grassed stormwater ponds to reflect the pastoral use of the wider site and some of the surrounding properties;

Proposed Roundabout

- 4.15 In order to facilitate safe and efficient access to the site the Applicant has proposed, in consultation with NZTA-WK the provision of a roundabout, the design details and safety credentials of which have been discussed in Mr Langwell's evidence and Mr Hill's Safety Audit and are not expanded on here.

³ Appendix 7 of the AEE 20/10/23

- 4.16 Further evidence in regard to the construction effects of the proposed roundabout on SH1 have also been provided to NZTA-WK, and is attached as **Appendix 3** to my evidence.

Modifications to the proposal since 9 August 2024

- 4.17 Throughout the resource consenting process, the Applicant and team of specialists have sought to engage with and respond to feedback received on the proposal. This has resulted in a number of modifications to the proposal since 9 August 2024, to further mitigate adverse effects including:

- (a) The inclusion of dimmable lighting measures within Stage 2 of the development;
- (b) Minor alterations to the design of the proposed roundabout, as a result of the recommendations from the Safety Audit to ensure access to SH1 is maintained for existing properties;
- (c) Proposed ecological protection and enhancement of the indigenous vegetation and riparian margins of the Ahuroa River; and
- (d) Refinements to the draft conditions.

- 4.18 Each of these matters is discussed within my evidence in more detail, and the proposed ecological enhancement elaborated on below.

Proposed Ecological Protection and Enhancement

- 4.19 Following submission of the revised application in August 2024, in response to commentary from Patuharakeke Iwi Trust Board and some submitters, the applicant also engaged Madara Vile of Wild Ecology to undertake an ecological assessment of the wider site, to ascertain the likely effects of the proposal, and make recommendations in respect of the potential for ecological protection and enhancement as part of the subdivision proposal. Ms Vilde has presented evidence on the matter, and the Ecological Assessment and recommended Ecological Management Plan is attached to her evidence.

- 4.20 The applicant's proposal has subsequently been amended to offer 2.28ha of ecological protection along the riparian margins of the Ahuroa River and incorporating 0.77ha of ecological enhancement as further mitigation to the effects of the initial subdivision and subsequent development. This area will be cleared of pests and weeds, planted and managed in accordance with the Ecological Management Plan.

5. REASONS FOR CONSENT

Reasons for consent

- 5.1 The proposed development requires resource consent in accordance with the provisions of the Whangarei District Council (operative in Part) District Plan ("District Plan" or "WDP") and the Northland Regional Council's Regional Plan ("Regional Plan" or "NRP").
- 5.2 The site is zoned Rural Production ("RPROZ") zone under the WDP, and as previously noted requires resource consent for the reasons set out below
- (a) Rule RPROZ-R10 - commercial activities that do not comply with the permitted activity standards of the RPROZ -discretionary activity.
 - (b) Rule RPROZ-R20 – storage and warehousing activities associated with rural production, rural communities including recreation and tourist based activities within the RPROZ -discretionary activity.
 - (c) Rule RPROZ-R4 – Building 25 does not comply with the 8m yard standard of the RPROZ for the proposed internal boundary with the parent lot-discretionary activity.
 - (d) Rule CEL-R2 - subdivision within 32 m of the centre line of a CEL – restricted discretionary activity.
 - (e) Rule NTW-R8 - subdivision within 32m of the centre line of the CEL – restricted discretionary activity.
 - (f) Rule HSUB-R1 - the use, storage or on-site movement of hazardous substances in the RPROZ, that does not meet the conditions for permitted activities in Appendix 8 of the WDP – discretionary activity.
 - (g) Rule TRA-R15 and TR-R16 - new activity that exceeds the carparking limits and sites thresholds limits of TRA Appendix of the WDP – restricted discretionary activity.
 - (h) Rule TRA-R17 and TRA-R18 - any major roading alteration to an existing public road and the construction of a public road – restricted discretionary activity
 - (i) Rule TWM-R2, the collection, treatment and disposal of stormwater associated with a subdivision in the RPROZ – restricted discretionary activity.

- (j) Rule TWM-R3 - the collection, treatment and disposal of wastewater associated with a subdivision in the RPROZ – restricted discretionary activity.
- (k) Rule TWM-R4 - the provision of or connection to a water supply associated with a subdivision in the RPROZ – restricted discretionary activity.
- (l) Rule EARTH-R1 - earthworks associated with subdivision that does not comply with the standards for a controlled activity in the RPROZ – restricted discretionary activity.
- (m) Rule LIGHT-R7 - artificial lighting provided for all roads created by a subdivision – controlled activity.
- (n) Rule NAV7.7 -activities that does not meet the noise and vibration permitted activity provisions of NAV6.1 – discretionary activity.
- (o) Rule SIGN R2- any sign visible beyond the site on which it is located – restricted discretionary activity.
- (p) Rule SIGN-R4 - signs that do not meet the permitted activity standards in the RPROZ – restricted discretionary activity.
- (q) Rule SIGN-R20 - illuminated signs that are visible from beyond the site boundary in the RPROZ – discretionary activity.
- (r) Rule SIGN-R21 - consolidated sign installations – restricted discretionary activity.
- (s) Rule SUB-R2 - proposed two lot subdivision of the underlying parent lot where appropriate infrastructural connections are proposed – controlled activity.
- (t) Rule SUB-R2.2 - non-compliance with the relevant zone permitted activity standards as a result of subdivision – restricted discretionary activity.
- (u) Rule SUB-R15, subdivision on land where the proposed allotments have a minimum net area < 20 ha in the RPROZ – non-complying activity.

5.3 Under the Proposed Northland Regional Plan the proposal requires S9 and S15 resource consent for the following reasons:

- (a) Rule C6.2.2 - discharge of treated wastewater from a wastewater network onto land and the associated discharge of odour- discretionary activity

- (b) Rule C8.3.1- earthworks that exceed 5000m² of exposed earth at any time
– controlled activity.

Activity Status

- 5.4 Overall, the application is to be assessed as a non-complying activity.

6. STATUTORY ASSESSMENT – NON-COMPLYING ACTIVITIES

Section 104 of the RMA

- 6.1 Section 104 of the RMA sets out the matters that the consent authority must, subject to Part 2, have regard to when considering an application for resource consent and any submissions received. Those matters comprise:

- (a) any actual and potential effects on the environment of allowing the activity;
- (b) any measure proposed by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects;
- (c) any relevant provisions of a national environment standard, other regulation, any national policy statement, regional policy statement(s) and plan(s); and
- (d) any other matter the consent authority considers relevant in determining the application.

- 6.2 My assessment of the actual and potential effects, which relies on the specialist evidence of the applicant's witnesses and contributors to the AEE is set out in my evidence below, and includes the ecological offsetting proposed by Ms Vilde and offered by the applicant. I conclude that the adverse effects generated will be no more than minor.

- 6.3 I have considered the following documents, to the extent that they are relevant or been referred to by Mr Hartstone in his evidence:

- (a) National Policy Statement for Highly Productive Land 2022
- (b) National Policy Statement for Indigenous Biodiversity 2023
- (c) National Policy Statement for Freshwater 2020
- (d) National Policy Statement on Electrical Transmission 2008
- (e) Northland Regional Policy Statement 2016

- (f) Proposed Regional Plan for Northland 2024
- (g) Whangarei District Plan (Operative in Part) 2022
- (h) Proposed Plan Change 1 – Natural Hazards

Section 104D Gateway Tests

- 6.4 The “gateway” tests of section 104D of the RMA provide that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that, having considered the matters set out above:
- (a) The adverse effects of the activity will be minor; or
 - (b) The application is for an activity that will not be contrary to the objectives and policies of the relevant plan or proposed plan.
- 6.5 In my opinion, and for the reasons I set out below, the proposal meets both of the gateway tests of Section 104D.

7. ACTUAL AND POTENTIAL EFFECTS – SECTION 104(1)(A) RMA

- 7.1 As a non-complying activity, the actual and potential effects of the Proposal are subject to assessment and scrutiny. The AEE has comprehensively considered the actual and potential effects of the Proposal, as has the s42A Report and associated Council specialist reviews. Accordingly, I do not propose to set out the full assessment here.
- 7.2 Instead, I will focus on the key effects of the Proposal that remain in contention (including matters raised by submitters). I consider the following to be the primary issues raised by this application.
- (a) Permitted Baseline
 - (b) Appropriateness of a Service Centre in this location
 - (c) Traffic Effects
 - (d) Lighting Effects
 - (e) Noise Effects
 - (f) Effects on rural character, amenity and landscape
 - (g) Economic effects

- (h) Effects on Rural Productive Land
- (i) Ecological effects
- (j) Cultural and archaeological effects
- (k) Infrastructure effects
- (l) Construction effects
- (m) Hazardous substance storage
- (n) Subdivision effects
- (o) Precedent effects
- (p) Positive effects

7.3 Each of these matters are discussed below.

Permitted Baseline

7.4 Section 104(2) of the RMA provides that when forming an opinion about the actual and potential effects of the activity, the consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

7.5 I disagree with Mr Hartstone's assertion that:

there is no permitted baseline that readily assists in assessing the effects of the proposal. At best, it may be credible to suggest that the earthworks could be staged across the site to comply with the permitted standards in the PRPM.⁴

7.6 In my view, the permitted baseline is particularly relevant when considering rural character, landscape and visual effects, having regard to the range of activities that are expressly permitted in the RPROZ of the WDP.

7.7 I consider that the effects associated with the following activities should be discounted from the effects assessment in accordance with S104(2), given that these activities are permitted to be undertaken on the subject land without the need for a resource consent:

- Farming, including horticulture and greenhouses, free range poultry farming and plantation forestry within an unlimited number of buildings and accessory buildings up to 10m in height, set back 8m

⁴ Para 55 S42A report

from the property boundary with a 20% coverage of the net site area

- Activities ancillary to farming or forestry that have a cumulative gfa of 2,000m² per site or an outdoor area greater than 500m², which could include premises for the manufacture of dairy products, abattoirs, timber processing, stock and sale yards, cool stores, pack houses and rural contractor depots;
- Artificial crop protection structures (including greenhouses tunnel houses) up to 10m in height, and 1m from boundaries;
- Intensive Livestock Farming that includes buildings and major structures with a cumulative gfa of 2,000m² per site, which could include, including pig farming and cattle feedlots and their associated buildings
- Farm Quarrying of up to 5,000m³/year, where the quarried material is used on the farm of origin;
- Rural Air Strip

7.8 In terms of the proposed activities and buildings on site, I consider that visual and landscape amenity effects associated with these, where they are the same or similar to those listed as permitted above should be discounted from the effects assessment in accordance with section 104(2). In particular, I note that buildings and structures such as those proposed in their basic form, as well as tunnel houses can be developed on the site in a similar location (in many ways like that which has been developed on the corner of Glenmohr Rd and SH1).

7.9 The development of buildings on the site for each of the stages will result in a build coverage of:

Net Site Area	Stage 1 Built Coverage	Stage 2 Built Coverage	Total built coverage %
49,828m ²	1,666m ²	5,888m ²	7,554m ² (15%)
Stage 1, 21,460m ²	1666m ²		7.76%
Stage 2, 28,376m ²		5,888m ²	20.7%

7.10 The buildings proposed are also less than 8m in height and comply with the 8m yard set back, for all but Building 25 which is located within the 8m yard with the internal boundary with Lot 100. Accordingly, when assessed overall, I consider that the proposed development will have a scale and bulk that is not dissimilar to permitted buildings associated with farming and horticulture, as referenced in paragraph 7.7 above. The subsequent subdivision around the development whilst

generating “technical infringements” will not alter the scale, form and appearance of development on the site, and therefore the effects as Mr Hartstone suggests.⁵

- 7.11 In my opinion, the form and scale of buildings proposed are also not inconsistent with those that are present in the rural landscape of NZ, or with my recent observations of rural buildings within the Rural Production zone around Auckland, such as those at 27 Dobson Road, Mangatawhiri, or 36 Glenmohr Road, Waipu for example, which I have provided images of below.



Figure 2A: 27 Dobson Rd, Mangatawhiri

⁵ Pp29 S42A Report



Figure 2B: 27 Dobson Rd, Mangatawhiri



Figure 3: 36 Glenmohr Road, Waipu

- 7.12 I note that the RPROZ zone allows building materials and form to be unrestricted and unfettered in this location, which lends itself to a rural amenity being able to be developed that is not pristine. If the rural landscape amenity was of such importance to WDC in this zone, the Council could have implemented a controlled activity status for all new buildings with controls pertaining to colours, materials, landscaping and glazing for example, or have specific design oriented policies as they have done for Outstanding Natural Landscapes and Outstanding Natural features and supporting policies (such as NFL-P9 *Buildings, Structures and Regionally Significant Infrastructure* and NFL-P10 *Buildings and Structures on Land Zoned Residential and Settlement Zone Residential Sub-Zone*).
- 7.13 I therefore do not consider that the inclusion of the built form as part of the permitted baseline and the applicant's reliance on that when assessing effects is

fanciful, but merely understands and appreciates that a wide variety of buildings exist in and form part of the working rural landscape, and that buildings such as these are more likely to be located in close proximity to a state highway given the reliance on transport links. The rural landscape is not an idealistic and romantic landscape representative of John Constable's Haywain, and in my opinion, it is fanciful for the Council officers to conclude that it is.

- 7.14 I also note that the WDP provides standards in respect of noise, vibration, lighting (both within the development and on the roading network) which the applicant has sought to comply with. These too provide a permitted baseline in respect of the level of noise, illumination and vibration considered acceptable in the location, and therefore in my opinion should also be discounted from the effects assessment.

Appropriateness of the Service Centre in this location

- 7.15 The evidence of Mr Kerr sets out the need for a service centre in this location, and its importance to the transport and freight services between Auckland and the Northland Port, carrying general goods and services to and from the mid and far north, with truck movements expected to grow. The provision of a fast, convenient and reliable charging network for electrical vehicles (EVs) is also a strategic priority.
- 7.16 Mr Kerr notes the past difficulty in finding an appropriate site in this wider location, that meets all of BP's criteria in terms of visibility, ease and safety of access adjacent SH1. Mr Kerr's opinion is that the proposed service centre will fill a significant gap in the BP network, for not only travelling public but also the truck and transport clients, the majority of which utilise a fleet car, so can only use BP sites – which accounts for between 25% market share for trucking demand and 22% for car demand.

Traffic Effects

- 7.17 The key transport matters raised by the Council and in submissions relate to the traffic safety effects associated with the design and function of the proposed roundabout, and the transport efficiency associated with trip generation of the proposal in the context of the existing and future environment.
- 7.18 Considerable effort has gone into understanding the transport implications of the Proposal, leading the applicant to engage an independent specialist TPC to design the proposed access to the site and assess the implications of the proposed activity on the surround traffic network. A Safety Audit has also been undertaken by Leo Hills of Commute which is outlined in the evidence of Mr Langwell.

- 7.19 The applicant has also had significant engagement with NZTA-WK, who have reviewed the proposal and provided commentary on the access arrangements, trip generation and draft conditions.
- 7.20 The TPC Traffic Impact Assessment of the proposal together with Mr Langwell's evidence provides a comprehensive assessment of:
- (a) The location of the site within the surrounding traffic and roading network;
 - (b) The proposed vehicle access to the site from SH1;
 - (c) Potential traffic effects arising from the development; and
 - (d) Traffic related issues raised by WDC and submitters.
- 7.21 Mr Langwell has also summarised the role of a Safety Audit, and the conclusions reached in regard to safety of the proposed roundabout for this proposal, and its suitability in terms of concept design and location.
- 7.22 I do not intend to repeat their analysis here; however, I will briefly address the key points raised by Mr Langwell upon which I have relied.

Existing Traffic Environment

- 7.23 Mr Langwell has used the traffic flow data provided by NZTA-WK from 2019 to estimate the traffic flows for the Integrated Traffic Assessment (ITA) of the proposal, together with turning count surveys conducted by TPC at the Millbrook and The Braigh intersections. This data is generally agreed by TPC and NZTA-WK as being the most appropriate for the assessment.
- 7.24 The SIDRA traffic modelling of both the traffic environment with and without the Waipu Service centre has been based on a design year of 2032, with a 3% traffic growth applied to the 2019 daily peak average flows as well as a holiday peak period.
- 7.25 Both average and holiday peak scenarios have been modelled in the ITA report, that on average the peak hour volumes recorded 805 vehicles per hour (vph), and the holiday shoulder peak hour volume (typically a Sunday between 2.00pm - 3.00pm) of 1,165vph.
- 7.26 In Mr Langwell's opinion, whilst the traffic modelling undertaken considered both average and holiday peak, reliance on traffic modelling based on a holiday period peak is an overly conservative position, given that:

- (a) the modelling represents the traffic experienced for a limited number of days and hours each year.
- (b) the results indicate that the Millbrook Road and The Braigh intersection with SH1 can not accommodate the anticipated 2023 holiday peak traffic even without the service centre in place, with delays already anticipated on the side road right hand turns of between 139-158 seconds and LOS F, although this is likely to only affects between 10 and 15 vehicles during the peak hour.
- (c) Mr Langwell also considers that there is likely to be some "let in" behaviour, whereby the actual delay for traffic turning right from Millbrook Road and the Braigh during this holiday peak will be significantly less than modelled.

7.27 Consequently, it is Mr Langwell evidence that the SIDRA modelling overstates the congestion that can be expected at the existing Millbrook Road and The Braigh RHT intersections, and in reality, is likely to be significantly less than the modelling would indicate.

Crash Analysis

7.28 Mr Langwell has provided a detailed crash analysis for the five-year period from 2019 - 2024 for SH1 and approximately 1 km north of and 1.4km south of the proposed Service Centre location. He concludes that the number and nature of crashes on the approach directions to the proposed Service Centre site are largely unremarkable and are not indicative of a pattern of inherent road safety defects that would be further adversely affected by the presence of the proposed Service Centre, to which I agree.

Traffic Generation Effects

7.29 Mr Langwell has modelled the traffic generation to and from the proposed Waipu Service Centre based on the existing road layout, given the NZTA-WK measures to address safety on SH1 through the Whangarei to Wellsford Safety Improvements project, including a roundabout at the SH1 intersection with Shoemaker Road (1km to the north of Millbrook Road) are not being pursued by NZTA-WK.

7.30 The SIDRA modelling of the traffic effects utilises the following assumptions:

- (a) The Service Centre component of the proposal (Stage1) provides services to the travelling public drive by market and is not anticipated primary destination in itself.
- (b) There will be a predominance of linked internal trips associated with the Service Centre, whereby customers refuel, and visit a café or pickup

takeaways (which based on other examples equates to between 35% - 65% of total customers).

- (c) For the Rural Service Centre component of the proposal (Stage 2), the modelling anticipates that this will be a primary destination in themselves, with negligible linked internal trips.

7.31 Based on the proposed land use activities, and the gfa of the proposed buildings, it is Mr Langwell evidence that the modelling results indicate that the roundabout will be able to satisfactorily accommodate the forecast traffic generated by the service centre in the 2032 holiday peak hour with the development in place, with the worst case movement being a right turn out from the site onto SH1 (with an average delay of 19s and LOS B).

7.32 Mr Langwell also highlights that with the Service Centre in place, the modelling predicts the already deficient Millbrook Road and The Braigh intersection delays to increase to 14-16 minutes. His evidence is that a delay of such magnitude is unlikely to be experienced because:

- (a) The peak hour demands for right hand turning traffic at the Millbrook and The Braigh intersections are very small (10 and 15 vph respectively);
- (b) There is anticipated "let in behaviour", especially when demands on SH1 are high and speeds reduced through congestion;
- (c) Right hand turns can be achieved in two stages;
- (d) Right hand turning vehicles also have the option of an alternative movement, either by utilising the roundabout, or left and then right into the Braigh, which would add significantly less time to ones journey than the predicted modelling.

Assessment of Road Safety Effects

7.33 Mr Hills of Commute Ltd has undertaken a Safety Audit of the roundabout concept design. The analysis of and conclusions reached are set out in his Safety Audit, which is tabled to Mr Langwell's evidence, and summarised below.

7.34 The Safety Audit concludes that:

- (a) The intersection provides safe and efficient access and egress for the Waipu Service Centre, being located sufficiently clear of the existing Millbrook Road and The Braigh intersections to avoid any potential conflict between various turning movements;

- (b) The roundabout could have additional safety benefits in conjunction with any NZTA-WK upgrades of the existing roading network;
- (c) Internal to the site, circulating and parking areas are generally separated and legible to motorists. Pedestrian connections are included within each parking area and across the main driveway to link with different activities.

7.35 Mr Hills has also considered the relevance of the NZTA-WK Road to Zero strategy and concludes that given the proposal is not an extraordinary one, there is no evidence to indicate that the operation of the Service Centre in this location will compromise the welfare or safety of any road user.

NZTA-WK involvement

7.36 The applicant has continued discussions with NZTA-WK post the notification of the application and provided them with the results of the Safety Audit and further construction details for the proposed changes to the roading network which are set out in section 7.81-7.84 of my evidence below and attached as **Appendix 3** to this evidence

7.37 NZTA-WK have also provided commentary on the draft condition set that were included in the 14 June 2024 amendments sent to WDC. In respect of the draft suite of conditions, we have made suggested amendments following our discussions with NZTA_WK. The revised draft conditions are attached as **Appendix 1** to this evidence.

Traffic Effects Summary

7.38 In reliance on the analysis provided by Mr Langwell, and the Safety Audit referenced in his evidence, I consider that the proposed Service Centre can be safely and compatibly integrated in the traffic environment.

7.39 On the basis of Mr Langwell's evidence, I am satisfied that any transportation/traffic safety effects are acceptable and do not warrant consent being withheld.

Lighting Effects

7.40 Mr Leung has provided an updated assessment of the proposed lighting as a result of amendments to the application, including the removal of two of the illuminated totem signs front SH1. The amended Lighting Plan is attached to his evidence.

7.41 Mr Leung has confirmed that the proposed lighting will comply with the relevant rules of the WDP, and I therefore conclude that the proposed lighting will generate luminance and glare effects of a level considered appropriate as anticipated by the

WDP, given that the standards have specifically been set by WDC which has determined these lighting are acceptable for this rural location, noting the Issues statement of the WDP states:

"The artificial lighting provisions in this chapter both manage and require artificial lighting, in order to support the health and safety of people to ensure that lighting levels are compatible with the existing lighting character of the surrounding environment and that the amenity of the night sky is preserved."

7.42 In my opinion, the applicant is entirely correct in relying on compliance with the WDC standards for lighting, and that the effects of the activity should be discounted under section 104 where compliance is achieved as this provides a permitted baseline of acceptable effects in this location.

7.43 In regard to the lighting effects of the proposal, I concur with Mr Leung's opinion that:

the lighting proposal will provide for a well-suited and safe space for the users of the service centre, given the following:

- a) *The proposed location is already well lit, given it is an intersection on SH1 with Millbrook Road and The Braigh, and issues of driver safety are considered paramount.*
- b) *The proposed illumination of the service centre and Stage 2 development complies with the WDP provisions and the relevant Australian / New Zealand Standard which are considered the acceptable standard for the zone, and are consistent with other planning provisions throughout the country.*
- c) *The illumination from the Stage 1 activities will be mitigated by the proposed landscaping (acting as a visual screen) and their relative positions in relation to SH1, in comparison to other existing services stations along SH1 in close proximity to the site, i.e. located directly adjacent to SH1 with no form of screening installed.*
- d) *The illumination of the sign at the entrance will be back-lit, i.e. the light source is fully concealed and does not create any glare to the drivers. The luminance of the signage will be in compliance with the requirement under the Signs Chapter of Whangarei District Plan.*
- e) *The illumination and dimmability of the lighting solution will further mitigate the effects of the Stage 2 development such that the lighting pollution to the sky is significantly reduced.*

Overall, I consider the effects of lighting are acceptable, comply with the plan provisions, and will produce light spill/glare that is less than other locations, and that nonetheless, the application has sought to have these effects mitigated further through the use of dimmable LED in the lighting solution.

7.44 As such, and relying on Mr Leung's evidence I consider the effects of lighting on the environment are acceptable and no more than minor.

Noise and Vibration Effects

7.45 The SLR Acoustic Report included in the AEE assessed the effects of operational noise and vibration resulting from the proposal and determined that there may be

a minor infringement (1dBA) in the operational noise standards. The assessment also concluded that this level of infringement will be imperceptible and will result in less than minor effects.

- 7.46 The SLR Report also concluded that the proposal will meet the permitted activity vibration standards of the WDP, and therefore are considered to be acceptable.
- 7.47 I rely on the specialist assessment of SLR, in concluding that the noise and vibration effects of the proposed development are less than minor.

Landscape, rural character and amenity

- 7.48 Mr Knott has undertaken a comprehensive assessment of the effects on the existing landscape, rural character and amenity values, in both his *Landscape and Visual Effects Assessment* provided as part of the AEE and his evidence.
- 7.49 The application has also been amended in response to the landscape and rural amenity concerns of Mr Kensington who reviewed the application for the Council, and in response to submissions received. These amendments are:
- (a) Removal two of the three illuminated signs from the entrance to Waipu Service Centre;
 - (b) Proposed further planting to boundaries of the development, including specimen trees, particularly to the north of the site adjacent Millbrook Road;
 - (c) Proposed protection and planting of the 2.28ha of indigenous vegetation and riparian margins of the Ahuroa River which provide a landscaped rural character and panoramic back drop to the site.
 - (d) Lighting of Stage 2 of the development will be restricted with dimmable LEDs from 10pm-6am.
- 7.50 Further mitigation in respect of restrictions on future built form of Stage 2 development is proposed by way of consent conditions including:
- (a) Building and major structure colour controls
 - (b) Permeable fencing requirements around the site.
- 7.51 These additional controls ensure that the built development will largely be of a form consistent with rural buildings and structures permitted in the zone, such as livestock and implement sheds, barns, tunnel housing and modern milking sheds.

7.52 Modifications to the Landscape Plan⁶, and the implementation of the Ecological Management Plan⁷ increase vegetation in the wider site, particularly the indigenous planting adjacent the Ahuroa riparian margins. Collectively in my view these amendments and additional controls reduce the visual effects of built form on the site. These measures are discussed in further detail in the evidence of Mr Knott and Ms Vilde and are reflected in the amended proposed consent conditions attached as **Appendix 1** to my evidence.

7.53 Mr Kensington has undertaken a peer review of the application on behalf of WDC. His primary concern was that the development was of an urban form that will not retain any rural character and amenity on the site, adversely affecting people's appreciation of the wider rural landscape character and values for people travelling past on SH1 or those in dwellings living opposite on SH1. These concerns were also raised by a number of submitters.

7.54 In Mr Knott's opinion:

The local environment is not an area of "high rural amenity as suggested by the Council. It is a modified rural environment.

- (a) *The rural land is bisected by SH1 and by local roads.*
- (b) *The existing vets, a commercial use located immediately to the north, the residential development along the Braigh, and residential development along SH1 are all located on Rural Production Zone land.*
- (c) *There are clear views of the Waipu village from SH1 across the Rural Production Zone land.*
- (d) *High voltage overhead powerlines cut across the area.*

7.55 Mr Knott concludes that when assessing the 'distinctive rural character and amenity of the Rural Production Zone', he does not consider that this is formed only by the matters listed at 1(a)-(g) of RPROZ-P1, as implied by Council officers. He concludes that:

In this instance, the 'distinctive rural character and amenity of the Rural Production Zone is a product of a different valance of natural and man-made features, which do not fit the general description in the RPROZ-P1. It is this 'distinctive rural character and amenity' which should be used in considering the appropriateness of the proposed development in this location, adjacent the dominant SH1, on the edge of Waipu village".

7.56 I concur with Mr Knotts opinion, and agree that the Council officers have underplayed the significance of the impact of SH1 on the visual and natural character of the local area.

⁶ Evidence of R Knott

⁷ Evidence of M Vilde

7.57 This “wider” appreciation of the rural landscape character has been confirmed in caselaw⁸ where it was noted that there are a number of “rural features”, that arise frequently in the rural area and therefore can be considered typical of its character, although to some who do not work within it, they may be termed undesirable. Many of these features are typical and even expected within the rural area and they contribute to a person’s appreciation and understanding of amenity.

7.58 These include:

- (a) Roads without areas for pedestrians and cyclists;
- (b) Prominent residential buildings with little shelter or screen planting;
- (c) Large utilitarian buildings and machinery prominently in view
- (d) Heavy truck movements for farming, forestry and quarrying.

7.59 In this particular wider landscape, there is also evidence of larger rural land lots being fragmented by rural residential subdivision, high tension overhead power wires, and a busy roading corridor of national significance which are lit at night. Illuminated signage for Service Centres along the SH1, which clearly runs through a predominance of rural land in New Zealand is also not an uncommon or unexpected aspect of the rural landscape – and one often considered a welcome respite on long car rides up and down the country.

7.60 Mr Knott has assessed the visual dominance of the proposed built form in this location, including creating simulations to illustrate how the proposal sits amongst the surrounding land uses and existing landscape character. His evidence is that subject to the mitigation proposed, any adverse effects from the proposal on the existing rural landscape, character and amenity values will be no more than minor. In particular:

- (a) In the long term with the implementation of the updated landscaping plan, the proposed development will have a minor or less than minor adverse effect on the rural character and amenity of the local area;
- (b) The scale of the proposed buildings is not out of keeping with the local modified rural area, and their setback from the SH1 road boundary is in keeping with the 8.0m minimum setback for buildings and major structures in the Rural Production Zone, and supported by the condition proposed regarding recessive colour palette to buildings.

⁸ Brookby Quarries Ltd v Manukau City Council Env A 196/05

- (c) The planting along the site boundaries has been designed to reach a height that will disrupt the view of building, signage on buildings, low height free standing signage and other "urban features" within the site.
- (d) In relation to the views from the limited private properties in the area, the dwellings in the Braig will experience a low-moderate visual effect equivalent to a minor adverse effect once the planting is established; and dwellings to the south of the proposal will experience a low (equivalent to less than minor adverse effect) to a low-moderate visual and landscape effect (equivalent to a minor adverse effect).
- (e) Signage, including large signs are not an unexpected feature along the Warkworth to Whangarei section of SH1. Whilst Sign 1 will represent a new feature in this landscape, its location is directly associated with SH1, it will maintain the amenity and not be out of character with the surrounding modified rural environment and will meet the expectations of SIGN-01, SIGN-02, SIGN-P1 and SIGN P-3.
- (f) Both in the short term and long term, the additional lighting in the vicinity of the site will not be out of character with the experience of drivers as they journey along SH1, it is an expected feature given the national significance of SH1,

7.61 Mr Knott concludes that:

I remain of the opinion that the development will in the long term, with the proposed conditions, have a minor or less than minor adverse effect on the rural character and amenity of the local area:

- (a) *The proposed landscaping scheme around and within the development will mean that there are only glimpses of "rural styled buildings" for the majority of viewers (which are under the 20% built coverage and height provisions of the site), and which are not out of keeping with other views they experience along SH1.*
- (b) *The wider pastoral landscape around the site will remain and will be enhanced by the protection of vegetation along the Ahuroa River margins, which also contributes to the framing of Mareretu Forest and hills beyond, both acknowledged by Mr Kensington and myself as an important feature of the wider landscape.*

7.62 I rely on, and agree with Mr Knott's assessment and consider that the proposed development will be mitigated by the proposed planting to such an extent that the proposal will no more than minor adverse effects on the rural character and amenity.

7.63 When reviewing the position of the development within the landscape, the ratio of buildings to open land appears low (and is less than and generally consistent with 20% site coverage calculations of the WDP for permitted buildings). In my view

when addressed in this context, and that of the mitigative planting proposed, the proposal will not have a more than minor effects on the particular rural characteristics of this landscape – given that the majority of views of the site will be fleeting glimpses by users of SH1, through trees and landscaping with the back drop of the remaining pasture land and the Mareretu Forest and hills.

- 7.64 I also disagree with the conclusions of Mr Hartstone that the proposed land use has no relationship to the surrounding rural amenity and will not be able to suitably mitigate or avoid adverse effects given its size, location and scale.
- 7.65 I have already described those activities and structures which are provided for as permitted activities in the zone at paragraphs 7.4-7.9 of my evidence. It is my opinion, relying on the evidence of Mr Knott that the visual effects of the proposed development are not dissimilar to those and can be mitigated by the proposed landscape planting and modification to lighting on the site.
- 7.66 I also rely on the evidence of Mr Thompson, who notes the need for a rural service centre catering for the needs of the local district adjacent transport infrastructure and the lack of available and appropriately zoned land within Waipu township, and Mr Kerr who confirm the importance of this location for BP.
- 7.67 Lastly, I note that the provisions of the RPROZ expressly provide for rural service and supplies to be located within the zone, at the scale proposed here as a discretionary activity.
- 7.68 I further rely on the evidence of Mr Knott that the rural character and amenity values of the site are already compromised by the presence of SH1, the overhead powerlines, the lit intersection of the Braigh and SH1 and the tendrils of residential development down the Braigh. The proposed service centre is not out of character in this context, noting that service centres are often located in rural locations adjacent major roading infrastructure throughout New Zealand.
- 7.69 The scale of both Stage 1 and 2 of the development, can in the opinion of Mr Knott be mitigated by landscape planting and lighting conditions to such an extent that the effects will be less than minor to minor.
- 7.70 I concur with Mr Knotts view, and in my opinion consider that proposal would appear, once the landscape planting is established, similar to that to a clutch of barns or sheds in this location. With the significant areas of open pasture surrounding the site and revegetation and planting in the wider site will complement and enhance the rural character values of the site. This differs from the conclusion of Mr Kensington and the S42A report that the adverse landscape effects will be more than minor and potentially significant.

- 7.71 Ultimately, I consider that the proposed land use does have a more practical relationship with the particular rural character of this site, and that any adverse effects can be mitigated appropriately to the extent that they are no more than minor.

Economic Effects

- 7.72 Mr Thompson has undertaken a comprehensive assessment of the proposal from an economic perspective, particularly in regard to the drive by market, the need for a rural service centre of the nature proposed in this location and commercial effects on Waipu township. I have summarised the key findings of his evidence that I have relied on below.
- 7.73 Mr Thompson's evidence is that when compared with similar facilities, and given the location of the proposal on SH1, with approximately 8,970 vehicles passing the site each day from the wider Auckland and Northland areas, the service centre elements of the development would rely on predominantly drive-by traffic refuelling and stopping for a bite to eat, then continuing on their journey. Mr Thompson concludes that because of this, the proposal will not have a discernible adverse economic effect on the surrounding commercial centres.
- 7.74 Mr Thompson's evidence is also that the wider rural area of Waipu and including Waipu Cove and Langs Beach is underserved in respect of specific rural-focused industrial and commercial activities engaged in the sales of rural supplies, servicing machinery, bulk storage and warehousing. Within the study area of the catchment, it is his evidence that there is only 7.3ha of suitably zoned land, of which only 0.8ha is currently vacant, and of the five businesses that operate on this land none of them appear to specifically service rural-focused industrial and commercial market. Consequently, Mr Thompson concludes that there are no suitable sites for new businesses engaged in rural focused commercial and light industrial activities within the study area.
- 7.75 Mr Thompson outlines the economic benefits for the wider rural community of the proposed rural service centre activities, including increased employment, improving operational efficiencies for agricultural production activities in the area, market stimulation and economic diversity.

- 7.76 His evidence concludes that:

The proposal is designed to primarily service rural production activities in the general areas of Waipu, Waipu Cove, Langs Beach, and the surrounding rural area. It is located in a place accessible to passing traffic and nearby towns, making it ideal for a small-scale centre. Additionally, the proposal is projected to significantly impact the local economy, contributing over \$50 million to GDP compared to the current \$0.1 million from existing rural activities

7.77 I concur with Mr Thompson's findings that the proposed development will provide a rural service centre, that will support the wider rural areas of Waipu, Waipu Cove and Langs Beach both in terms of current and future demand, and that current provision of suitably zoned land and available land for such an activity, in this local environment is limited. I also rely on Mr Thompson's opinion that the proposed development will have significant and ongoing economic benefits to the wider rural community.

Cultural and Archaeological Effects

Cultural Effects

7.78 Identification of actual and potential cultural effects associated with the proposal have been informed through the applicant's consultation with Mana whenua and as documented in the Cultural Impact Assessment (CIA) prepared by Patuharakeke Te Iwi Trust Board (PTB) (29/11/2023).

7.79 The CIA concludes that *"on the whole though, we consider that the proposal can avoid potential ecological, cultural and social-economic effects that are more than minor"*.

7.80 The CIA makes this conclusion on a number of recommendations in respect of the proposal, which the applicant includes as draft consent conditions, in the event that the consents are granted. These are:

- (a) A copy of the consent conditions be circulated for PTB to review;
- (b) PTB Pou Taioa are able to review and comment on the final technical reports and management plans at the detailed design stage in an iterative manner and have the opportunity to meet with specialists/consultants as required;
- (c) The applicant support PTB Te Taiao to development and implement a Cultural Mitigation Plan to include (but not be limited to):
 - Deployment of cultural induction, monitoring and discovery protocols for potential unrecorded wāhi tapu protection during site/earthworks;
 - Occasional monitoring of works for sediment/discharges to waterways
 - Opportunities for involvement in delivery of the landscape and planting plans.

7.81 Given that applicant has agreed to include these conditions into the draft condition set attached as **Appendix 1** to my evidence, as such I conclude that the effects on

cultural matters are no more than minor and can be appropriately addressed through conditions.

Archaeological Effects

7.82 The identification of archaeological effects, given the property includes the site of the former McGregor Blacksmith, has been completed by Clough and Associates and forms part of the AEE⁹. The NZ Historic Places Trust has also granted an authority to modify, the conditions of which also forms part of this application.

7.83 The Clough Report concludes that the archaeological effects of the proposal can be avoided and mitigated to the extent that they are no more than minor, with the imposition of the following conditions (which have been included in the draft condition suite attached as Appendix 1 to my evidence). These are:

- An archaeological investigation of the mound containing artefacts recorded as site Q08/652 should be carried out under Section 52(2) of the HNZPTA, prior to the start of earthworks, as it has the potential to provide significant information relating to the history of the area.
- The area of archaeological potential shown in Figure 15 of the Archaeological Assessment should be monitored by an archaeologist during earthworks as it is likely that additional unidentified subsurface remains relating to site Q08/652 will be present.
- Any additional archaeological remains identified during monitoring should be investigated and recorded prior to their removal.

7.84 On this basis, I have concluded that the archaeological effects of the proposal are no more than minor.

Infrastructure Effects

7.85 The servicing of the site with three waters infrastructure has been addressed in the Earthworks and Civil Works Infrastructure Report prepared by CKL Ltd and attached to the AEE, and subsequent S92 requests. The proposed infrastructure has been designed in accordance with the rules and standards that apply, and this has been confirmed as appropriate within the s42A report¹⁰, and servicing the site can be satisfactorily achieved subject to the proposed consent conditions.

⁹ Archaeological Assessment, Clough & Associates March 2023

¹⁰ Paragraph 60, S42A report

- 7.86 We agree with Mr Hartstone suggestion that relying on a S127 RMA amendment to the consent conditions to provide for future flexibility if a public wastewater servicing system was made available prior to the Stage 2 development.
- 7.87 On this basis any adverse impacts associated with three water servicing on the environment will be less than minor and acceptable.

Hazardous Substances and Storage

- 7.88 As set out in the evidence of Mr Kerr, the design and operational standards for the BP service station ensure that spills of hazardous substances are avoided. Such standards form part of this application and were included in the AEE.
- 7.89 On this basis, in my opinion any adverse impacts of managing hazardous substances on site on the environment will be less than minor and acceptable.

Construction Effects

- 7.90 The effects of the construction of the activity on the site have been assessed in the Acoustic Assessment prepared by SLR Ltd, Infrastructure Report prepared by CKL Ltd and BP Construction Environment Reports that were attached to the AEE.
- 7.91 At the request of NZTA-WK, we have also provided further information on the anticipated construction effects of the proposed roundabout on SH1. This information has been prepared in conjunction with TPC Ltd and CKL Ltd and has been attached to my evidence as **Appendix 3**
- 7.92 I rely on the expert opinion contained within these reports, and the memorandum attached as **Appendix 3** when they concluded that:
- (a) The construction generated noise and vibration levels are expected to comply with the relevant DP criteria at the surrounding properties due to the distance between the works and receivers;
 - (b) The construction traffic effects associated with the proposed roundabout are standard and will be minimised through off-line construction. Construction traffic effects include temporary posted speed reduction, minor increase in HCV volumes carting fill to the site, and minor increase in turning traffic into and out of construction site.
 - (c) The effects of construction of the development on site can be appropriately managed through conditions of consent including earthworks and sediment control measures, to ensure that the adverse effects of construction are mitigated to the extent that the effects are acceptable.

- 7.93 Accordingly, I consider that on the basis of including a suite of Management Plan conditions that will be prepared following detailed design of the site and the proposed roundabout, the adverse effects of construction can be adequately avoided and mitigated to so that they are no more than minor.

Effects on Rural Productive Land

Soil type and land classification

- 7.94 Mr Hanmore has undertaken an assessment of the soil types of the site, and the classifications afforded to them, as detailed in his evidence and his *Soil and Resource Report for 47 Millbrook Road, Waipu*.

- 7.95 Mr Hanmore's evidence concludes that:

- (a) The site contains Waipu clay, Waipu peaty clay and Ruakaka peaty silt loam, which have LUC of classifications 3w2, 3w4 and 4w1 and 4w1+3, rather than 2w2 as originally classified by the NZRLI.
- (b) All soils exhibit poor drainage and clay and peat texture which present a moderate to severe limitation of arable use;
- (c) Based on the Northland Regional Policy Statement (NRPS) definition of 'highly versatile soil', the soils are not classified as highly versatile; and
- (d) Based on the interim definition of Highly Productive Land ("HPL") as set out in the NPS-HPL, 4.08ha (68.9%) of the development site is considered to be HPL.

- 7.96 On the basis of Mr Hanmore's evidence, I have concluded that there will be no adverse effect of the subdivision and proposed development on highly versatile soils, given that they are no found on the site.

Effects on HPL soils

- 7.97 Mr Stuart Ford has undertaken a thorough assessment of the capacity of the soils of the site for productive use, given the HPL classification and has set out his opinion within his evidence on the effects of the proposal on that capacity.

- 7.98 Mr Ford has also provided evidence confirming that site meets the three tests of NPS_HPL clause 3.10 Exemption for highly productive land. Mr Fords evidence concludes that:

- (a) The site is subject to permanent and long-term constraints, including quality and nature of soils, scale, potential for amalgamation, high water table, poor drainage.
- (b) The highest and best land use for the 6ha site is Dairy Support, which is estimated to earn approximately \$7500 per annum, which in Mr Fords opinion is not considered commercially viable both now or in 30 years time.
- (c) The subdivision of 6ha of HPL soils will not result in a loss of productivity capacity of the land in the district and is not significant in the Northland region.
- (d) The subdivision of the land avoids fragmentation, given the size of the area to be subdivided in the context of surrounding HPL soil.
- (e) The proposal will not generate any reverse sensitivity effects.
- (f) The proposed development would result in economic, social and environmental benefits that outweigh the costs associated with the loss of HPL.

7.99 I rely on the specialist evidence of Mr Ford in this regard, and therefore disagree with the conclusions of Mr Hartstone that the removal of 4ha of HPL in this location is considered to have more than minor adverse effects. In my opinion, given the proposal meets the explicit exemption tests of clause 3.10 of the NPS_HPL, the effects the subdivision and proposed development on HPL will be no more than minor.

Ecology Effects

7.100 Ms Wilde has undertaken an assessment of the ecological features and values of the wider site, as detailed in the Wild Ecology *Ecological Assessment Report for the proposed subdivision of 47 Millbrook Road, Waipu* and commented on the quality and significance of the representative indigenous habitats and fauna within the Ahuroa River and its terrestrial margins.

7.101 At the behest of the applicant, Ms Vilde has advised as the extent of significance, and the recommended location and areas for protection that would be required to further protect and enhance their ecological significance. Ms Vilde concludes in the Ecological Assessment Report that:

The proposal aims to create a Net Environmental Benefit extending over approximately 2.28 ha of land of which approximately 1.41 ha comprises of existing significant terrestrial vegetation within Ahuroa River riparian margin (Category A) and 0.77 ha will comprise of riparian margin revegetation plantings (Category C),

resulting in the creation of 1 additional lot which is generally in accordance with SUB-R15 Table 1 requirements.

This will enable the protection of the entire length of Ahuroa River and its margin within the site boundaries, expanding, connecting and buffering the existing bush, wetland and riparian features noted on site and immediate surrounds. Collectively the habitats contained on site and immediate surrounds were recorded to support at least one 'Regional significant' plant species, one 'Regionally Significant' and three 'At risk' fish species, one 'At Risk' freshwater invertebrate species, and one 'Regionally Significant' bird species.

7.102 Ms Vilde concludes¹¹ that based on the assessment of the significance of indigenous vegetation and habitats having reference to significance criteria of the NRPS that

... "the Ahuroa River and its terrestrial margins classified as PNA Ahuroa River Forest Remnants (Q09/235) are considered to be of high ecological significance in reference to Appendix 5 of the NRPS."

7.103 Ms Vilde also concludes¹² that:

"The nature of the subdivision proposal is unlikely to have any adverse effect on any potential lizard, fish, bird or bat populations utilising the area. It is deemed that fauna habitat will in fact be enhanced (i.e. positive benefit) through the protection and enhancement of the onsite bush areas and riparian features associated with Ahuroa River and its margins"

7.104 such the applicant offers as an Augier condition that the 2.28 hectare margins of the Ahuroa River be managed as per the Wild Ecology *Ecological Management Plan for the proposed subdivision of 47 Millbrook Road, Waipu*¹³ ("EMP") which include:

- (a) Revegetation with eco sourced species;
- (b) Stock exclusion;
- (c) Pest control;
- (d) Biosecurity;
- (e) Covenant fencing; and
- (f) Ongoing Monitoring

7.105 Ms Vilde concludes that the implementation of the riparian enhancement proposal as part of the EMP will:

.."strengthen ecological values within the local area which is vitally important to provide further functional and structural ecological connectivity for flora and fauna already present on the Site and immediate surrounds. The riparian enhancement area proposal has been designed to protect and enhance the Ahuroa River and its margins thus improving the overall ecological structure, composition and functions of the Site through providing appropriate vegetated buffer areas, and improving the services provided by ecosystems.

¹¹ Para 3.11, M Vilde evidence

¹² Para 3.16, M Vilde evidence

¹³ Para 5.6, M Vilde evidence

7.106 Ms Vilde also concludes in regard to the ecological effects of the proposed subdivision that:

Overall, it is my opinion that the subdivision proposal will result in a positive ecological benefit to the water quality and condition of the Ahuroa River and its margins where it abounds the Site boundaries. I consider that the proposed development controls and ecological management principles described within the EA and associated EMP will ensure that the health and well-being of the section of the Ahuroa River flowing along the Site's boundaries will be improved from its existing degraded ecological state.

7.107 Ms Vilde further conclude¹⁴s that:

the proposal will result in a Net Environmental Benefit, and any potential adverse ecological effects can be effectively avoided, minimized, or mitigated if the recommended consent conditions outlined in Section 10.0 of the Ecological Assessment, and summarized above, are fully adopted and implemented.

7.108 I rely on the expertise of Ms Vilde, to conclude that subject to suitable conditions, the ecological values of the site will be enhanced by the proposed development, primarily as a result the effects protection and enhancement of the margins of the Ahuroa River, the location of the development in an area of minimal existing ecological value or functionality and compliance with conditions pertaining to sediment and control measures.

Effects of Subdivision

7.109 I agree with the conclusion¹⁵ of Mr Hartstone, that the proposed lots can be adequately serviced and the effects of subdivision as a result of Stage 1 – 3 of the subdivision will arise as a result of the land use, and that the subsequent subdivision will not give rise to additional effects.

7.110 I rely on the evidence of Mr Hanmore and Ford outlined in paragraphs 7.92-7.97 above, in regard to matters pertaining to HPL soils, and conclude that the proposed subdivision will not give rise to adverse effects on highly productive soils. I therefore disagree with the conclusions reached by Mr Hartstone in the S42A report.¹⁶

Positive Effects

7.111 I consider there to be a number of actual and positive effects of the proposed development, which have been discussed in detail in the evidence of Mr Langwell, Kerr and Thompson and Ms Vilde and are summarised as:

¹⁴ Para 6.3, M Vilde evidence

¹⁵Para 119, S42A report

¹⁶Para 118, S42A Report

- (a) Improved safety over the existing traffic infrastructure layout as a result of the roundabout in this location, in lieu of any funded proposals by NZTA-WK or Council to improve the safety of this stretch of road;
- (b) Contributions to the local economy of \$11.2m GDP and the employment of 84FTE during construction, and \$2.7m/annum and supporting 58FTE as a result of ongoing operation;
- (c) The protection and enhancement of 2.28ha of indigenous vegetation along the margins of the Ahuroa River and the resultant ecological, biodiversity, landscape and water quality effects that this will have;
- (d) The removal of stock from areas of indigenous vegetation and riparian margins, combined with restoration and enhanced planting are likely to result in positive cultural improvements compared to the current situation; and
- (e) The improved servicing of infrastructure and connections in the form of refuelling, truck stops and EV charging.

7.112 I therefore conclude that the proposal collectively represents an opportunity where private development results in significant benefits to the local environment and local community. I do not agree with Mr Hartstone's assertion that any form of commercial development of a similar scale in the district would likely result in similar effects, primarily because this proposal represents significant onsite investment (with secured anchor tenants in BP and Burger King) and provides significant improvement to road infrastructure, rural services and supplies as well ecological and biodiversity benefits.

8. OFFSETTING MEASURES PROPOSED BY THE APPLICANT – SECTION 104(1)(AB)

- 8.1 Section 104(1)(ab) of the RMA directs the consent authority when considering an application for resource consent, and measure proposed or agreed by the applicant for the purposes of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment from the proposal.
- 8.2 In this case, the applicant has offered the protection and enhance of 2.28ha of indigenous vegetation and land for ecological and landscape enhancement as part of the application.

9. **RELEVANT PLANNING PROVISIONS - SECTION 104(1)(B)**

National Policy Statement for Highly Productive Land 2022 (NPS-HPL)

- 9.1 The NPS_HPL contains objectives, policies and Implementation statements to ensure that highly productive land is protected for use in land-based primary production, both now and in the future,
- 9.2 I agree with Mr Hartstone's opinion that the NPS-HPL is a relevant policy document in the consideration of this proposal, given that the current LUC mapping provided by Northland Regional Council (which is valid in the transitional period before NRC maps the highly productive land) shows the land on the subject site as being LUC 2.
- 9.3 This is even though the site specific soil analysis of Mr Hanmore's evidence confirms that the land is 3w 2, 3w 4, 4w 1 and 4w 1+3w 2 not 2w 2 as mapped by the NZLRI.
- 9.4 The evidence of Mr Ford confirms that the removal of HPL soils from productive capacity as a result of the subdivision and land use would meet and be consistent with the NPS_HPL provisions for exemption in section 3.10 of the NPS_HPL.
- 9.5 I rely on the evidence of Mr Ford when he concludes, having stepped through the tests of Section 3.10, that site meets the criteria for exemption for highly productive land in that:
- (a) There are a number of significant constraints which have a bearing on the highest and best land use on the site. These constraints include:
- the nature of the soils which are suitable for a limited range of arable crops, because of their very poor to poor drainage and relatively high water table, and a wide range of pastoral activities;
 - the scale which at only approximately 6 ha it lacks any of the scale which is necessary to achieve the economies of scale which are necessary to achieve commercial viability for any but the most intensive land uses;
 - the site is virtually land locked from any access which would make it suitable for any land owner, apart from the existing land owner, to incorporate it into a larger block of land;
 - the poor drainage and relatively high water table which means that the only arable options are crops such as maize which are in the ground for the summer and are removed in the autumn and the fact that the site has poor drainage means that in winter months the site will not be

suitable for intensive grazing or stocking with heavy livestock such as cattle.

- (b) that the pastoral land use that could potentially establish on the 6ha site is unable to provide sufficient income to provide for interest, taxation and a return for management as a stand-alone unit therefore it cannot be considered to be commercially viable, both now and in 30 years' time.
- (c) the subdivision of 6 ha of HPL will not result in any significant loss of the productive capacity of land in the district and is not significant in the Northland region which contains 127,885 ha of HPL land.
- (d) the proposal avoids fragmenting large and geographically cohesive areas of HPL. The scale of the area to be subdivided, comprising 6 hectares, is not significant in the context of the surrounding HPL land and will not contribute significantly to additional fragmentation.
- (e) the proposal mitigates potential reverse sensitivity effects on surrounding land-based primary production. This is because the nature of the proposal will not generate any reverse sensitivity effects because it is not primary production.
- (f) The proposed development for retail, commercial, and industrial use would result in economic, social and environmental benefits that outweigh the costs associated with the loss of HPL.

9.6 I concur with the evidence of Mr Ford and his conclusion that:

"the proposed subdivision of the site to enable the development of the 6 hectares meets all of the limbs in the clause 3.10 Exemption tests and therefore WDC should be satisfied that this HPL can be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8 or 3.9"

9.7 Accordingly, I conclude that the proposal is not inconsistent with the NPS_HPL.

National Policy Statement for Indigenous Biodiversity 2023 (NPS IB)

9.8 The National Policy Statement for Indigenous Biodiversity (NPS_IB) seeks to maintain indigenous biodiversity across NZ so that there is no overall loss in indigenous biodiversity after the 4 August 2023 commencement date of the NPS-IB.

9.9 I rely on the evidence of Ms Vilde, who confirms the proposal will protect 2.28ha of existing indigenous biodiversity on the site, providing for significant restoration and 0.77ha of enhancement over time through the site-specific Ecological Management Plan.

- 9.10 I also rely on Ms Vilde’s opinion¹⁷ that the proposal not only gives full effect to the objectives and policies of the NPS_IB through protection of existing bush remnants and enhancing ecologically valuable areas of the wider site, but also through the reestablishment of native species and habitats along the margins of the Ahuroa River which contributes to the long-term ecological health and resilience of the area.
- 9.11 Accordingly, I consider that the proposal is consistent with the NPS_IB.

National Policy Statement for Freshwater Management (2020) – NPS FM

- 9.12 The National Policy Statement for Freshwater Management (NPS_FM) seeks to provide greater protection for freshwater bodies and wetland, and in this case particularly the freshwater ecosystem of the Ahuroa River and its immediate surrounds.
- 9.13 In this regard I note opinion of Ms Vilde¹⁸, that:

“In relation to the proposed development, the application demonstrates a strong commitment to upholding the hierarchy of obligations outlined in the NPS-FM (2020). The primary objective has been to avoid any potential adverse effects on the freshwater ecosystems associated with the Ahuroa River and its immediate surroundings. the subdivision prioritises the protection and preservation of this ecologically significant marine-freshwater transitional zone by minimising disruption to the river and its margins, and by preserving or enhancing their ecological integrity wherever possible.”

- 9.14 I rely with Ms Vilde’s opinion that the proposal demonstrates a strong commitment to upholding the integrity of the obligations outlined in the NPS-FM, to conclude that the proposal is consistent with the provisions of NPS-FM.

National Policy Statement on Electricity Transmission 2008

- 9.15 The applicant has undertaken consultation through Transpower’s Patai Portal process and incorporated the recommended conditions into their draft suite of consent conditions attached as **Appendix 1** to my evidence.
- 9.16 Accordingly, I conclude that the proposal is not inconsistent with the NPS-ET.

Northland Regional Policy Statement 2016 and Proposed Regional Plan for Northland

- 9.17 Mr Hartstone has considered the proposal against the relevant regional level policy and planning instruments, namely the Northland Regional Policy Statement 2016 (NRPS) and the Proposed Regional Plan for Northland 2024. (PRPN)

¹⁷Section 8.1, Ecological Assessment Report, Wild Ecology, Appendix 2, Evidence of M Vilde

¹⁸ Section 8.2, Ecological Assessment Report, Wild Ecology, Appendix 2, Evidence of M Vilde

9.18 In regard to the NRPS, Mr Hartstone considers that the following matters are of relevance to this application, namely:

- (a) Objective 3.12 and Policy 8.1.2 that address tangata whenua's role in decision making;
- (b) Objective 3.11 and policy 5.11. relating to regional form and planned and coordinated development.

9.19 I consider this to be very narrow view of the relevant matters contained within the NRPS, and a broader assessment is in my opinion required.

9.20 In my opinion, the relevant objectives pertaining to this application are:

Objective 3.4 Indigenous ecosystems and biodiversity

Safeguard Northland's ecological integrity by:

- (a) *Protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
- (a) *Maintaining the extent and diversity of indigenous ecosystems and habitats in the region; and*
- (b) *Where practicable, enhancing indigenous ecosystems and habitats, particularly where this contributes to the reduction in the overall threat of regionally and nationally threatened species.*

Objective 3.5 Enabling economic wellbeing

Northland's natural and physical resources are sustainably managed in a way that is attractive for business and investment that will improve the economic wellbeing of Northland and its communities;

Objective 3.7 Regionally significant infrastructure

Recognize and promote the benefits of regionally significant infrastructure, (a physical resource), which through its use of natural and physical resources can significantly enhance Northland's economic, cultural, environmental and social well being.

Objective 3.8 Efficient and effective infrastructure

Manage the resource to:

- (a) *Optimise the use of existing infrastructure*
- (b) *Ensure new infrastructure is flexible, adaptable and resilient and meets the reasonably foreseeable needs of the community;*
- (c) *Strategically enable infrastructure to lead or support economic development and community wellbeing.*

Objective 3.11 Regional Form

Northland has sustainable built environments that effectively integrate infrastructure with subdivision, use and development and have a sense of place, identify and a range of lifestyle, employment and transport choices.

Objective 3.12 Tangata whenua role in decision making

Tangata whenua kaitiaki role is recognised and provided for in decision making over natural and physical resources.

9.21 The objectives combined demonstrate a broader focus that combines the important issues of Northland, namely the importance of protecting remaining areas of significant indigenous vegetation, biodiversity and habitat, providing for development and land use that integrates with existing infrastructure and enables economic wellbeing.

9.22 Cascading from these, the relevant policies of the NRPS (with my emphasis added) are:

Policy 4.7.1 Promote active management

In plan provisions and the resource consent process, recognise and promote the positive effects of the following activities that contribute to active management:

- a) Pest control, particularly where it will complement an existing pest control project / programme;
- b) Soil conservation / erosion control;
- c) Measures to improve water quality in parts of the coastal marine area where it has deteriorated and is having significant adverse effects, or in freshwater bodies targeted for water quality enhancement;
- d) Measures to improve flows and / or levels in over allocated freshwater bodies;
- e) Re-vegetation with indigenous species, particularly in areas identified for natural character improvement;
- f) Maintenance of historic heritage resources (including sites, buildings and structures);
- g) Improvement of public access to and along the coastal marine area or the margins of rivers or lakes except where this would compromise the conservation of historic heritage or significant indigenous vegetation and / or significant habitats of indigenous fauna;
- h) Exclusion of stock from waterways and areas of significant indigenous vegetation and / or significant habitats of indigenous fauna;
- i) Protection of indigenous biodiversity values identified under Policy 4.4.1, outstanding natural character, outstanding natural landscapes or outstanding natural features either through legal means or physical works;
- j) Removal of redundant or unwanted structures and / or buildings except where these are of historic heritage value or where removal reduces public access to and along the coast or lakes and rivers;
- k) Restoration or creation of natural habitat and processes, including ecological corridors in association with indigenous biodiversity values identified under Policy 4.4.1, particularly wetlands and / or wetland sequences;
- l) Restoration of natural processes in marine and freshwater habitats

Policy 5.1.1 Planned and coordinated development

Subdivision, use and development should be located, designed and built in a planned and co-ordinated manner which:

- (a) *Is guided by the 'Regional Form and Development Guidelines' in Appendix 2;*
- (b) *Is guided by the 'Regional Urban Design Guidelines' in Appendix 2 when it is urban in nature;*
- (c) Recognises and addresses potential cumulative effects of subdivision, use, and development, and is based on sufficient information to allow assessment of the potential long-term effects;
- (d) Is integrated with the development, funding, implementation, and operation of transport, energy, water, waste, and other infrastructure;
- (e) Should not result in incompatible land uses in close proximity and avoids the potential for reverse sensitivity;
- (f) Ensures that plan changes and subdivision to / in a primary production zone, do not materially reduce the potential for soil-based primary production on land with highly versatile soils, or if they do, the net public benefit exceeds the reduced potential for soil-based primary production activities; and
- (g) Maintains or enhances the sense of place and character of the surrounding environment except where changes are anticipated by approved regional or district council growth strategies and / or district or regional plan provisions.
- (h) Is or will be serviced by necessary infrastructure.

Note: in determining the appropriateness of subdivision, use and development (including development in the coastal environment – see next policy), all policies and methods in the Regional Policy Statement must be considered, particularly policies relating to natural character, features and landscapes, heritage, natural hazards, indigenous ecosystems and fresh and coastal water quality.

Policy 5.1.3 Avoiding the adverse effects of new use(s) and development

Avoid the adverse effects, including reverse sensitivity effects of new subdivision, use and development, particularly residential development on the following:

- (a) *Primary production activities in primary production zones (including within the coastal marine area);*
- (b) *Commercial and industrial activities in commercial and industrial zones;*
- (c) *The operation, maintenance or upgrading of existing or planned regionally significant infrastructure; and*
- (d) *The use and development of regionally significant mineral resources.*

Policy 5.3.2 Benefits of regionally significant infrastructure

Particular regard shall be had to the significant social, economic and cultural benefits of regionally significant infrastructure when considering and determining resource consent applications or notices of requirement for regionally significant infrastructure

Policy 8.1.1 Tangata Whenua participation

The regional and district councils shall provide opportunities for tangata whenua to participate in the review, development, implementation, and monitoring of plans and resource consent processes under the Resource Management Act 1991.

- 9.23 Mr Hartstone notes that Objective 3.11 and Policies 5.1.1(f), (g) and (h) are relevant to the assessment of this application, and in this respect concludes that in regard to policy 5.1.1(f), Mr Hartstone agrees with the evidence of Mr Hanmore that the site does not contain any highly versatile soils as identified in the RPS, to which I concur.
- 9.24 In regard to policy 5.1.1(g), Mr Hartstone concludes the surrounding environment is considered to be rural and the proposal is neither maintaining or enhancing the sense of place or rural character, and notes that there are no changes anticipated by the WDC through growth strategies, structure plans or provisions that would anticipate the type of development proposed.
- 9.25 In my opinion, Mr Hartstone has taken a very narrow view of this policy and for the reasons outlined previously by myself and Mr Knot, a narrow view of what the particular rural character of the site and its environs is. In my view the policy requires a broader approach as directed in the *Policy 5.1.1 Note* which directs that the assessment of the appropriateness of subdivision or development must take into account all of the PRPS policies, which includes those relating to biodiversity and ecological protection (policy 4.7.1), and the importance of strategic infrastructure (policy 5.3.2).
- 9.26 In this regard, the proposal seeks to protect the significant ecological and biodiversity values of the Ahuroa River, by providing as part of the Stage 00 subdivision conditions, a covenant pertaining to protection, management and enhancement of the 2.28h of regionally threatened ecosystem. In my opinion the proposal is therefore consistent with Policy 4.7.1 of the PRPS.
- 9.27 The PRPS Policy 5.3.2 highlights the importance of SH1 as significant regional infrastructure, and the role that has on the economic, cultural and social wellbeing of the region and the regional economy, yet a development which supports that regional infrastructure and is in Mr Kerr's and Mr Thompson's opinion located both

within a rural environment and next to the strategic transport links of the SH1 is considered inappropriate located there by Mr Hartstone and Mr Kensington. In my opinion, the proposal is therefore consistent with Policy 5.3.2 of the PRPS.

- 9.28 In regard to Policy 5.1.1 (d), the evidence of Mr Langwell, Hills and the engineering information provided with the application, that the proposal is able to be serviced by the necessary infrastructure which is consistent with that policy.
- 9.29 Both Mr Hartstone and I agree, that the proposal is unlikely to generate cumulative or reverse sensitivity effects.
- 9.30 In regard to 5.1.1(g), I disagree with Mr Hartstone's conclusion. Whilst I maintain that the proposal will maintain the existing character of the surrounding environment, even if it did not, the policy provisions of the RPROZ do provide for rural subdivision and development where a Net Environmental Benefit is provided. Having referred to the evidence of Ms Wilde, and for reasons I step through at para 9.7-9.89 of my evidence, I consider that the proposal is also consistent with this policy and anticipated by the district planning documents.
- 9.31 In respect of Objective 3.12 and Policy 8.1.1 Mr Hartstone notes that engagement with Patuharakeke Iwi Trust Board in the preparation and assessment of this application, in his view suitably addresses the objectives and policy. To which I concur.
- 9.32 Accordingly, I disagree with the narrow stance of Mr Hartstone and consider that the proposal is not inconsistent with the provisions of the proposed PRPS.

Proposed Northland Regional Plan (PRPN)

- 9.33 I agree with the conclusions of Mr Hartstone that the proposal will meet the policy requirements of the Proposed Northland Regional Plan (PRPN), and that detailed design of the proposed discharge of wastewater to ground and associated odour will address the policies of the PRPN, as will the compliance with the proposed consent conditions including those relating to archaeology, CEL overhead power lines and Patuharakeke Iwi Trust Board.

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- 9.34 Mr Hartstone in the s42A Report has not repeated the AEE assessment and commentary of the WDP objective and policy analysis, choosing to generally accept and adopt the assessment and commentary in the AEE, as it relates to matters

contained in Tangata Whenua, Network Utilities, Historic Heritage, Earthworks and Three Waters Management chapters.¹⁹

9.35 I acknowledge this approach, and provide the following assessment for completeness against the following WDP chapters:

- (a) District Growth and Development (DGD);
- (b) Rural Production Zone (RPROZ);
- (c) Signage (SIGN)
- (d) Lighting (LIGHT); and
- (e) Subdivision provisions (SUB).

9.36 Mr Hartstone has consistently said that the proposed subdivision and activity is not envisaged or provided for within the RPROZ zone and is the “anti-thesis” of what is envisaged in this zone. However, in this regard I note that:

- (a) It seems non-sensical that the permitted, controlled, restricted discretionary and discretionary activities provided for in the RPROZ zone may only have their activity status if they are on sites of 20 hectares or greater (unless they are already an undersized lot);
- (b) A subdivision of the underlying 31.78ha lot is required to create a title for the proposed activity, which renders the application as bundled a non-complying activity. Proposing the Service Centre on the entire 31.78ha lot would eliminate the “non-complying” activity status, but in reality no commercial service could be justified on a 30Ha site in this location.
- (c) Both commercial and industrial activities are provided for as discretionary activities in the RPROZ, and therefore in my opinion, should be considered on their merits, meaning in my view that this type of development “may” be appropriate on a site, as opposed to prohibited which in my mind is more in line with the term “anti thesis”.

9.37 In light of Mr Hartstone’s stance, and the initial two lot subdivision being a non-complying activity, I have given further consideration to the number of smaller rural residential lots scattered through the RPROZ in the district which are also non-complying activities in the RPROZ.

¹⁹ Para 167, Section 42A report

- 9.38 The landscape character often associated with rural residential subdivision with residential style buildings with small surrounding lots, not to mention the potential for reverse sensitivity complaints regarding noise, odour and rural untidiness would, in my view be better described as the antithesis of the type of activity envisaged in the RPROZ than this proposal.
- 9.39 In particular I note that the subdivision policies of the WDP seek to enable subdivision that reflects patterns of development that are compatible with the predominant character and maintain the integrity of the zone with allotment sizes sufficient to accommodate the intended land uses. The Subdivision rule also provide for a range of subdivision and lot sizes dependent on different zones.
- 9.40 As such, in my view the subdivision controls in the RPROZ were put in place to preserve the economic viability of rural production and to encourage the protection of wetlands. Indigenous vegetation, heritage and outstanding features, by preventing fragmentation of highly productive soils and uncontrolled rural/residential living. They were not put in place to limit commercial development adjacent SH1.
- 9.41 I also question the consistency of the WDC assessment of these matters, unless of course WDC in making decisions on the numerous rural residential subdivision application in the RPROZ, have agreed that either that the rural character was of lesser rural amenity in those location that would warrant rural residential development appropriate, or that the applicant offered a Net Environmental Benefit to offset the development, as per the policies and objectives of the plan.

District Growth and Development

- 9.42 The District Growth and Development chapter of the WDC guides decision making at a strategic level with objectives and policies set a high level and seeking to achieve a range of outcomes across the district.
- 9.43 In particular, I note overarching policies DGD-P4 *Amenity*, which seeks to ensure that the scale and nature of land use is commensurate with the anticipated level of amenity and stated issues and objectives of the zone, and DGD-P6 *Urban Expansion*, which seeks to avoid *inappropriate* urban expansion.
- 9.44 I also note, the more specific District Growth and Development Rural Production zone policy DGD-RA-P3, which seeks to enable a diverse range of rural production activities and activities that support rural production activities and rural communities and maintain biodiversity and rural character.

9.45 In this respect, having relied on the expert evidence provided by the specialist witnesses, I conclude that:

- (a) The proposed activities seek to support rural production activities and rural communities;
- (b) The site is located on SH1, which is an appropriate location for a rural service centre and provides a “unique” rural character.;
- (c) The proposal will result in development close to the rural settlement of Waipu, which does not have sufficient appropriately zoned and vacant land area to accommodate a similar rural service centre;
- (d) Urban sprawl into truly productive areas is avoided given that the development is contained within a site which is not financially viable for rural productive activities; and
- (e) Three waters services can be provided on site.

Rural Production Zone

9.46 I have provided the following assessment of the Rural Production Zone (RPROZ) objectives and policies on the basis that the proposal will have no more than minor effects on rural character and amenity and the land use proposed is broadly anticipated in the zone.²⁰

9.47 **Appendix 4** of my evidence contains the RPROZ chapter, and I have only referenced the policies of particular relevance. It is the position of the Environment Court that the provisions of the RPROZ should be read holistically, and that approach has informed my assessment.²¹

9.48 The RPROZ chapter of the WDC, seeks to sustainably manage the natural and physical resources of the rural area, in order to protect, sustain and promote rural production activities as well as those that support rural communities as well as maintaining rural amenity and character.

9.49 The issues statement notes the importance of not compromising the zone for rural production and provides a description of what the rural amenity and character comprise, and notes that:

The interplay of historical land use and values has resulted in the environmental character that exists in the Rural Production Zone today. This character is made up of the varied natural landforms and natural features, openness, as well as an existing subdivision and development pattern. It is mostly characterised by a working/living

²⁰ Evidence of S Ford, A Thompson and R Knott

²¹ Haines House Haulage Northland Ltd v Whangarei DC [2019] NZ EnvC 49

environment, with noises, odours and visual effects associated with a wide range of farming, horticulture, forestry and mineral extraction activities.

....

The Rural Production Zone provides for commercial activities and industrial activities that have a functional need to service rural production activities and/or rural communities or provide location based recreation or tourist activity.

- 9.50 The statement appears to also focus on the issue of “reverse sensitivity” effects of urban and residential development on rural production activities, with the potential for urban development to impact on productive uses when conflicts arises.

Urban and rural residential types of development can erode the viability of rural productivity and can create reverse sensitivity impacts on productive uses through the visual effect of large scale buildings and incidental structures, increased traffic generation, and loss of amenity including privacy, rural outlook, spaciousness, and quietness, particularly when a new incompatible activity is located near an existing activity, with resulting conflicts.

- 9.51 As previously discussed, I consider that the proposal reflects the overall intent of the RPROZ, and as such is not inconsistent with the outcomes sought in that zone.

- 9.52 In summary, and relying on the specialist evidence of the applicant’s specialists to inform my opinion, I consider that the proposal will:

- (a) Protect, sustain and promote rural production activities in more appropriate locations by maximising the use of non-productive land which is already constrained by its physical attributes²² for rural support services;
- (b) Maintain the existing rural amenity and character of the site (already compromised by CEL, SH1, existing land uses and rural residential subdivision) and surrounding environment by enhancing the features of the site through proposed planting and ongoing management;
- (c) Provide for the protection of and enable rehabilitation of the riparian margins of the Ahuroa River (noted as an area considered Acutely Threatened Environment Classification) in perpetuity.

- 9.53 Objectives RPROZ-01 and RPROZ-02 in my view seek to provide protection to the use of productive land resources, including enabling commercial and industrial activities that support rural production activities and/or rural communities to establish and contribute to the District’s economy, and policies RPROZ-P2. RPROZ-P3 and RPROZ-P6 give effect to these objectives. Given the site constraints described by Mr Ford, I consider the proposal will have less than minor effects on rural productivity as the productive opportunities of the site are already compromised by location constraints, scale and poor drainage.

²² Evidence of S Ford

- 9.54 RPROZ-02 Land Use Activities seeks to enable a wide range of rural production activities and provide for commercial and industrial activities that support rural production activities and /or rural communities. Policy RPROZ-P2 give effect to this objective. Given the intended rural service and supply activities, the location of the activity within the rural environment and adjacent to SH1, I consider that the proposal has a direct connection with the rural land resource and supports both the production activities and rural communities, as well as recreation and tourist based activities of the wider district.
- 9.55 Given the size and nature of the development, and dependency on the SH1 road network in my view, the proposal is ideally located to ensure that it can operate and function effectively. The proposed development will not generate reverse sensitivity effects on rural productive land uses, and will contain and manage effects of glare, noise and infrastructure servicing onsite. The proposed development will contribute positively to the economy of the district and will meet and fund the local infrastructural requirements, including the upgrade of SH1 with a new roundabout.
- 9.56 Objective RPROZ-03 seeks to recognise, maintain and where appropriate protect rural character and amenity. Policies RPROZ-P1 Rural Character and Amenity, RPROZ-P2 Land Use Activities, RPROZ-P5 Maintain Amenity and Character, RPROZ-RPROZ-P9 Net Environmental Benefit and RPROZ-P11 Location and Design of Subdivision and Associated Land Development all give effect to the objective.
- 9.57 In my opinion, the wider site does exhibit some of characteristics noted in RPROZ-P1, in that it the site features open farmland, indigenous vegetation onto a backdrop of hill country, fencing and varying levels of noise associated with seasonal activities, and a low intensity of buildings on the site. However, as directed by RPROZ-P2 the distinctive character and amenity of the site is not limited to this, and in this case also includes SH1, coupled with its own noise, lighting, signage, traffic volumes and visual amenity effects, as well as large CEL pylons traversing the site which significantly reduce the rural amenity, but also provide a constraint to rural land use. The character of the surrounding rural area also includes rural residential subdivision, large white tunnel houses on mass, recessive-coloured buildings, as well as hedging and shelterbelts which visually screen any development from view.
- 9.58 Having considered the evidence of Mr Knott, Mr Leung and Mr Langwell and the noise assessments provided in the AEE, I therefore consider that the existing and anticipated rural character of the site will not be compromised by the proposal and any landscape planting proposed will soften and mitigate the built development to such an extent that glimpses of built development would remain. For this reason, I consider that the proposal will not be inconsistent with RPROZ-P2.

- 9.59 RPROZ-P5 seeks to maintain rural amenity and character, by ensuring all new buildings, major structures and rural land uses are of a scale and character that is appropriate for the RPZ, are setback sufficiently from boundaries and avoid ribbon development.
- 9.60 The proposed development will maintain rural amenity and character as previously detailed. Whilst the built form within the development will not be of a scale or character that reflects the standard outcomes of the wider RPROZ, the development including signage is not inconsistent with similar service centres in rural locations adjacent SH1, nor is it any different in built scale to more intensive rural production land uses such as that exhibited on the corner of Glenmohr Rd/SH1, with multiple white tunnel houses. The proposed design provides for openness and landscaping through the centre of the site, as well as compactness to avoid ribbon development.
- 9.61 Objectives RPROZ-O5 and RPROZ-O7 both seek to protect significant ecology and biodiversity values:
- RPROZ-O5 – Fragmentation*
- Minimise the fragmentation of rural land and promote allotment sizes that facilitate rural production activities other than to protect significant ecological and biodiversity values.*
- RPROZ-O7 – Protection and Enhancement*
- Encourage protection and enhancement of significant ecology, biodiversity, landscapes and historic heritage.*
- 9.62 These objectives are given effect to by policies RPRZ-P8, RPROZ-P9 and RPROZ-P11. In my opinion the objectives RPROZ-O5 and O7, policies RPROZ-P8 and P9 and the definition of NEB need to be read and assessed together.
- 9.63 Objective RPROZ-O5 clearly signals that an exception to the requirement to minimise fragmentation and promote allotment sizes which facilitate rural production activities is where significant ecological and biodiversity values are protected.
- 9.64 RPROZ-P8 and P9 seek to avoid the subdivision of land into allotments of less than 20ha, unless the subdivision will not inhibit or restrict rural productive potential, and where it does that significant ecological and biodiversity value are protected or enhanced.
- 9.65 In respect of RPROZ-P8 as outline above, the evidence of Mr Ford confirms that the proposal avoids the fragmentation of large and geographically cohesive areas of productive land, given the scale of the area to be subdivided and its rural productive capacity.

9.66 The protection afforded by the proposed legal protection and restoration of the riparian margins of Ahuroa River, as outlined in the evidence of Ms Wilde can be used to offset the effects of the subdivision and subsequent development of the land if a Net Environmental Benefit is achieved. In this regard, I refer to the evidence of Ms Wilde that the protection afforded by the proposed covenant and resource consent conditions requiring restorative planting and ongoing management will ensure that a Net Environmental benefit is achieved, and will ensure a significant amount of ongoing environmental protection.

9.67 I therefore disagree with the conclusions of Mr Hartstone in the S42A report²³, that the proposal will not meet the RPROZ-P8 criteria 1 - 4 for allowing a two staged subdivision of less than 20 ha, those being:

1. *It does not create a rural residential or rural lifestyle allotment, other than where a Net Environmental Benefit is achieved.*
2. *The subdivision of rural land and associated buildings does not inhibit or restrict the productive potential or reasonably anticipated productive potential of rural production activities.*
3. *The size, shape and arrangement of allotments:*
 - a. *Is a practical size for rural production activities, other than where a Net Environmental Benefit is achieved.*
 - b. *Does not restrict the range of options for the use of production land.*
4. *The viability of the existing rural production activity is not compromised, and the existing rural production activity can continue to operate efficiently at the subdivided scale.*
5. *The subdivision and subsequent development will not result in adverse effects on the operation and viability of any adjoining rural production activity or strategic rural industry.*
6. *The subdivision and subsequent development will not require connection to the District's reticulated sewer or an extension or upgrading of any service or road, except where it is in the economic interest of the District and will not compromise the efficient functioning of the District's infrastructure network.*

9.68 Having regard to the specific criteria of RPROZ_P8, I consider that the proposed subdivision is not contrary to (1), given RPROZ-P8 explicitly provides for development where a NEB is created, which directly reflects RPROZ-05.

9.69 The two lot subdivision is also not contrary to (2), given my reliance on the evidence of Mr Ford, who concludes that the proposed subdivision will not restrict or inhibit the productive potential given that it is already severely limited.

9.70 In regard to criteria (3)(a), I rely on the evidence of Ms Wilde who considers that a NEB will be achieved through the protection and ongoing management of the riparian margins of the Ahuroa River.

9.71 In regard to criteria (3)(b) I am also of the view that the size, shape and arrangement of allotments for the subdivision does not further inhibit the

²³ S42A report at paragraph [XXX]

practicability of the wider site for rural production activities or restrict the range of options for use of the remaining portion of land. The existing use of the site can continue to operate without the viability of the existing rural activity being further compromised – bearing in mind that it is already not financially viable.

- 9.72 In regard to criteria (4) and (5), the subdivision will not adversely affect the operation and viability of any adjoining rural production activities. In respect to criteria (6), the infrastructure requirements of the proposal can be accommodated on site, and the financial costs associated with the proposed upgrades to the SH1 including the roundabout will be paid for by the applicant, not WDC or NZTA-WK. Overall as noted in the evidence of Mr Langwell, the development of a roundabout in this location will likely improve the efficient and safe functioning of the District's roading infrastructure network, by eliminating the need for right hand turns across SH1.

Net Environmental Benefit (NEB)

- 9.73 Policy RPROZ_P9, refers to Net Environmental Benefit. Net Environmental benefit is defined in the WDP as:

... an activity where it is demonstrated that the benefits of environmental protection and on-going management are greater than the adverse effects created by subdivision and associated land development. The benefits achieved through environmental protection and on-going management do not include:

- a. with respect to the area to be protected:

 - i. requirements of a condition of a prior consent, unless the prior consent has not been implemented and will be surrendered on the grant of a subdivision that proposes environmental protection and on-going management of an environmental protection area.*
 - ii. requirements of existing legal mechanism such as a covenant, easement, designation or private agreement / contract.*
 - iii. the level of protection provided under regional or district plan rules.**
- b. methods required to avoid, remedy or mitigate adverse effects of the allotments being created (such as planting to integrate allotments into their surroundings, and control of cats and dogs)*

- 9.74 To achieve a NEB the benefits of environmental protection and on-going management must be greater than the adverse effects created by the subdivision and associated development. The adverse effects created by the proposal have been discussed previously in the AEE and in this evidence.
- 9.75 The land adjacent the Ahuroa River is Acutely Threatened land environment and will be retired and rehabilitated in accordance with RPROZ-P11.1(d). With respect to the NEB, the proposal comprises the 1.41ha of established indigenous vegetation and proposes an additional enhancement area adjacent the river of approximately 0.77ha.
- 9.76 In order to meet the definition of a NEB, the area for protection cannot include and of the matters outlined in (a)(i)-(iii) as outlined in the definition of a NEB above.

The proposed enhancement is considered to meet this part of the definition, as it is not subject to conditions of a prior consent or any other legal mechanism and is not afforded similar protection or enhancement through any other rule of the district or regional plan other than the setback of buildings and major structures development from a river or stream.

9.77 In order to meet the second part of the NEB definition, the benefits achieved through environmental protection and on-going management can not include any other methods as outlined in (b) of the definition.

9.78 The proposal utilises the following methods to avoid, remedy or mitigate the adverse effects of the proposed allotments and resultant development:

- (a) Design and location measures, including positioning of allotments adjacent SH1 to ensure that future development is viewed within the context of the roading corridor and avoids access to Millbrook Road,
- (b) The construction of a roundabout on SH1 to mitigate the effects of traffic safety and efficient operation of the roading network as a result of the proposal.
- (c) Limited earthworks and site establishment to minimise disturbance;
- (d) A suite of Management Plans that will set measures to management potential adverse effects associated with the construction phase of the project;
- (e) Building and major structure setbacks as specified in the WDP, and as required by Transpower to manage the scale and location of built form, including setbacks from the western boundary.
- (f) Colour, finishing, signage, lighting design controls for future buildings and major structures to mitigate the visibility of built form;
- (g) Landscape planting and internal amenity planting to blend in the built form into the site, and only provide intermittent glimpses of the development from surrounding areas and SH1
- (h) Management and treatment of stormwater and wastewater to improve quality and control of discharges to land.

9.79 In my opinion, the mitigation measures listed above sufficiently avoid, remedy or mitigate the adverse effects of the proposed noting that I conclude with the reliance of evidence of Mr Knott, Langwell, Ford and Thompson that the effects that the

effects on the proposed landscape and rural character, roading infrastructure, highly productive soils and the Waipu economic community respectively, as a result of the proposal, are no more than minor.

- 9.80 When assessing the environmental benefits achieved through environmental protection and on-going management in accordance with the NEB definition, I have discounted those measures from my calculation of NEB. In this context I have relied on the evidence of Ms Vilde who has outlined the benefits of the proposed protection from an ecological perspective.
- 9.81 Therefore, I have concluded that on balance the benefit of the environmental protection of the proposed enhancement areas are greater than the adverse effects created by the proposal, and that the proposal meets the definition of NEB.
- 9.82 As such, I have assessed the proposal in respect of RPROZ-P9 and discuss the relevant subclauses below:

RPROZ-P9 Net Environmental Benefit

To protect and enhance biodiversity, landscapes, historic heritage, and significant ecology whilst protecting productive rural land resources, rural character and amenity by providing for [subdivision](#) where all of the following are achieved:

1. A [Net Environmental Benefit](#) is created by the legal protection in perpetuity and on-going management (maintenance and enhancement of the values and attributes, characteristics and qualities) for one or more of the following:
 - a. Appropriate area(s) of [indigenous vegetation](#), or habitat of indigenous fauna, assessed as significant in accordance with policy 4.4.1 and appendix 5 of the Northland Regional Policy Statement 2016; or
 - b. Appropriate area(s) of Outstanding Natural Landscapes, Outstanding Natural Features, Outstanding Natural Character, High Natural Character; or
 - c. Heritage Buildings or Sites of Significance to Māori; or
 - d. Appropriate area(s) of [Highly Erodible Land](#), or land within a riparian margin of a [stream](#), [river](#), estuary or the coast located within Acutely or Chronically threatened land environment associated with Land Environments of New Zealand Level 4, will be retired and rehabilitated.
2. The effects of the number, size and location of [allotments](#), [building](#) platforms and [access](#), are managed by:
 - a. Avoiding:
 - i. Adverse effects on the areas(s) protected under clause (1) of this policy.
 - ii. Adverse cumulative effects.
 - iii. [Reverse sensitivity](#).
 - iv. Development on [highly versatile soils](#).
 - v. An urban form, by encouraging small clusters of [allotments](#).
 - b. Minimising fragmentation of rural land.
 - c. Protecting the productive potential of the [site](#).
 - d. Retaining natural character, landscape qualities and characteristics, rural character and amenity.
 - e. Determining whether fewer than the maximum number of [allotments](#) should be created.
 - f. Assessing the proposal against the Coastal Environment objectives and policies where the [site](#) is located in the Coastal Environment.

- 9.83 In regard to the other matters set out in RPROZ-P9.2, I note that:

- (a) the proposed covenant will ensure legal protection and ongoing maintenance of the Ahuroa stream riparian margins (Located within Acutely threatened land environment associated with Land Environments Level 4) on the property, which achieves RPROZ-P9 (1)(d).
- (b) the area to be protected is located well away from the area to be subdivided and therefore will not be adversely affected by the development;
- (c) The proposal will avoid adverse cumulative effects by providing a landscape planting buffer around the site and managing the form and land use by conditions of consent;
- (d) The proposal will avoid reverse sensitivity effects, given the nature of the activity and the land uses around it;
- (e) The proposed urban form does not encourage small clusters of allotments and minimises fragmentation of rural land by focussing the development on the corner of SH1/Millbrook Road, and seeking to align the individual allotments with the operation of the buildings and land uses.
- (f) As previously concluded, and on reliance of the evidence of Mr Ford, productive potential of the site is already compromised.
- (g) The proposal will retain and enhance the natural character and rural landscape qualities, particularly the proposed protection of existing indigenous habitat alongside proposed revegetated riparian margins of the Ahuroa River which form the lower reaches of the wider view towards Mareretū Forest.
- (h) The proposed number of allotments has been predicated on the type and number of rural commercial land uses proposed. The intensity of development is in my opinion reasonable for a rural service centre supporting the wider rural environment of the district and therefore does not represent an over development of the site.

9.84 RPROZ_P9 does not, in my opinion seek to avoid all urban form as the policy must be read in totality, but seeks to manage the effects of proposed allotments by encouraging small clusters rather than urban sprawl.

9.85 Lastly RPROZ-P11, seeks to direct the location and design of subdivision and associated land development to maintain rural character and amenity values and protect and enhance environmental features. It does not explicitly seek avoidance of subdivision and development.

- 9.86 In this regard I consider that the proposal is not inconsistent with this policy given the development responds to the topography of the site and its unique environmental characteristics, providing for the service centre to be accessed off SH1 and avoiding access from Millbrook Road. The proposed development design locates buildings and servicing within the site that respond to the constraints of low water tables, overland flow paths and overhead powerlines, and the scale and design (together with the mitigative planting) maintains the rural character and amenity values. The roundabout access to the site has been carefully considered and responds to the features of the site including SH1 and Millbrook Road, as well as the safety requirements of NZTA-WK. The subdivision will also not create reverse sensitivity effects to any lawfully established activity.
- 9.87 Furthermore, the report of Mr Hanmore evidence confirms²⁴ that the site does not comprise highly versatile soils.
- 9.88 For the reasons I have set out above, I disagree with the conclusions of Mr Hartstone in the S42A report²⁵ that the proposal is “the antithesis” of and directly contrary to the objectives and policies of the RPROZ.
- 9.89 In this regard, I consider that sufficient evidence has been provided which clearly demonstrates that the proposed landscaping, roading, subdivision design and environmental, ecological and economic outcomes for the site will overall, not be contrary to the objectives sought by the WDP.
- 9.90 A development that proposes a rural commercial services supporting the wider rural environment, on land that is not financial viable as a rural production use, in a location adjacent critical infrastructure, surrounded by landscaping that mimics the wider rural landscape character and screens the majority of development from view, whilst providing economic benefit to the wider district in my view is not the antithesis of the RPROZ – it provides much needed rural support services in an appropriate location with good transport connections.
- 9.91 Furthermore, given the dual purpose of the RPROZ the provision of NEB, will ensure a positive visual landscape and environmental outcome for the wider site, and is therefore consistent with RPROZ-05 and RPROZ-07 which specifically focus on protection and enhancement outcomes.
- 9.92 Overall, I consider that the proposed development will not be contrary to the RPROZ outcomes, objectives and policies described within the WDP.

²⁴ Soil and Resource Report for 47 Millbrook Road, Waipu 290523 [para 3.2]

²⁵ Para 173, S42A report].

Subdivision

9.93 The Subdivision Chapter of the WDP, are in my opinion, process oriented and seek to protect the districts valued features and resources and to subdivide land in a manner that provides for the changing needs of people and communities.

9.94 Objective SUB-05 requires that subdivisions are designed to avoid, remedy or mitigate the adverse effects on the environment and occur in a sequenced and coherent manner. SUB-P1 and P5 give effect to this objective. SUB-P1 seeks to:

To enable subdivision where it meets the relevant zone, overlay and districtwide policies, where subdivision and development is designed to:

1. *Reflect patterns of development that are compatible with the role, function, amenity values and predominant character of the zone.*
2. *Maintain the integrity of the zone with allotment sizes sufficient to accommodate intended land uses.*
3. *Respond positively to and integrate with the surrounding context.*
4. *Appropriately avoid, remedy or mitigate adverse effects on:*
 - a. *Outstanding Natural Features.*
 - b. *Outstanding Natural Landscapes.*
 - c. *Coastal Areas.*
 - d. *Areas of High Natural Character.*
 - e. *Areas of Outstanding Natural Character.*
 - f. *Sites of Significance to Māori.*
 - g. *Historic Heritage.*
 - h. *Significant Natural Areas*
 - i. *Highly versatile soils*

9.95 The proposed subdivision will reflect a pattern of development that is compatible with the role, function, amenity values and predominant character of the RPROZ i.e. to encourage protection of significant ecology, biodiversity and landscapes and provide for rural services that support the rural production activities and rural communities, whilst integrating with the physical features and context of the site.

9.96 The proposed development has been designed to respond to the relevant features of the site, and mitigate adverse effects on known archaeological sites. The proposal does not affect any of the other matters listed in 4(a) – (i). The proposed subdivision provides for suitable connections to public and private onsite infrastructure by the proposed development.

9.97 I therefore conclude that, in my opinion, the proposal is consistent with the Subdivision objectives and policies of the WDP

Signs and Lighting

Signs

9.98 The Signs chapter sets policy direction for the control of the design, number, size and location of signage in order to ensure that the amenity values of the zones are

maintained, and that the safe and efficient operation of the transport network is not compromised.

- 9.99 Objective SIGN-O1 provides for signage across a range of zones, where it maintains or enhances the character and amenity of the zone, does not adversely impact the transport network or the use of infrastructure, and is provided in a manner which is efficient, functional and legible. SIGN-O2 provides for illuminated signage where it contributes to the cultural, social and economic wellbeing of the District, while maintaining amenity and character and avoiding or mitigating adverse effects.
- 9.100 The policies SIGN-P1, SIGN-P4, SIGN P7 and SIGN P8 give effect to the objectives by requiring illuminated signs to be located and designed to minimise adverse effects on traffic safety and controlling the use of illuminated signage in zones where amenity values are higher and background lighting levels are lower.
- 9.101 I disagree with Mr Kensington and Mr Hartstone's view that the wider site and surrounding area retains high rural amenity with low background lighting, particularly given its location next to SH1, and the lighting already provided at the intersection of SH1 and the Braigh.
- 9.102 The applicant has removed all but one illuminated sign from the entrance to the service centre, as this is required for wayfinding – the design of which is simple and functional and required in this location to support the safe and efficient operation of the transport network and those people using it and accessing the Waipu Service Centre.
- 9.103 The evidence of Mr Leung confirms that the brightness of the proposed sign, will be limited to 150 max candelas per m² (cd/m²) during the hours of darkness as per the standards of rule SIGN-R19 *Any illuminated Sign Visible from Beyond the Site Boundary*.
- 9.104 The visual amenity and character effects of the signage have been considered by Mr Knott in his evidence, who has concluded the scale, location and design of the 13.5m sign has been carefully considered, and is consistent with the nature and scale of similar signs for service centres along SH1 which provide efficient, legible and functional signage.
- 9.105 Mr Knott has also concluded that the signage within the site will be appropriately mitigated by the proposed landscaping, to such an extent that any passersby will only see glimpse of signage on buildings.
- 9.106 In this regard, relying on the evidence of Mr Knott and Leung I have concluded that the proposed signage will maintain the mixed character and amenity of the

surrounding location, given that in this location, that rural character and amenity is punctuated by a busy State Highway, CEL powerlines and other residential development.

- 9.107 I also conclude that the proposed sign is unlikely to will not adversely affect the transport network, pedestrian and cyclist safety, or impede the efficient use of infrastructure.
- 9.108 I therefore conclude, that in my opinion the proposed signage is not inconsistent with the objectives and policies of the WDP, given that it must be considered in its unique location adjacent to SH1.

Lighting

- 9.109 As I have already noted, the objectives and policies relating to lighting seek to also have a dual purpose of supporting the health and safety of people and to ensure that lighting levels are compatible with existing lighting character of the surrounding environment and that the amenity of the night sky preserved. In particular LIGHT_P1 seeks to:

"maintain, and where appropriate enhance, the amenity and character of each zone by controlling the intensity, location and direction of artificial lighting" and LIGHT P5 seeks to "support the safe and efficient use of the roading, cycling pedestrian network while maintaining the character and amenity of the surrounding environment by requiring street lighting to be provided at the time of subdivision".

- 9.110 The WDP does this by setting luminance standards to be achieved by development and infrastructure at the time of subdivision. As I have previously concluded, based on the evidence of Mr Leung the proposed development meets these standards, and therefore the luminance levels afforded by the development are readily anticipated in this location. Nonetheless, the applicant has proposed a condition that provides for dimmable LED within Stage 2 of the development to further reduce the effects of lighting in this location.
- 9.111 Accordingly, I consider that the proposal is consistent with objectives and policies of the LIGHT chapter of the WDP.

Transport, Three Waters Management, Earthworks

- 9.112 The Transport, Three Waters Management and Earthworks chapters set policy direction for the establishment, maintenance and use of the transport network, three waters infrastructure and earthworks.
- 9.113 I reply on the technical assessment of CKL Ltd included in the AEE with respect to earthworks and three waters management, and the evidence of Mr Langwell with

respect of transport related matters. In my opinion, the proposal is consistent with the policies of these chapters because:

- (a) The proposed development has been designed to provide safe and efficient access to the site, taking into account the proposed roundabout from SH1;
- (b) The proposed development includes the provision of three waters infrastructure that will be managed on site (in the case of stormwater and wastewater) and provide for the connection of into the public reticulated potable water infrastructure.
- (c) Earthworks, retaining and stormwater management have been carefully designed by CKL Ltd to mitigate the effects from the establishment of level finished building platforms within the site.

Indigenous vegetation and habitat

9.114 The overarching intent of the relevant provisions in the Indigenous Vegetation and Habitat Chapter is to maintain and enhance the life-supporting capacity of ecosystems and the biodiversity of the district, and more specifically to protect areas of significant indigenous vegetation and significant habitats from inappropriate subdivision, use and development.

9.115 I consider that the Proposal is consistent with the relevant provisions in the chapter for the following reasons:

- (a) Proposed Lot 100 (which incorporates 2.28ha) is proposed to be covenanted. This is a significant parcel of land and contains mature native vegetation with approximately 0.77ha of regenerative planting proposed.
- (b) While it is recognised that under the provisions of the District Plan indigenous vegetation could be removed as a permitted activity, the Proposal will not involve the removal of indigenous vegetation.
- (c) Covenanting the significant areas of indigenous vegetation within the Site will ensure the protection of the riparian margin and its important ecological and landscape values now and into the future.

Conclusion regarding Consistency with Planning Provisions

9.116 In my opinion, the proposal will not be contrary to the objectives and policies of the WDP. I have holistically considered the objectives and policies of the RPROZ with respect to the site and the proposal. The RPROZ objectives and policies seek to protect and enhance significant ecology, biodiversity, landscapes and historic

heritage in addition to maintaining and where appropriate protecting rural character and amenity and providing for rural production. The sole purpose of these objectives and policies is not to avoid commercial development adjacent to SH1

- 9.117 When considering the particular site within the RPROZ and the surrounding environment, this proposal is well located providing a service for the travelling public and for the rural community as well as enabling ecological and landscape enhancement and protection in an area of importance to the community and mana whenua.

Proposed Plan Change 1 – Natural Hazards

- 9.118 Mr Hartstone has highlighted that Plan Change 1 has since the application was lodged notified Proposed Plan Change 1, which reviews of the Natural Hazards Chapter.
- 9.119 The Plan change highlights the river flood hazard area associated with the Ahuroa River along the northwestern boundary of the site, and some minor areas of moderate susceptibility to land instability. These two areas as Mr Hartstone notes relate to proposed Lot 100 and do not affect the location of the proposed land use, nor is the proposal considered inconsistent with the proposed Plan Change.

10. OTHER MATTERS SECTION 104(1)(C)

Structure plan and Growth Strategy for Waipu.

- 10.1 The relevance of the 'Whangarei District Growth Strategy' and the 'Draft Waipu Placemaking Plans' in the decision making of this application has been raised by submitters. On this matter, I agree with Mr Hartstone that these documents are non-statutory, and whilst setting out some of the aspirations, they have not been subject to the processes set out in Schedule 1 of the RMA, and do not inform the planning provisions in the District Plan at this time.
- 10.2 I therefore conclude that these documents cannot be used to inform any decision on this resource consent application.

Precedent effects

- 10.3 The proposed development is considered as a non-complying activity due to the size of the proposed lots, and as such has Mr Hartstone has noted the potential for precedent effects, given in his view the proposal lacks any evident unique, unusual

or distinguishing qualities that serve to take the application outside of the generality, with the site being similar to many land parcels along State Highway 1.

10.4 In my opinion, the proposal is significantly distinguished from other potential consent applications for similar developments within the wider Whangarei District for the following reasons:

- (a) The proposal seeks to provide a rural commercial service centre specifically providing for the travelling public and to support of rural production activities and communities in the vicinity of the site which is a discretionary activity, and therefore anticipated within the zone.
- (b) The proposal responds to the outcomes sought by the RPROZ, through the proposed mitigation measures, including the subsequent protection and restoration of the identified significant vegetation and riparian margins;
- (c) Whilst the proximity of the rural site adjacent State Highway 1 is not unique along this portion of the Whangarei, difficulty in getting NZTA-WK to agree allow access off SH1 to the site, and the financial outlay required to implement the proposed roundabout are impediments to future similar proposals.
- (d) The rural character of the RPROZ can be maintained through the imposition of conditions, including controls on built development and landscape implementation;
- (e) The substantial net environmental benefit that will be provided in the protection, maintenance and enhance of 2.28ha of indigenous vegetation adjacent the Ahuroa River margins.

10.5 In my view the proposal is unique enough that it will not encourage a deluge of similar proposals and applications for resource consent Accordingly, I consider that potential precedent effects are avoided or mitigated by the circumstances of this property, the proposed activity and the conditions of consent.

10.6 I note that Mr Hartstone comments that "whilst such applications would be unlikely to be of a similar scale as the current proposal, smaller applications for commercial development could claim to be the same or similar, such that the precedent effect could arise". To this point, I note that commercial activities that supports the rural production zone at a smaller scale are a permitted activity in this zone, and those of a larger scale are discretionary activities. Whilst it is the initial subdivision to create the development lot that renders this application as non-complying a consent

for a rural commercial development would not necessarily in my opinion, affect the integrity of the plan because it could be undertaken without the subdivision.

- 10.7 I also question whether similar consideration of precedent effects have been appropriately weighed up in other WDC decision making, given the evidence of the number of rural-residential subdivisions WDC have approved in the area. It appears difficult to understand why this proposal may be considered by WDC to generate unacceptable precedent effects, yet the subdivision of rural productive land for residential lifestyle developments (also requiring a non-complying activity approval), are not.

11. **104D NON-COMPLYING ACTIVITIES**

- 11.1 Under s104D of the RMA, a non-complying activity must pass at least one of the tests of either s104D(1)(a) or s104D(1)(b) before a decision can be made to grant or decline a resource consent application under s104B. If an application fails both tests of s104D then it must be declined.

- 11.2 Under s104D(1) of the RMA, an application must satisfy 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 the relevant plan.

- 11.3 It is my opinion that the application passes both limbs of section 104(D), given that:

- (a) The effects of the proposal are addressed in detail in the AEE, as well as the evidence that has been presented above, and that of the expert witnesses. In my opinion it has been demonstrated that the effects of the proposal, including the proposed consent conditions to avoid, remedy or mitigate adverse effects, will be no more than minor; and
- (b) The objectives and policies of the WDP have been assessed in detail earlier in my evidence. That evidence confirms that the proposal is not contrary to the objectives and policies of the RPROZ, given its dual objective.

- 11.4 I consider it important to note that in order to pass the second test of S104(D), the proposal does not need to be supported by the objectives and policies or entirely consistent with them, rather the proposal should not be contrary, indicating different too or opposite to what they are seeking.

11.5 Although the proposal is not entirely consistent with every single provision of the WDP, when assessed in the round I consider there to be overall consistency with the policy direction. Where that consistency cannot be achieved, the proposal has responded through appropriate mitigation and positive effects.

11.6 I therefore consider that the proposal satisfies both of the tests of S104D and the application is able to be assessed against the provisions of S104B, with a substantive decision made.

12. SECTION 106 ASSESSMENT

12.1 I agree with the conclusions of Mr Hartston in regard to S106 assessment, namely that:

- (a) Extent of the flood hazard has been identified and addressed through engineering advice;
- (b) Stage 0-3 of the subdivision has been provided with suitable legal and physical access;

12.2 Accordingly, I consider that the WDC can grant a subdivision consent, subject to conditions.

13. PART 2 MATTERS

13.1 In *RJ Davidson Family Trust v Marlborough District Council*,²⁶ the Court of Appeal confirmed that Part 2 is applicable to resource consent applications, however, whether and to what extent it will be appropriate for a decision maker to resort to Part 2 will depend on the planning instruments engaged.²⁷ The Court of Appeal's key finding was that in circumstances where it is clear that a plan has been prepared having regard to Part 2, with a coherent set of policies designed to achieve clear environmental outcomes, although it is permissible to refer to Part 2, such reference is unlikely to add anything.

13.2 In my view, the WDP is the most recent planning document for the Whangarei District and has recently been through a comprehensive plan change process and was clearly prepared having regard to Part 2 of the RMA. Therefore, I consider that

²⁶ [2018] NZCA 316.

²⁷ This is a departure from the High Court's decision which required recourse to Part 2 in the context of resource consent applications only where the planning instrument was invalid, incomplete, or uncertain.

the preceding assessment under S104 has adequately addressed Part 2 matters and resorting to Part 2 is unlikely to add anything.

14. **SUBMISSIONS**

14.1 Following public notification of the proposal, 72 submissions were filed, with six in support, six suggesting that the application be approved subject to amendments, and 60 in opposition. Opposing submissions raised issues regarding:

- (a) The loss of rural character, visual amenity of the landscape and scale of the activity affecting the character of Waipu have been addressed in the specialist evidence of Mr Knott in detail;
- (b) Traffic effects and safety, which has been addressed by specialist evidence of Mr Langwell and the Commute Safety Audit;
- (c) Loss of highly productive land and versatile soils which has been addressed by the specialist evidence of Mr Hanmore and Mr Ford;
- (d) Potential for hazardous spills, which has been addressed by the specialist evidence of Mr Kerr;
- (e) Concerns regarding the ability to provide suitable infrastructure capacity, and avoid effects from stormwater and wastewater, which has been addressed by the specialist reports by CKL attached to the AEE;
- (f) The increase in light pollution has been addressed by the specialist evidence of Mr Leung;
- (g) The increase in noise pollution has been addressed by the specialist reports by SLR Ltd attached to the AEE;
- (h) The detrimental economic effects on existing businesses and services in Waipu, which has been addressed by the specialist evidence of Mr Thompson;
- (i) Effects of the District Plan and long-term placemaking plan for Waipu has been addressed in my evidence;
- (j) Effects on heritage and archaeology, have been addressed in the AEE and subsequent Authority issued by Heritage New Zealand Pouhere Taonga in respect of earthworks in the vicinity of the archaeological site.

- 14.2 These issues have largely been addressed in my evidence above, or that of the specialist's evidence. As such, these issues are only addressed to the extent that they have not already been addressed in my evidence.

Community Benefit

- 14.3 A number of submitters raised the concern that there was no benefit to the community as a result of the proposed Service Centre.
- 14.4 In this regard, I reiterate that the proposed Service Centre will serve both the needs of the travelling public, and also the wider rural community in and around Waipu, through the provision of dedicated rural services and supplies in an easily accessible and convenient location. Such activities are generally provided for in the RPROZ (at this scale as a discretionary activity), as they support the rural production activities provided in the zone as well as households connected to these activities. The provision of such services will have a positive effect on the efficiency of rural production, enabling reduced travelling times, easier access to supplies and services and more choice. Mr Thompson's evidence also confirms that there is a significant economic benefit to the community with the establishment of the Service Centre.
- 14.5 Ms Vilde has also outlined the positive ecological and biodiversity effects that will be afforded by the protection and enhancement of 2.28ha of land adjacent the Ahuroa River margins on the wider site, which is offered by the applicant as an offsetting mitigation measure as intended by the RPROZ objectives and policies.
- 14.6 This protection and planting enhancement will in my view result in a Net Environmental Benefit of the proposal as well as supporting the water quality objectives of Patuharakeke Iwi Trust Board and help to address the concerns of submitters.

Cycling and pedestrian facilities

- 14.7 A number of submitters have commented that the proposal does not provide for pedestrians walking to, or cyclists cycling to the Service Centre. It is not the intention that the Service Centre will be a destination for pedestrians and cyclists primarily because of the nature of the activity and its location adjacent SH1, it would be inappropriate to encourage people to cross the road in this location. In addition, the rural supply and services activities accommodated within Stage 2 of the development will typically mean arriving and departing via a vehicle, and would not warrant walking or cycling to.
- 14.8 Consequently, I conclude that cycling and pedestrian facilities are not warranted nor should be encouraged in this location, particularly where the residents of Waipu

wish to encourage the support of the Waipu and Waipu Cove commercial centres by residents and visitors to the area utilising the existing and proposed cycle paths along the coast.

15. COMMENTS ON OFFICER'S S42A REPORT

- 15.1 I have read the Section 42A report prepared by Mr Hartstone and the accompanying assessments undertaken by Council's landscape architect, Mr Kensington, Mr Williamson in regard to the HPL, WDC Engineering Officers, Messrs Gau and Floyd, and Messrs Jones and Govind (NRC) in respect of economic effects.
- 15.2 Having regard to the application material, the submissions received and the inputs of Council specialists, Mt Hartstone has recommended that NRC regional council discharges and earthworks consents can be approved, but the landuse and subdivision application should be declined.
- 15.3 Mr Hartstone and I disagree with respect to the potential adverse effects of the proposal on rural character, amenity and landscape within the RPROZ; the effect on highly productive land. As addressed earlier in my evidence, the key points of difference between us are as follows:
- (a) Landscape, rural character and amenity – Mr Hartstone considers that the proposal will have more than minor adverse effects on landscape, rural character and amenity. I disagree for the reasons outlined above and as set out in the evidence of Mr Knott who has also specifically responded to the S42A comments made by Mr Kensington.
 - (b) Mr Kensington does not consider that the design of the proposal and conditions of consent will mitigate potential adverse effects on the landscape, rural character and amenity. I disagree for the reasons outlined above and set out in the evidence of Mr Knott.
 - (c) Furthermore, I have concluded that based on the ecological protection proposed by the applicant and discussed in Ms Vilde's evidence, that the proposal will achieve a NEB, and therefore a subdivision that creates the initial lot for development is appropriate.
- 15.4 Mr Hartstone and I disagree in respect of the permitted baseline ²⁸for this receiving environment. However, in my opinion as I have outlined in paragraphs the receiving environment must also be considered in the context of what the surrounding zoning

²⁸ Para 55 S42A report

enables and anticipates, particularly when reflecting on rural amenity and landscape character.

- 15.5 As detailed in section 7.6-7.13 of my evidence, I consider the permitted baseline to include a range of buildings and structures that could be developed on the site and disagree with Mr Hartstone's conclusion at para 98 of the S42A report when he concludes that:

There is no credible permitted baseline that accommodates the extent of the development proposed. The development is of an urban character and a large scale, noting that the entire existing retail/commercial zoning of Waipu township (some of which is vacant) equates to approximately 6.5ha. This provides some scale of comparison in terms of the extent of commercial activity being proposed on a vacant open pasture area adjacent SH1.

- 15.6 Whilst the total site area is approximately 5.9ha, the total gfa of the buildings amounts to only 7,554m², with the remainder of the site comprising landscaping, carparking, roading, stormwater and wastewater ponds – all features that the 6.5ha of retail and commercial zoning in Waipu do not need to comply with, given their connection to public infrastructure. As such, I disagree with Mr Hartstone's conclusion in this regard, and consider this to be an inappropriate comparison.

- 15.7 Mr Hartstone's reference to the existing areas providing under development commercial and retail zoning in Waipu, is also in my opinion, does not convey a fair and reasonable comparison to this proposal, for the following reasons:

- (a) The Settlement zone centre subzone has a maximum permitted height of 8m, and yards of 2m from road boundaries and 3m from other boundaries that contain a separate residential unit, where a 3m+45 height in relation to boundary control also applies. The subzone provides for rural centre service activities and commercial activities provided that the activity does not exceed 300m² gfa or that there are 3 or more individual commercial/rural centre activities on the site. Whilst this subzone provides for rural centre service activities, the scale provided for would prohibit the type of activities proposed in by the applicant as they predominantly require a larger floor area, and either yard, loading or circulation space to operate effectively – all of which are not provided for within this subzone
- (b) The Settlement zone industrial subzone has a maximum permitted height of 20m above ground, with yards of 4.5m from road boundaries. A height in relation to boundary control of 3m and 45 degrees only to those property boundaries the abut a non-settlement Zone Industry sub-zone boundary. Such controls could lead to a far greater level of development intensity, and

therefore commercial scale than the proposed development if developed to its maximum

Matters requiring clarification

15.8 Mr Hartstone also notes a number of matters requiring clarification, which I have responded to below:

- (a) Status of Lot 23 ²⁹in Stage 2 has been confirmed in the updated Scheme Plans attached to my evidence as **Appendix 2**;
- (b) Earthworks associated with the roundabout. The preliminary details of the earthworks and construction involved in the proposed roundabout have been included in **Appendix 3** of my evidence. The earthworks proposed as a result has been itemised, and is in addition to that required by the development on site. The applicant has assumed that these earthworks will fall within the current designation for SH1, and have sought clarification from NZTA-WK. If not, the applicant requests that the additional volume and area be included within this application as per **Appendix 3**.
- (c) Infringements that may arise following subdivision³⁰. I have attached the proposed development plan overlaid with the proposed titles to ascertain “technical infringements” that will arise following a subdivision around any approved development as **Appendix 5** to my evidence.

16. **DRAFT CONSENT CONDITIONS**

16.1 The applicant provided the Council with a set of proposed consent conditions, attached with the amended application in August 2024.

16.2 These have been prepared on the basis of the recommendations prepared by the applicant’s independent specialists, the Northland Regional Council, and Transpower. They have also been reviewed by NZTA-WK, and have subsequently been revised prior to this hearing to capture the recent amendments to matters that both NZTA-WK, Patuharakeke Iwi Trust Board, the Council and the applicant are in agreement.

16.3 Changes made reflect:

²⁹ Para 24 S42A report

³⁰ Para 29 S42A report

- (a) Recommendations of Ms Vilde in her evidence with respect to ecological protection and enhancement areas;
- (b) Recommendations of Mr Knott in his evidence with respect to lighting, buildings and additional planting;
- (c) Recommendations of Patuharakeke Iwi Trust Board in respect of iwi engagement and ongoing involvement;
- (d) Recommendations of NZTA-WK, which were not already addressed by the Applicant's original conditions of consent.

16.4 A full set of the amended set of conditions are attached as **Attachment 1** to my evidence, and summarised below:

- (a) Survey and easements – Conditions 1 will ensure that the subdivision is in accordance with the information supplied with the application, the survey plan including appropriate conditions and easements.
- (b) Architectural – Conditions 1, 19 will ensure that the development is in accordance with the information supplied with the application, and the architectural drawings.
- (c) Landscape – Conditions 17,18 will ensure that the landscape planting is in accordance with the information supplied with the application and maintained in perpetuity.
- (d) General Engineering – Conditions 25, 29, 30, 35, 36, 40, 45 will ensure that all detailed engineering plans and design is approved prior to construction, and all pre-start approvals are gained and work is completed in accordance with plans and approvals;
- (e) Traffic – Conditions 22, 23, 24,46, 47, 52 will ensure the traffic operation of the site is appropriately managed within the roading network
- (f) Hazardous Substances – Conditions 43, 44 will ensure that the hazardous substances are appropriately contained and managed on the site
- (g) Engineering – Management Plans – Conditions 5 will ensure traffic management, construction management and sediment control plans are in place during construction
- (h) Archaeological and Cultural – Conditions 15, 31, 32, 33 ensure the management of potential effects prior to the commencement of

construction, including site blessing, further archaeological investigation and accidental discovery protocols apply during construction.

- (i) Geotechnical- Conditions 29, 30, 34, 35 ensure that all proposed earthworks, earth bunds and site establishment will comply with the recommendations of the Soil & Rock Geotechnical Report and will not result in site instability.
- (j) Ecology – Conditions 5, 54 - 62 seek to manage the effects on ecology and ensure that a NEB is achieved through the protection and on-going management of the proposed ecological enhancement area via the Ecological Management Plan
- (k) Noise – Conditions 37, 38, 39 seeks ensure that the noise and vibration emitting from the proposed activity during both construction and operation meets the relevant standards of the WDP
- (l) Lighting – Conditions 1, 41, 42 seek to ensure that the lighting on the site from the proposed activity meets the relevant standards of the WDP as a minimum.
- (m) Transpower – Conditions 48, 49, 50 and 51 that seek to ensure that CEL is not affected by the development.

16.5 I consider that these conditions appropriately manage and mitigate effects, forming a basis on which consent could be granted, should the Commissioners be minded to do so.

17. **CONCLUSION**

17.1 Based on the expert assessment provided, it is my opinion that the proposal will provide for sustainable management of physical resources while avoiding, remedying, or mitigating any potential adverse effect on the environment, in so far as:

- (a) There are no potential adverse effects of the development that cannot be avoided, remedied or mitigated through the imposition of conditions;
- (b) There will also be significant positive effects associated with the application, in particular relating to the ongoing property and revegetation of areas of the wider site, and the economic benefits to the wider District.

- (c) The proposal is not contrary to the relevant statutory documents and in some instances finds specific support in relation to ecological and landscape enhancement elements and the exemptions afforded under the NPS_HPL.
- 17.2 Matters raised in submissions have been addressed through the body of evidence or within the technical evidence.
- 17.3 Therefore, I am of the opinion that this proposal is worthy of the grant of resource consent subject to the conditions as proposed in **Attachment 1**.



Hamish Firth
24 September 2024

Appendices:

- Appendix 1: Draft Conditions
- Appendix 2: Amended Scheme Plans
- Appendix 3: Construction Effects of Proposed Roundabout
- Appendix 4: RPROZ Chapter
- Appendix 5: Architectural Plan 3096-H-UT-01a Proposed Titles Plan