
To	Independent Commissioner
Prepared By	Cameron Aplin, Consultant Planner
Date	25 May 2020
Approved By	Wade Hill – Consents Team Leader
Application	SUB0165/19
Applicant	G & S Singleton Heritage Limited
Report Title	Section 42A Report on a publicly notified resource consent application by G & S Singleton Heritage Limited to undertake an eight additional lot Rural Zone subdivision at 635 State Highway 23, Whatawhata.

Experience & Qualifications

I have been engaged by Waikato District Council to provide an evaluation and recommendation on an application by G & S Singleton Heritage Limited to undertake an eight additional lot Rural Zone subdivision. I am a Senior Planner at BCD Group Ltd. I hold a Bachelor of Resource and Environmental Planning (Honours) from Massey University. I have 10 years' experience as a Resource Management practitioner with a specific focus on resource consents within the Local Government environment. Previous roles held include Environmental Planner (Compliance and Monitoring) at Hastings District Council and Intermediate Planner at Waikato District Council.

Executive Summary

The subject site is situated at 635 State Highway 23, Whatawhata and is within the Waikato River Catchment.

Proposal

The subdivision consent application seeks to create eight additional lots from two existing titles (10 new lots) in the Rural Zone. As a result of the proposed subdivision; the following land use non-compliances are created:

- To exceed site coverage within Lot 8;
- To locate existing accessory buildings within the internal building setbacks with respect to the new allotment boundaries of proposed Lots 3, 8 and 10.

The application proposes to mitigate effects of the proposed subdivision by undertaking the following:

- Retaining and establishment of visual mitigation planting shown on the covenant vegetative area plan submitted as further information to the application;
- To ensure the built form of the anticipated buildings on the proposed lots visually integrate with the rural landscape, a set of design measures (including restricted building areas) are proposed as part of the recommendations set out in the

Landscape Visual Assessment commissioned by Council which have been adopted as part of the proposal.

The activity is classified as a Non-Complying Activity under the Operative Waikato District Plan (Waikato Section) (“Operative District Plan”).

District Plan Provisions

The subdivision proposal is unable to comply with the restricted discretionary activity rules in relation to number of additional lots, allotment size, setbacks of existing buildings from proposed boundaries, frontage and number of lots accessed off a right of way. The subdivision proposal is also unable to comply with the permitted activity rules in relation to building coverage and building setbacks. The application does not trigger any rules in the Proposed District Plan - Notified Version July 2018 (“PDP”) that have legal effect nor does it trigger the National Environmental Standard (“NES”) for Contaminated Land.

Submissions

Five submissions were received in relation to this proposal, two neutral and three in opposition. Three submitters wish to be heard. In summary, the matters raised in submissions relate to the proposal being inconsistent with current submissions to the Proposed Waikato District Plan, proposal inconsistent with the policy framework contained in the ODP, PDP, Waikato District Council’s Draft Growth & Economic Development Strategy and Waikato Regional Policy Statement; seeking assurances regarding land drainage matters (including that consent notices & easements will be imposed), seeking consent notices to be imposed relating to water supply for firefighting and seeking consent conditions & advice notes to be imposed relating to archaeological event accidental discovery protocol.

Recommendation

The following report provides an assessment of the proposal against the requirements of section 104, 104B, 104D and Part 2 of the Act.

As a Non-Complying Activity under the ODP, Council may grant consent for the proposal only if it is satisfied that either one of the two gateway tests in section 104D can be met (minor adverse effects on the environment or not contrary to the objections policies of both the ODP and the PDP). If the application passes one of the gateway tests, it can proceed to be determined on its merits under section 104. I have concluded that the proposal when considered holistically, passes the first gateway test under section 104D and, as such, can be considered under section 104 as to whether or not consent should be granted (with conditions) or declined. In terms of my section 104D(1)(a) assessment, all of the adverse effects have been assessed to be minor or less than minor, with the exception of land fragmentation effects which are assessed as more than minor. However, in my view, the adverse effects, including land fragmentation effects, when taken as a whole, and having regard to the proposed mitigation, are overall minor.

The matters to be assessed under section 104 include the actual and potential effects of the proposed activity on the environment, an assessment of the relevant plan provisions and all other relevant matters. Section 104 is also subject to Part 2 matters. The report contains a recommendation to the Commissioner on whether or not consent should be granted evaluating all of the evidence presented at the time of report writing.

Having considered the matters under section 104 and Part 2, it is my view that the consent should be granted for this proposal for the following reasons:

Under s104(1)(a), I have concluded; overall that the actual and potential effects of the proposal are able to be avoided, remedied or mitigated through the imposition of conditions and are therefore acceptable. In particular, the positive effects, in my view will balance against and outweigh the more than minor land fragmentation effects.

Under s104(1)(b), I have concluded that the proposal is consistent with, and not contrary to, the relevant provisions of the Waikato Regional Policy Statement and the Waikato Regional Plan. In terms of the ODP assessment under s104(1)(b), I conclude that when looking at the objectives and policies of the plan holistically, the proposal is contrary to them. In particular, I consider Objective 1A.2.1 and associated Policies 1A.2.3, 1A.2.6 and 1A.2.12 and Objective 1A.6.1 and associated Policies 1A.6.2 and 1A.6.3 of the ODP to be the most directly relevant to the proposal. These provisions in my view, provide the overarching intent of the plan provisions which is to direct rural-residential development into defined towns and villages to preserve rural areas for rural uses (while maintaining rural character and amenity). These policies provide strong direction by Council, endorsed by the community, as to what outcomes are sought in regard to the location of rural-residential development. The assessment under 9.4.1 and 9.4.7 has concluded that the proposal is contrary to these provisions. In terms of the PDP assessment under s104(1)(b), I conclude that when looking at the objectives and policies of the plan holistically, the proposal is not contrary to them.

Under s104(1)(c), I have concluded the proposal is inconsistent with Waikato 2070 Waikato District Council's Draft Growth & Economic Development Strategy; and the Updated (Future Proof) Growth Strategy and Implementation Plan (2017) but not inconsistent with (and not contrary to) the following documents.

- Waikato Tainui Environmental Plan; and
- Ngati Haua Environmental Management Plan.

I consider that granting this application will not have a precedent effect (acknowledging the unique factors of the proposal) on future applications and will also not undermine the integrity of the clear and important policy direction in the ODP and PDP for subdivision in the Rural Zone.

When weighing up the competing factors under section 104, I have afforded little weight to the matters the proposal is inconsistent with because these matters are non-statutory documents. Although the proposal is consistent with the objectives and policies of the PDP, I have afforded them less weight as they have yet to be tested through the Schedule 1 process. In my view, the positive effects, overall minor adverse effects, and absence of precedent and plan integrity concerns, when considered together, outweigh my findings that the proposal is contrary to the objectives and policies of the ODP and, narrowly tips the balance in favour of granting consent, subject to Part 2. Turning to Part 2 matters, I have undertaken an assessment under Part 2 as I believe reasons exist for doing so as explained later in my report. The adverse effects of the proposal are acceptable with the imposition of conditions. I consider Part 2 of the RMA would be better met through granting this consent than declining it, although my recommendation is finely balanced.

However, the conclusions reached, and recommendations made in this evaluation report are not binding on the Commissioners and it should not be assumed that the Commissioners will reach the same conclusions or decision after having considered all of the evidence.

CONTENTS

1.0	<u>Introduction</u>
1.1	Proposal
1.2	Description of Subject Site and Surrounding Area
1.3	Legal Interests
2.0	<u>Process Matters</u>
2.1	Key Dates
2.2	Technical Comments
3.0	<u>Status of Activity</u>
3.1	Waikato District Plan – Waikato Section
4.0	<u>Notification and Submissions Received</u>
4.1	Notification Decision
4.2	Submissions Received
4.3	Late Submissions
5.0	<u>Section 104 Considerations</u>
5.1	Section 104
5.2	Permitted Baseline
5.3	Part 2 Matters
6.0	<u>Permitted Baseline Assessment</u>
7.0	<u>Existing Environment</u>
8.0	<u>Assessment of Effects on the Environment - s104(1)(a)</u>
8.1	Positive Effects
8.2	Landscape Visual Effects
8.3	Rural Character Effects
8.4	Land Fragmentation Effects
8.5	Reverse Sensitivity Effects
8.6	Traffic Safety Effects
8.7	Wastewater & Water Supply Effects
8.8	Stormwater Effects
8.9	Flooding Effects
8.10	Archaeological Effects

8.11	Cumulative Effects
8.12	Other Matters raised in Submission from Waikato Regional Council
8.13	Summary of Effects
9.0	<u>Relevant Plan Provisions – S104(1)(b)</u>
9.1	National Environmental Standards
9.2	Waikato Regional Policy Statement
9.3	Waikato Regional Plan
9.4	Operative Waikato District Plan (Waikato Section) – Objectives and Policies
9.5	Proposed Waikato District Plan – Objectives and Policies
9.6	Summary of Assessment under Section 104(1)(b)
10.0	<u>Section 104(1)(c) – Other Matters</u>
10.1	Waikato Tainui Environmental Plan
10.2	Ngati Haua Environmental Management Plan
10.3	Waikato 2070 Waikato District Councils Draft Growth & Economic Development Strategy
10.4	Updated (Future Proof) Growth Strategy and Implementation Plan (2017)
10.5	Precedent
10.6	Administration of the District Plan (District Plan Integrity).
10.7	Summary of Assessment under Section 104(1)(c)
11.0	<u>104 Conclusion</u>
12.0	<u>Section 104D</u>
13.0	<u>Section 106</u>
14.0	<u>Assessment of Part 2 Matters</u>
15.0	<u>Conclusion & Recommendation</u>

APPENDICES

APPENDIX A – APPLICATION AND FURTHER INFORMATION

APPENDIX B – DISTRICT PLAN RULE ASSESSMENTS

APPENDIX C – LAND DEVELOPMENT ENGINEER TECHNICAL REPORT

APPENDIX D – LANDSCAPE VISUAL ASSESSMENT COMMISSIONED BY COUNCIL

APPENDIX E – STORMWATER & FLOODING ASSESSMENT COMMISSIONED BY COUNCIL

APPENDIX F – NOTIFICATION DECISION

APPENDIX G – SUBMISSIONS RECEIVED

APPENDIX H – DRAFT CONDITIONS

1.0 INTRODUCTION

The application proposes to create eight additional lots from two existing titles in the Rural Zone. As a result of the proposed subdivision; the following land use non-compliances are created:

- To exceed site coverage within Lot 8;
- To locate existing accessory buildings within the internal building setbacks with respect to the new allotment boundaries of proposed Lots 3, 8 and 10.

The site is located at 635 State Highway 23, Whatawhata and is zoned Rural Zone under the Waikato Section of the Waikato District Plan.

An assessment of environmental effects pursuant to section 95E of the Act, concluded that the effects of the proposal were more than minor on the environment in relation to rural character and land fragmentation and the application was publicly notified.

1.1 Proposal

Pursuant to s88 of the Resource Management Act 1991, McCracken Surveys, now Cheal (the Agent) has applied on behalf of G & S Singleton Heritage Limited (the Applicant) for subdivision consent.

The site is made up of two parcels of land legally described as Lot 1 DPS 12627 contained in RT SA10B/682 comprising 4.0494 ha, issued in 1969 and Lot 2 DPS 12627 contained in RT SA10B/683 comprising 41.6194 ha, issued in 1969.

The proposal seeks to create eight additional lots from the two existing titles (10 new lots) using the subdivision general provisions under the ODP which is classified as a Non-Complying Activity. The application states that the applicant's vision behind the proposal is to create a park like environment with dwellings and planting selectively placed interspersed through the site to attract birdlife.

The lot sizes of the proposed subdivision are listed below.

Lots Sizes

Lot 1 – 0.8530 ha

Lot 2 – 1.04 ha

Lot 3 – 1.01 ha

Lot 4 – 0.8165 ha

Lot 5 – 0.8 ha

Lot 6 – 1.75 ha

Lot 7 – 1.22 ha

Lot 8 – 0.9620 ha

Lot 9 – 1.80 ha

Lot 10 – 35.41 ha (Balance Lot)

The proposed arrangement of the subdivision is seen in Figure 1.

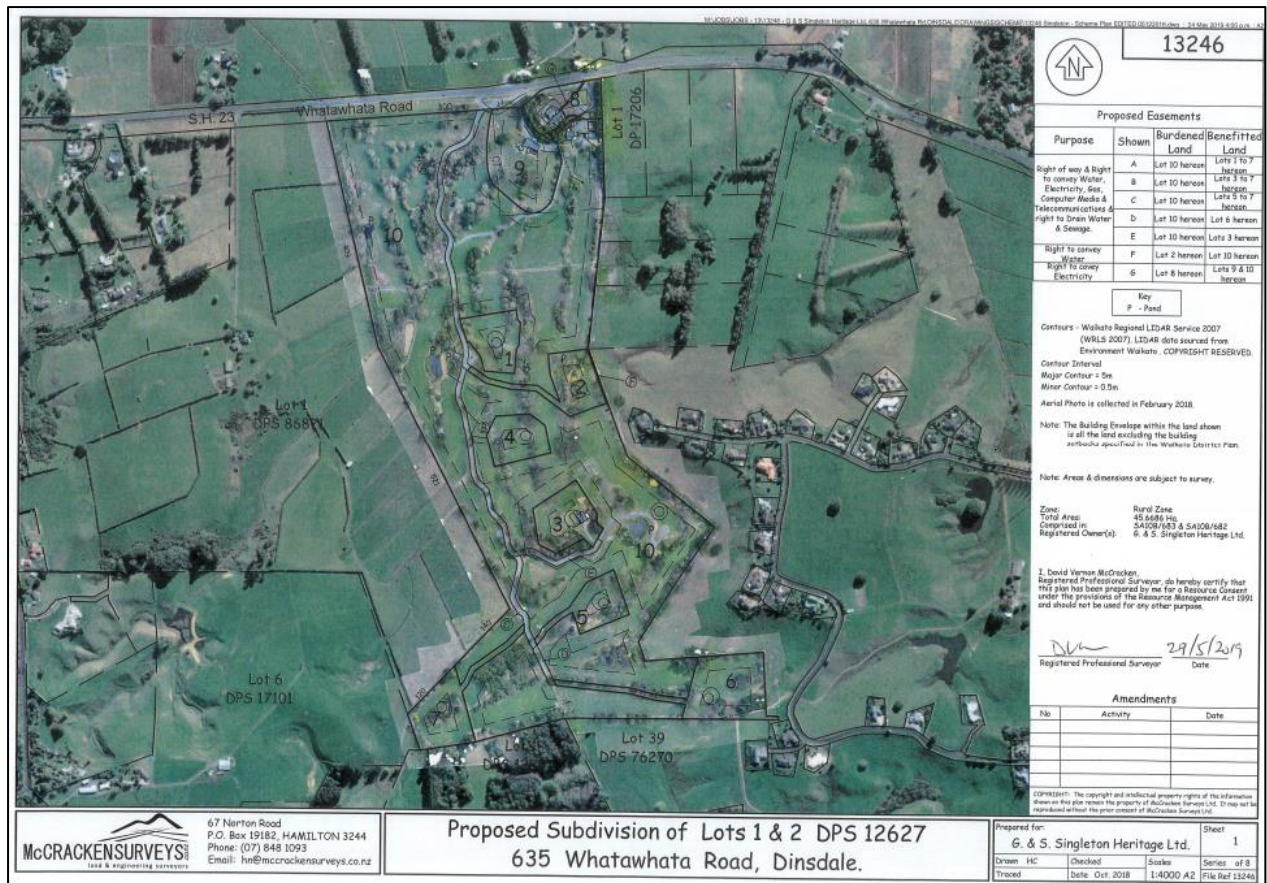


Figure 1 – Scheme Plan.

Access

The existing vehicle entrance off Whatawhata Road is proposed to provide access to the proposed Lots 8, 9 and 10. Proposed Lots 1 - 7 obtain access via a proposed right of way created over Lot 10, with a width of 10m, also accessed from the existing vehicle entrance from Whatawhata Road. Photographs of the access can be found in appendix 3 of the application.

Power

WEL Networks has provided written confirmation that power supply is available for all proposed lots.

Telecommunications

Chorus has provided written confirmation that hardwire telecommunications is available for all proposed lots.

Land Use Capability of Soils

A Land Use Capability (LUC) report prepared by Soil and Land Evaluation dated August 7th, 2018 has been submitted with the appendix 6 of the application. Section 8 of this report concludes that the subject site does not support high quality soil. As illustrated by Figure 2, the site contains soil that is classed as 3w2 (described as very poorly drained), 3e3 (described as poorly drained), 4e2 (described as poorly drained) as well as modified soil which cannot be classified as described in section 7 of the LUC report and summarised in the table below. These classes do not meet the definition of high quality soils as defined under the ODP and also does not meet the definition of high class soils under the PDP.

Soil Classification	Soil Type	Approx. % of Site	Description
3w2	Mix of Kaipaki silty peat loam and Te Kowhai humic silt loam	75	Very poorly drained
3e3	Hamilton clay loam	10	Poorly drained
4e2	Hamilton clay	10	Poorly drained
N/A	N/A (Modified Soil)	5	N/A

Section 5 of the LUC report states that the reasons for the very poorly drained non-versatile soil is that 75% of the site is located in a topographic low which receives drainage and runoff from the steep hills along the eastern and southern boundaries.

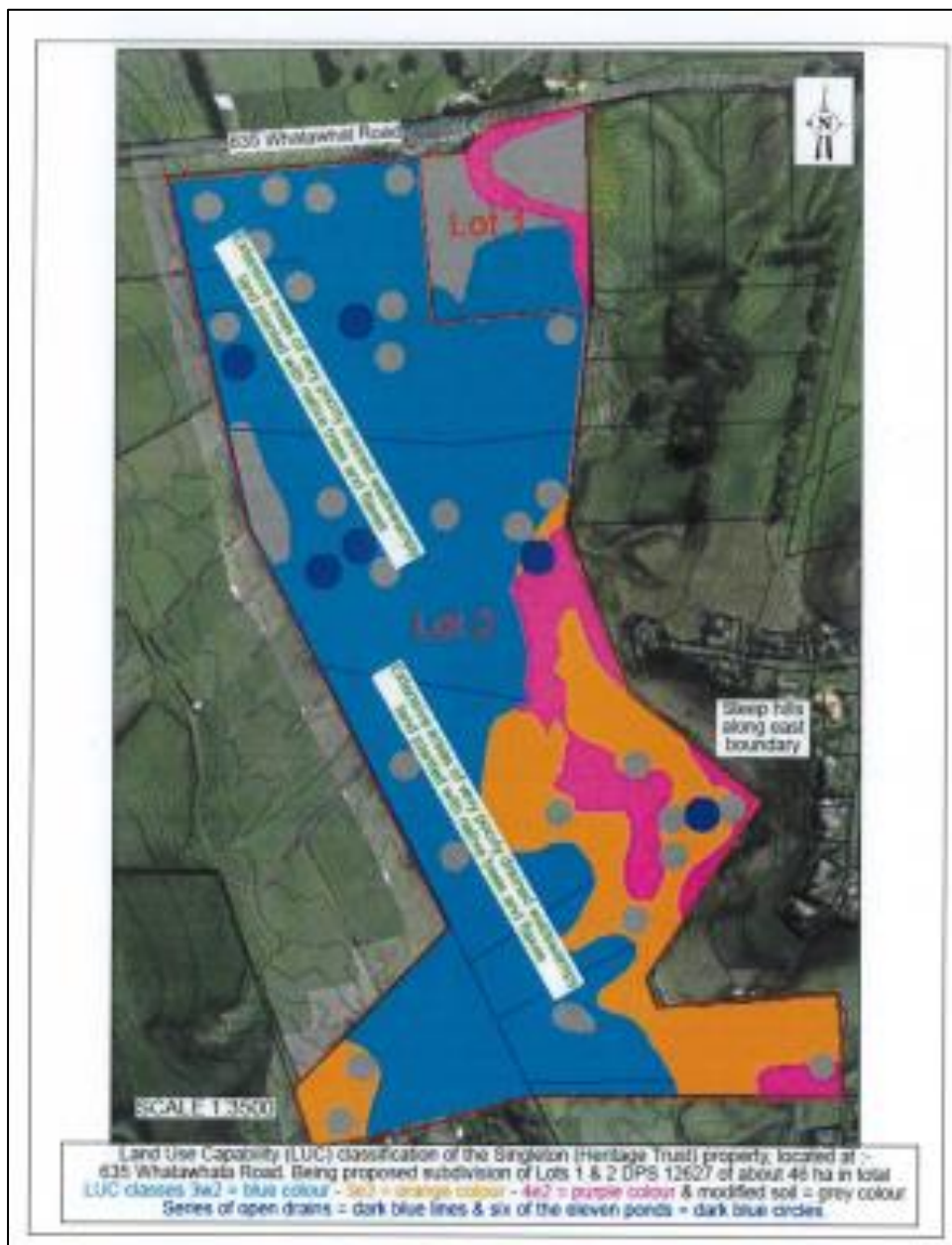


Figure 2 – Soil Types (Source: Figure 1 of Land Use Capability (LUC) report prepared by Soil and Land Evaluation dated August 7th, 2018)

Agriculture Suitability Assessment

An Agriculture Suitability Assessment prepared by Ag First dated 18 December 2018 has been submitted as appendix 8 to the application. The assessment discusses the following matters.

- Farming activities since June 2015 when the applicant purchased the property,
- The site's soils,
- The site's physical configuration,
- Indicative development costs to turn this property into a productive agricultural block,
- Indicative development costs to turn this property into maize production; and
- Implications of Plan Change 1 on converting the site back into a productive use.

The concluding paragraph in the executive summary states that the site's soil types provide significant obstacles to profitable farming practices and the land development costs to remove the trees (remnant of the historic golf course activity that occurred on the site, as seen in Figure 1) and establish a reasonably sized farming block would be prohibitive.

Floodplain Analysis

A floodplain analysis prepared by Dr Steven Joynes of Golovin has been submitted as part of the application and updated as part of further information received on 18 October 2019. This analysis has undertaken flood modelling and recommended finished floor levels are provided for each of the proposed building platforms within each of the lots.

Site Suitability

A preliminary geotechnical assessment report prepared by CMW Geosciences dated 15 August 2019 has been provided as part of further information on 16 August 2019 to confirm site suitability for the proposed lots. The report includes an assessment of liquefaction risk, slope stability, foundation suitability and on-site disposal of stormwater and wastewater. The summary states that based on the assessment and investigation, CMW Geosciences consider the site is suitable for the proposed rural-residential subdivision development provided their recommendations are adhered to. Key recommendations include further CPT investigations to be undertaken at building consent stage.

Stormwater

Possible locations of stormwater attenuation structures, above maximum flood levels, are shown on a plan attached to the report as seen in Figure 3. A copy of the final stormwater management plan was received on 20 December 2019.

Wastewater

Possible locations of wastewater soakage fields, above maximum flood levels, are shown on a plan attached to the report as seen in Figure 3.

Water

Future dwellings on Lots 1, 2, 4, 5, 6 and 7 will utilise on-site water detention tanks. Lot 3 has an existing water tank, for water collection and detention. Lots 8 and 9 will have a water bore that pumps water to individual water tanks on each lot. Lot 10 will have one water bore, which currently feeds an irrigation system and water storage tank located within the south-eastern portion of the lot. This water bore will be used in Lot 10 only. As seen in Figure 1, an easement is proposed to convey water over Lot 2.

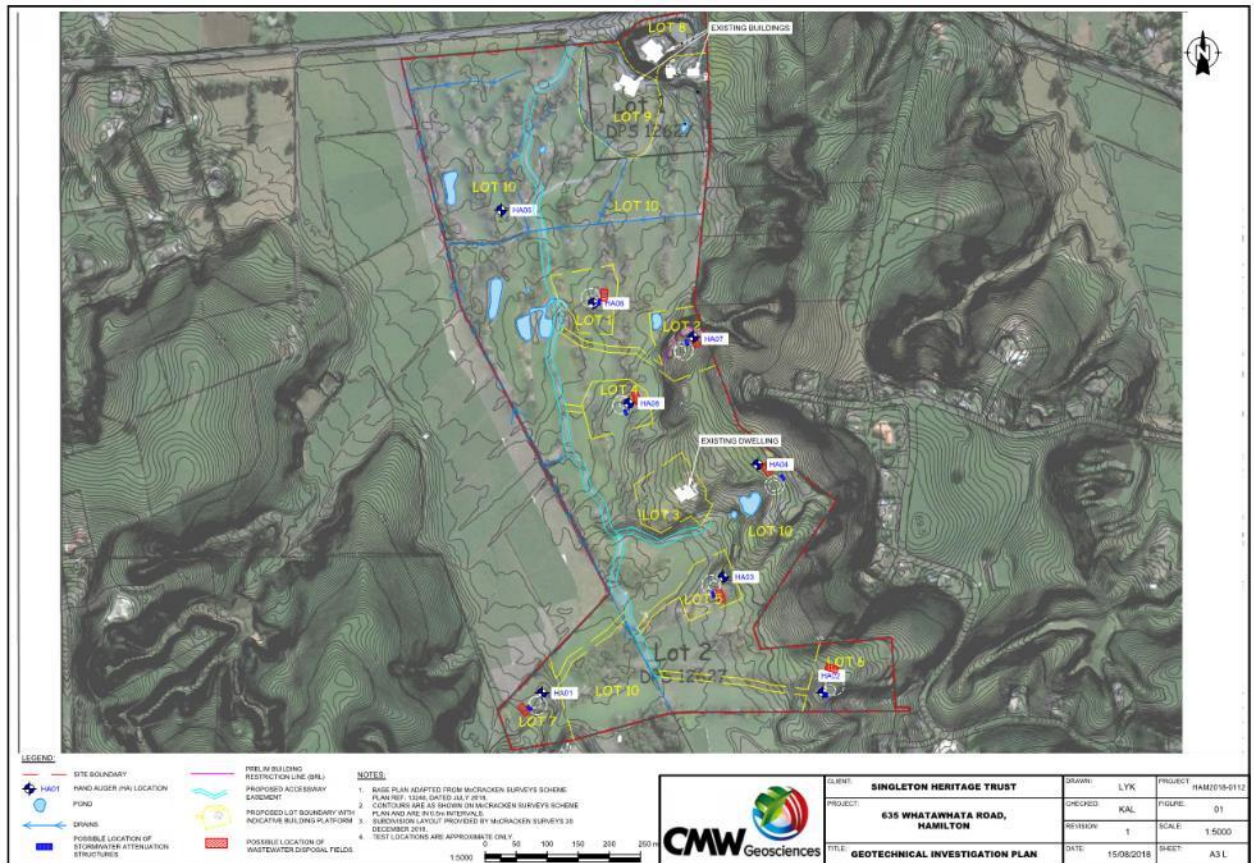


Figure 3 – Geotechnical Investigation Plan.

Landscape View Shafts

Views of the site taken from a drone at locations to the east/south east of the site have been provided with the application (refer to Appendix 12 of the application) to illustrate potential landscape and visual effects of the proposal.

Restricted Building Areas

As part of the proposed design measures to mitigate potential visual landscape effects of the proposed subdivision; restricted building areas have been identified for Lots 1- 7 and 10 as seen in Figure 4 below. If consent is granted, a consent notice will be imposed to each lot advising current and future owners that new buildings shall be constructed within the identified area within the respective lot.

Visual Mitigation Planting

A significant amount of existing planting exists onsite as identified in Figure 8. As part of further information to the application received on 16 August 2019, a proposed covenant vegetative area plan has been provided (refer to Figure 5). This shows areas within the site proposed to be subject to a land covenant to ensure existing and proposed planting providing visual mitigation will be retained and maintained should consent be granted and given effect to. This covenant vegetative area plan supersedes the supplementary planting plan provided with the application.

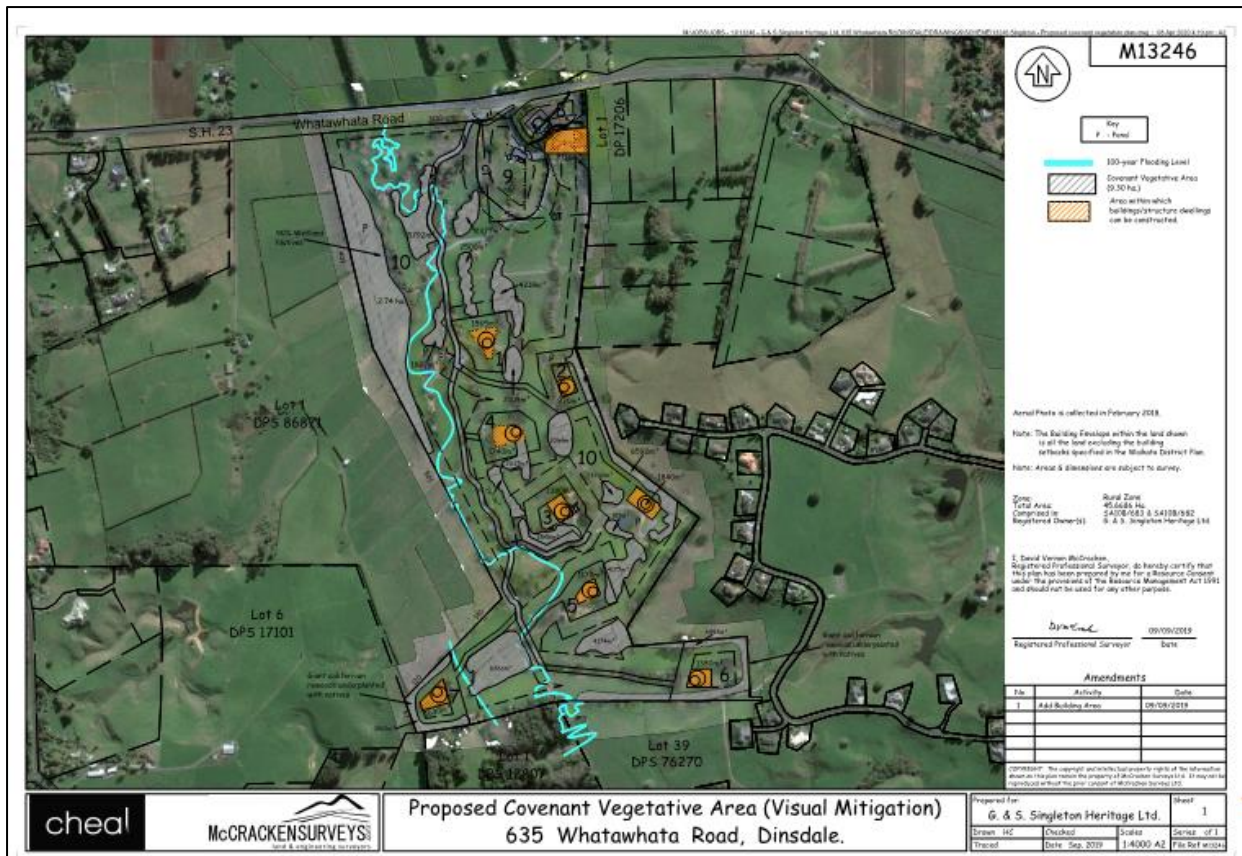


Figure 5 – Annotated Proposed Covenant Vegetative Area Plan (Size of areas provided on 9 April 2020).

As part of further information received on 21 August 2019; the following information has been provided regarding planting species and growth rates of the planting subject to the covenant vegetative area plan.

Main boundary planting:

Californian coastal redwood - *Sequoia sempervirens* - NZ growth rate very rapid 8.0m in five years; Height when mature 15.0m.

Western Red Cedar – *Thuja Placata* - NZ growth rate medium growth 4.0m after 5 years. Height when mature 30.0m

Intermittent boundary planting:

Black Beech - *Fuscospora solandri* - NZ growth rate medium growth 3.0m after 5 years. Height when mature 20.0m

Pohutukawa - NZ growth rate slow/medium growth 3.0m after 5 years. Height when mature 10.0m

Kauri - *Agathus australis* - NZ growth rate very slow 3mm /per year.

Manuka - *Leptospermum scoparium* - NZ growth rate medium/rapid growth 2.0m after 5 years. Height when mature 4.0m

Subcanopy planting:

Pittisporum Crassifolium -

Pittisporum Eugenioides - Established Height Width in 7/10 yrs: 6m x 3m

Pittisporum Tenuifolium - Established Height Width in 7/10 yrs: 5m x 3m

Design Measures

A number of design measures were identified as part of the Landscape Visual Assessment prepared by Boffa Miskell dated 26 September 2019 (commissioned by Council) as necessary to minimise the potential adverse landscape and visual effects. As part of further information received 10 January 2019; the applicant has confirmed that these are adopted as part of the application. The design measures include:

Vegetation:

- Proposed mitigation native and exotic treed vegetation shall be implemented at subdivision stage. This shall include those areas shown on the Covenant Vegetative Area Plan (McCracken Surveys, File Ref 13246, Sheet 1, Date July 2019).
- Vegetation cover shall be managed in perpetuity and shall be allowed to grow to natural height and form.
- The LMP shall identify locations of the following planting schedule:

Planting Area	Species	Common Name	Height in 5 years	Mature Height
Main Boundary Planting	<i>Sequoia sempervirens</i>	Californian Coastal Redwood	8.0m in 5yrs	15.0m
	<i>Thuja placcate</i>	Western Red Cedar	4.0m in 5rs	30.0m
Intermittent Boundary Planting	<i>Fuscospora solandri</i>	Black Beech	3.0m in 5yrs	20.0m
	<i>Metrosideros excelsa</i>	Pohutukawa	3.0m in 5 years	10.0m
	<i>Agathis australis</i>	Kauri	3.0m in 5 years	40m
	<i>Leptospermum scoparium</i>	Manuka	2.0m in 5 years	4.0m
Sub Canopy Planting	<i>Pittosporum crassifolium</i>	Karo	7-10years – 5m	
	<i>Pittosporum eugenioides</i>	Lemonwood	7-10years – 6m	
	<i>Pittosporum tenuifolium</i>	Kohuhu	7-10years – 5m	

Buildings & Structures:

- Building Areas: Defined Building Areas (DFA) shall be identified in a final scheme plan that:
 - Locates the DFA in general accordance with the building areas shown in the proposed scheme plan.
 - DFA shall include all new buildings and structures, including sheds, garden sheds, not precluding existing buildings and sheds.
- Placement: All buildings above ground must be located within the Building Areas as shown on the proposed scheme plan including ancillary buildings, garden sheds and above ground water tanks.
- Height: All buildings shall be single storey and a maximum height of 5m from natural ground level.
- Water tanks: All water tanks shall be screened from view in a manner and/or with screening and materials/colours harmonious with the dwelling and shall be installed on each respective lot.

Form:

- Design roofs that integrate buildings into the landscape and use a sheltering form with deep overhangs of more than 1.0m.
- Roofing: Roof materials shall be coloured in recessive colours no greater than a reflectance value of 20%. Grass or green roofing consistent with the surrounding vegetation patterns and colours is acceptable.
- Use building modulation to break the length of a building facade by changing direction, stepping in and out of the main facade, balconies, eaves, pergolas and other structures.

- Recess large areas of glazing below wide eaves and dividing glazing with walls, pergolas and the like.
- Use of dark tinted glass, but not mirror glazing, is required.
- Use window joinery, doors and balustrades that have a reflectance value of less than 30% and are dark or naturally coloured.
- Design buildings that use natural materials including natural stone, timber and concrete and cladding that has a reflectance value of less than 30% for walls and 25% for roofs.
- Ancillary Buildings: Garages, boat storage, and other ancillary buildings associated with the house shall be contained within the house site and shall be a comparable quality to that of the main building on the site.

Materials and Colour:

- Select materials that respond to the natural landscape and native vegetation immediately surrounding the subject site.
- Select colour palettes that have a reflectance value of less than 20% for roofs and 30% for walls (Refer to the Resene British Standard 5252 Range as a guide only. All colours and materials must be approved at building consent).
- Use natural material finishes such as stone and timber which will weather naturally.
- Apply dark oxide colouring to concrete materials to reduce reflectivity of the material.
- Timber cladding and other natural elements (stone) naturally weathered or stained dark.
- Painted timber, blockwork or other materials may be used and must contribute to receding the building into the landscape.
- The reflectance value of surfaces, including joinery, gutters, downpipes, cladding and roofing materials shall be no greater than 30% for walls and 25% for roofs.

Earthworks:

- No earthworks or grading other than the minimum required for driveways or underground services is permitted outside the house site area.
- Re-contouring all embankments surrounding driveways and building platforms into the natural landform to avoid visually exposed cut banks greater than 1.5m in height.
- All cut embankments, between 0.5m and 1.5m in height, shall be planted against to visually screen the exposed soil. Planting shall be organic in shape and form and avoid emphasising straight unnatural lines within the landscape.

Hard Surfaces:

- Providing all driveways with flush kerb with either rip rap, grass or planted swales for stormwater management. Raised kerb and channels shall be avoided.
- Providing asphaltic concrete, dark coloured concrete or exposed aggregate concrete driveway surfaces.
- Impervious outdoor areas, including patio, outdoor entertainment areas and turning areas (within the driveway), all located within the Building Areas.

Fencing:

- Using post and 3 - 5 timber rail or post and wire fencing and vegetation to demarcate boundaries of properties to reflect the rural character of the wider area. Urban style post and panel and solid wall style fencing shall be avoided.
- Providing front gate fencing that is visually permeable including post and rail, stone pillars, brick or wrought iron.

Lighting and Utilities

- *All exterior lighting shall be contained within the Building Areas and shall be down lights only.*
- *All utilities and services shall be located below ground. No above ground wiring will be permitted. Aerials, satellite dishes and other utilities shall be maintained within the 6.0m building height plane.*
- *Downward facing bollard lighting is acceptable along the accessway corridor and to demarcate driveway entrances.*
- *Street lighting shall be avoided.*
- *Illuminated signage shall be avoided.*

Consultation

New Zealand Transport Agency (NZTA)

Based on the application including the following conditions; NZTA are not opposed to the proposal being granted. The applicant has adopted these as part of the proposal.

1. *As State Highway 23 is a Limited Access Road in this vicinity, an authorisation pursuant to Section 91 of the Government Roading Powers Act 1989 (GRPA) will be required for access onto the state highway from all lots depicted in Appendix One. Once resource consent has been granted, the consent holder should seek this authorisation from the Transport Agency enclosing a copy of the following:*
 - a. *The resource consent*
 - b. *The underlying certificate(s) of title*
 - c. *The LT plan including the number*
 - d. *The number of the allocated titles.*
2. *The landowner shall sufficiently screen the property where appropriate, to mitigate the risk of internal headlight glare causing distraction to State Highway 23 users. A screening design shall be submitted to and approved by the Transport Agency prior to installation.*
3. *The existing boulders that currently surround the (Westlands) sign shall be removed from the road reserve and the signage posts shall be replaced with frangible posts. Any alterations to the sign including wording or design, will require further approval from the Transport Agency.*
4. *The internal access / right of way (ROW) is to be sealed to mitigate debris tracking onto the state highway.*

5. A consent notice pursuant to Section 221 of the Resource Management Act 1991 shall be registered against the titles of proposed Lots 8, 9 and 10 of the subdivision of land shown on Scheme Plan 13246, Sheet 1 (dated October 2018) and comprised in SA10B/682 & SA10B/683 that addresses potential reverse sensitivity effects resulting from the normal operation of State Highway 23. This consent notice shall read as follows:

- 1) Any dwelling or other noise sensitive location* on the site in or partly within 100m of the edge of State Highway 23 carriageway must be designed, constructed and maintained to achieve..
 - (a) Road-traffic vibration levels complying with class C of NS 8176E: 2005.
 - (b) An indoor design noise level of 40 dB LAeq(24hr) inside all habitable spaces.
- 2) If windows must be closed to achieve the design noise levels in condition 1 (b), the building must be designed, constructed and maintained with ventilation and cooling system. For habitable spaces the system must achieve the following:
 - (a) Ventilation must be provided to meet clause G4 of the New Zealand Building Code. At the same time, the sound of the system must not exceed 30 dB L when measured 1m away from any grille or diffuser.
 - (b) The occupant must be able to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour. At the same time, the sound of the system must not exceed 35 dB LAeq(30s) when measured 1m away from any grille or diffuser.
 - (c) The system must provide cooling that is controllable by the occupant and can maintain the temperature at no greater than 25C. At the same time, the sound of the system must not exceed 35 dB LAeq(30s) when measured 1m away from any grille or diffuser.
- 3) A design report prepared by a suitably qualified and experienced acoustics specialist must be submitted to the Waikato District Council demonstrating compliance with conditions 1 and 2 prior to construction or alteration. The design must take into account the future permitted use of the state highway; for existing roads this is achieved by the addition of 3 dB to existing measured or predicted noise levels.

*Noise sensitive locations means buildings or parts of buildings used for, or intended to be used for the following purposes: residential activity (including visitor accommodation and retirement accommodation); education; healthcare; and/or places of worship/marae.

Written correspondence from NZTA is included in appendix 5 of the application.

Iwi

A letter from Ngaa Uri o Maahanga Trust has been provided as an official letter of support for this application provided as further information to the application.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES)

Preliminary Site Investigation

A Preliminary Site Investigation (PSI) was provided to address the requirements of the NES. This PSI recommended further preliminary soil sampling for arsenic being undertaken in regard to the building site for Lot 1 which was provided as further information. The PSI concludes the proposal is a permitted activity under the NES and the soil sampling results indicate that the average arsenic concentration at the intended site on Lot 1 is unlikely to breach applicable NES soil standards.

A copy of the preliminary site investigation (PSI) is included in appendix 10 to the application and an addendum to this report is attached to the electronic file as further information received 19 July 2019. Soil Testing referenced in the PSI is also attached to the electronic file as further information received 19 July 2019.

Landuse Non-Compliances

As a result of the proposed subdivision; the following land use non-compliances are created as result of existing buildings.

- To exceed site coverage within one proposed lot (Lot 8). The total site coverage within Lot 8 will be 725m², where 500m² is permitted;
- Existing accessory buildings located within the internal building setbacks with respect to the new allotment boundaries of Lots 3, 8 and 10.

1.2 Description of Site

The site is approximately 1.2km to the west from the boundary of Hamilton City and the associated residential area of Western Heights and Dinsdale as identified in Figure 6.

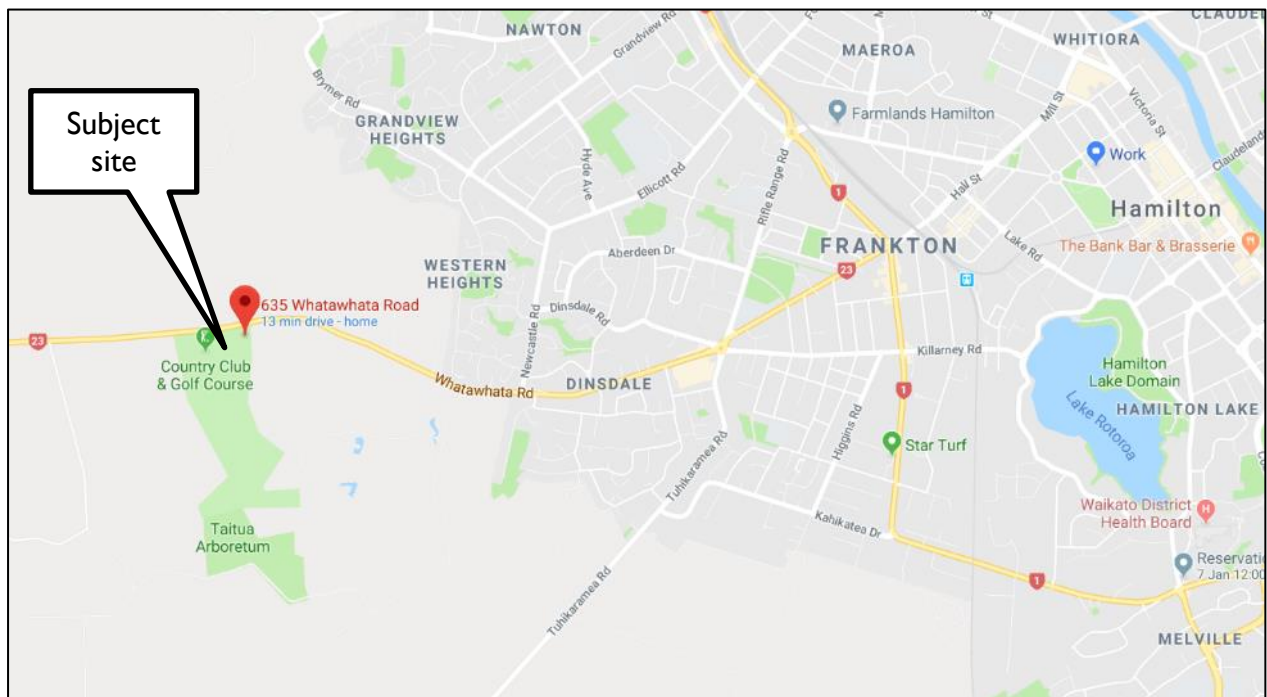


Figure 6 – Location of site in context of Hamilton including suburbs of Western Heights and Dinsdale.

The site sits on the cusp of a rolling hillside with the eastern edge of the site sitting on the mid to lower slopes of the hillside. The mid to western portion of the sites falls to the lower rural plains landform with knolls and mounds sited throughout from the remnant golf course.

Drains extend through the site from the south to north both along the boundary and within the site, collecting water from the internal and surrounding gully networks. Vegetation cover on the site is largely mature canopy vegetation and remnant of the golf course. New wetland, pond and shelter planting has been installed by the applicant to strengthen the natural features and framework planting around the site. Large areas of Redwood trees have been installed along the western boundary and along parts of the eastern boundary.

The following map has been provided in the application which shows the location of trees planted in recent years in reference to the survey of existing trees onsite provided in appendix 11 of the application.

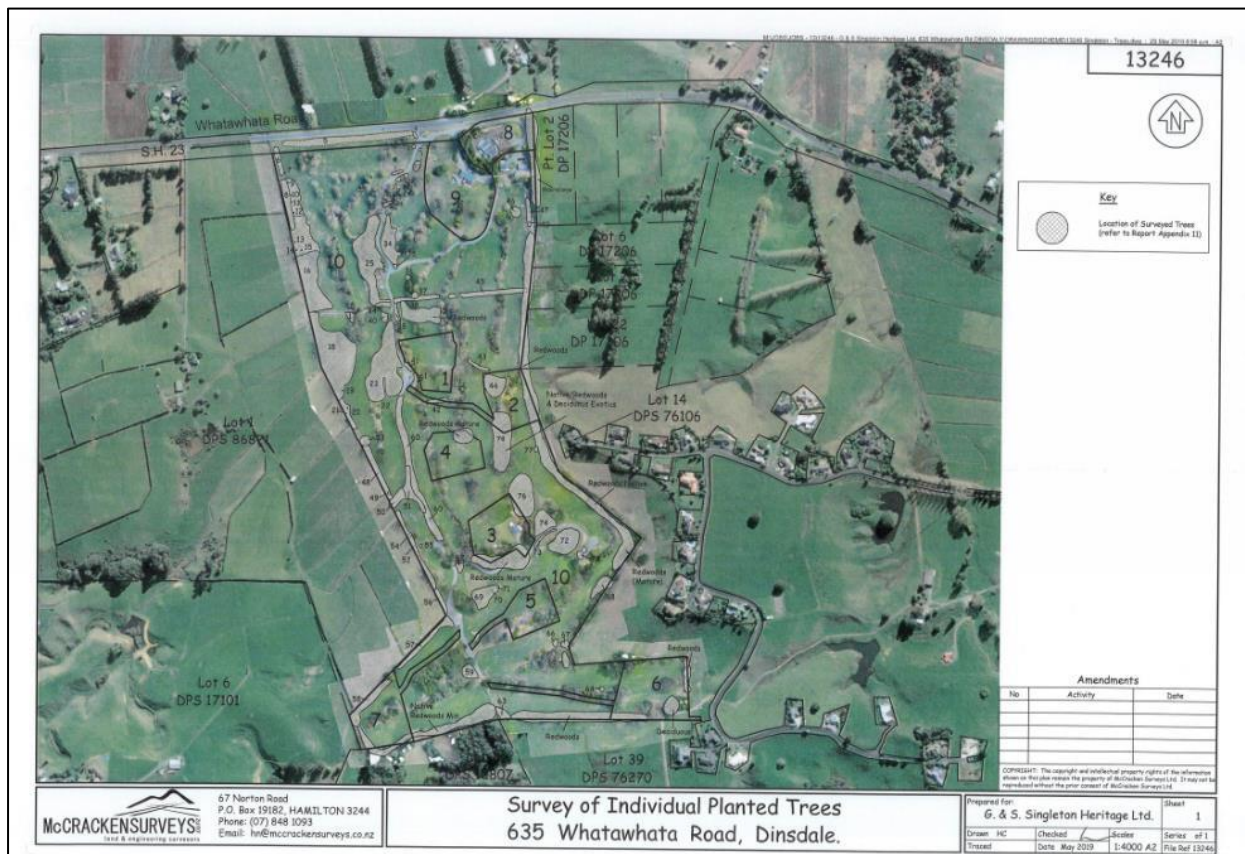


Figure 8 – Location of surveyed trees onsite.

The following photographs are some of the photographs undertaken during a visit to the site. More photographs are included in Appendix 5 (Visual Analysis) of the Assessment of Landscape and Visual Effects prepared by Boffa Miskell (Attached as APPENDIX D) that was commissioned by Council. These photographs are in reference to viewpoint locations identified below.

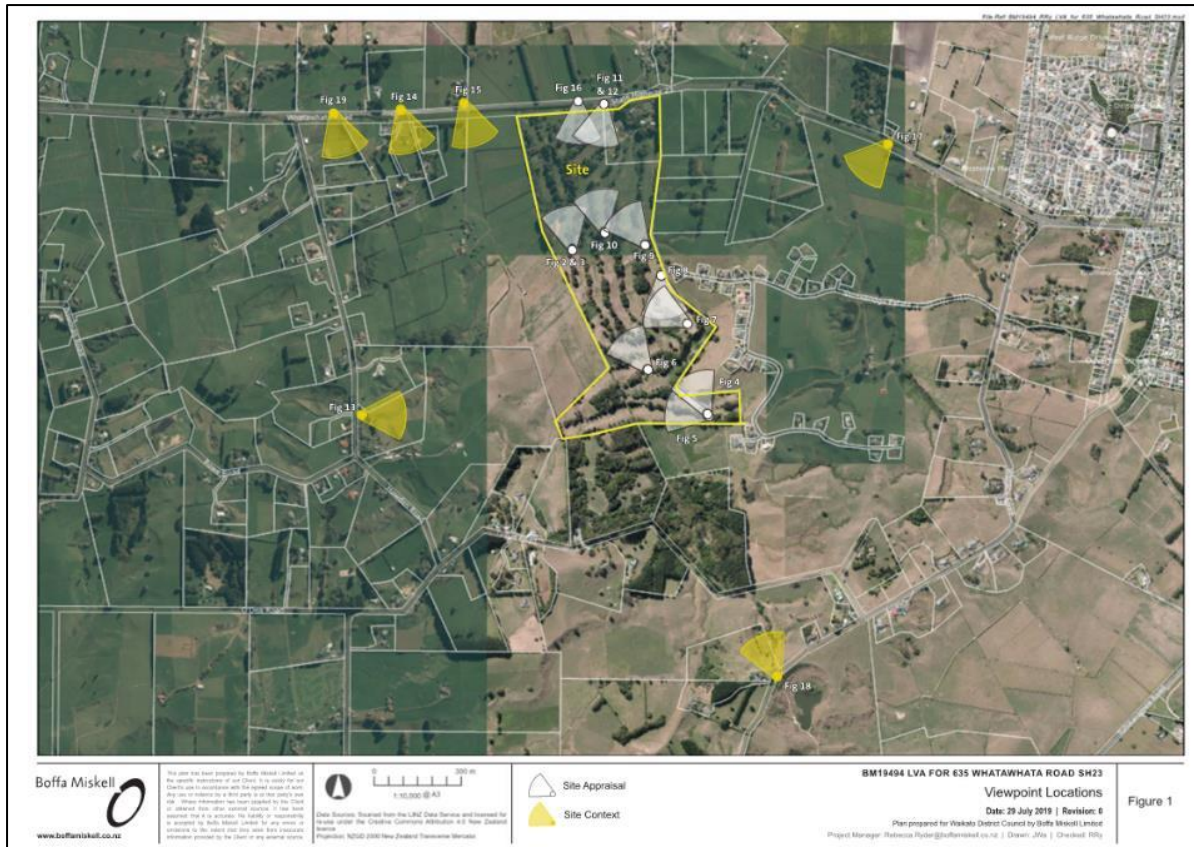


Figure 9 – Viewpoint Locations (Source: Appendix 5 of the Assessment of Landscape and Visual Effects prepared by Boffa Miskell).



Figures 10 & 11 – Entrance to site driveway to Lot 8 and Lot 9.



Figures 12 & 13 – Proposed right of way (looking south).



Figure 14 – View from Lot 1 looking north towards State Highway 23.



Figure 15 – View from Lot 4 looking east with bund subject to the proposed covenanted area in foreground, with the dwelling at 14 Stonebridge Road in the background.



Figure 16 – Looking from Lot 4 towards the existing building located within Lot 3.



Figure 17 – Location of Lot 5 looking north.



Figure 18 – Location of Lot 6 looking north with the dwelling visible located at 21 Stonebridge Road.



Figure 19 – Location of Lot 7 looking south west.



Figure 20 – Location of proposed restricted building area identified within Lot 10 looking north.



Figure 21 – Views from eastern boundary of proposed restricted building area identified within Lot 10 looking towards adjoining properties 15 (left), 16 (centre) and 17 (right) Stonebridge Road.



Figure 22 – Views from proposed restricted building area identified within Lot 10 looking towards adjoining properties 18 (left) and 19 (right – behind the trees) Stonebridge Road.



Figure 23 – Location of Lot 2 with the dwelling located at 14 Stonebridge Road visible in the background.

An aerial photograph of the site in context of the surrounding area is seen in Figure 25.

Surrounding area

The surrounding area is zoned Rural Zone made up of parcels of land of varying sizes from as small as 1,495m² (one of the sites forming part of the Stonebridge Road farm park as discussed below) to 108.944 ha (balance lot of the Stonebridge Road farm park).

To the north of the site consists of medium to larger rural parcels consisting of largely open space used for rural productive activities.



Figure 24 – Looking north across the road from the subject site.

Immediately to the west of the site is two sites; approximately 45 ha and 21 ha in size largely consisting of open space and used for rural productive activities. To the west of the site along Whatawhata Road and Howden Road is a cluster of properties used for rural lifestyle purposes which vary between 2,101m² and 2.8078 ha in size.

Immediately to the south of the site is the Taitua Arboretum operated by Hamilton City Council which consists of a collection of mature trees covering almost 20 hectares of open pasture, lakes and woodland gardens.

Immediately to the east of the site is Stonebridge Road rural residential farm park consisting of 34 small lots between 1,495m² and 2,171m² in size. These lots were created under a different (and now defunct) rule framework known as the farm park provisions.

In the wider surrounding area is a range of small to medium sized Rural zoned allotments as seen in Figure 25.

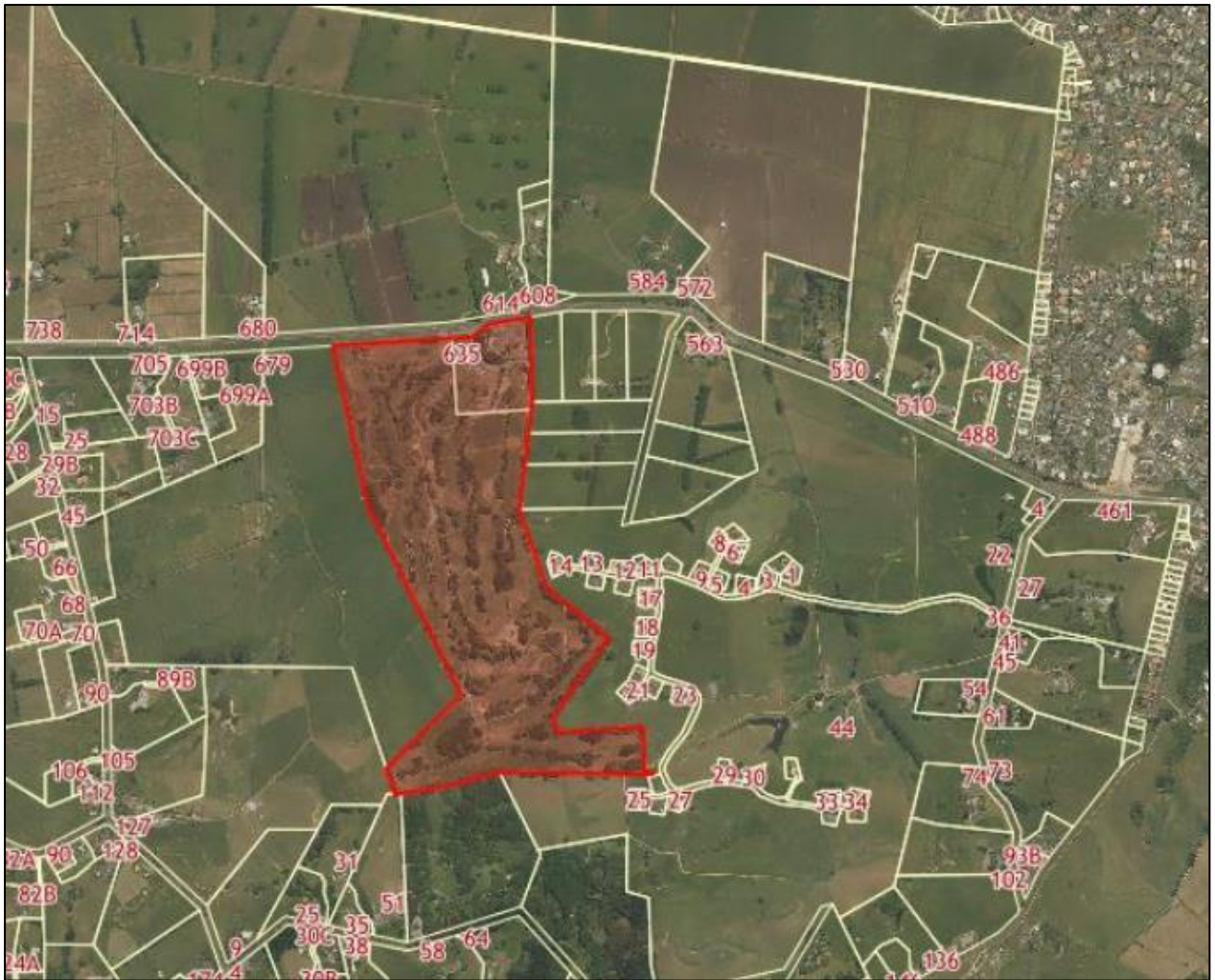


Figure 25 – Aerial photograph of the site taken in 2012 when the site was used as a golf course.

1.3 Site's Legal Interests

The following relevant interest is registered on the Record of Title SA10B/683.

- H159200 Gazette Notice declaring No 23 State Highway (Hamilton-Raglan) fronting the within land to be a limited access road.

The following relevant interest is registered on the Record of Title SA10B/682

- H159200 Gazette Notice declaring No 23 State Highway (Hamilton-Raglan) fronting the within land to be a limited access road

HI59200 Gazette Notice

This relates to declaring a portion (including the portion adjoining the subject site) of State Highway 23 as a limited access road.

As noted above, the applicant has undertaken consultation with NZTA. As part of the consultation, NZTA has requested the following condition with respect to the Limited Access Road (of which the applicant has proffered as part of the application):

1. As State Highway 23 is a Limited Access Road in this vicinity, an authorisation pursuant to Section 91 of the Government Roving Powers Act 1989 (GRPA) will be required for access onto the state highway from all lots depicted in Appendix One. Once resource consent has been granted, the consent holder should seek this authorisation from the Transport Agency enclosing a copy of the following:

- e. The resource consent
- f. The underlying certificate(s) of title
- g. The LT plan including the number
- h. The number of the allocated titles.

Under the RMA, this legal interest does not restrict the proposal from proceeding.

Summary

There are no relevant interests that restrict the proposal from proceeding.

1.4 Site Consent History

As discussed on page 3 of the application, the site was historically used as a golf course known as Westlands Golf Club, inclusive of function facilities. The Westlands Golf Club operated from the early 1970's to the mid 2010's before ceasing operations. The existing clubroom is currently being used as a dwelling and is located within proposed Lot 8.

Land use consent (LUC0190/05) provided in Appendix 5 of the application was granted on 17 January 2005 for an accommodation facility to operate onsite for up to 36 golf students and four staff. This existing building is located within Lot 8.

The applicant purchased the site in 2015 and, according to the application, has planted 70,000 specimen trees.

On 14 December 2018, land use consent (LUC0192/19) was granted for a 192m² storage shed to be constructed on an area of land identified as proposed Lot 10. The application advises that this shed is yet to be constructed.

2.0 PROCESS MATTERS

2.1 Key Dates

A summary of key dates for this application are as follows:

		Date
1	Application officially lodged under Section 88 of the Resource Management Act 1991 (RMA)	31 May 2019
2	Application put on hold under section s92(2) for commissioning of a landscape visual assessment.	10 June 2019
3	Application officially accepted under Section 88 of the Resource Management Act 1991 (RMA).	30 July 2019
4	Final version of commissioned landscape visual assessment completed.	27 September 2019
5	Application put on hold under Section 92 (1).	06 January 2020

6	Final further information received requested under Section 92 (1).	15 January 2020
7	Timeframes extended under section 37 for special circumstances.	21 January 2020
8	Notification decision made and application was publicly notified.	09 March 2020
9	Submissions closed with five submissions received.	06 April 2020

2.2 Technical Comments

As part of my evaluation, I have engaged various technical experts to review the applicant's application and advise me on aspects of the proposal in relation to Engineering, Landscape Visual, Flooding and Stormwater as discussed below.

Engineering

Technical comments were provided by Mr Malcolm Brown, Council's Consultant Land Development Engineer, in form of a report. Mr Brown's report includes an assessment with regards to water, wastewater, stormwater, flooding, roading and natural hazard related aspects of this proposal and recommends conditions to mitigate effects should consent be granted. A copy of this report is attached as APPENDIX C.

Landscape Visual

Technical comments were provided by Rebecca Ryder at Boffa Miskell in form of a report. Ms Ryder is a qualified Landscape Architect with a Bachelor of Landscape Architecture (Honours) from Lincoln University and has 22 years' experience in the Landscape Architecture field. Ms Ryder's report includes an assessment with regards to landscape visual related aspects of this proposal. Ms Ryder makes the following conclusion:

Analysis against the District Plan demonstrates the different expectations of the rural zone to what occurs within the site and immediately surrounding the site. When assessed against these provisions the potential for adverse landscape and visual effects is of a low to moderate degree, equating to a minor adverse landscape effect. Therefore, the inclusion of the recommendations set out in Section 6.0, and the retention of the design as it is presented, this level of effect can be reduced a low degree. This translates (as set out in Appendix 1) as being a less than minor adverse effect.

A copy of this report is attached as APPENDIX D. The design mitigation measures recommended in her report are set out on page 14 - 16 of my report and are agreed to by the applicant.

Flooding & Stormwater

Technical comments were provided in form of a letter by Anna McKay at BECA as result of a peer review of the floodplain analysis and stormwater management plan provided with the application and further information to the application. Ms McKay concludes that the issues she raised have been addressed as result of additional information provided by the applicant. A copy of this letter is attached as APPENDIX E.

3.0 STATUS OF ACTIVITY

3.1 Waikato District Plan – Waikato Section

Subdivision Rules

Rule #	Rule Name	Status of Activity	Comment
25.70A	Subdivision Generally	Non-Complying	The proposal seeks to create 8 additional titles from 2 existing viable certificate/record of titles which is seven more than anticipated under these provisions.
25.70B	Subdivision <ul style="list-style-type: none"> • Policy Areas • Utility and Access Allotments 	Restricted Discretionary	The proposal complies with the requirements of this rule.
25.72	Allotment Boundaries	Discretionary	<p>The proposal does not comply with criteria (a) of this rule relating to compliance with permitted activity rules relating to building setbacks as follows:</p> <p>Lot 3 - The existing shed is located 5m from the eastern boundary shared with Lot 10 whereas 12m is required under this rule for an adjoining allotment 6ha or more for a building which does not accommodate a residential activity.</p> <p>Lot 8 – The existing clubroom / academy building currently used as a dwelling is setback 10m from the proposed common boundary between Lots 8 and 10 which does not comply with the 25m permitted activity setback.</p> <p>Lot 10 – Existing greenkeeper's dwelling is setback 9m from the proposed common boundary between Lots 8 and 10 which does not comply with the 25m permitted activity setback.</p> <p>Lot 10 – Consented shed subject to LUC0192/19 is setback 5m from the proposed common boundary between Lots 8 and 10 which does not comply with the 25m permitted activity setback.</p> <p>Lot 10 – Consented shed subject to LUC0192/19 is setback 14m from the eastern boundary of the site and Lot 10 which does not comply with the 25m permitted activity setback.</p>

			<p>Lot 10 – Existing storage building/utility shed is setback 13m from the eastern boundary of the site and Lot 10 which does not comply with the 25m permitted activity setback.</p> <p>Lot 10 – Existing woodshed is setback approximately 0.5m from the eastern boundary of the site and Lot 10 which does not comply with the 25m permitted activity setback.</p> <p>The proposal complies with criteria (b), (c) and (ca) of this rule.</p>
25.74	Allotment Size – Minimum – Maximum	Non-Complying	<p>(a) One of the existing titles fails to meet the minimum 20ha requirement under this criteria therefore is a Non-Complying Activity in accordance with rule 25.74.2.</p> <p>(b) Lot 6 and Lot 9 have a net site area of 1.75ha and 1.80ha respectively which exceeds the maximum net site area (1.6ha) under this rule by 0.15 ha and 0.2 ha respectively therefore is a Non-Complying Activity in accordance with rule 25.74.2.</p> <p>(c) Three titles (Lots 6, 9 and 10) are proposed to be greater than 1.6 ha which exceeds one title anticipated under this criteria therefore is a Non-Complying Activity in accordance with rule 25.74.2.</p> <p>(d) The proposal does not seek to create a utility allotment therefore this criteria is not applicable.</p>
25.75	Frontage	Discretionary	<p>Lot 9 with a frontage of 50m does not comply with the minimum frontage of 60m required by this rule. Lots 8 & 10 comply with the 60m requirement. Lots 1 – 7 do not have road frontage therefore this rule does not apply to these lots.</p>
25.76	Road Access	Restricted Discretionary	<p>The proposal does not comply with Appendix A (Traffic) as discussed below.</p>
25.77	Building Platform	Restricted Discretionary	<p>The proposal complies with the requirements of this rule.</p>
25.79	On-site Services	Restricted Discretionary	<p>The proposal complies with the requirements of this rule.</p>
25.80	Hazard Risks	Restricted Discretionary	<p>The proposal complies with the requirements of this rule.</p>
25.83	Traffic generation	Restricted Discretionary	<p>The proposal complies with the requirements of this rule.</p>

Appendix A (Traffic) – Provision of Access on Subdivision

Rule	Rule Name	Status of Activity	Comment
A21	Access and entrances	Non-Complying	<ul style="list-style-type: none"> (a) The proposal complies in regard to every proposed allotment having vehicle access to a formed road that is maintained by Council. (b) The proposed right way serves eight allotments which does not comply with this rule as it exceeds the requirement of four allotments and is a Non-Complying activity as the proposed right of way (with a width of 10m) is less than 20m wide. (c) Access for Lot 8 runs parallel to State Highway 23 along the northern boundary of Lot 8 within the required 30m therefore does not comply this rule. (d) The proposed legal width of the proposed right of way is 10m, not 20m as required by Table 4, therefore does not comply with this rule. The proposal complies with Tables 5, 6, Figures 4 – 12 and Appendix B (Engineering Standards). (e) This criterion is not applicable to the proposal. (f) This criterion is not applicable to the proposal. (g) This criterion is not applicable to the proposal.
A21A	Road Network – Safety and Functions	Restricted Discretionary Activity	<ul style="list-style-type: none"> (a) No new vehicle entrance is proposed therefore the proposal complies (b) The proposal results in an increase of car movements per day to/from the existing vehicle entrance therefore does not comply with this rule. (c) This criterion is not applicable to the proposal. (d) This criterion is not applicable to the proposal.

Land Use Rules

Rule #	Rule Name	Status of Activity	Comment
25.51	Building Coverage	Discretionary	As a result of the creation of Lot 8, land use consent is sought for site coverage of 725m ² which exceeds 500m ² allowed under this rule to be a permitted activity.
25.54	Building setbacks – allotments 1.6 or more	Non-Complying	<p>Proposed lot sizes for Lots 6, 9 and 10 are larger than 1.6 ha therefore this rule is applicable for these three lots.</p> <p>Lot 10 – Existing dwelling with a setback of 9m from the proposed common boundary between Lot 8 and 10 which does not comply with the 25m permitted activity setback.</p> <p>Lot 10 – Consented shed subject to LUC0192/19 is setback 5m from the proposed common boundary between Lot 8 and 10 which does not comply with the 25m permitted activity setback.</p> <p>Lot 10 – Consented shed subject to LUC0192/19 is setback 14m from the eastern boundary which does not comply with the 25m permitted activity setback. It is noted that resource consent LUC0192/19 has been granted to allow this shed a reduced setback of 14m from this eastern boundary. Hence no further consent is required for this aspect.</p> <p>Lot 10 – Existing storage building/utility shed is setback 13m from the eastern boundary which does not comply with the 25m permitted activity setback.</p> <p>Lot 10 – Existing woodshed is setback of approximately 0.5m from the eastern boundary which does not comply with the 25m permitted activity setback.</p>
25.55	Building setbacks – allotments 5000m ² to less than 1.6ha	Non-Complying	<p>Proposed lot sizes for Lots 1 - 5, 7 and 8 are between 5,000m² and less than 1.6ha therefore this rule is applicable for these seven lots.</p> <p>Lot 3 – The existing shed is located 5m from the eastern boundary which fails to</p>

			<p>comply with the 12m required under this rule for an adjoining allotment between 5000m² to less than 1.6ha for a building that does not accommodate a residential activity.</p> <p>Lot 8 – The existing clubroom / academy building currently used as a dwelling is setback 10m from the proposed common boundary between Lot 8 and 10 which does not comply with the 25m permitted activity setback.</p>
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4.0 NOTIFICATION AND SUBMISSIONS RECEIVED

4.1 Notification Decision

A Notification Decision report dated 28 February 2020 concluded that the proposal is likely to result in adverse effects that are more than minor on the environment and therefore public notification is required in accordance with Section 95A of the Act.

Pursuant to clause 10(2) of the Resource Management (Form, Fees, and Procedure) Regulations 2003, the application was directly served on Hamilton City Council and Waikato Regional Council as local authorities on 09 March 2020. No party was identified as affected persons under section 95B in accordance with clause 10(2)(a) of the Regulations. Submissions closed at 5pm on 06 April 2020.

4.2 Submissions Received

A total of five submissions were received during the submission period:

- Hamilton City Council (In opposition)
- Waikato Regional Council (In opposition)
- Te Akau South Farm (In opposition)
- Heritage New Zealand Pouhere Taonga (Neutral)
- Fire and Emergency New Zealand (Neutral)

Of the five submissions received, three were opposed to the proposal and two were neutral.

Of these five submissions; the following three parties wish to be heard in support of their submission. Fire and Emergency New Zealand originally did wish to be heard but withdraw the request to be heard on the basis that Council is acceptable to imposing (if granted) the proposed consent notice.

- Hamilton City Council
- Waikato Regional Council
- Te Akau South Farm

A copy of the submissions is attached as Appendix 2.

The key matters raised by submitters are summarised below:

1. Policy framework (Hamilton City Council)
 - Concerned the proposal does not meet the fundamental expectations for subdivision of land in the Rural Zone as anticipated through Waikato District Council's policy framework and considers that the proposal is contrary to this framework set out in both the ODP and PDP and does not align with the Waikato Regional Policy Statement and the Waikato 2070 Waikato District Councils Draft Growth & Economic Development Strategy.
2. Precedent (Hamilton City Council)
 - Concerned that allowing the proposal to occur may encourage and set a precedent for cumulative effects of further subdivision of rural blocks using arguments presented in the application.
3. Land Drainage (Waikato Regional Council)
 - Seeks the following further information:
 - a) Demonstrating that the proposed right of way is located outside of the 10% AEP flood extent and if this cannot be demonstrated, to relocate the right of way further east away from the flood plain.
 - b) A plan showing the change in flood extent on the adjacent property (679 State Highway 23, Whatawhata) due to increase in flood level on Lot 10 and this should be used as a basis of consultation with that affected party.
 - c) Undertake an adequate assessment of the 1% AEP floodplain that includes inundation in the lateral drain (Campbells Drain) to determine the suitability of Lot 7 for a potential house site.
 - Seeks the following assurances:
 - a) Stormwater management to consider potential future on-lot impervious areas and the longer term effects of the right of way if sealed.
 - b) Seeks consent notice be imposed relating to sizing of water tanks and maintaining an overland flow path.
 - c) Seeks a consent notice on Lot 10 relating to maintaining of overland flow paths to the Council administrated drain on the western boundary of the site.
 - d) Seeks an easement over Lots 7 and 10 for access purposes in relation to the Regional Council administered drain (Westland's Drain) along the western boundary of the site.
 - e) That the level of service provided by existing land drainage infrastructure is understood and appropriately accounted for when making a decision on this proposal.

As of 21 May 2020, all of the above matters except for the following three matters are resolved as a result of discussions between the applicant and Waikato Regional Council.

The three outstanding matters are:

- *(Waikato Regional) Council strongly recommends that consultation is undertaken with the neighbouring landowner at 679 SH23 Whatawhata Road in relation to the proposed increase in flood extents on their land.*
- *Either an easement is provided in favour of Waikato Regional Council over Lots 7 and 10 or the applicant secure agreement with the property owner at 679 SH23/ Whatawhata Road*

(to be added to property title) to always have the Council drain maintained from their property.

- *The drawing in the Stormwater Management Plan showing the 1% AEP needs to be updated to show the updated flow path from Campbells Drain past Lot 7. It should also be updated to show the flood extents on the property to the west of the site.*
- 4. Water supply for firefighting purposes (Fire and Emergency New Zealand)
 - Seeks a consent notice relating to water supply for firefighting purposes be imposed should consent be granted.
- 5. Archaeological (Heritage New Zealand Pouhere Taonga)
 - Seeks a consent condition (since submission received, Heritage NZ has advised that only an advice note is now requested) & advice notes relating to archaeological event accidental discovery protocol should consent be granted.
- 6. Submissions of the Proposed District Plan (Te Akau South Farm)
 - Considers that the proposal is inconsistent with current submissions to the PDP; specifically, submission 794 by Middlemiss Farm Holdings Limited. Clarification was sought from the submitter as to what concerns they have the proposed subdivision as reading submission 794, it was unclear how this related to the proposal. As at time of finalising this report on 22/05/2020, this clarification was not provided. Therefore, this submission has not been addressed in this report.

I have addressed these matters throughout my assessment below.

4.3 Late Submissions

No submissions to date have been received after the submission period.

5.0 STATUTORY CONSIDERATIONS

The key statutory considerations that are applicable to the assessment of the application are set out in sections 104, 104B, 104D and Part 2 of the RMA. Each of these are assessed below.

5.1 SECTION 104D TEST

Section 104D(1) RMA contains particular restrictions for Non-Complying Activities. The Council may grant an application for a Non-Complying Activity only if one of the “gateway” or “threshold” tests is satisfied. To pass one of the tests, the Council must be satisfied that either the adverse effects of the activity on the environment will be no more than minor (section 104D(1)(a)) or that the application will not be contrary to the objectives and policies of the ODP and PDP (section 104D(1)(b)). If one of these tests is passed, the Council has jurisdiction to proceed to consider the application on its merits. Case law has held that it is of no consequence whether the decision maker addresses section 104D before or after the assessment under section 104. For convenience, and to avoid repetition, I will first examine the proposal against the matters listed in section 104(1) before returning to my conclusion under section 104D.

SECTION 104

Matters to be considered by the Council when assessing an application for resource consent under s104 of the Act include, subject to Part 2, any actual and potential effects on the environment, any relevant objectives, policies, rules or other provisions of a Plan or Proposed Plan and any other matters considered necessary (i.e. under s104(1)(c)).

Before I undertake my assessment of effects under section 104(1)(a), it is first necessary to address the permitted baseline and existing environment as these are the starting point against which the effects must be considered.

s104 - Permitted Baseline

Section 104(2) contains the statutory definition of the permitted baseline. This section specifies that when forming an opinion with regard to the actual and potential effects on the environment of allowing the activity, the consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. Application of the permitted baseline is a matter of discretion for the consent authority. If it is applied, permitted effects cannot then be taken into account when assessing the effects of a proposal. The baseline has been defined by case law as being non-fanciful (credible) activities that could be permitted as of right by the ODP.

Subdivision Rules

While subdivision is not a permitted activity under the ODP, the result of subdivision (if granted) is that dwellings can then establish as a permitted activity on the newly created lots. The number of dwellings that could occur on the two parent titles subject to the property is therefore relevant. The permitted baseline for a dwelling on the smaller title is one. In terms of the larger title, two dwellings could be established as a permitted activity. This means there is a permitted and non-fanciful level of visual effects with respect to three dwellings at the site. This is on the basis that NZTA have advised that the existing access arrangements are acceptable. (i.e. no further consent is required for the accessways).

Accordingly, it is appropriate to apply the “permitted baseline” to the subdivision aspect of the proposal in terms of the visual effects associated with three dwellings at the site. This means the visual effects of three dwellings have been disregarded.

Land Use Rules

It is a permitted activity to construct or alter buildings that comply with all bulk, location and building coverage rules. I have therefore applied the “permitted baseline” as it relates to bulk, location and building coverage. This means only the effects of exceeding the 500m² building coverage requirement will be assessed in regard to the proposed building coverage within Lot 8.

s104 - Existing Environment

Under section 104(1)(a) RMA, when considering the application, regard must be had to the actual or potential effects on the “environment” of allowing the activity. The existing environment is the environment as it exists at the time of the assessment and includes all lawfully established buildings on the site, all operative consents and any consents which have been granted but not implemented, where it appears likely that those consents will be implemented. The caselaw has held that “likely” means “more probable than not”.

The site contains a number of existing buildings from when the public golf course was operated on the site up until the end of 2014/early 2015. These buildings, which form part of

the existing environment, include:

- Greenkeepers cottage (located within Lot 10)
- Pro golf shop / café building (located within Lot 9)
- Utility shed (located within Lot 9)
- Clubroom/academy building (located within Lot 8).

In regard to the clubroom/academy building, land use consent (LUC0190/05) provided in Appendix 5 of the application, was granted on 17 January 2005 as an accommodation facility to operate onsite for up to 36 golf students and four staff.

On 14 December 2018, land use consent (LUC0192/19) was granted for a 192m² storage shed to be constructed on an area of land identified as proposed Lot 10. The application advises that this shed is yet to be constructed. In my view, this consent is likely to be implemented because Lot 10 is a large balance lot which already contains a dwelling, woodshed and utility shed and is intended to remain in the applicant's ownership. Notwithstanding the storage shed forms part of the existing environment, I consider there are no additional matters to consider in regard to the assessment of this proposal on the basis the consent is for a storage shed.

SI04 – Written Approvals

Section 104(3)(a)(ii) RMA provides that when considering an application, Council must not have regard to any effect on a person who has given written approval to the application.

NZTA

NZTA have provided written approval subject to conditions. The applicant has confirmed all of NZTA's proposed conditions are acceptable. Accordingly, I disregard the adverse effects on NZTA.

Local Parties

Written approvals have been received from the following parties which are referenced to properties 1 – 2 identified in Figure 26.

Property Number	Property Address	Legal Description	Owner or Occupier
1	44 Wallace Road, Dinsdale	LOT 39 DPS 76270	Chris John & Melissa Rose Gibbs
2	14 Stonebridge Road, Dinsdale	LOT 14 DPS 76106	Nigel Mark Liddicoat

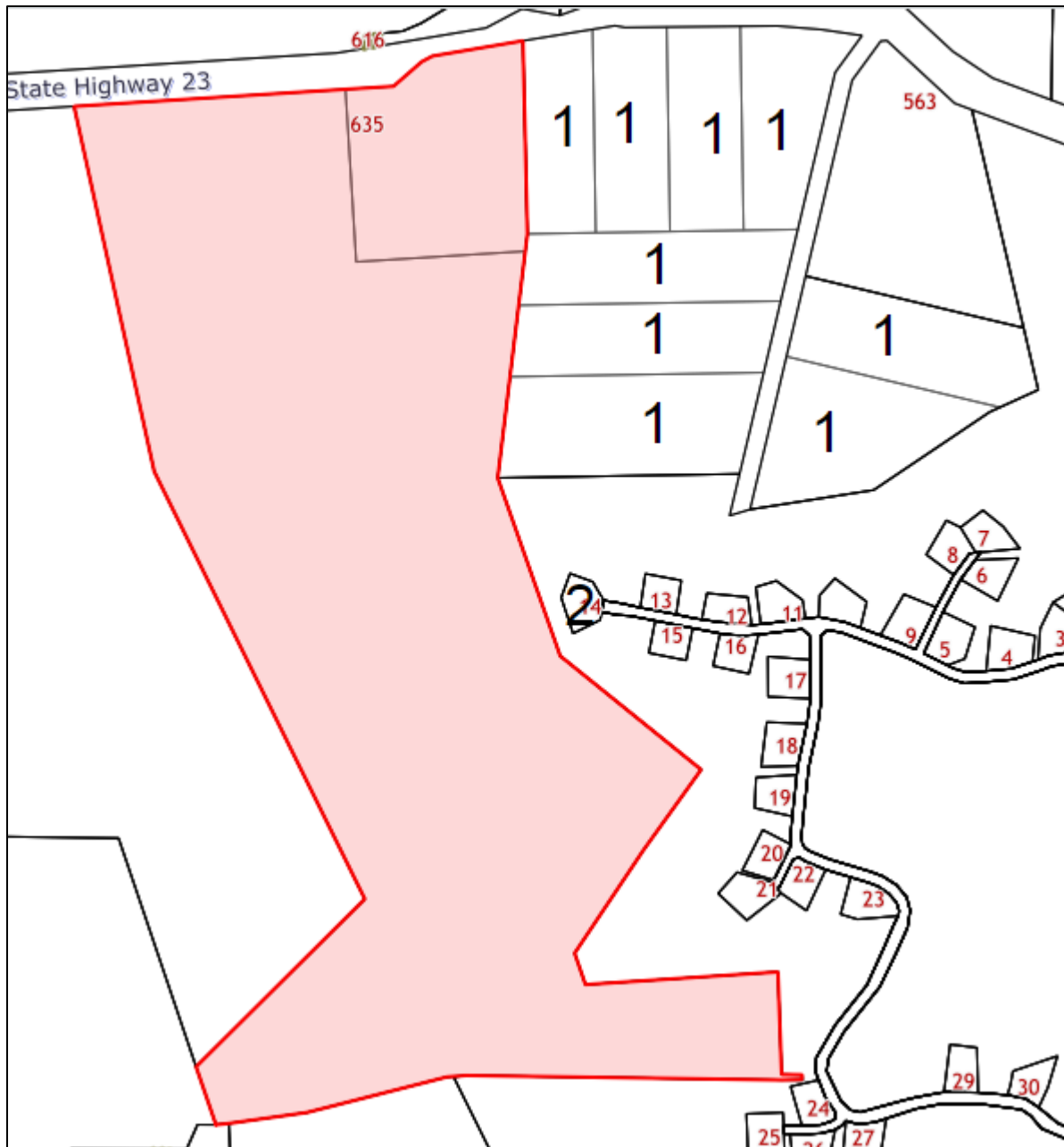


Figure 26 – Locations of persons who have provided written approval.

8.0 ASSESSMENT OF EFFECTS ON THE ENVIRONMENT– SI04(I)(a)

8.1 Positive Effects

Section 3 of the RMA defines the meaning of effects to include positive effects and it is entirely appropriate to consider whether a proposal creates positive effects on the environment (which includes people and communities). Positive effects that result from a proposal can be balanced against any adverse effects that might not be able to be avoided, remedied or mitigated and may outweigh such adverse effects and enable a conclusion to be made for a proposal to be approved.

In relation to this proposal, I have identified the following positive environmental effects that may result from this proposal.

- The proposal seeks to convert un-productive and un-economic rural land to provide for unique rural-residential development within a park-like environment which provides a social need in regard to housing. The proposal also provides for the applicant's economic well-being.
- The proposal results in enhanced amenity values of the site and surrounding area as result of the proposed planting which covers more than 20% (excess of 9ha) of the site.
- The proposal will result in long term ecological benefits as a result of proposed planting to be subject to covenants. This planting will result in a park like environment which provides recreation for its owners and occupiers.
- The proposed planting will result in increased bird life to the site and surrounding area including the Taitua Arboretum adjoining the site to the south.
- The current and proposed planting will reinforce the character of the site and the Taitua Arboretum in the rural landscape.

The applicant may wish to comment on the positive effects in their evidence.

8.2 Landscape and Visual Effects

A landscape and visual assessment prepared by Rebecca Ryder of Boffa Miskell dated 26 September 2019 ("LVA") has been commissioned by Council under s92(2) of the RMA as it was considered that the subdivision aspect of the proposal may result in significant adverse landscape and visual effects. This assessment separately assesses landscape and visual effects and is discussed below.

The LVA also discusses rural character effects of the proposed subdivision in the context of the objectives and policies of the ODP and the PDP.

Landscape Effects

Section 5.1.3 of the LVA provides a summary of landscape effects of the proposal which is reproduced below.

The Site, by way of existing onsite character, landform and vegetation cover provides capacity to absorb a land use change as result of its unique present characteristics. The balancing of open space and the role of these areas of the site provide for separating Lots 1 – 5 and 10 from the surrounding rural landscape and the elements that reside within the surrounding landscape. The clustering of the house sites of Lots 1 – 5 and 10 creates a similar dispersal of house sites as grouping of houses at the entrance to Howden Road. This approach retains the openness between the groupings and protects the lowland plains and rural character margins of the site from development. Separately these lots (1, 2, 3, 4, 5 and 10) introduce a low degree of adverse landscape effects upon the rural character of the area.

With the overall subdivision and the inclusion of Lots 6 and 7 house sites the potential adverse landscape effects with regard to landscape character has potential to introduce a low to moderate adverse effects on the landscape character to the surrounding rural character when considered in

the context of the overall proposed subdivision (inclusive of Lots 1 – 5 and 10). The inclusion of additional landscape vegetation treatments around Lots 6 and 7, with the mature scale and nature of the planting, these effects can be reduced to a low adverse level. The integration with the vegetation within the subject site will assist in the mitigation of landscape effects.

My understanding of the LVA is that individually, Lots 1 – 5 and 10 introduce a low landscape effect but cumulatively, the landscape effect is moderate. The addition of Lots 6 and 7 is low to moderate but can be reduced to a low degree over time with mitigation treatment on Lots 6 to 7. However, as it will take several years for the mitigation measures to reduce effects to an overall low level, I consider the adverse landscape effects as a result of the proposal to be low to moderate until such time as the mitigation measures are fully effective (i.e. planting matures).

Visual Effects

Section 5.2 of the LVA assesses visual effects of the proposed subdivision. Section 2.3 of the LVA states that the visual catchment is largely confined to nearby private dwellings and land and the road network of SH23, Howden Road and Wallace Road. The viewing catchment comprises dwellings on Howden Road's eastern slope, the northern slopes of Wallace Road and properties on the western slopes of Stonebridge subdivision. Public views from roads are limited to small areas of Howden Road and Wallace Road (as photographed in Appendix 6 of the LVA) and along State Highway 23 between the site and Howden Road.

Section 5.2.3 of the LVA provides a summary of the visual effects of the proposal on the wider environment which is reproduced below.

The magnitude of visual change varies for each of these dwellings with the inclusion of the proposed lots. The inclusion of this subdivision will see a low level of adverse visual effect which is suitably mitigated for Lots 1 – 10 with visual mitigation planting shown on the Covenant Vegetative Area plan.

The integration of built form into this landscape requires not only sensitive placement, vegetation management but also building design management to ensure the built form visually integrates to the rural landscape. A set of design controls are proposed as part of the recommendations set out in section 6.0 of this report.

In reliance on this assessment; I consider that any adverse visual effects as result of the proposal will be low. Furthermore, the permitted baseline in terms of visual effects of three dwellings on the site has been applied so I consider any visual effects of the proposal will be comparable to this permitted baseline.

Conclusion

Section 7 of the LVA prepared by Boffa Miskell concludes that when assessed against the relevant objectives and policies of the ODP and PDP; the potential for adverse landscape and visual effects (without mitigation) is of a low to moderate degree which equates to a minor adverse landscape visual effect. When taking into account the proposed mitigation, this level of effect can be reduced to a low degree.

In reliance on this assessment; I concur that any adverse landscape and visual effects as a result of the proposal will be minor and over time reduced to less than minor, subject to imposition of conditions to mitigate the landscape visual effects. In forming this view, I consider that moderate equates to minor and that low equates to less than minor which the

LVA has also come to the same interpretation.

8.3 Rural Character Effects

The proposed subdivision to create eight additional lots in the Rural Zone has the potential to create adverse rural character effects on the environment.

When assessing rural character effects, it is important to assess these in the context of the relevant provisions of the ODP and PDP. Section 13.7.1 of the ODP recognises that “*Rural character is not constant throughout the district. It varies from one locality to another*”. Section 5.1.1 of the Landscape Visual Assessment (LVA) prepared by Boffa Miskell also recognises this and further states that “*each rural landscape evokes its unique characteristics and when considering effects, the existing character forms a baseline to be assessed against*”.

Objective 13.6.1 of the ODP seeks that “*Rural Character is preserved*”. The PDP has similar wording with Objective 5.3.1 seeking that “*Rural Character and Amenity is maintained*”.

The following assessment assesses rural character effects in the context of the relevant provisions of the ODP. The provisions of the PDP (including Policy 5.3.8 relating to effects on rural character and amenity from rural subdivision) have been reviewed in relation to rural character and are considered very similar so a separate assessment against the PDP is not considered necessary. The rural character outcomes sought by both plans are entirely consistent with each other.

Assessment of Rural Character

Policy 13.6.2 of the ODP states that rural subdivision and development should be of a density, scale, intensity and location to retain or enhance rural character and lists a number of elements that contribute to rural character. Each of these elements has been assessed in section 5.4 of the LVA prepared by Boffa Miskell (commissioned by Council) as reproduced below.

Elements listed in Policy 13.6.2	Assessment
<i>(aa) a predominance of natural features over built features</i>	<i>The existing and proposed tree cover provides a clear dominance of ‘natural’ features over the built form proposed.</i>
<i>(a) a very high ratio of open space in relation to areas covered by buildings</i>	<i>Whilst a specific ratio has not been set, the overall rural zone provisions provide direction on the expected ratio. The proposed subdivision would not meet this expectation but provides a sleeving approach to many of the proposed lots to manage the interface with surrounding peri-urban and rural development.</i>
<i>(b) open space areas in pasture, trees, crops or indigenous vegetation</i>	<i>This policy provides a direction on the anticipated elements of the rural zone. The existing site includes some but does not represent a typical ‘productive’ rural landscape and is more so a parkland landscape.</i>
<i>(c) tracts of unmodified natural features, indigenous vegetation, streams, rivers,</i>	<i>As above.</i>

wetlands and ponds	
(d) large numbers of farm animals and wildlife	As above regarding the existing parkland character. It is noted the considerable amount of tree and indigenous species planting, coupled with its locality adjoining Taitua Arboretum the site provides a habitat for wildlife.
(e) noises, smells and sights of farming, horticultural and forestry uses	The site reflects the unique rural characteristics of this area including views to the wider pastoral rural landscape, Taitua Arboretum and provision of open space surrounding the house sites.
(f) post and wire fences, purpose-built farm buildings, and scattered dwellings	The subdivision provides existing buildings of this nature, however established for the historic golf activities as implement sheds and the like. The house sites are scattered within the site and create open spaces between them.
(fa) low Population density	The proposal would increase the local population in a manner which is consistent with the density found along road corridors and is less than the adjoining rural farm park development.
(g) generally narrow carriageways within wide road reserves, often unsealed with open drains, low-speed geometry and low traffic volumes	The proposal would provide all of these outcomes sought, excluding an unsealed road.
(h) a general absence of urban-scale and urban-type infrastructure such as roads with kerb and channel, footpaths, mown berms, street lights, advertising signs, sealed and demarcated parking areas, decorative fences and gateways	It is understood this is the intent. To further ensure this outcome is achieved the recommended design controls include avoidance of these elements.
(i) a diversity of lot sizes and shapes, related to the character and pattern of the landscape.	The site includes some diversity, with a larger parent lot sleeving around the entire site. The broader rural scale of lot size is not achieved.

In summary of the above, the proposal achieves the following elements.

- Predominance of natural features over built features;
- Wildlife as result of the proposed native planting; and
- The general absence of urban-type infrastructure such as roads with kerb and channel, footpaths and streetlights.

However, the following elements of rural character are not met by the proposal:

- Very high ratio of open space in relation to areas covered by buildings;
- Low population density.

I will assess each below but note, the remaining elements of rural character relating to infrastructure, roading and drains have not been assessed as no modifications outside of the site are proposed as part of the proposal.

The rural character element of *very high ratio of open space in relation to areas covered by buildings* is supported by the following commentary found in Chapter 29 (Explanations and Reasons) of the ODP.

“The retention of large sites allows a small part of the site to be developed as dwelling curtilage and maintains rural character and the potential versatility of land”.

The LVA states that *whilst a specific ratio has not been set, the overall rural zone provisions provide direction on the expected ratio. The proposed subdivision would not meet this expectation but provides a sleeving approach to many of the proposed lots to manage the interface with surrounding peri-urban and rural development.* However, I consider that in terms of the site itself, eight additional development rights created by way of subdivision will not maintain what the plan envisages to be *a very high ratio of open space in relation to areas covered by buildings*, as the proposed number of additional lots exceeds what the plan anticipates. In this context, the effect on rural character resulting from the subdivision would reduce open space areas as a result of a dwelling and accessory buildings anticipated on each vacant lot.

Another element of rural character relates to *“low population density”*. The LVA states the following in regard to this element. *The proposal would increase the local population in a manner which is consistent with the density found along road corridors and is less than the adjoining rural farm park development.* Whilst I agree with the above, with regard to low population density, a restricted discretionary activity subdivision allows for one additional small lot, containing one additional household. In this case, the proposal is anticipated to result in a population increase of eight additional households which may have a noticeable effect to the population density in this location.

Based on the above, the proposal does not achieve all elements of rural character identified in Policy 13.6.2. However, the rural character effects of the proposal have been assessed in section 5.1.1 (reproduced below) of the LVA prepared by Boffa Miskell, in the context of the particular and unique characteristics of the rural landscape of the site and its surrounding locality as reproduced below. This approach is consistent with Section 13.7.1 of the ODP that recognises rural character is not constant throughout the district. The rural character in localities such as the subject site which is close to Hamilton City is different from other rural localities much further out.

Section 5.1.1 of the LVA relating to Rural Landscape Character Effects

- *Landscape character is derived from the distinct and recognisable pattern of elements that occur consistently in a particular landscape. It reflects particular combinations of geology, landform, soils, vegetation, land use and features of human settlement. It creates the unique sense of place defining different areas of the landscape.*
- *The rural landscape is often described in New Zealand as representing an arcadian landscape of productive pastoral land use. In many instances this varies from area to area and can range from bush clad hills and wetlands, pastoral plains, rolling pastoral hills with clustered housing amongst, woodlots, forestry and horticultural blocks. Each rural landscape evokes its unique characteristics and when considering*

effects, the existing character forms a baseline to be assessed against.

- The rural landscape for this area comprises a mixture of vegetated hillsides with pockets of rural residential housing and rural housing. The heavily treed landscape within the site and adjoining arboretum are unique to this landscape type and are representative of the past and present land uses as manicured and planted treed landscapes.
- The introduction of housing into the hillsides of this rural area exists along the Howden Road and Wallace Road corridors and ridgelines. The introduction of eight additional house sites into the subject site, placed on the hill slopes and lower plains, is set amongst a heavily treed landscape that connects to the Taitua Arboretum to the south. The Site transitions into a head of a pastoral plains set at the foot of the Howden Road / Wallace Road hills.
- The landscape patterns of vegetation, landform and built form within the area and particularly on the site are distinctive to areas where built form within the rural landscape is sited. The broad open rural plains remain largely unaffected by the proposal. The connectivity of the site's open rural landscape to the rural plains has been disconnected to some degree by the historic land use of the site as a golf course.
- Continuation of framework trees through current and proposed planting reinforces the character of the site and the Taitua Arboretum in the rural landscape.
- The site has not been for some time, a productive rural landscape area, with the historic land use as a golf course. The treed landscape creates a secondary buffer between the rural and urban landscapes but visually creating a barrier for western based views of the urban limits and Stonebridge farm park subdivision.
- The site, by way of existing on site character, location, landform and vegetation cover, provides capacity to **absorb a landuse change as a result of its unique present characteristics. The balancing of open rural land between built development is an important characteristic of the rural landscape. There are areas within the site that are considered to contribute to this balancing effect where the site's characteristics balance the built form of the surrounding land use.**
- The central lots are sited along the base and sidings of the eastern hillside. Existing and proposed protected treed vegetation frames all of the house sites. The clustering of the house sites of Lots 1 – 5 and 10 creates a similar dispersal of house sites as the grouping of houses at the entrance to Howden Road. This approach retains the openness between the groupings and protects the lowland plains and rural character margins of the site from development. Separately these lots (1, 2, 3, 4, 5 and 10) introduce a low degree of adverse landscape effects upon the rural character of the area.
- Lots 6 and 7 house sites reside within areas of the rural landscape that connect into landform and landscape character changes between the site and its surrounds. Both lots sit directly on the southern boundary at the transition between the site and

its surrounding rolling hills (Lot 7) and rural plains (Lot 6). The balancing of open space and the role these areas of the site provide for separating Lots 1 – 5 and 10 from the surrounding rural landscape and the elements that reside within the surrounding landscape. Spatially these two house sites have potential to introduce low to moderate adverse effects on the landscape character to the surrounding rural character when considered in the context of the overall proposed subdivision (inclusive of Lots 1 – 5 and 10).

Conclusion

In reliance on the expert LVA report, I consider that with the recommended mitigation, there will be low to moderate rural character effects as a result of the proposal which equate to minor. These effects will reduce to a low level over time as the planting establishes and matures. Design measures and restricted building areas have been offered as conditions to mitigate the rural character effect.

8.4 Land Fragmentation Effects

Any proposed subdivision to create additional lots creates land fragmentation effects to some degree on the environment.

When assessing the degree of fragmentation effects, it is important to assess these in the context of the relevant provisions of the ODP and PDP. Section 3.5.9 of the ODP (Reasons and Explanations - Rural Landscapes) of the District Plan states the following:

*“Land fragmentation and development can have a significant impact on the rural landscape, particularly over time as the cumulative effects of more intensive non-rural development becomes evident. It is important to control the overall level of subdivision in rural areas and to regulate the size of allotments being created **to protect rural landscapes**. In particular, it is important to ensure that, in **any given rural area, rural land uses continue to predominate because these land uses are fundamental to providing the rural landscape. Rural land uses, which may or may not be productive rural activities in economic terms**, require allotments that are large enough to support them. The creation of **new allotments too small to support rural land uses**, such as livestock grazing and horticulture **can detract from rural landscapes and visual amenity values** and need to be appropriately regulated in the Rural and Coastal zones. Development that is predominantly residential in nature and which has little or no rural land use component is provided for in the Country Living zone and to a limited degree in the Rural Zone.”* (Emphasis added).

The following assessment assesses land fragmentation effects in the context of the relevant provisions of the ODP. The provisions of the PDP (including Policy 5.2.3 relating to minimising the fragmentation effects of productive rural land) have been reviewed in relation to rural character and are considered very similar so a separate assessment against the PDP is not considered necessary (apart from Policy 5.2.3). The land fragmentation outcomes sought by both plans are entirely consistent with each other.

Assessment of Land Fragmentation

The matters relating to landscape and visual amenity values have already been discussed in the section of landscape visual effects above. These landscape visual effects were found to be low to moderate on the environment.

A key statement in the commentary above from section 3.5.9 of the ODP is that rural land

uses, require allotments that are large enough to support them, regardless of whether they are productive rural activities in economic terms. While the Agriculture Suitability Assessment submitted with the application states that the soil types provide significant obstacles to profitable farming practices and the land development costs to remove the trees and establish a reasonably sized farming block would be prohibitive, this does not mean fragmentation effects of rural land do not result or are otherwise less important. A key reason for seeking to prevent land fragmentation is to protect the rural landscape.

Section 1A.9.1 of ODP (reasons and explanations for rural character and amenity) of the ODP states that the creation of lots that are *“too small to support rural land uses, such as livestock grazing and horticulture can detract from rural landscapes and visual amenity values and need to be appropriately regulated in the Rural and Coastal zones. Development that is predominantly residential in nature and which has little, or no rural land use component is provided for in the Country Living zone and to a limited degree in the Rural Zone”*. I have concluded the adverse effects relating to landscape and visual would not have more than low to moderate effects (minor effects) on the environment. Nevertheless, the ODP is explicit in its direction for rural land and states that it is important to control the overall level of subdivision in rural areas. The density of subdivision proposed is provided for in the Country Living Zone. An additional 8 lots do not constitute a scale of a limited degree in the Rural Zone.

In Chapter 29, the ODP provides the following guidance on the number of allotments in the rural zone, *“One additional allotment is provided for as a restricted discretionary activity, subject to relevant standards being met. Restricting the creation of additional allotments to no more than one ensures that larger areas are available for rural productive purposes, and protects rural character, landscapes and soils, while still providing for lifestyle choice associated with a level of rural use of the land. To subdivide off more than one allotment requires resource consent for a non-complying activity so that matters such as cumulative effects on rural character and sustainability of the soil resource and in the Coastal Zone, effect on natural character, can be assessed. By restricting the number of additional lots, the rules control adverse effects, including cumulative effects that result from continued fragmentation of rural land, while enabling subdivision to occur where appropriate. The retention of large sites allows a small part of the site to be developed as dwelling curtilage, and maintains rural character and the potential versatility of land. Note that subdivision on high quality soils is more restrictive and in some cases may be a prohibited activity”*.

Policy 13.6.10 of the ODP states that *“Subdivision, use and development of rural land composed principally of small land holdings should be managed to retain rural character by ensuring allotments are of sufficient size for rural land uses to predominate in these areas”*. Objective 4.4.1 of the ODP and associated policies seek to retain versatility and productive capability of rural land. The proposal does not provide for the new allotments to contain rural land-uses, therefore, further to the rural character assessment above regarding a very high ratio of open space in relation to areas covered in buildings, the maximum one additional allotment requirement sets the baseline for retention of opportunities of rural productive activities.

Policy 5.2.3 of the PDP seeks to minimise the fragmentation of productive rural land, particularly where high class soils are located. The proposal does not result in the fragmentation of productive rural land as the land has been assessed as not containing any high class soils and the site’s soil types provide significant obstacles to profitable farming practices and the land development costs to remove the trees and establish a reasonably sized farming block would be prohibitive.

Conclusion

In summary, with regards to fragmentation, the proposed subdivision of eight additional lots significantly exceeds what is provided for in the ODP as a restricted discretionary activity. While I acknowledge rural character, effects have been assessed above as minor and that the land in question is not considered productive, the ODP nevertheless seeks to protect rural productive uses even if the land is not an economic unit. Accordingly, having regard to the relevant plan provisions which provide the context for my assessment of adverse effects, the proposal will have adverse fragmentation effects on rural land that is not anticipated by the ODP and therefore, in my view, are unacceptable.

On the above basis; I consider that the land fragmentation effects as result of the proposal will be more than minor.

8.5 Reverse Sensitivity Effects

In regard to reverse sensitivity, subdivision can result in development opportunities for residential dwellings that can be sensitive to activities that typically take place in the Rural Zone including farming and horticulture activities. It is important that subdivision does not worsen or give rise to any potential conflict between incompatible activities on the environment. The proposal will result in seven additional dwelling rights. However, the area is already predominately used for rural residential activities and grazing/farming activities and as such, the potential for adverse reverse sensitivity effects to occur is unlikely. Furthermore, New Zealand Transport Agency (NZTA) have advised they are not opposed to the proposed subdivision subject to conditions which include a consent notice to address potential reverse sensitivity effects in relation to State Highway 39.

On the above basis; I consider that any adverse reverse sensitivity effects as a result of the proposal are unlikely to arise and, if they do, will not be significant.

8.6 Traffic Safety Effects

The expected daily traffic generation of the eight additional lots is 80 traffic movements a day which is not considered to result in any adverse effects on the safe and efficient functioning of the transport network and infrastructure in reliance on the New Zealand Transport Agency not being opposed to the proposal subject to conditions which the applicant has adopted as part of the application.

The effects of the non-compliance relating to access for Lot 8 running parallel within 30m of State Highway 23 is considered acceptable on the basis that New Zealand Transport Agency are not opposed to the proposal subject to conditions which the applicant has adopted as part of the application.

On the above basis; I consider that any adverse traffic safety effects as a result of the proposal are insignificant and therefore less than minor.

8.7 Wastewater & Water Supply Effects

Wastewater can be adequately managed onsite and in relation to water supply, the application advises that future dwellings on Lots 1, 2, 4, 5, 6 and 7 will utilise on-site water detention tanks. Lot 3 will utilise the existing water tank, for water collection and detention. Lots 8 and 9 will obtain water supply via a water bore that pumps water to

individual water tanks on each Lot. Lot 10 will have one water bore, which currently feeds an irrigation system and a south-east water storage tank, within Lot 10. This water bore will be used in Lot 10 only. If granted, a consent notice on the proposed lots will be imposed requiring a minimum of 45,000l of water storage within 90m of each dwelling to address the requirements of the FENZ Code of Practice. This addresses Fire and Emergency New Zealand's submission in full.

On the above basis; I consider that any adverse wastewater and water supply effects can be appropriately managed to a less than minor level.

8.8 Stormwater Effects

The stormwater management plan provided with the application was peer reviewed by BECA on behalf of Council. After feedback from BECA, this plan was updated. The updated plan details how stormwater can be mitigated to an acceptable level. This includes recommended building floor levels, options for mitigating flooding of building platforms and location of wastewater fields.

Council's Consultant Land Development Engineer, Mr Brown, has reviewed these findings and has advised the following.

New dwellings and associated paved areas will require attenuation to limit effects to existing stormwater flows. Consent conditions will required existing access roadways will be sealed, however the additional run-off is negligible as metalled areas that have been trafficked have similar runoff properties to seal. Culverts will be provided under raised ROW to mitigate the effect on stormwater flows.

Conclusion

In reliance on this assessment; I consider that any adverse stormwater effects as result of the proposal will be less than minor and can be appropriately managed with conditions.

8.9 Flooding Effects

A floodplain analysis provided with the application was peer reviewed by BECA on behalf of Council. After feedback from BECA, this assessment was updated and subsequently accepted by BECA on 17 November 2019. The summary of findings from the peer review undertaken by BECA is reproduced below.

- *Floor levels and freeboards have been identified and are considered appropriate.*
- *We infer from the modelling there will be a minor flood impact (tens of millimetres) on neighbouring land to the west of the drain however, this land is already subject to flooding (in parts over 1m deep). Climate change will provide a significant impact on flood levels irrespective of the development occurring or not.*

BECA have also provided the following additional comment.

Given that the existing flood depths are >1m and there are no existing homes in the affected area (the nearest dwellings are above the post development flood level) I would say the effects are less than minor from a stormwater/flooding perspective.

Council's Consultant Land Development Engineer; Mr Brown, has reviewed these findings and has advised the following.

Flooding effects on neighbouring properties due to the development is considered to be acceptable (see Item 1 of Steven Joynes' responses SW review, dated 28th November 2019) New dwellings and associated paved areas will require attenuation to limit effects to existing stormwater flows. Consent conditions will required existing access roadways will be sealed, however the additional runoff is negligible as metalled areas that have been trafficked have similar runoff properties to seal. Culverts will be provided under raised ROW to mitigate the effect on stormwater flows.

In reliance on these assessments, I consider the flooding effects of the proposal to be less than minor as the effects on the localised adjacent properties are considered less than minor.

8.10 Archaeological Effects

There are no known archaeological sites on the site so it is considered any potential archaeological effects can be mitigated through an advice notice (as requested by Heritage NZ) relating to the archaeological accidental discovery protocol. This addresses Heritage New Zealand's submission in full.

On the above basis; I consider that any potential archaeological effects as a result of the proposal are less than minor and appropriately managed through an advice note on the consent, if granted.

8.11 Cumulative Effects

While the proposal has the potential to result in cumulative effects in relation to visual effects and land fragmentation Section 5.3 of the LVA prepared by Boffa Miskell has assessed the potential for cumulative visual effects and concludes that the subdivision introduces a low degree of adverse cumulative effects when considering the broader landscape character of the area. I consider this low degree equates to less than minor. In regard to land fragmentation, I consider cumulative effects of land fragmentation to be more minor on the basis that the 45ha site made up of two titles is proposed to be divided into ten titles. On balance; I consider that any adverse cumulative effects as result of the proposal will be minor.

8.12 Land Drainage Matters raised in Submission from Waikato Regional Council

As of 18 May 2020, all issues raised in Waikato Regional Council's submission have been resolved as a result of discussions between the applicant and Waikato Regional Council, except for three matters.

The three outstanding matters are:

1. *(Waikato Regional) Council strongly recommends that consultation is undertaken with the neighbouring landowner at 679 SH23 Whatawhata Road in relation to the proposed increase in flood extents on their land.*

2. *Either an easement is provided in favour of Waikato Regional Council over Lots 7 and 10 or the applicant secure agreement with the property owner at 679 SH23 Whatawhata Road (to be added to property title) to always have the Council drain maintained from their property.*
3. *The drawing in the Stormwater Management Plan showing the 1% AEP needs to be updated to show the updated flow path from Campbells Drain past Lot 7. It should also be updated to show the flood extents on the property to the west of the site.*

Item 1

In regard to item 1, these flooding effects have been assessed by BECA on behalf of Waikato District Council. In particular, BECA has stated the following in relation to this property.

- *We infer from the modelling there will be a minor flood impact (tens of millimetres) on neighbouring land to the west of the drain however, this land is already subject to flooding (in parts over 1m deep). Climate change will provide a significant impact on flood levels irrespective of the development occurring or not.*

Council's Consultant Land Development Engineer; Mr Brown, has reviewed these findings and has advised the following.

Flooding effects on neighbouring properties due to the development is considered to be acceptable (see Item 1 of Steven Joynes' responses SW review, dated 28th November 2019) New dwellings and associated paved areas will require attenuation to limit effects to existing stormwater flows. Consent conditions will required existing access roadways will be sealed, however the additional run-off is negligible as metalled areas that have been trafficked have similar runoff properties to seal. Culverts will be provided under raised ROW to mitigate the effect on stormwater flows.

In conclusion, I do not consider consultation is required with the neighbouring landowner on the basis that I consider the flooding effects on this property will be acceptable and less than minor on reliance of the above assessments.

Item 2

In regard to item 2, Consultant Land Development Engineer, Mr Brown, has advised that a condition of consent (if granted) should be imposed requiring that an easement is provided as requested by Waikato Regional Council. Mr Brown advises the justification is that an easement will provide certainty of access to the drain for maintenance purposes.

Item 3

The applicant has advised they intend on providing this updated drawing. As at 22/05/2020, this had not been completed.

8.13 Summary of Effects

I have concluded above that the adverse effects relating to archaeological, water, wastewater, stormwater, flooding and traffic are less than minor. I have concluded that effects relating to rural character, landscape visual and cumulative effects are minor. I have concluded that effects relating to land fragmentation are more than minor.

The assessment of effects for the purpose of section 104D(1)(a) first gateway test is to be taken on a holistic basis looking over the entire application and the range of effects, not

individual effects. While I acknowledge the land fragmentation effects individually are more than minor, I consider the adverse effects as proposed to be mitigated, and when taken as a whole, are overall minor.

In terms of my section 104(1)(a) assessment, I find, on balance, the adverse effects can be appropriately mitigated with conditions of consent and are minor. In particular, I find the positive effects will balance against and outweigh the land fragmentation effects.

9.0 RELEVANT PLAN PROVISIONS – S104(1)(b)

In accordance with section 104(1)(b) of the RMA, the following assessment considers the proposed activities in terms of relevant provisions of policy statements and plans. The focus is to establish if the proposal is consistent or not contrary to the objectives and policies of relevant plans in addition to consideration of issues, environmental outcomes, rules, explanations and reasons.

9.1 National Environmental Standards

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

Regulation 5(5) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) describes subdivision as an activity to which the NES applies where an activity that can be found on the Ministry for the Environment Hazardous Activities and Industries List (HAIL) has occurred.

Regulation 6 of the NES specifies that an applicant must establish if any HAIL activities have occurred on the subject site. The applicant can do this by adopting one of two methodologies:

1. Review of all relevant council records including dangerous goods files, property files, registers, databases, resource consent databases, records available from Regional Council;
2. Preliminary Site Investigation undertaken by a suitably qualified and experienced practitioner in accordance with the current Ministry for the Environment's Contaminated Land Management Guidelines No. 1 Reporting on Contaminated Sites in New Zealand.

A Preliminary Site Investigation (PSI) was provided to address the NES. This PSI recommended further preliminary soil sampling for arsenic being undertaken in regard to the building site for Lot 1 which was provided as further information. The PSI concludes the proposal is a permitted activity under the NES and the soil sampling results indicate that the average arsenic concentration at the intended site on Lot 1 is unlikely to breach applicable NES soil standards.

Council's Contamination Land Specialist, Mr Parkes, has reviewed this information and has confirmed he agrees that the proposal is permitted activity under the NES.

In reliance on this assessment, I conclude the proposal is a permitted activity under the NES and no further consideration of the NES is required in regard to this application.

9.2 Operative Waikato Regional Policy Statement

The Waikato Regional Policy Statement (RPS) became operative on 20 May 2016.

The RPS is a mandatory document that provides an overview of the resource management issues in the Waikato region, and the ways in which integrated management of the region's natural and physical resources will be achieved.

This document has been reviewed in the context of this proposal.

The following objectives and policies are considered relevant.

Objective 3.3

Resource management decision making is holistic and consistent and;

- a) is aligned across legislation and national and regional strategies;*
- b) takes an integrated approach to managing resources that cross regional and functional boundaries;*

The assessment in this report is in accordance with the required statutory considerations and is considered to achieve this objective.

On this basis, it is considered the proposal is consistent with, and not contrary to, Objective 3.3.

Objective 3.12

Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:

- g) minimising land use conflicts, including minimising potential for reverse sensitivity;*

This objective relates to the built environment and includes minimising land use conflicts including minimising the potential for reverse sensitivity effects. Such effects have been addressed in section 8.5 above and concluded that reverse sensitivity effects are unlikely to arise and therefore less than minor.

On this basis, it is considered the proposal is consistent with, and not contrary to, Objective 3.12.

Objective 3.21

The qualities and characteristics of areas and features, valued for their contribution to amenity, are maintained or enhanced.

This objective relates to amenity which has been addressed in section 8.2 which concluded that landscape visual effects including visual amenity would be low to moderate.

On this basis, it is considered the proposal is consistent with, and not contrary to, Objective 3.21.

Objective 3.26

The values of high class soils for primary production is recognised and high class soils are protected from inappropriate subdivision, use or development.

This objective relates to protecting high class soils from inappropriate subdivision, use or development which the proposal achieves as the site does not contain any high class soils as confirmed by the LUC report prepared by Soil and Land Evaluation submitted with the application.

On this basis, it is considered the proposal is consistent with, and not contrary to, Objective 3.26.

Policy 6.1

Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:

- a) has regard to the principles in section 6A;*
- b) recognises and addresses potential cumulative effects of subdivision, use and development;*
- c) is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development;*
- d) has regard to the existing built environment.*

Assessment of Policy 6.1 a)

The relevant principles in Section 6A are detailed below along with assessments in relation to them.

• General development principles

New development should:

- b) occur in a manner that provides clear delineation between urban areas and rural areas;*
- e) connect well with existing and planned development and infrastructure;*
- j) maintain or enhance landscape values and provide for the protection of historic and cultural heritage.*

• Principles specific to rural-residential development

- c) avoid open landscapes*
- f) minimise visual effect and effects on rural character*
- g) be capable of being serviced onsite*

I consider that the proposed development results in a clear delineation between the urban area of Hamilton City and the rural area that the site is part of. This is based on proposed mitigation (including visual screening) and the density of the proposal (10 lots) being created on a site which exceeds 45 ha. This results in an average density of 4.5 ha of land per lot which is vastly larger from a typical urban area where the average density within urban areas is typically less than 1ha. Ribbon development along State Highway 23 will not occur as a result of the proposal.

It is considered the development connects well with the existing Stonebridge development to the east which is characterised as rural residential development surrounded by large open space. The development is capable of being serviced onsite as sought under the principles specific to rural-residential development. The site is not considered to be an open landscape which is supported by the LVA report commissioned by Council. I rely on the LVA for my conclusion that landscape and visual effects are low to moderate. I further note that section 5.1.1 of the of the LVA states that “the tree landscape creates a secondary buffer between the rural and urban landscapes but visually creating a barrier for western based views of the urban limits and Stonebridge farm park subdivision”. In summary, it is considered the proposal will overall be consistent with these principles.

Assessment of Policy 6.1 b)

While the proposal has the potential to result in cumulative effects relating to rural character & amenity, it is considered the site has unique factors for the conversion of rural land to rural-residential which in my view outweigh the potential for cumulative effects, when taking into account the nature and proposed mitigation of the proposal. It is considered that the proposal has recognised and addressed the potential cumulative effects of the proposed subdivision occurring. For example, visual mitigation planting covenants have been proposed to mitigate rural character effects.

Assessment of Policy 6.1 c)

It is my opinion that sufficient information has been provided to allow assessment of potential long-term effects of this development.

Assessment of Policy 6.1 d)

I consider the proposal has had regard to the existing built environment and the effects on the built environment have been adequately assessed in section 8.

On the above basis, it is considered the proposal is consistent with, and not contrary to, Policy 6.1.

Policy 6.17

Management of rural-residential development in the Future Proof area will recognise the particular pressure from, and address the adverse effects of, rural-residential development in parts of the sub-region, and particularly in areas within easy commuting distance of Hamilton and:

- a. the potential adverse effects (including cumulative effects) from the high demand for rural-residential development;*
- b. the high potential for conflicts between rural-residential development and existing and planned infrastructure and land use activities;*
- c. the additional demand for servicing and infrastructure created by rural-residential development;*
- d. the potential for cross-territorial boundary effects with respect to rural-residential development; and*
- e. has regard to the principles in section 6A.*

Policy 6.17 relates to rural-residential activity in the future proof area which the site is part of. The potential adverse effects have been addressed in the assessment provided in section 8 where it was concluded that overall, on balance, I consider the effects on the environment will be acceptable and can be appropriately mitigated by conditions of consent. The assessment provided in Section 8 included reverse sensitivity effects on existing land use activities and it was concluded these effects are unlikely arise. I am not aware of any existing

or planned infrastructure that the proposal has the potential to conflict with. The proposal does not create additional demand on servicing such as water supply and wastewater as it will be provided on-site. It is acknowledged the proposal will result in some additional demand on roading infrastructure as a result of the expected 80 vehicle movements per day to/from the site. However, the demand is insignificant on the surrounding road network. Further, NZTA have not raised any issue in relation to the increased demand. It is my view that the proposal has had regard to the principles in section 6A as discussed above. On this basis, I disagree with the assessment of Policy 6.17 outlined in the submission from Hamilton City Council.

In conclusion, it is my view that the proposal is consistent with, and not contrary to, Policy 6.17 on the basis that the proposal results in a minor level of adverse effects (as concluded in section 8), does not create additional demand on servicing (three waters specifically), the additional demand on infrastructure (80 vehicles per day on State Highway 23) is minor and the proposal is overall consistent with the relevant provisions in Section 6A as discussed above.

Conclusion

Taking into account all of the above, overall, it is my opinion that this proposal is consistent with, and not contrary to, the Operative Waikato Regional Policy Statement (RPS). I note the submission from Waikato Regional Council does not raise any issues in relation to the proposal's consistency or otherwise with the provisions of the RPS. Rather, it's submission is focussed only on the localised effects relating to land drainage matters.

9.3 Operative Waikato Regional Plan

The Operative Waikato Regional Plan contains policies and methods to manage the natural and physical resources of the Waikato region. The plan implements the Regional Policy Statement.

The proposed subdivision will not affect any of the relevant provisions of the Operative Waikato Regional Plan. Accordingly, the proposal is consistent with, and not contrary to, the Waikato Regional Plan. I note the Waikato Regional Council submission raises no concerns in relation to regional plan matters.

9.4 Operative Waikato District Plan (Waikato Section) 2013

Assessments of this proposal against the relevant ODP relevant objectives and policies are provided below.

9.4.1 Chapter 1A: Waikato District Growth Strategy

Objective	Policies / Assessment
<p>1A.2.1</p> <p><i>Towns, villages and other defined growth areas are the focus of future residential, industrial and</i></p>	<p>1A.2.2</p> <p><i>Subdivision, use and development of an urban nature should occur within clearly defined boundaries of towns and villages rather than in rural areas.</i></p> <p>1A.2.3</p> <p><i>Subdivision, use and development of a rural-residential nature should</i></p>

<p>commercial development</p>	<p>occur within <i>defined growth areas</i> where infrastructure and services can be efficiently and economically provided.</p> <p><i>IA.2.4</i> New growth areas, including new rural residential areas, should be identified and planned for in conjunction with towns and villages where they support local services and minimise adverse effects on productive rural activities and lawfully established rural-based activities.</p> <p><i>IA.2.6</i> <i>Subdivision</i>, use and development should be managed so that a range of lifestyle choices is available, while ensuring residential development occurs in identified towns, villages and other <i>defined growth areas</i>.</p> <p><i>IA.2.6A</i> Rural-residential <i>subdivision</i> and development should be at a location and scale that does not detract from the development of high amenity and compact urban areas.</p> <p><u>Assessment</u> The proposed subdivision is considered to be of a rural-residential nature with some urban elements to it. The site is not located within a town, village or defined growth area therefore is contrary to Policies IA.2.2, IA.2.3, IA.2.4 and IA.2.6. I consider the proposal is at a location and scale that does not detract from the development of high amenity and compact urban areas and therefore is not contrary to Policy IA.2.6A. This is on the basis that landscape visual effects including visual amenity effects have been assessed as low to moderate.</p> <p>In conclusion; in my opinion, while the proposal is not contrary to one of the policies, it is considered contrary to this objective and four of the associated policies.</p>
<p><i>IA.2.9</i></p> <p>Rural areas are maintained as a resource for productive rural activities and lawfully established rural-based activities.</p>	<p><i>IA.2.12</i> <i>Subdivision</i>, use and development that is not directly associated with <i>productive rural activities</i> should occur in towns, villages and other <i>defined growth areas</i>.</p> <p><i>IA.2.13</i> The potential for reverse sensitivity effects on productive rural activities and lawfully established rural-based activities should be avoided.</p> <p><u>Assessment</u> The proposed subdivision is not directly associated with productive rural activities and is therefore contrary to Policy IA.2.12. In regard to reverse sensitivity, subdivision can result in development opportunities for residential dwellings that can be sensitive to activities that typically take place in the Rural Zone including farming and horticulture activities. It is important that subdivision does not worsen or give rise to any potential conflict between</p>

	<p>incompatible activities on the environment. The proposal will result in eight additional dwelling rights. However, the area is predominately used for rural residential activities and grazing/farming activities and as such, the potential for adverse reverse sensitivity effects to occur will be unlikely and therefore not contrary to Policy IA.2.13.</p> <p>In conclusion; in my opinion, while the proposal is not contrary to Policy IA.2.13, it is considered contrary to Objective IA.2.9 and Policy IA.2.12.</p>
<p><i>IA.6.1</i></p> <p><i>The capacity of rural areas to support productive rural activities and lawfully established rural-based activities is maintained.</i></p>	<p><i>IA.6.2</i></p> <p><i>Rural resources should be managed so that opportunities to use them for productive rural activities or lawfully established rural-based activities are retained.</i></p> <p><i>IA.6.3</i></p> <p><i>Activities that are not related to productive rural activities should not locate in rural areas unless there is a demonstrable functional need and they will not constrain existing lawfully established productive rural activities, lawfully established rural-based activities or compromise access to and the extraction of mineral resources from Coal Mining Policy Areas.</i></p> <p><u>Assessment</u></p> <p>The proposed subdivision does not provide opportunities for the rural resource within the site to be used for productive rural activities, therefore is contrary to Policy IA.6.2.</p> <p>In regard to Policy IA.6.3, a finding that a proposal is not contrary to this policy requires both aspects of the policy to be met by the use of the word “and” as seen above and below.</p> <ol style="list-style-type: none"> <i>1. Activities that are not related to productive rural activities should not locate in rural areas unless there is a demonstrable functional need and</i> <i>2. They will not constrain existing lawfully established productive rural activities, lawfully established rural-based activities or compromise access to and the extraction of mineral resources from Coal Mining Policy Areas.</i> <p>I consider that the proposal does not constrain existing lawfully established production rural activities. However, it is considered the proposed subdivision does not have a genuine functional connection with the rural land or soil resource and does not require a rural setting.</p> <p>In conclusion; in my opinion, the proposal is contrary to this objective and these policies, despite not constraining existing lawfully established productive rural activities, as both parts of Policy IA.6.3 are required to be achieved to be not contrary to this policy.</p>

<p><i>IA.8.1</i></p> <p><i>Landscape, character and amenity values of rural areas are maintained.</i></p>	<p><i>IA.8.2</i></p> <p><i>Activities that do not have a functional need to establish in rural areas should be accommodated in towns, villages and defined growth areas.</i></p> <p><i>IA.8.4</i></p> <p><i>Provision should be made for limited subdivision where this protects and manages in perpetuity land or features of ecological, cultural, heritage, recreational, access or landscape value to the wider community.</i></p> <p><i>IA.8.5</i></p> <p><i>Subdivision, use and development in rural areas should be managed so that a range of lifestyle choices is available while ensuring that rural landscapes and rural character are retained.</i></p> <p><i>IA.8.6</i></p> <p><i>Subdivision, use and development in rural areas that have been modified through development should be managed to ensure that cumulative adverse effects do not compromise rural landscapes and rural character.</i></p> <p><i>IA.8.7</i></p> <p><i>Rural landscapes, rural character and associated amenity values should be retained by ensuring allotments are of sufficient size for rural land uses to predominate in rural areas.</i></p> <p><u>Assessment</u></p> <p>It is considered the proposed subdivision does not have a genuine functional need to establish in the rural area. Nor does it rely on a rural setting. On this basis, the proposal is considered contrary to Policy IA.8.2.</p> <p>It is considered that the proposal does not achieve the meaning of the term 'limited subdivision' therefore the proposal is contrary to Policy IA.8.4, despite the proposed covenant vegetative planting.</p> <p>The proposal does provide a range of lifestyle choice in the Rural Zone as sought by Policy IA.8.5. Furthermore, this choice is provided while retaining rural landscapes and rural character for the reasons set out in section 8.2 and 8.3 of this report. Therefore, on this basis, the proposal is considered not contrary to Policy IA.8.5.</p> <p>Cumulative effects of the proposal have been assessed as acceptable under section 8.5 of this report and in any event will not compromise rural landscape and rural character. Therefore the proposal is considered not contrary to Policy IA.8.6.</p> <p>Lot 10 is the only proposed lot which is considered to be of a sufficient size for rural land uses to predominate in rural areas. On this basis, it is considered the proposal is contrary to Policy IA.8.7.</p>
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	<p>In regard to Objective IA.8.1; landscape, rural character and amenity values have been assessed above as low to moderate. On this basis, it is considered the proposal is not contrary to this objective.</p> <p>In conclusion; in my opinion, while the proposal is considered contrary to Policy IA.8.2, IA.8.4 and IA.8.7, it is considered not contrary to Objective IA.8.1, Policy IA.8.5 and Policy IA.8.6.</p>
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9.4.2 Chapter 3: Natural Features and Landscapes

Objective	Policies / Assessment
<p>3.4.1</p> <p><i>Landscapes and visual amenity values, as viewed from public places, are retained and enhanced.</i></p>	<p>3.4.2</p> <p><i>Natural features and landscapes, including locally distinctive landforms and prominent ridgelines, and general visual amenity values should be protected from inappropriate subdivision, use and development, in particular by:</i></p> <ul style="list-style-type: none"> (a) <i>avoiding or mitigating adverse effects on natural features such as indigenous vegetation, lakes, rivers and mountains</i> (b) <i>ensuring that the visual effects of buildings can be absorbed without significant adverse effects on the landscape.</i> (c) <i>locating buildings and development so as to integrate them with the surrounding landscape and backdrops, to avoid dominating the landscape</i> (d) <i>designing subdivision so that potential development, including building platforms, fences and vehicle accesses, are located sympathetically in the landscape</i> (e) <i>avoiding, remedying or mitigating as soon as practicable, the adverse visual effects of earthworks and vegetation clearance, by:</i> <ul style="list-style-type: none"> • <i>retaining vegetation, and</i> • <i>restoring natural contours and replanting with appropriate species, and</i> • <i>limiting the area of soil exposed by earthworks and the length of time it is exposed, and</i> • <i>locating and constructing roads, tracks and vehicle accesses to minimise their visual impacts.</i> (f) <i>avoiding or mitigating the adverse effects on visual amenity from noxious, dangerous, offensive or objectionable materials.</i> (fa) <i>considering the effects of activities on the relationship of Maaori with their ancestral lands and waahi tapu.</i> (fb) <i>avoiding, remedying or mitigating any adverse effects in accordance with the landscape and visual amenity values of the zone in which the</i>

	<p><i>activity is located.</i> <i>(g) locating national grid transmission lines in ways that avoid or minimise adverse effects on visual amenity.</i></p> <p>3.4.3 <i>Rural land uses, including productive rural activities, should predominate in the Rural and Coastal Zones.</i></p> <p>3.4.4 <i>Rural landscapes and amenity values should be maintained by avoiding cumulative adverse effects of subdivision use, and development.</i></p> <p><u>Assessment</u> Except for Policy 3.4.3, for the same reasons identified in sections 8.3 of this report, I consider the proposal will appropriately manage the effects on landscapes and amenity values to a low to moderate (minor) level.</p> <p>In regard to Policy 3.4.3, the proposal is contrary to this on the basis that a rural land use is not proposed.</p> <p>In conclusion; in my opinion, while the proposal is contrary to Policy 3.4.3, the proposal is not contrary to Objective 3.4.1 and Policies 3.4.2 & 3.4.4.</p>
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9.4.3 Chapter 4: Natural Resources

Objective	Policies / Assessment
<p>4.4.1</p> <p><i>Versatility and productive capability of rural land, especially that containing <u>high quality soil</u> and open space, is retained.</i></p>	<p>4.4.2 <i>Allotments created by <u>subdivision</u>, particularly in areas containing high quality soils, should be appropriately located and shaped and of sufficient size to enable rural production based on the soil resource.</i></p> <p>4.4.2A <i>Rural land should be retained in large holdings, and the creation of large holdings encouraged, to retain opportunities for land based primary production and rural industries.</i></p> <p>4.4.3 <i>Subdivision of rural land composed principally of small land holdings outside <u>defined growth areas</u> should be constrained to ensure rural land uses continue to predominate in these areas.</i></p> <p><u>Assessment</u> While the proposal seeks to create nine (ten lots minus the 1 large balance lot) lots that are not of sufficient size to enable rural activities to occur as sought by Policy 4.4.2, 4.4.2A and 4.4.3, the</p>

	<p>site does not contain high quality soils. Further an agricultural suitability assessment provided with the application states the site's soil types provide significant obstacles to profitable farming practices and the land development costs to remove the trees and establish a reasonably sized farming block would be prohibitive. On this basis, it is considered the proposal is not contrary to the objective (Objective 4.4.1) which seeks to retain versatility and productive capability of rural land.</p> <p>In conclusion; in my opinion, while the proposal is contrary to Policy 4.4.2, 4.4.2A and 4.4.3, it is considered not contrary to Objective 4.4.1.</p>
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9.4.4 Chapter 5: Natural Hazards

Objective	Policies / Assessment
<p>5.2.1</p> <p><i>Risks from natural hazards to health, safety and property, resulting from use, development or protection of land, are minimised.</i></p>	<p>5.2.2</p> <p><i>Use or development of land subject to significant natural hazards should be avoided.</i></p> <p>5.2.2A</p> <p><i>Use or development of other land subject to natural hazards should be required to mitigate the related risks to health, safety and property.</i></p> <p>5.2.3</p> <p><i>Use, development or protection of land should not increase the adverse effects of natural hazards, or compromise natural processes.</i></p> <p>5.2.5</p> <p><i>Development should minimise impervious surfaces, provide adequate stormwater drainage, and mitigate the off-site effects of stormwater drained from the site.</i></p> <p>5.2.9</p> <p><i>Development should be designed and located to avoid or mitigate the predicted effects of global climate change on natural hazards, especially increased flooding, erosion, fire, and storms. Where there is incomplete information, a precautionary approach should be taken.</i></p> <p><u>Assessment</u></p> <p>For the same reasons identified in section 8.8 and 8.9 of this report, relying on Council's Consultant Land Development Engineer, I consider the proposal is unlikely to result in adverse natural hazard effects. In conclusion; in my opinion, the proposal is not contrary to this objective and these five policies.</p>

9.4.5 Chapter 8: Land Transport Network

Objective	Policies / Assessment
<p>8.2.1</p> <p><i>An integrated, safe, responsive and sustainable land transport network is maintained, improved and protected.</i></p>	<p>8.2.2A <i>Subdivision, use and development should not compromise the road function as specified in the road hierarchy.</i></p> <p>8.2.2B <i>Subdivision, use and development should be in a location and at a scale that</i></p> <p><i>(a) is consistent with the existing or planned capacity and design of the roading network, and</i></p> <p><i>(aa) is consistent with the intended function of any roads that may be affected by the subdivision, use and development (roading hierarchy), and</i></p> <p><i>(b) does not compromise the safety and efficiency of the roading network, and</i></p> <p><i>(c) does not compromise the safety and efficiency of the railway network.</i></p> <p>8.2.3 <i>The integrated, safe, responsive and sustainable operation of the land transport network should be promoted through:</i></p> <p><i>(a) carriageway, intersection and site design</i></p> <p><i>(b) appropriate siting of and access for traffic generating activities</i></p> <p><i>(c) traffic management, signage, road marking, lighting, and rest areas and parking as appropriate</i></p> <p><i>(d) provision for pedestrians, cyclists and the disabled, including off road routes and connections including pedestrian malls</i></p> <p><i>(e) provision of public transport</i></p> <p><i>(f) provision for network utilities</i></p> <p><i>(g) appropriate access for existing land uses</i></p> <p><i>(h) railway crossing design.</i></p> <p>8.2.4 <i>Subdivision, use and development should not obstruct future road linkages including access to adjoining land and to Hamilton City where relevant.</i></p> <p>8.2.5 <i>Subdivision, use, and development should be located and designed to connect safely to an existing road.</i></p>

	<p>Assessment</p> <p>For the same reasons identified in section 8.6 of this report, relying on Council's Consultant Land Development Engineer, I consider the proposal is unlikely to result in adverse traffic effects and the integrated sustainable land transport network is maintained, improved and protected. In conclusion; in my opinion, the proposal is not contrary to this objective and these five policies.</p>
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9.4.6 Chapter 13: Amenity Values

Objective	Policies / Assessment
<p><i>13.2.1</i></p> <p><i>Adverse effects of activities on amenity values are managed so that the qualities and character of the surrounding environment are not unreasonably compromised.</i></p>	<p><i>13.2.2</i></p> <p><i>Adverse effects associated with lighting, litter, electromagnetic radiation, vermin, traffic, spray drift, and noise should be contained within the site where they are generated.</i></p> <p><i>13.2.5</i></p> <p><i>Amenity values, health and safety should be protected from adverse traffic effects including:</i></p> <ol style="list-style-type: none"> <i>1. noise, vibration, dust, lighting and glare</i> <i>2. vehicle emissions</i> <i>3. accelerated or contaminated stormwater runoff</i> <i>4. visual effects of parking and loading areas</i> <i>5. traffic safety and congestion.</i>
<p><i>13.2.6</i></p> <p><i>Amenity values of localities are maintained and enhanced.</i></p>	<p><i>13.2.7</i></p> <p><i>Scale, intensity, timing and duration of effects of activities should be managed to be compatible with the amenity and character of the locality.</i></p>
<p><i>13.4.1</i></p> <p><i>Amenity values of sites and localities maintained or enhanced by subdivision, building and development</i></p>	<p><i>13.4.2</i></p> <p><i>Subdivision, building and development should be located and designed to:</i></p> <ol style="list-style-type: none"> <i>1. be sympathetic to and reflect the natural and physical qualities and characteristics of the area</i> <i>2. ensure buildings have bulk and location that is consistent with buildings in the neighbourhood and the locality</i> <i>3. avoid buildings and structures dominating adjoining land or public places, the coast, or water bodies</i> <i>4. retain private open space and access to public open space</i>

	<ol style="list-style-type: none"> 5. encourage retention and provision of trees, vegetation and landscaping 6. arrange allotments and buildings in ways that allow for view sharing, where appropriate 7. provide adequate vehicle manoeuvring and parking space on site 8. provide vehicle, cycling and pedestrian connection to transport networks, including roads, cycleways and walkways, and facilitate public transport 9. promote security and safety of public land and buildings, and places 10. mitigate foreseeable effects (including reverse sensitivity effects) on, and from, nearby land use, particularly existing lawfully established activities 11. mitigate foreseeable effects on water bodies 12. maintain adequate daylight and direct sunlight to buildings, outdoor living areas and public places 13. maintain privacy 14. avoid glare and light spill. <p><u>Assessment</u></p> <p>For the same reasons identified in sections 8.2 of this report, I consider the proposal will not result in adverse effects on amenity values.</p> <p>In conclusion; in my opinion, the proposal is not contrary to these three objectives and four policies.</p>
Objective	Policies / Assessment
<p>13.6.1</p> <p>Rural character is preserved.</p>	<p>13.6.2</p> <p>Rural subdivision and development should be of a density, scale, intensity and location to retain or enhance rural character, including:</p> <ol style="list-style-type: none"> (aa) a predominance of natural features over built features (a) a very high ratio of open space in relation to areas covered by buildings (b) open space areas in pasture, trees, crops or indigenous vegetation (c) tracts of unmodified natural features, indigenous vegetation, streams, rivers, wetlands and ponds (d) large numbers of farm animals and wildlife (e) noises, smells and sights of farming, horticultural and forestry uses (f) post and wire fences, purpose-built farm buildings, and scattered dwellings (fa) low population density (g) generally narrow carriageways within wide road reserves, often

<p>13.6.5</p> <p><i>The cumulative effects of subdivision or development on rural character and amenity values are avoided.</i></p>	<p><i>unsealed with open drains, low-speed geometry and low traffic volumes</i></p> <p><i>(h) a general absence of urban-scale and urban-type infrastructure such as roads with kerb and channel, footpaths, mown berms, street lights, advertising signs, sealed and demarcated parking areas, decorative fences and gateways</i></p> <p><i>(i) a diversity of lot sizes and shapes, related to the character and pattern of the landscape.</i></p> <p>13.6.3 <i>Rural land should be retained in large holdings sufficient in size to enable productive rural activities to occur, and the creation of large holdings encouraged and where appropriate boundary relocations should be encouraged that facilitate holdings of sufficient size to support these activities.</i></p> <p>13.6.4 <i>Allotments created by subdivision should be of a shape and sufficient size to retain the rural character of the area by ensuring they are large enough for rural land uses to predominate.</i></p> <p>13.6.6 <i>Rural character should be maintained and the cumulative adverse effects of subdivision should be avoided.</i></p> <p>13.6.9 <i>Subdivision, use and development should not further compromise rural character in rural areas already modified by non-rural activities.</i></p> <p>13.6.10 <i>Subdivision, use and development of rural land composed principally of small land holdings should be managed to retain rural character by ensuring allotments are of sufficient size for rural land uses to predominate in these areas.</i></p> <p><u>Assessment</u> Based on my assessment of effects, I consider the proposal is not contrary to these two objectives or Policies 13.6.2, 13.6.6 and 13.6.9. Despite the proposal not meeting all elements, particularly (a) and (fa) identified in Policy 13.6.2, I consider the proposed subdivision is of a density, scale, intensity and location to retain or enhance rural character and note that elements (aa), (d) and (h) are met.</p> <p>I consider the proposal is contrary to Policies 13.6.3, 13.6.4 and 13.6.10 on the basis that nine of the ten proposed lots are not considered to be large holdings sufficient in size to either enable productive rural activities to occur or allow rural land uses to predominate.</p>
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9.4.7 Summary of Objectives and Policies of ODP

The assessment provided in section 9.4 of this report finds the proposal is not contrary to roughly two thirds (33/51) of the relevant objectives and policies but is contrary to roughly one third (18/51). However, section 104D requires a fair appraisal of the objectives and policies as a whole. It is not a “numbers game”.

I consider the objectives and policies in Chapter 1A and Chapter 13.6 to be the most directly relevant to the proposal. Objectives and Policies within Chapter 1A (in particular Objective 1A.2.1 and associated Policies 1A.2.3 1A.2.6 and 1A.2.12, Objective 1A.2.9 and Objective 1A.6.1 and associated Policies 1A.6.2 and 1A.6.3) provides strong direction that subdivision of a rural-residential nature that is not directly associated with productive rural activities should occur within towns, villages and defined growth areas.

While the proposal is not contrary to the majority (5/8) of objectives and policies within Chapter 13.6 (including Objective 13.6.5 and Policy 13.6.6 which seeks to avoid cumulative effects of subdivision and development on rural character and amenity values), the proposal is contrary to the vast majority (11/16) of objectives and policies within Chapter 1A. It is considered appropriate that more weight is given to Chapter 1A as they provide the over-arching intent of the plan provisions most relevant to the proposal – which is to direct rural-residential development into defined growth areas to preserve rural areas for rural uses.

In the circumstances, overall, I find the proposal to be contrary to the objectives and policies of the ODP when read as a whole.

9.5 Proposed Waikato District Plan – Objectives and Policies

The objectives and policies of the PDP are relevant under section 104(1)(b). Assessments of this proposal against the relevant Proposed Waikato District Plan objectives and policies are provided below.

9.5.1 Chapter 5: Rural Environment

Objective	Policies / Assessment
<p><i>5.1.1 – The rural environment</i></p> <p><i>Objective 5.1.1 is the strategic objective for the rural environment and has primacy over all other objectives in Chapter 5.</i></p> <p><i>(a) Subdivision, use and development within the rural environment where:</i></p> <ul style="list-style-type: none"> <i>(i) High class soils are protected for productive rural activities</i> <i>(ii) Productive rural activities are supported, while maintaining or enhancing the rural environment;</i> 	<p><i>No Policies.</i></p> <p><u>Assessment</u></p> <p>Clause (i) is not applicable to the proposal because the site does not contain high class soils.</p> <p>In terms of clause (ii) the proposal does not support productive rural activities (irrespective of the fact it is not an existing productive rural activity) but it does maintain the rural environment.</p> <p>The proposal is not contrary to clause (iii) as the proposal is not an urban subdivision on the basis of the proposed rural-residential lot sizes (ranging between 0.8 ha and 1.8 ha) which are not associated with urban areas.</p>

<p>(iii) <i>Urban subdivision use and development in the rural environment is avoided.</i></p>	<p>Overall, I consider the proposal is not contrary to Objective 5.1.1, particularly as it does avoid urban subdivision in the rural environment which is the most directive provision in the objective.</p>
<p><i>5.2.1 Rural Resources</i></p> <p>(a) <i>Maintain or enhance the:</i></p> <p>(i) <i>Inherent life-supporting capacity and versatility of soils, in particular high class soils;</i></p> <p>(ii) <i>The health and wellbeing of rural land and natural ecosystems;</i></p> <p>(iii) <i>The quality of surface fresh water and ground water, including their catchments and connections;</i></p> <p>(iv) <i>Life-supporting and intrinsic natural characteristics of water bodies and coastal waters and the catchments between them.</i></p>	<p><i>5.2.2 – High class soils</i></p> <p>(a) <i>Soils, in particular high class soils, are retained for their primary productive value.</i></p> <p>(b) <i>Ensure the adverse effects of activities do not compromise the physical, chemical and biological properties of high class soils.</i></p> <p><i>5.2.3 – Effects of subdivision and development on soils</i></p> <p>(a) <i>Subdivision, use and development minimises the fragmentation of productive rural land, particularly where high class soils are located.</i></p> <p>(b) <i>Subdivision which provides a range of lifestyle options is directed away from high class soils and/ or where indigenous biodiversity is being protected.</i></p> <p><u>Assessment</u></p> <p>In regard to Objective 5.2.1, it is considered the proposal does not maintain or enhance the inherent life-supporting capacity and versatility of soils, however, it is considered the proposal does maintain the health and wellbeing of rural land and natural ecosystems as result of the proposal including the proposed covenant planting which is expected to attract birdlife. On this basis, it is considered the proposal is not contrary to Objective 5.2.1.</p> <p>The proposal does not result in the utilisation of high class soils (as none exist onsite) for rural productive activities sought by Policy 5.2.2, nor does the site contain high class soils and the site's soil types provide significant obstacles to profitable farming practices and the land development costs to remove the trees and establish a reasonably sized farming block would be prohibitive. On this basis, it is considered the proposal is not contrary to Policies 5.2.2 and 5.2.3.</p> <p>In conclusion; the proposal is not contrary to Objective, 5.2.1, Policy 5.2.2 and Policy 5.2.3.</p>
<p><i>5.3.1 – Rural Character and Amenity</i></p> <p>(a) <i>Rural character and amenity are maintained</i></p>	<p><i>5.3.4 Density of dwellings and buildings within the rural environment</i></p> <p>(a) <i>Retain open spaces to ensure rural character is maintained</i></p> <p>(b) <i>Additional dwellings support workers accommodation for large productive rural activities.</i></p> <p><i>5.3.7 – Reverse sensitivity effects</i></p>

	<p>(a) Recognise the following features are typical of the rural environment and the effects are accepted and able to be managed:</p> <ul style="list-style-type: none"> (i) Large numbers of animals being farmed, extensive areas of plants, vines or fruit crops, plantation forests and farm forests; (ii) Noise, odour, dust, traffic and visual effects associated with the use of land for farming, horticulture, forestry, farm quarries; (iii) Existing mineral extraction and processing activities; (iv) Minor dwellings; (v) Papakaainga housing developments within Maaori Freehold land. <p>(b) Avoid adverse effects outside the site and where those effects cannot be avoided, they are to be mitigated.</p> <p>(c) Mitigate the adverse effects of reverse sensitivity through the use of setbacks and the design of subdivisions and development.</p> <p>(d) The scale, intensity, timing and duration of activities are managed to ensure compatibility with the amenity and character of the rural environment.</p> <p>(e) Enable the use of artificial outdoor lighting for night time work.</p> <p>(f) Ensure glare and light spill from artificial lighting in the rural environment does not:</p> <ul style="list-style-type: none"> (i) Compromise the safe operation of the road transport network; and (ii) Detract from the amenity of other sites within the surrounding environment. <p>(g) Frost fans are located and operated to ensure adverse effects on the surrounding environment are minimised.</p> <p>(h) Provide for intensive farming activities, recognising the potential adverse effects that need to be managed, including noise, visual amenity, rural character or landscape effects, and odour.</p> <p>5.3.8 – Effects on rural character and amenity from rural subdivision</p> <p>(a) Protect productive rural areas by directing urban forms of subdivision, use, and development to within the boundaries of towns and villages.</p> <p>(b) Ensure development does not compromise the predominant open space, character and amenity of rural areas.</p> <p>(c) Ensure subdivision, use and development minimise the effects of ribbon development.</p> <p>(d) Rural hamlet subdivision and boundary relocations ensure the following:</p> <ul style="list-style-type: none"> (i) Protection of rural land for productive purposes; (ii) Maintenance of the rural character and amenity of the surrounding rural environment;
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	<p>(iii) <i>Minimisation of cumulative effects.</i></p> <p>(e) <i>Subdivision, use and development opportunities ensure that rural character and amenity values are maintained.</i></p> <p>(f) <i>Subdivision, use and development ensures the effects on public infrastructure are minimised.</i></p> <p><u>Assessment</u></p> <p>The proposal is considered not contrary to Policy 5.3.4 as rural character effects have been assessed in section 8.3 as low to moderate and open space is retained. In regard to open space, while a very high ratio is not achieved, open space (notably Lot 10 which has a size of 35 ha) is provided in a way (with clustering of house sites of Lots 1 – 5 and 10) creates a similar dispersal of house sites as the grouping of houses at the entrance to Howden Road. Section 5.1.1 of the Landscape Visual Assessment (LVA) prepared by Boffa Miskell considers that this approach “retains the openness between the groupings and protects the lowland plains and rural character margins of the site from development”.</p> <p>The proposal is considered not contrary to Policy 5.3.7 as the area is predominately used for rural residential activities and grazing/farming activities and as such, the potential for adverse reverse sensitivity effects to occur will be unlikely.</p> <p>The proposal is considered not contrary to Policy 5.3.8 and Objective 5.3.1 as it has been assessed that rural character effects and visual amenity effects are low to moderate under section 8.3 and 8.2 of this report respectively.</p> <p>On the above basis, it is considered the proposal is not contrary to this objective and these policies.</p>
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9.5.2 Chapter 6.4: Infrastructure, Subdivision, Development

Objective	Policies / Assessment
<p>6.4.1 – Integration of infrastructure with subdivision, land use and development.</p> <p>(a) Infrastructure is provided for, and integrated with, subdivision, use and development.</p>	<p>6.4.2</p> <p>(a) <i>Ensure adequate provision of infrastructure, including land transport networks, where land is subdivided or its use intensified.</i></p> <p>6.4.3</p> <p>(a) <i>Ensure subdivision, use and development are provided with infrastructure and services to a level that is appropriate to its location and intended use including:</i></p> <ul style="list-style-type: none"> (i) <i>Three waters (water, wastewater and stormwater supply);</i> (ii) <i>Telecommunication services;</i>

	<p>(iii) Electricity services; and</p> <p>(iv) Adequate water supply within urban areas for firefighting purposes.</p> <p>6.4.6</p> <p>(a) The hydrological characteristics of the natural drainage processes are retained.</p> <p>6.4.7</p> <p>(a) Ensure that stormwater and drainage infrastructure for subdivision, land use and development:</p> <ul style="list-style-type: none"> (i) Adopts, where appropriate, a best-practice low impact design approach to the management of stormwater; (ii) Manages stormwater in accordance with a drainage hierarchy, with a preference for on-site treatment; (iii) Minimises impervious surfaces to reduce stormwater run-off; (iv) Retains pre-development hydrological conditions as far as practicable; (v) Does not increase the flow of stormwater runoff onto adjoining properties or flood plains, or reduce storage capacity on-site; (vi) Provides a stormwater catchment management plan for future urban development; and (vii) Promotes clean water reuse and groundwater recharge where practicable. <p><u>Assessment</u></p> <p>The proposal is considered not contrary to Policy 6.4.2 and Policy 6.4.3 on the basis that adequate provision of infrastructure and servicing is proposed. The proposal is also considered not contrary to Policy 6.4.6 and 6.4.7 as stormwater effects have been assessed in section 8.8 as acceptable. On the above basis, it is considered the proposal is not contrary to Objective 6.4.1.</p>
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9.5.3 Chapter 6.5: Transport

Objective	Policies / Assessment
<p>6.5.1 – Land Transport Network</p> <p>(a) an integrated land transport network where</p> <p>(i) All transport modes are accessible, safe and efficient</p> <p>(ii) Adverse effects from the construction, maintenance and operation of the transport network are managed.</p>	<p><u>Assessment</u></p> <p>For the same reasons identified in section 8.6 of this report, relying on Council's Consultant Land Development Engineer, I consider the proposal is unlikely to result in adverse traffic effects and the integrated sustainable land transport network is maintained, improved and protected. In conclusion; in my opinion, the proposal is not contrary to this objective.</p>

9.5.4 Summary of Objectives and Policies of PDP

The assessment provided in section 9.5 of this report finds that when read as a whole the proposal is not contrary to the relevant objectives and policies of the PDP. Significantly, the proposal is not contrary to Objective 5.1.1 which is of critical importance to the rural environment and therefore to the proposal because it has primacy over all other objectives in Chapter 5 as stated in the PDP.

9.6 Summary of Assessment under Section 104(1)(b)

The proposal is consistent with the Waikato Regional Policy Statement and the Waikato Regional Plan.

The proposal is considered overall to be contrary to the relevant objectives and policies of the ODP. In arriving at this view, I have given more weight to the objectives and policies in Chapter 1A as they provide clear direction that rural-residential subdivision should not locate in rural areas where they are not directly related to productive rural activities.

The assessment provided in section 9.5 of this report finds that when read as a whole the proposal is not contrary to the relevant objectives and policies of the PDP.

In my view, more weight should be given to the ODP than the PDP because the PDP is still in the early stages of the schedule 1 process, in particular I note the Rural Zone hearing has not commenced and no decisions have been issued.

10.0 SECTION 104(1)(c) – OTHER MATTERS

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application. These matters are discussed below.

There are a number of other matters which are relevant and reasonably necessary to have regard to when considering this proposal. These matters are:

- Waikato Tainui Environmental Plan;
- Ngati Haua Environmental Management Plan;
- Waikato 2070 Waikato District Councils Draft Growth & Economic Development Strategy;
- Updated (Future Proof) Growth Strategy and Implementation Plan (2017);
- Precedent; and
- Administration of the District Plan (District Plan Integrity).

10.1 Waikato Tainui Environmental Plan

The Waikato Tainui Environmental Plan covers a wide range of matters. Those matters particularly relevant to this application are the following:

Chapter 21 – Land

I consider the proposal is compatible with this chapter as the proposal does not offend any of the objectives and policies within this chapter.

Chapter 25 – Land Use Planning

I consider the proposal is compatible with this chapter as the proposal does not offend any of the objectives and policies within this chapter. The most relevant objective and policy in this chapter is set out below.

Objective 25.3.2

Urban and rural development is well planned and the environmental, cultural, spiritual, and social outcomes are positive.

Policy 25.3.2.2

To ensure that rural development is well planned and the environmental, cultural, spiritual, and social outcomes are positive.

To achieve this objective and policy, a number of methods are listed as set out and assessed below.

Method (a)

Generally, the methods in policy 24.3.2.1 above, applies to rural residential subdivision.

The following method from policy 24.3.2.1 is considered relevant.

- (a) where possible and practicable, avoid development or subdivision of land where there are high quality and versatile soils.*

I consider that the proposal achieves this method as the site does not contain high quality and versatile soils, therefore is considered to be meet the associated objective and policy.

Method (b)

Recognise the genuine need, at times, for smaller rural residential subdivision to enable landowner use of their site for personal, family, or staff use. However, rural residential subdivision shall not result in 'ribbon' type ad hoc development along rural roads.

I consider that the proposal achieves this method as the proposed subdivision does not result in 'ribbon' type ad hoc development along a rural road, therefore is considered to be meet the associated objective and policy.

Method (c)

Rural residential form shall be well designed taking into account the surrounding environment, visual amenity, and other policies and methods in this chapter.

I consider that the proposal achieves this method as form of the proposed rural-residential subdivision is well designed taking into account by:

- Taking into account the surrounding environment by selective placement of lots and house sites and proposed mitigation which includes planting and restricted building areas.
- Visual amenity effects have been assessed as acceptable under section 8.2 of this report.
- Avoiding ribbon development as discussed above.

Method (d)

Minimise the amount of high quality of highly versatile land that is taken out of productive use or that has options for future use reduced as result of rural development.

The proposal achieves this method as the site does not contain high quality and versatile soils, therefore is considered to meet the associated objective and policy.

Summary

Based on the above assessments, it is considered that this proposal will be compatible with the relevant objectives and policies relating to the above topics.

10.2 Ngati Haua Environmental Management Plan

The Ngati Haua Environmental Management Plan covers a range of matters. The matters particularly relevant to this application are the following:

Chapter 9 – Sustainable Land Use and Development

The most relevant objective and policy in this chapter is Objective 9.2 as set out below.

Objective 9.2

1. A more integrated, holistic and collective approach to sustainable land use development and management within our rohe. This is to provide for population growth without compromising the productive capacity of our soils or life supporting capacity of our environment.

Policy 9B

Manage the potential effects of rural land and urban land use and development within our rohe.

To achieve this objective and policy, a number of methods are identified. The most relevant one is set out and assessed below.

Method 9B.1

Advocate for land use within our rohe that matches the capability of the land.

The proposal is considered to match the capability of the land as the site does not contain high quality soils or high class soils. The site's soil types provide significant obstacles to profitable farming practices and the land development costs to remove the trees and establish a reasonably sized farming block would be prohibitive.

It is therefore is considered to meet this method.

Summary

Based on the above assessment, it is considered that this proposal will be compatible with relevant objectives and policies relating to the above topics.

10.3 Waikato 2070 Waikato District Councils Draft Growth & Economic Development Strategy

The purpose of the draft strategy is to guide the growth in the district over the next 50 years. Section 4 of this draft strategy relates to identifying where and when growth can occur. The area of Whatawhata which the subject site is located within, is not identified in this section. On this basis; it is considered that Whatawhata is not an identified growth area and the proposal is not consistent with this draft strategy.

10.4 Updated (Future Proof) Growth Strategy and Implementation Plan (2017)

This document is a sub-regional growth strategy and is applicable to the three territorial areas of Hamilton City, Waipa District and Waikato District which makes up the “Future Proof sub-region”. This strategy aims to manage growth in a collaborative manner for the benefit of the Future Proof sub-region from both a community and physical perspective. This strategy identifies a settlement pattern made up of a number of key growth areas identified within the sub-region which is made up of Hamilton City, Cambridge, Te Awamutu, Kihikihi, Pokeno, Tuakau, Huntly, Te Kauwhata, Ngaruawahia and Raglan.

The location of the site (Whatawhata) does not fit into this settlement pattern. On this basis, I consider the proposal is inconsistent with the Updated (Future Proof) Growth Strategy and Implementation Plan (2017).

10.6 Precedent

The difference between the legal concepts of precedent and district plan integrity was described by the High Court in *Stirling v Christchurch City Council*, (2011) 16 ELRNZ 198 at [90] in the following way:

The concept of precedent reflects the concern that the granting of consent may have on planning significance beyond the immediate vicinity of the land concerned, plan integrity is more likely to reflect the public confidence in the Plan.

In my opinion the precedent effect is a relevant factor for Council to take into account as the proposal is a non-complying activity. Thus, by its very nature, it is not anticipated by the ODP or PDP.

A precedent reflects the concern that a grant may have on the fate of future resource consents applications which are made in reliance on the grant of consent. In other words, how a decision may influence the way in which future resource consent applications are dealt with.

Although previous resource consents have been granted for Non-Complying subdivisions, none have been granted which are comparable in scale to this proposal (eight additional lots). Given the low scale of each application granted, there is no evidence to demonstrate that the granting of those applications has encouraged further applications, particularly of this scale.

The proposed subdivision goes beyond what is provided for in the ODP as a restricted discretionary activity and seeks to create seven additional lots over and above what is anticipated to occur on the site. However, if this proposal is granted, I consider this is unlikely to set a precedent and result in other applications being made in reliance on a grant. This is because I consider the following unique factors, when considered together, takes the proposal out of the generality of cases, thereby reducing the risk of precedent. The following is the primary unique factor.

- The site was previously used for commercial purposes being a public golf course inclusive of a pro golf shop/café and an accommodation facility. This golf course has a unique landscape as assessed by the LVA prepared by Boffa Miskell commissioned by Council. The LVA states that “the site, by way of existing on site character, location, landform and vegetation cover provides capacity to absorb a land use change as result of its unique present characteristics”. Section 5.1.1 of the LVA states that each rural landscape evokes its unique characteristics and when considering effects, the existing character forms a baseline to be assessed against; and that the heavily treed landscape within the site and adjoining arboretum are unique to this landscape type.

Secondary to above, the site does not contain high quality soils or high class soils with soils onsite described as “poorly drained” and “very poorly drained”. The Agriculture Suitability Report submitted with the application prepared by Ag First states that these soil types provide significant obstacles to profitable farming practices and the land development costs to remove the trees and establish a reasonably sized farming block would be prohibitive. Indicative costs to turn this property into a productive agricultural block or maize production have been provided in the section 6 and section 7 respectively of the assessment. These assessments have formed the view of the author (as stated in the executive summary) that the site’s soil types provide significant obstacles to profitable farming practices and the land development costs to remove the trees and establish a reasonably sized farming block would be prohibitive. Lastly, the site is a low lying area which is prone to flooding.

In summary, in my opinion; if this application was granted, it is not likely to set a precedent which will influence the way in which future applications are dealt with. I have not come to this view lightly; my three site visits have helped me appreciate the unique characteristics of the site.

10.7 Administration of the District Plan (District Plan Integrity)

District Plan integrity reflects the public confidence in the plan. The Environment Court (EC) in *Berry v Gisborne District Council* [2010] NZEnvC 71 at [25] considered precedent and plan integrity and cautioned the use of such concepts. The EC advised an application will only be declined on the basis of plan integrity where:

- The proposal clearly clashes with important plan provisions; **and**
- It is likely that further applications will follow which are equally incompatible with the district plan and materially indistinguishable from this application.

In my opinion, the current proposal does clearly clash with the following important ODP provisions as assessed in sections 9.4.1 and 9.4.7 respectively; being:

1A.2.1

Towns, villages and other defined growth areas are the focus of future residential, industrial and commercial development

1A.2.3

Subdivision, use and development of a rural-residential nature should occur within defined growth areas where infrastructure and services can be efficiently and economically provided.

1A.2.6

Subdivision, use and development should be managed so that a range of lifestyle choices is available, while ensuring residential development occurs in identified towns, villages and other defined growth areas.

1A.2.9

Rural areas are maintained as a resource for productive rural activities and lawfully established rural-based activities.

1A.2.12

Subdivision, use and development that is not directly associated with productive rural activities should occur in towns, villages and other defined growth areas.

1A.6.1

The capacity of rural areas to support productive rural activities and lawfully established rural-based activities is maintained.

1A.6.2

Rural resources should be managed so that opportunities to use them for productive rural activities or lawfully established rural-based activities are retained.

1A.6.3

Activities that are not related to productive rural activities should not locate in rural areas unless there is a demonstrable functional need and they will not constrain existing lawfully established productive rural activities, lawfully established rural-based activities or compromise access to and the extraction of mineral resources from Coal Mining Policy Areas.

The proposed subdivision goes beyond what is provided for in the ODP as a restricted discretionary activity and seeks to create seven additional lots over and above what is anticipated (i.e. one additional lot) to occur on the site. However, if this proposal is granted, I consider this will not result in other applications being lodged which are materially indistinguishable from this application and potentially incompatible with the District Plan. This is because each application is assessed on its own merits. Further, the unique factors listed above in section 10.6, when considered together, distinguishes it from any other future applications.

In my opinion the two tests outlined above are not met as, while the proposal clashes with important ODP provisions, it is not likely that further applications will follow which are equally incompatible with the District Plan and indistinguishable from the application. This is because I consider the site to have unique characteristics that cannot be easily replicated by other sites in the district.

10.8 Summary of Assessment under Section 104(1)(c)

Under s104(1)(c), I have concluded the proposal is inconsistent with Waikato 2070 Waikato District Councils Draft Growth & Economic Development Strategy; and the Updated

(Future Proof) Growth Strategy and Implementation Plan (2017) but not inconsistent (and not contrary to) with the following documents.

- Waikato Tainui Environmental Plan;
- Ngati Haua Environmental Management Plan; and

I also consider that granting this application will not have a precedent effect on future applications and it is not likely that further applications will follow which are equally incompatible with the ODP and materially indistinguishable from this application.

11.0 SECTION 104 CONCLUSION

Under s104(1)(a), I have concluded, on balance, that the actual and potential effects of the proposal are able to be avoided, remedied or mitigated through the imposition of conditions and are therefore acceptable. In particular, the positive effects, in my view will balance against and outweigh the more than minor land fragmentation effects.

Under s104(1)(b), I have concluded that the proposal is consistent with the relevant provisions of the Waikato Regional Policy Statement and the Waikato Regional Plan. In terms of the ODP objective and policy assessment under s104(1)(b), I conclude overall, that the proposal is contrary to the objectives and policies of the ODP when read as a whole. I have given more weight to the Chapter 1A objectives and policies as I consider them to be the most relevant to the proposal as they provide the most directive guidance on rural-residential development in rural areas. In terms of the PDP assessment under s104(1)(b), I conclude that when looking at the objectives and policies of the plan holistically, the proposal is not contrary to them.

Under s104(1)(c), I have concluded the proposal is inconsistent with Waikato 2070 Waikato District Councils Draft Growth & Economic Development Strategy; and the Updated (Future Proof) Growth Strategy and Implementation Plan (2017) but not inconsistent with (and not contrary to) the following documents.

- Waikato Tainui Environmental Plan; and
- Ngati Haua Environmental Management Plan.

I consider that granting this application will not have a precedent effect on future applications and it is not likely that further applications will follow which are equally incompatible with the District Plan and materially indistinguishable from this application.

In weighing up the competing considerations under section 104, I give little weight to the PDP objectives and policies as they are not sufficiently advanced through the Schedule 1 process. I have also given little or no weight to the growth strategy documents as they are non-statutory documents and one of them is yet to be approved by Council. It is my view that the positive effects, overall minor effects (with mitigation) and absence of precedent or plan integrity concerns, when considered together, outweigh my findings that the proposal is contrary to the objectives and policies of the ODP and, narrowly tips the balance in favour of granting consent. This is without undertaking a Part 2 assessment. I will undertake a Part 2 assessment in section 14 to see if that alters my findings.

12.0 SECTION 104D

In my summary of effects under section 8.1.3 for the section 104D(1)(a) assessment, I conclude the effects, when assessed holistically and, having regard to the mitigation measures, were overall minor. As such, the proposal passes the first gateway test of section 104D(1)(a) so can proceed to be determined on its merits under section 104.

My assessment of the objectives and policies of the ODP under section 104(1)(b) found that the proposal is contrary when read as a whole. My assessment of the objectives and policies of the PDP under section 104(1)(b) found that the proposal is not contrary when read as a whole. However, in order to pass the second gateway test, the proposal must not be contrary to both plans. Accordingly, the proposal fails the second gateway test. This is not, however, fatal to the application.

13.0 SECTION 106

Sufficient provision has been made for legal and physical access to each allotment created by the subdivision.

The applicant has provided a risk assessment of the natural hazards identified for the site.

This assessment provides a combined assessment of:

- (a) The likelihood of natural hazards occurring (whether individually or in combination) and
- (b) The material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and
- (c) Any likely subsequent use of the land in respect of which the consent that is sought would accelerate, worsen, or result in material damage of the kind referred to in (b) above.

Council's Consultant Land Development Engineer; Mr Brown has reviewed the assessment provided and advises that he is satisfied that there is not a significant risk from natural hazards provided that the recommended conditions proposed form part of the resource consent decision which include mitigation measures to reduce the risk to a level acceptable under section 106 of the RMA.

There is no reason to decline this application under section 106 of the RMA.

14.0 ASSESSMENT OF PART 2 MATTERS

I now turn to the assessment under Part 2 of the RMA. The Court of Appeal in *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 determined that, in the context of an application for resource consent, RMA decision-makers should usually consider Part 2 when making decisions on resource consents (this is the implication of the words "Subject to Part 2" in section 104). However, the Court stated that doing so is unlikely to advance matters where the relevant plan provisions have clearly given effect to Part 2 or where it is clear that the plan is "competently prepared" with a "coherent set of policies" such that there is no need to refer to Part 2.

In the present application, I consider it is appropriate to apply Part 2 because it cannot be said that the ODP contains a coherent set of policies or gives effect to the operative RPS due to the timing of the two plans. There is therefore potential incomplete coverage in the

ODP. As this is one of the three caveats where the Supreme Court in *King Salmon* said recourse should be had to Part 2, I provide an assessment of the application under Part 2. Furthermore, given the ODP was prepared before the *King Salmon* decision, it cannot be said with any certainty that the plan was “competently prepared”.

In these circumstances, I believe providing a Part 2 assessment will provide a belts and braces approach to my evaluation under section 104. However, in reverting to Part 2, I acknowledge the Environment Court’s recent comments in *Te Runga o Ngati Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196 at paragraph 62:

Part 2 [is not] a law unto itself: s5 is not intended to be an operative provision under which particular planning decisions are made and the specific jurisdictional framework of the rest of the RMA and the policy framework of the planning documents under it are not to be circumvented by resort to Part 2 generally.

... Reference to Part 2 should not result in the policy statement or plan provisions being considered only for the purpose of putting them on one side or otherwise subverted.

I take on board these comments when providing my assessment under Part 2.

The following assessment has been made in regard to Part 2:

Section 8

Section 8 of the Act concerns the principles of the Treaty of Waitangi. There are no known sites of interest to Maori on the land of the subject site. A letter from Ngaa Uri o Maahanga Trust has been provided as an official letter of support for this application provided as further information to the application. Accordingly, it is considered that the proposal will not offend the provisions of section 8.

Section 7

Section 7 of the Act sets out other matters that Council is to have particular regard to in achieving the purpose of the Act. The matters of relevance to this application are:

- (b) *the efficient use and development of natural and physical resources*
- (c) *the maintenance and enhancement of amenity values*

Despite the site’s rural land not being used for rural productive purposes, I consider the proposal promotes the efficient use of a natural and physical resource, being rural residential living on rural land described as having poor draining soil, where these soil types provide significant obstacles to profitable farming practices.

Section 6

Section 6 of the Act requires a number of matters of national importance to be recognised and provided for. None of the provisions are considered relevant to this proposal.

Section 5

Section 5 outlines the purpose of this Act which is as follows:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*

- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -*
- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Overall broad judgement under Part 2

Part 2 allows for an overall broad judgement to be made on whether to grant or decline the application, having regard to the competing considerations under s104. My conclusion on the competing matters in section 104 set out in section 11.0 above found the application could be granted, irrespective of a Part 2 assessment. Having now considered the matters in Part 2 as set out above, I am of the view that granting consent will promote the sustainable management of the natural land resource because it is considered the proposal is an efficient use of the site and unlikely to be used for a productive use as the site's soil types provide significant obstacles to profitable farming practices and the land development costs to remove the existing trees onsite to establish a reasonably sized farming block would be prohibitive. The proposal will provide a lifestyle choice for people wishing to live in the rural environment. The proposal will also promote the social and economic wellbeing of the applicant and the community who wish to live in a rural landscape which evokes unique characteristics which will be ensured through mitigation measures offered by the applicant. In conclusion, I consider the proposal will meet the purpose of the RMA set out in section 5 relating to sustainable management.

15.0 CONCLUSION & RECOMMENDATION

The proposal passes the first s104D(1)(a) gateway test, but not the second test. I have concluded that when assessing the adverse effects on a holistic basis, the effects are overall minor, with the proposed mitigation.

In terms of s104(1)(a), it is considered the actual and potential effects of the proposal are able to be avoided, remedied or mitigated through the imposition of conditions and are minor. In particular, the positive effects, in my view will balance against and outweigh the more than minor land fragmentation effects.

Under s104(1)(b), it is considered that the proposal is consistent with the relevant provisions of the Waikato Regional Policy Statement and the Waikato Regional Plan.

Under s104(1)(b), I concluded that, on balance, the proposal is contrary to the policy direction in the ODP when read as a whole. In particular, I consider the objectives and policies in Chapter 1A and Chapter 13.6 to be the most directly relevant to the proposal. Objectives and Policies within Chapter 1A (in particular Objective 1A.2.1 and Policies 1A.2.3 1A.2.6 and 1A.2.12, Objective 1A.2.9 and Objective 1A.6.1 and Policies 1A.6.2 and 1A.6.3) provides strong direction that subdivision of a rural-residential nature that is not directly associated with productive rural activities should occur within towns, villages and defined

growth areas. It is considered appropriate that more weight is given to Chapter 1A as they provide the over-arching intent of the plan provisions most relevant to the proposal – which is to direct rural-residential development into defined growth areas to preserve rural areas for rural uses.

In terms of the PDP assessment under s104(1)(b), I conclude that when looking at the objectives and policies of the plan holistically, the proposal is not contrary to them.

In terms of relevant section 104(1)(c) matters, I conclude the proposal is inconsistent with Waikato 2070 Waikato District Councils Draft Growth & Economic Development Strategy; and the Updated (Future Proof) Growth Strategy and Implementation Plan (2017) but not inconsistent (and not contrary to) with the following non-statutory documents.

- Waikato Tainui Environmental Plan;
- Ngati Haua Environmental Management Plan.

I consider that granting this application will not have a precedent effect on future applications (acknowledging the unique factors of the proposal) and it is not likely that further applications will follow which are equally incompatible with the District Plan and materially indistinguishable from this application.

In weighing up the competing considerations under section 104, I give little weight to the PDP objectives and policies as they are not sufficiently advanced through the Schedule 1 process. I have also given little or no weight to the growth strategy documents as they are non-statutory documents and one of them is yet to be approved by Council. It is my view that the positive effects, overall minor effects (with mitigation) and absence of precedent or plan integrity concerns, when considered together, outweigh my findings that the proposal is contrary to the objectives and policies of the ODP and, narrowly tips the balance in favour of granting consent. This is without undertaking a Part 2 assessment.

A separate Part 2 assessment confirms my view that a grant of consent is appropriate and will promote the sustainable management of the natural land resource for the reasons set out in section 14 above. I acknowledge that regardless of whether or not a separate Part 2 assessment is undertaken, my recommendation to grant consent is finely balanced. In conclusion, I recommend the proposal be **GRANTED** under the Operative Waikato District Plan subject to conditions (refer to APPENDIX H for draft conditions).