
Open Meeting

To	Independent Commissioner
Prepared By	Michelle Carmine – Consultant Planner, Element Planning
Date	28th October 2020
Approved By	Wade Hill – Consents Team Leader
Application	LUC0427/19
Applicant	Quattro Property Holdings Limited

Experience and Qualifications of Reporting Officer

I have been engaged by Waikato District Council to provide an evaluation and recommendation on an application by Quattro Property Ltd to construct and operate a Retail Centre at 561 Horotiu Road. I am a Director and Principal Planner at Element Planning Ltd. I hold a Bachelor of Science in Earth Science from The University of Waikato. I have 14 years' experience as a Resource Management Practitioner with a specific focus on resource consenting within the Local Government environment. Previous roles held include: Senior Planner at Rodney District Council, Principal Planner at Auckland Council and Consents Team Leader at Waikato District Council. I am a qualified Hearings Commissioner.

Executive Summary

This report has been prepared pursuant to s.42A of the Resource Management Act 1991 (RMA) and provides an assessment of the proposal in accordance with the relevant matters specified in the RMA.

Proposal

The commercial development comprises a single level building with a floor area of 1,290m². The building will comprise seven retail tenancies, including a hairdresser, pizza shop, superette and a number of other small-scale retail outlets. Tenancy sizes are as follows: 1 x 80m², 3 x 100m², 2x 120m² and 1 x450m². A seven metre high free standing sign is proposed along with 39 car parking spaces, including two accessible spaces. A landscaping/planting plan has been provided. An area of 3670m² of earthworks, with cut volume of 5872m³ and fill volume of 6239m³ are proposed. All cut material will be removed from the site and the fill volume will be imported. Wastewater and Water supply will be onsite, as no reticulated network is present in Te Kowhai.

District Plan Provisions

The proposal is located in the Country Living Zone under the Operative Plan (ODP) and Business Zone under the Proposed Plan (PDP), there are no rules with legal effect under the PDP.

The proposal is unable to comply with the “type of activity” rule under the ODP as it is a commercial activity in the Country Living zone and fails to meet a number of performance standards and development controls (building coverage, signage, noise, traffic movements, access and setbacks). The proposal is a Discretionary Activity under the Operative Plan.

Submissions

25 Submissions were received in relation to this proposal. Two in support, one neutral and 22 in opposition. Five submitters have indicated they wish to be heard. One submitter (submission #5) has identified themselves as a Trade Competitor but considers themselves directly affected by the proposal. In Summary, the prevalent topics of concern relate to whether the town has enough demand to cater for the additional shops, concerns relating to shops being left untenanted and character and amenity effects associated with the design of the proposal not fitting with the character of the village.

Status of the Two Plans

The Waikato District Council currently has two District Plan frameworks: the Operative Plan and the Proposed Plan. It is important that I provide initial context on the status of the plans. Currently the Proposed Plan is at Notification/Hearings stage and no decisions have

been released on any part of the plan. Only the objectives and policies and the rules that meet section 86B(3) have legal effect at this stage. There are no rules with legal effect triggered by this proposal. This incomplete framework means that a full assessment cannot be carried out against the PDP. As a result of this, my report below contains only one recommendation against the Operative District Plan (this incorporates an assessment of the PDP Objectives and policies that do have legal effect).

Recommendations

The following report provides an assessment of the proposal against the requirements of section 104 and 104B of the Act, including the actual and potential effects of the proposed activity on the environment, an assessment of the relevant plan provisions, all other relevant matters and 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.

In light of the evaluation below, it is my recommendation that the application be DECLINED under the Operative District Plan for the following reasons:

The reasons I have come to this conclusion can be summarised as follows:

- In my conclusion on actual and potential effects under section 104(1)(a) I have found:
 - (i) That there will be effects on Character and Amenity that have not been sufficiently mitigated.
 - (ii) The economic assessment provided demonstrates there is no retail demand for some years to come and no guarantee when that will occur due to lack of reticulation in the area. Meaning there is the potential for shops to be left vacant for some time yet.
 - (iii) The lack of retail demand, limits the positive economic benefits of the proposal which I have found are not enough to balance out the adverse effects found on character and amenity of the locality and the village.

- (iv) I do not consider enough detail has been provided in relation to the servicing on site to address the effects associated with the tanks and any conflicts with the activities or mitigation proposed.
 - (v) I am concerned that the proposal will not comply with the daytime noise limits on a Sunday. Effects in relation to this apparent infringement have yet to be addressed.
- In my conclusion on relevant plan provisions under section 104(1)(b) I have concluded that:
 - (i) the NPSUD or the NESCS are not relevant considerations,
 - (ii) the proposal is inconsistent with the Regional Policy Statement
 - (iii) consistent with the Waikato-Tainui Raupatu (Waikato River) Settlement Claims Act 2010.
 - (iv) The provisions of the Operative District Plan have been assessed where it is concluded that the proposal is inconsistent with the Objectives and Policies of the Plan. Although the proposal is within the bounds of a defined growth area, the proposal seeks through the scale and nature of the activities to effectively create a town centre on the northern periphery of the village. This in turn has the potential to lead to growth pressure outside the urban boundaries of the village. The directive objectives and policies pertaining to Amenity Values have not been met by the proposal. I have found that the development does not align with the vision for rural villages set out in Chapter 1 of the Plan.
 - (v) I have found the proposal to be inconsistent with the Proposed District Plan Objectives and Policies. These seek to encourage large format commercial activities and discourage small scale retail within the Business Zone. I find weighting between the two plan provisions somewhat arbitrary because the proposal is inconsistent with both the Operative and Proposed Plans despite the proposed zone change from Country Living to Business.
- Under section 104(c) Other Matters I have found that:
 - (i) The proposal is partially consistent with the non statutory Future Proof Strategy 2017 in that it is located within the bounds of the urban area.

However due to the nature and location of the activity proposed, the proposal will lead to pressure to intensify development of the surrounding rural and country living land.

- (ii) The proposal is inconsistent with the non statutory documents such as Waikato 2070 and the Structure Plan, which do not identify establishment of a town centre in or near the location of the subject site within the next 50 years.
 - (iii) The proposal will undermine the Integrity of the District Plan.
- In light of the above I consider Part 2 of the RMA would be better met through the decline of this consent application than the granting.

Submission Strike Out Recommendation

I have also made a recommendation to strike out submission #5 as the submitter is a Trade Competitor who has not identified any direct effects on themselves. Submission #15 also requires further investigation as to whether it can be accepted as a valid submission.

I will review my recommendations following the filing of evidence and will advise before or at the hearing whether there is any change to my recommendation as a result of the pre exchanged evidence or evidence presented at the hearing.

The conclusions reached and recommendations made in this report are not binding on the Commissioner and it should not be assumed that the Commissioner will reach the same conclusions or decision after having considered all of the evidence. If the Commissioner does not agree with my assessment under section 104(1) and considers that the proposal can be granted, I have provided a set of recommended conditions of consent for reference that will continue to be worked through with the applicant with the hope that an agreed set can be tabled prior to or at the hearing.

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1.0 INTRODUCTION

Pursuant to s88 of the Resource Management Act 1991 (the Act), Quattro Properties Ltd (the Applicant) has applied for land use resource consent to construct and operate a retail complex in the Country Living Zone at 561 Horotiu Road, Te Kowhai.

1.1 Summary of Site and Planning Information

Applicant:	Quattro Property Holdings Limited
Property Address:	561 Horotiu Road TE KOWHAI
Legal Description:	LOT 28 DP 522977 comprised in Record of Title 831028
Site Area:	5029m ²
Operative Plan	Waikato District Plan (Waikato Section) 2013 (ODP)
Proposed Plan	Proposed Waikato District Plan (Notified Version 2018) Stage 1 and 2. (PDP) Variations 1 and 2 of Stage 1 of the Proposed Waikato District Plan
Activity Status:	Operative District Plan: Discretionary Proposed District Plan: N/A (activity status rules does not have legal effect)
Zoning:	Operative District Plan: Country Living Zone Proposed District Plan: Business Zone
Policy Area:	Operative District Plan: Waikato River Catchment Proposed District Plan: Airport Obstacle

	Limitation Surface, Waikato River Catchment
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1.2 Proposal

Activity

Section 3 of the application outlines the proposal as follows:

The commercial development comprises a single level building with a floor area of 1,290m² generally following the northern and eastern boundaries. The building will comprise seven retail tenancies, including a hairdresser, pizza shop, superette and a number of other small-scale retail outlets.

The takeaway outlet will have an outdoor seating area to the north of the building and will be for the exclusive use of patrons. For the purposes of this application, no outlet will be licensed under the Sale and Supply of Alcohol Act, however, such elements are not intended to be precluded in the future, subject to further consent processes.

The external façade will comprise a mixture of concrete and slatted timber weatherboard finishes. Generous landscaped areas are proposed along the road frontage, within the car parking area and along the rear boundary for the site.

This is evident in the architectural visualisations included in the application, and shown in Figure 1 below:



Figure 1 – Architectural visualisation of development

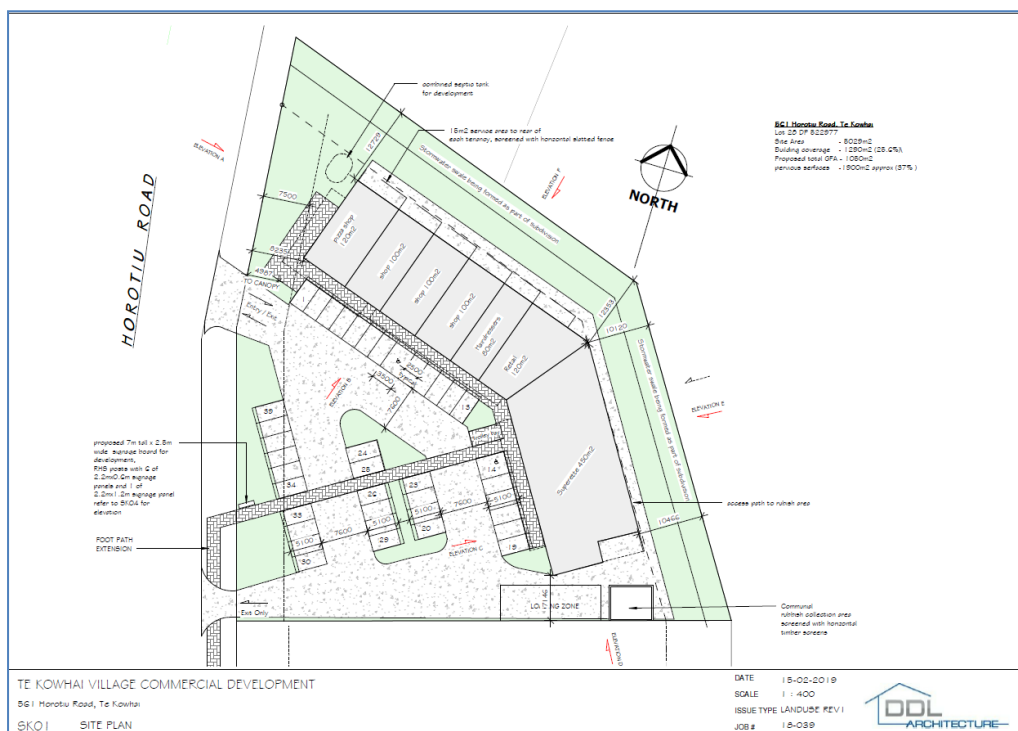


Figure 2 – Site plan

I add to this description the Tenancy sizes which are as follows: 1 x 80m² 3 x 100m² 2x 120m² and 1 x450m².

Signage

The proposal includes one 7m high freestanding structure comprising 7 signs. Section 3 of the application includes a description of the sign as follows:

A freestanding sign, comprising a maximum height of 7m and a width of 205mm, is proposed to be located between the northern and southern vehicle entrances. The sign has been designed to avoid disrupting sightlines, by providing signage boards no lower than 2.05m above ground level. The proposed signage comprises several sandwich boards, with six being 2.2m x 600mm and one being 2.2m x 1.2m. The overall area of [Freestanding] signage is 10.56m². Refer to Figure 9 as follows which illustrates the proposed signage.

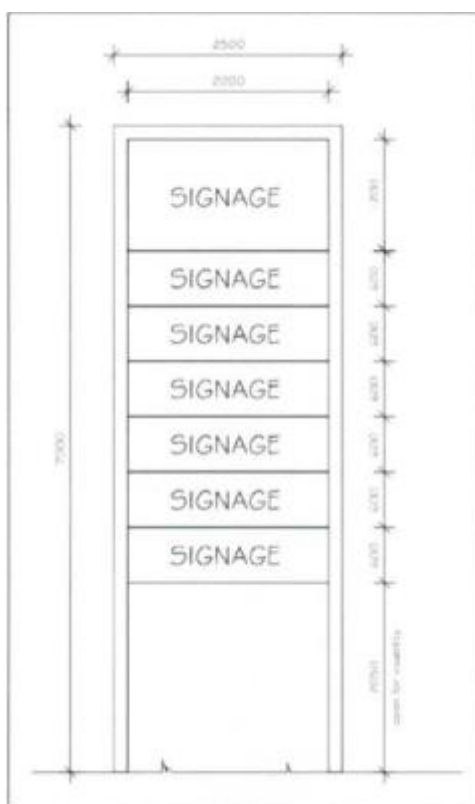


Figure 3 – Elevation of proposed signage board

Signage will also be attached to each tenancy in order to identify the activities occurring on the site within each tenancy. No information has been given on the size of this signage in the application, however indicative locations are shown on the elevation plans for the building. This is in addition to the 10.56m² free standing signage.

Traffic

Vehicle access is proposed via two entrances off Horotiu Road. Section 3.0 of the Application confirms that *'the northernmost crossing will be entry and exit, allowing for two-way flow. The southern crossing is an exit only and will primarily cater for service vehicles to allow for more efficient onsite manoeuvring for heavy goods vehicles.'*

Approximately 984-1,388 vehicle movements per day are anticipated to be generated by the proposal. The proposal is supported by an Integrated Transportation Assessment prepared by CKL which provides an assessment on the transportation effects.

Parking and loading

Car parking and loading spaces are proposed between the building and Horotiu Road boundary. Section 3.0 confirms that:

All carparking associated within the commercial activity will be located to west of the building, nearest the Horotiu Road boundary. 39 car parking spaces will be provided, including two accessible spaces. Sufficient space has been provided onsite to provide the required 4 bicycle spaces to cater for the activity. One loading lane has been provided along the southern boundary, nearest a communal refuse area. The loading zone is located nearest the superette, which is likely to have the highest loading demand. Nonetheless, all other outlets will have access to the area.

Pedestrian Access

The proposal includes extension of the existing footpath near the café and pedestrian access on the site as shown above in Figure 2. This is to allow for an interconnection between the subject site and the consented café to the south.

Noise

A noise assessment has been provided with the application prepared by Earcon Acoustics Ltd dated May 2019. This assessment addresses potential noise created from car park noise, people and takeaways, refuse collection, mechanical plant noise and predicated noise levels. The noise assessment has applied the Country Living Zone standards. Further Information was provided by Earcon Acoustics on the 14th April 2020 to clarify the noise effects during the night time. Noise will not comply on the Southern boundary with 571 Horotiu Road (church café).

Hours of operation

The application seeks the following hours of operation for each respective outlet seven days a week (Monday to Sunday):

- Takeaway / pizza outlet – 10am to 10pm
- Retail and hairdressers - 8am to 6pm
- Superette - 7am to 10pm

Servicing

There is no public reticulation available in Te Kowhai for wastewater, water supply and stormwater. Therefore it is proposed to manage the three waters on site. The proposal has been supported by a Three Waters Management Plan prepared by Wainui Environmental, and outlines the following:

Wastewater

Wastewater will be disposed of via an advanced secondary treatment system with disposal to ground via a conventional bed. The volume of effluent expected to be generated by the commercial activity has been estimated to be 3m³, which complies with the permitted thresholds of the Waikato Regional Plan (refer to Rule 3.5.7.6 of the Waikato Regional Plan).

Stormwater

Stormwater management is by way of an underground soakage system. A 10m wide easement in gross is located over the drain which runs along the northern and eastern boundaries. This drain is part of the Waikato Regional Council drainage network. The swale will convey all secondary overland flow during storm events that exceed the design loading of the soakage system, as will be the case with development of all lots within this subdivision.

Water

Water supply will be provided via two 25,000L water tanks which will be partially or fully buried. The Three Waters Management Plan estimates 2000L/day of potable water when the development is operating at full capacity.

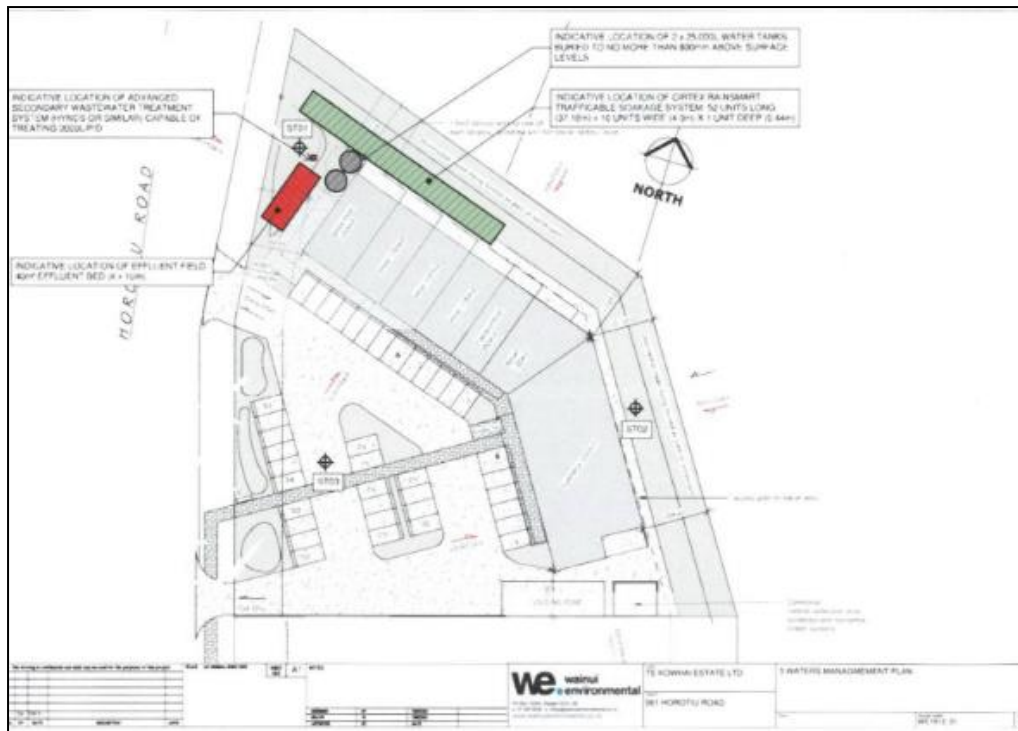


Figure 4 - Location of proposed onsite servicing.

Earthworks and Construction

The earthworks plan shows 3670m² of earthworks, with cut volume of 5872m³ and fill volume of 6239m³. All cut material will be removed from the site and the fill volume will be imported. The applicant proposes erosion and sediment controls to be installed prior to earthworks which includes a silt fence along the edge of the drain and a stabilised construction entrance. As well as a buffer between the earthworks and the drain. The controls will remain in place throughout the works. It is estimated that approximately 600 truck movements will occur across approximately 43 working days. The applicant has not provided information on the length of time that construction will occur over.

Rubbish

A communal rubbish collection area is proposed to be located along the southern boundary (near the loading zone).

The full application documents and all further information is set out in **Appendix A** of this report.

1.3 Description of Site

Subject site and directly surrounding area

The 5029m² subject site is located at 561 Horotiu Road, Te Kowhai within the Country Living Zone.

I visited the site on the 25th February 2020. The site is generally flat in topography, in pasture/grass and contains the Waikato Regional Council stormwater drain which runs along the northern and eastern boundary.

The site has frontage to Horotiu Road, but has no existing formed vehicle entrance to the site. The frontage has no kerb and channelling or footpath which both stop just south of the application site, at the newly established café site.

The café site directly adjoining to the south is also zoned Country Living, it contains an untenanted café and gift shop within a relocated church and numerous water tanks as well as a formed and marked out parking area and post and rail fencing.

To the north is a single dwelling located on a Country Living zoned site, this forms the edge of the Te Kowhai urban area and is where the 50km town entrance signs are located, beyond the adjoining site to the north is rural land.

Behind the subject site (to the east) is Country Living zoned land currently undergoing subdivision with the construction of new dwellings and local roads.

To the west on the opposite side of Horotiu Road are established Country Living dwellings/lots with vegetative screening and a slip access from Horotiu Road to serve dwellings, a wide Right of Way access adjoins Horotiu Road opposite the site, this access serves additional Country Living dwellings located to the rear of Horotiu Road.

Te Kowhai Village

The character of the Te Kowhai township is what I would describe as a small rural village settlement. The town is mostly made up of 70s style residential mixed with newer country

living residential (rural residential). Currently the village has no defined town centre and instead consists of a scattering of a small number of commercial activities along the main road (Horotiu Road). There are currently only three small sites zoned for Commercial activities with activities that could be established on these sites limited by the size of the parcels and area zoned. The largest being 1406m² and housing the current mechanic/garage.



Image 1: Existing garage zoned commercial

The other two commercial sites are located along side each other in separate ownership. 656 Horotiu Road (1258m²) is occupied by the Te Kowhai food centre and post box facility and neighbouring site 654 Horotiu Road (1102m²) contains an existing dwelling currently not developed as commercial property but zoned for it.



Image 2: Existing FoodMart and Post box and Dwelling zoned Commercial

On Country Living land to the southern outskirts of the town is an existing produce shop and a bakery/café that has recently established in an existing building.



Image 3: Fruit and Vege store to the left and Bakery to the right (Te Kowhai Village Café).

The area directly surrounding the subject site is synonymous with the character described above that exists throughout the village.

1.4 Legal Interests

The following relevant interests are registered on the Record of Title:

- 11132886.3 Consent Notice – this relates to the soils and site assessment report for foundation design and wastewater disposal. At the time of building consent, the recommendations are to be adhered to. This consent notice also requires restrictions and recommendations of the stormwater management plan are complied with. The Consent notice has provision for alternative reports to be approved by Council in writing. The Land Development has confirmed the proposal complies with the consent notice.
- Subject to a right (in gross) to drain water over part marked T on DP 522977 in favour of Waikato Regional Council.
- The easements created by Easement Instrument 11132886.4 are subject to Section 243(2) RMA 1991
- Land Covenant in Covenant Instrument 11294173.9. This covenant is a private covenant and restricted the use of the property to rural residential

purpose or any other purpose permitted by the plan with some exceptions. The close board fences proposed would not meet the covenant provisions. Any compliance issues with the covenant are between the applicant and the Covenanter. It is however noted that the applicant has provided written approval from Te Kowhai Estate Limited for the RMA matters so it is assumed that if they had issues with covenant compliance they would have withheld their written approval.

None of these interests restrict the proposal from proceeding from an RMA perspective

2.0 PROCESS MATTERS

2.1 Key Dates

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

Date	Description	Working days
23/05/19	Application lodged under Section 88 of the Resource Management Act 1991 (RMA)	01
05/06/19	Revised application accepted under Section 88 of the RMA.	09
29/04/20	Section 37 doubled timeframes under special circumstances	17
13/05/20	Public Notification Decision made	26
13/05/20	All processing put on hold waiting on a fixed fee under s37(6)	26
20/08/20	Public Notification	26
17/09/20	Submissions Closed	46

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, Transportation, Acoustics and Economics.

Acoustics

Mr Matt Cottle from Marshall Day Acoustics took over review of the acoustic report and provided final comment on the 20th April 2020. Prior to Mr Cottle taking over the acoustic review Mr James Bell- Booth was the acoustic reviewer and provided an initial report dated 22 July 2019. The acoustic reviews and communications are set out in **Appendix B**.

Mr Cottle is an Associate with Marshall Day Acoustics. He has a Master of Design Science (Audio and Acoustics) qualification from the University of Sydney, New South Wales, Australia. He is a current member of the Acoustical Society of New Zealand.

Mr Cottle has more than 13 years' experience in acoustic consulting in both Australia and New Zealand, specialising in environmental / industrial noise and vibration control and three-dimensional computer noise modelling.

Traffic Engineering

Mr Vinish Prakash from Gray Matter Traffic Engineering reviewed the application in reference to the traffic effects. A report was provided on the 26 September 2019. Further clarification and updated recommendations were provided by Mr Alastair Black by way of email on the 8th April 2020. The report and email updates and correspondence are attached as **Appendix C**.

Mr Vinish holds a Bachelor of Engineering Technology degree (Civil, 2014) from the Waikato Institute of Technology (WINTERC). And is a Member of Engineering New Zealand. He has worked in the civil/transportation field for 6 years.

Land Development Engineering

Mr James Templeton – Land Development Engineer for Waikato District Council reviewed the application and provided initial draft comment on the notification report. An updated report has been provided on the 22 October 2020 with recommended conditions. The updated report is attached as **Appendix D**

Mr Templeton lists his qualifications and experience as follows;

Qualification: NZCE (Civil)

Experience: 13+ years in Highways and Roading (Operations, Asset Management
Project Management)

5 years (Land Development)

Economics

Mr Derek Foy from Market Economics was engaged post notification to assist with analyzing the economic effects of the proposal. His report is attached as **Appendix E**

Mr Foy is Associate Director of Market Economics Limited, an independent research consultancy. He holds the qualifications of a BSc in Geography and an LLB from the University of Auckland. He has 20 years consulting and project experience, working for commercial and public sector clients. Mr Foy specialises in retail analysis, assessment of demand and markets, the form and function of urban economies, the preparation of forecasts, and evaluation of outcomes and effects.

3.0 STATUS OF ACTIVITY

3.1 Waikato District Plan – Waikato Section

Rule #	Rule Name	Status of Activity	Comment
27.10	Type of Activity	Discretionary	The proposal is for a commercial development within the Country Living Zone.
27.16	Access, vehicle entrance, parking, loading and maneuvering space	Restricted Discretionary Activity	The proposed vehicle entrances are unable to comply with sightlines and separation distances Aisle width for maneuvering space for carparks does not comply with the required 8.7m with 7.5m-7.8m proposed. Loading spaces – only 1 proposed where 3

			are required.
27.17	Vehicle Movements	Discretionary	The proposal will result in approximately 984-1388 vehicle movements per day when the zone allows 30 per day.
27.18	Noise	Discretionary	The proposal will infringe daytime noise standard on the southern boundary with the church café at 557 Horotiu Road by 5dBA. However I have questions on whether the proposal complies on a Sunday that remain unanswered.
27.24	Earthworks	Discretionary	The proposal involves approximately 5872m ³ of cut to waste and 6239m ³ of imported fill over an area of 3670m ² . If additional tanks are required for servicing then additional earthworks will be needed that have not been applied for.
27.36	Signs – advertising signs	Discretionary	The proposed freestanding sign has a total combined height of 7m and width of 2.5m with the signage component being 4.8m height by 2.2m width. The total area of the free standing signage is 10.56m ² . In addition there will be signage on each tenancy as shown on the elevation plans.
27.37	Signs – effects on traffic	Discretionary	Each tenancy will have an advertising board which exceeds the number of characters and symbols permitted.
27.47	Building Coverage	Discretionary	The proposal results in a total Building coverage of 25.5% (1290m ²) when 10% is allowed (502.9m ²)
27.48	Building Setbacks – allotments 1050m ² or	Discretionary	The proposed building is setback a minimum of 10m from the eastern boundaries and 7.1m from the southern boundary where 12m is required.

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Overall the proposal is a Discretionary Activity. Except for the noise matter yet to be worked through, I adopt the District Plan assessments set out in the application documents.

There are no rules in the Proposed District Plan that have legal effect.

4.0 NOTIFICATION AND SUBMISSIONS RECEIVED

4.1 Notification Decision

A notification decision was made on the 13th May 2020 to publicly notify the application. The decision concluded that there were likely to be or would be adverse effects in relation to Character and Amenity. Aside from publicly notifying the application, direct notice was served on the owners and occupiers of 12 properties within the vicinity of the site as well as those parties required to be served notice under Regulation 10 of the RMA. The list of the 12 properties served direct notice is set out below:

Ref	Property Address	Legal Description	Owners	Submission Made?
1	557 Horotiu Road TE KOWHAI	PT DP 21971 BLK XI NEWCASTLE SD	Mary C Bowen & Dianne Bowen	No
2	560 C Horotiu Road TE KOWHAI	LOT 1 DPS 82272	Clive I Dyson & Dianne F Clarke	No
3	560 B Horotiu Road TE KOWHAI	LOT 2 DPS 82272	Edward C Stocks & Andrea L Stocks & Patricia Ann Stocks & JW Trustees Limited	Yes
4	560 A Horotiu Road TE KOWHAI	LOT 3 DPS 82272	Richard C Burke & Desmond P P Chia	No
5	564 A Horotiu Road	LOT 4 DPS 82272	Brett I Findsen	No

	TE KOWHAI			
6	564 B Horotiu Road TE KOWHAI	LOT 5 DPS 82272	David W Bennett & Joanna L Bennett & BPA Trustee Limited	No
7	564 C Horotiu Road TE KOWHAI	LOT 6 DPS 82272	Arnold C Trigg & Dianne H Trigg	No
8	564 D Horotiu Road TE KOWHAI	LOT 7 DPS 82272 SUBJ TO ESMT DP 471756	Max Ravlich & Amanda Ravlich	Yes
9	8 Westvale Lane TE KOWHAI	LOT 1 DP 323466 BLK XI NEWCASTLE SD	Tait R Mitchell & Linda J Mitchell	No
10	578 Horotiu Road TE KOWHAI	LOT 1 DPS 5232 BLK XI NEWCASTLE SD	Gaynor J Stevens	No
11	577 Horotiu Road TE KOWHAI	LOT 2 DPS 17990 BLK XI NEWCASTLE SD	Martha P Novoa Hernandez	No
12	575 Horotiu Road TE KOWHAI	LOT 1 DPS 17990	Jeffrey H T Stewart & Elizabeth M Stewart	Yes

4.2 Submissions Received

25 Submissions have been received and can be found in **Appendix F**.

Two submissions support the proposal (#3 and #4), one is neutral (#20), and 22 submissions are in opposition to the proposal. Five parties have requested that they are heard at the hearing. (#2, #5, #15, #16 and #25)

Submission Number	Name	Address	For/Against	To Be Heard
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I	Vandghie & Michiel Badenhorst	650B Horotiu Road RD 8 Hamilton 3288	Against	No
2	Delwyn Brunt	39 Crawford Road Te Kowhai	Against	Yes
3	Amanda & Jack Schaaake	694B Horotiu Road RD 8 Te Kowhai	For	No
4	Heritage New Zealand Pouhere Taonga	PO Box 1339 Tauranga 3141	For	No
5	Shoring Tang	656 Horotiu Road RD 8 Hamilton 3288	Against	Yes
6	Jaimee Brunt	69 Limmer Road RD 8 Hamilton 3288	Against	No
7	Jennifer Kaye de Boer	166 Crawford Road RD 8 Hamilton 3288	Against	No
8	Tait Russell Mitchell	8 Westvale Lane RD 8 Hamilton 3288	Against	No
9	Andrea Julie Cadwallader	96 Crawford Road RD 8 Hamilton 3288	Against	No
10	Judith Gallagher	958 Horotiu Road RD 8 Hamilton 3288	Against	No
II	Julian Scott Stone	484 Horotiu Road RD 8 Hamilton 3288	Against	No

12	Amy Spitzer	14 Coombes Road RD 8 Hamilton 3288	Against	No
13	Catherine Heather Shaw	663 Te Kowhai Road RD 8 Hamilton 3288	Against	No
14	Amanda Ravlich	564D Horotiu Road RD 8 Hamilton 3288	Against	No
15	Tao Liu	656B Horotiu Road RD 8 Hamilton 3288	Against	Yes
16	Edward & Andrea Stocks	560B Horotiu Road RD 8 Hamilton 3288	Against	Yes
17	Sara Gavin	570B Te Kowhai Road RD 8 Hamilton 3288	Against	No
18	Michelle and Damian Max	Horotiu Road RD 8 Hamilton 3288	Against	No
19	Peter Douglas Scott	13 Westvale Lane RD 8 Hamilton 3288	Against	No
20	Pauline Kaye Hendrikse	509 Horotiu Road RD 8 Hamilton 3288	Neutral	No
21	Nadine Anne Stewart	165 Fullerton Road RD 8 Hamilton 3288	Against	No
22	Fay Kay	726 Te Kowhai Road RD 8 Hamilton 3288	Against	No

23	Nienke van der Helm	13 Duck Road RD 8 Hamilton 3288	Against	No
24	Jeffery Hugh Tasman Stewart	575 Horotiu Road RD 8 Hamilton 3288	Against	No
25	Marshall & Kristine Stead	703B Te Kowhai Road RD 8 Hamilton 3288	Against	Yes

Submissions can be summarised as follows:

Submission Summary	Point	Submission Number	My Response
<u>Economic</u> - Concern on what effect this proposal will have on the existing shops and/or lack of demand for more shops.		#1 #2 #3 #5 #6 #7 #8 #9 #10 #11 #12 #13 #14 #15 #16 #17 #18 #19 #23 #24 #25	Addressed within my assessment of effects and Plan provisions.
<u>Character, Amenity and Built Form</u> - The design/aesthetics of the proposal does not fit within the character of the township/village and/or immediate locality.		#1 #2 #5 #7 #9 #10 #11 #12 #13 #14 #16 #17 #18 #19 #21 #23 #25	Addressed within my assessment of actual and potential effects and Plan provisions.
Noise		#8 #14 #20	Acoustic Engineers have assessed and concluded acceptable – I have outstanding questions on Sunday Day noise.

Traffic Safety and numbers	#8 #14 #19 #24	Traffic Engineers have assessed and concluded acceptable
Infrastructure and Flooding	#19	Council LDE addresses this matter in his report.
Archaeology – accidental discovery protocol condition requested	#4	Condition recommended
Location – shops in the wrong place	#12 #14 #19 #20 (conditional), #22 #24	Addressed within my assessment of effects, plan provisions and other matters
Social Impacts	#14 #16 #19 #24	Addressed within my assessment of effects.

4.3 Late Submissions

All submissions were lodged within the submission timeframe.

4.4 Trade Competition Matters

One party has identified themselves to be a Trade Competitor. This is Submission #5 Mr Shoring Tang. Based on the address provided I am assuming that the Business Mr Tang operates is the FoodMart Dairy shown in Image 2 within the site descriptions above. Mr Tang considers that there will be direct effects on them. The submission fails to describe what those direct effects are. The submission notes the following reasons why they do not support the proposal:

- Not enough foot traffic to support the development
- The Base shopping mall is close
- Water tanks and septic tanks will affect amenity of the village.
- The development will become a ghost town

In my opinion these matters relate to indirect effects on the submitter and cannot be considered direct environmental effects.

As the location of this submitter is some distance away (850m linear distance) at 656 Horotiu Road, Te Kowhai. I am of the view that the only direct effects that can be identified on this party are those that relate to Trade Competition effects. Unless the submitter can provide additional evidence as to how they are directly affected during the pre exchange of evidence it is my recommendation that the submission should be struck out.

I note that submission #15 comes from the same site currently zoned Business in the Operative District Plan. (656B Horotiu Road, Te Kowhai) The Submitter Mr Tao Liu does not identify themselves as a Trade Competitor. It is my view that based on the address of the submitter there is real potential for this submission to have been undertaken on behalf of Submitter #5. The matters raised in this submission relate to:

Concern that the population in Te Kowhai will not support the commercial shops at the moment.

I recommend this matter is further investigated by the Commissioner to understand whether submission #15 is a valid submission.

Both submitters # 5 and #15 wish to be heard.

Many of the other submissions raise concern regarding having empty shops within the town, and the effect this will have on the town. This matter is discussed further in my effect's assessment under Economics Effects.

5.0 SECTION 104 CONSIDERATIONS

This section of the report outlines the statutory framework of the Resource Management Act 1991 under which the assessment of the application will be undertaken.

5.1 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)).

The following sections of this report will assess the proposal's effects on the environment and against any relevant objectives, policies of the relevant National Policy Statements, Waikato District Plan (Waikato Section), the Operative and Proposed Regional Policy Statement and the Regional Plan and other relevant regulations and other matters considered necessary.

5.2 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 particular resource consent application. The baseline has been defined by case law as being non-fanciful (credible) activities that could be permitted as of right by the District Plan. I will address the permitted baseline further in Section 6.0 below.

5.3 Part 2 Matters

All of the above considerations under section 104 are subject to Part 2 of the Act – purpose and principles (sections 5, 6, 7 and 8). The key matter when considering this application will be the Act's single purpose as set out in section 5, which is to promote the sustainable management of the natural and physical resources.

A full discussion and assessment of all Part 2 matters and a final overall judgement of whether the proposal promotes this part of the Act is set out in later sections of this report.

EVALUATIVE ANALYSIS

6.0 RULES PERMITTED BY THE PLAN

Section 104(2) states that *“When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.”*

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 particular resource consent application on a person. The baseline has been defined by case law as being non-fanciful (credible) activities that could be permitted as of right by the District Plan.

As the focus of the permitted baseline test is on the *effects* of permitted activities, it is necessary to first identify credible permitted activities in the Country Living Zone (CLZ) and then assess whether any of the permitted effects are comparable to the effects of the proposal.

As a permitted activity the following are examples of what could be carried out in the Country Living Zone:

- One Residential Dwelling and one Dependent Persons dwelling that complies with all other effects and building rules
- A childcare facility for up to 10 children that complies with all effects and building rules
- A Commercial Activity as a Home Occupation made up of 40m² within an existing dwelling with no more than 2 people employed who live off site with no customers after 7pm.

A selection of Effects and Building rules are as follows:

- Up to 30 Traffic movements a day

- Earthworks up to 100m³
- One sign up to 3 metres in height and 1m²
- Building Coverage (including required parking spaces) does not exceed 10%, in this case this equates to 502.9m²
- Gross floor area for accessory buildings does not exceed 80m²
- Yard setbacks of 7.5metre from the road boundary and 12 metres from other boundaries.

In my opinion when comparing the scale and nature of the activities proposed to those activities listed above it is clear that the effects resulting in the proposed activity are not comparable to those that could be appropriated by right. I therefore do not consider it a useful assessment to apply the permitted baseline in this case to my assessment of effects.

7.0 EXISTING ENVIRONMENT

Case law has held that the 'environment' upon which the effects are to be assessed is the existing and the reasonably foreseeable future environment (that is, the future state of the environment as it might be modified by permitted activities under the District Plan and unimplemented resource consents, where it appears likely that these consents will be implemented).

7.1 Current Environment

The current existing environment has been described in the site description analysis in section 1.3 of this report.

7.2 Unimplemented Consents

Subdivision Consent SUB0007/20 was granted on the 13th October 2020 to the land adjoining the subject site to the east. The subdivision granted 19 Rural Residential allotments at sizes ranging from 3000m² to 3450m² and proposes to vest road in Council. The road is already physically formed through a previous proposed subdivision however had not vested under the previous subdivision as the applicant applied for SUB0007/20 to increase densities in line with the proposed Village Zone rather than the Country Living Zone.



Figure 5: Approved Scheme Plan for SUB0007/20

There are no other unimplemented Resource Consents within the vicinity that I am aware of.

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

As the proposal is a Discretionary Activity, my assessment of effects is not restricted to any particular matters.

The actual and potential effects of the land use activities on the environment are those effects relating to:

- Positive Effects
- Character Effects
- Economic Effects
- Acoustic Effects
- Transportation Network and Parking Effects

- Servicing Effects
- Earthworks and Construction Effects.

Where relevant, the assessment below identifies whether actual and potential effects can be avoided, remedied or mitigated with the use of appropriate conditions of consent. The presence of any draft conditions is not a predetermination of a recommendation or decision to grant the application. They are simply set out to be of assistance to all parties, in particular the Hearing Commissioner, should they conclude that the application be granted subject to conditions.

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 and may outweigh such adverse effects and enable a conclusion to be made for a proposal to be approved.

The positive effects of the proposal are set out below:

- The construction of the proposed site will temporarily contribute to the economy through the provision of construction jobs. However no further information has been provided from the applicant to quantify this.
- If tenanted, the proposal will result in increased choice of retail for the residents of Te Kowhai.
- If tenanted, the proposal provides additional opportunity for social interaction within the community.

The long term benefits of the proposal are reliant on demand for retail being satisfied. This will be discussed in more detail within my section on Economic effects below.

8.2 Character Effects

“Local character is the distinctive identity of a particular place that results from the interaction of many factors - built form, landscape, history, people and their activities.” (Ref: *Summary of the value of urban design: The economic, environmental and social benefits of urban design. Ministry for the Environment, June 2005.*)

Built Form

One of the common themes raised in submissions is the concern regarding whether the built form appropriately fits with the character of the Te Kowhai Village.

The Te Kowhai village is a mix of building styles – and that partly makes up its character however, it is my view that the predominant character (and potentially that aspired to by submitters) is generated from the more traditional styles best illustrated by the church buildings, the hall and to some extent the school. Steeply pitched metal roofs, gables, painted weatherboard etc. In my opinion the proposed building does little to reflect/respect the village character. I am in agreement with the submitters that due to the roofline, scale and size as well as the tilt slabs used, that the character and built form of the proposal is more akin to a more densely populated urban set of shops than that of a small rural village.

In addition to the building itself when you also add in the signage proposed, both on the buildings and the seven metre high freestanding signage board, as well as the expanse of the parking and access areas, this combination of features shows little in the way of reflecting the existing character of the village or the Country Living Zone, in which the proposal is located. There are no other examples in the village where a set of attached shops at the scale proposed is evident.

I do not consider that some built form in this location would be out of place, the site is within the boundaries of the Te Kowhai village area where you would expect to see more densely populated built form within the 50km speed zones. It is evident that any structure within this site fills a logical gap in the urban form. The back drop to the east of the proposal is proposed to be more densely populated than typically seen in the Country Living Zone with approval of allotments down to 3000m².

It is the size, scale and design and associated curtilage of the proposal that in my view does not reflect the character of the village as a whole or the character of the immediate area.

Evidently there is a business activity approved within the relocated church to the south. However in my view the built form, scale and size of this fits more with existing character, the building is much smaller in footprint with the pitched roof and weatherboard materials complementing the character of the village.

Landscape

The applicant has provided a Landscape and Visual assessment from a Qualified Landscape Architect Ms Jo Soanes dated 14 February 2020 and attached in **Appendix A**. I have read Ms Soanes report and I accept some of her findings, however I do have concerns regarding the reliance in her reporting that places weight on the Proposed District Plan provisions and the presumption of change of zoning to the proposed site. In light of my concerns I asked the applicant's agent as to whether they could provide confirmation that findings held in the report were not in reliance of the PDP zone change and were derived solely within the context of the zoning provided for in the Operative District Plan. The agent was unable to provide this confirmation from the Landscape Architect. I have set out the matters for contention below:

Landscape Character Effects

I accept Ms Soanes sections 5.1.1 and 5.1.2. However when assessing the Magnitude of Change under section 5.1.3 Ms Soanes relies heavily on the Proposed District Plan changes to rezone the land and concludes that *"the proposed retail development will not significantly alter the broader landform patterns of the wider area, it will sit within the changing rural residential landscape signalled by the proposed rezoning of the area under the PDP from Country living to future Business Zone.*

She goes onto note that: *"Within the Site the development will introduce a complete land use change from currently rural residential (country living) to commercial. The proposal will form a permanent change to the Site for some time with changes to the land use and landcover for the carparking, building development and associated landscape planting. The magnitude of change to the Site itself is low, due to the permitted residential development to proposed commercial, and therefore the integration of quality landscape planting and boundary treatments to reflect the Te Kowhai village character is recommended."*

It is my view that the magnitude of change cannot be described as low because the proposed rezoning has no certainty of occurring and no weight can be applied to this matter at this stage in the process. The scale of the proposal results in seven attached commercial buildings with a total floor area of 1290m², the application also proposes 10.3m² of commercial freestanding signage at 7 metres in height and formed carparking to provide for 30 spaces. There is currently no such activity that is comparable within the Te Kowhai town when taking into account both the scale of the built form combined with the nature and intensities of the activities proposed. While the café directly to the south of the site has significantly more parking spaces for their activity (45 spaces), the activities on site are limited to one café and one gift shop with a building footprint of 398m². I do not consider the scale and intensity of the activities on the adjoining site to be comparable to that on the subject site. Due to the size of the existing Business zoned land, no such activity of a similar nature would be able to establish in the near future as a permitted activity, on land already zoned Business within the town.

Visual Effects

Under section 5.2 of her report Ms Soanes assesses the visual effects of the proposal. I accept section 5.2.1 of her report where she described the visual catchment. Section 5.2.2 addresses visual sensitivity from the immediate environment and sections 5.2.3.1 and 5.2.3.2 address magnitude of change from the immediate environment,

Section 5.2.3.3 addresses magnitude of change from transient views from Horotiu Road. Ms Soanes concludes:

“that due to the changing rural environment and the subdivision development within Te Kowhai and surrounding area, the magnitude of change for transient views from Horotiu Road is considered very low.”

I am concerned that this assessment again relies on the PDP rezoning matters to come to these conclusions and therefore the conclusions on visual effects described in section 5.2.4 cannot be relied upon. The CLZ allows for one residential dwelling on a 5000m² section with limits on signage. Although the site will be filling a gap in a line of existing development and the subdivision granted behind allows rural residential development down to 3000m², it is my view that the scale and intensity of the proposal including the seven attached retail

units, the close board fencing on the eastern and northern boundaries, expansive carparking and all associated signage, creates a bulk form well beyond the activities which are generally established within a Country Living Zone.

Ms Soanes recommends a number of mitigation measures to integrate the development into the landscape. Key recommendations include:

- Kowhai specimen trees along the road frontage
- Native planting and low hedging to provide partial screening of the carparking
- Planting to assist in screening water tanks and effluent field
- Timber boundary fencing (stained a dark colour) and planting along the north and east boundary to screen rear of development for 557 Horotiu Road and future rural residential development and
- Timber rail fence along the road boundary to tie into the adjacent Café Church development and wider Te Kowhai rural character.

It is my view that while the proposed landscaping features such as post and rail fencing and Kowhai trees will help soften the proposal into the landscape, they do not mitigate the scale and design of the built form itself.

The applicant offers no further assessment or mitigation from an architect or urban designer on the proposed built form and how it interrelates to the existing character of the village or the Country Living zone.

Social Coherence

I would like to add an additional aspect of Character and Amenity into consideration. It is my opinion that the social coherence and sense of place that is found within the Village also contribute to overall character and amenity values. Chapter 11 of the Operative District Plan (Social, Cultural and Economic Wellbeing) can provide some context and guidance to this effects assessment. Chapter 11 notes:

Development that does not correspond with, or respect the context of, the place and the established

development pattern can cause towns, villages, neighbourhoods and localities to lose social coherence and a sense of place, resulting in loss of social and cultural wellbeing. This in turn directly affects the amenity of the town.

The proposal if tenanted will result in a significant increase in traffic numbers and members of public occupying the site than one would anticipate, would be associated with the amenity values of an area dominated by rural residential dwellings.

The scale and nature of the activities proposed will result in effectively creating a town centre for Te Kowhai within the Country Living Zone, on the periphery of the town. This is away from the existing Business Zone activities, the town hall, school and existing and future residentially zoned areas. It is my opinion that establishment of what will effectively be a town centre into the Country Living Zone, on the northern outskirts of the town will erode the potential for solidifying the existing community cohesion. I do recognise that currently due to the existing layout and zonings the town has little in the way of a defined town centre and this is discussed in my economic section in direct relation to the shops. However, on visiting the site and wider area, it is evident that the focal points of the town are located within the School, and Town hall area where it was my observation that the community congregate. This is in my experience unusual, as normally social and community cohesion is most evident around existing businesses and shops.

Conclusions on Character

The AEE lodged by the applicants Planner Ms Jodie Hansen relies on the rezoning of the land to Business to form conclusions that the effects on character are less than minor and therefore acceptable. Further to this assessment, the applicant has commissioned a Landscape Assessment (at the request of the Council Planner dealing with the application at the time), this has been relied upon by the applicants agent to solidify their view that Character effects are entirety acceptable provided the mitigation undertaken by Ms Soanes is implemented.

My view is that Character is made up of so much more than just Landscape and Visual effects. It is my opinion that the proposal will be detrimental to the effects on the character of the Te Kowhai Village as a whole and the immediate environment surrounding the site because:

- The built form does not respect and/or respond to the existing character of the immediate surrounding area or the Village as a whole.

- The Landscape Architect has relied on the Proposed District Plan rezoning that has no legal effect to conclude that the landscape and visual effects are satisfactory, and I do not consider that is the correct approach when undertaking an Operative District Plan assessment.
- The establishment of what will effectively become the town centre for Te Kowhai on the northern periphery of the village, will erode the ability to solidify the existing community cohesion that is more established in other areas of the village.
- The proposal (including the additional comings and goings of people and vehicles) will, when combined with the neighbouring church café site, result in a change of dominant use from Rural Residential Living to Commercial use. As the zoning is Country Living on the northern edges of the town, I find this unacceptable.

In conclusions having regard to the considerations discussed above I am of the view that the character effects of this proposal are likely to be detrimental to the character of Te Kowhai Village and the Country Living Zone in this location. Residents of the Village have sent a clear message through submissions that the proposal does not align with their aspirations for the character of the Village. The effects of the proposal in terms of character are in my opinion not acceptable.

8.3 Economic Effects

There are numerous submissions that raise concerns regarding whether there is sufficient population demand to warrant the proposed size of the shops proposed. In response to this I engaged Mr Derek Foy from Market Economics to provide expert opinion and address the concerns raised. There was also concern that the location of the proposal will “draw away” from the existing shops and cause these to close. Mr Foy’s full Economic assessment can be found in **Appendix E**.

Retail Demand

Mr Foy has concluded as follows:

Our assessment has shown that Te Kowhai is a very small retail market now, and will remain so into the future. The amount of retail/hospitality space in the town is broadly consistent with the

amount of space that is sustainable. It will be around 2028 before the new growth cells anticipated in Waikato 2070 begin to be developed, and residential growth increases local retail demand to a point where additional local retail supply is sustainable. Prior to 2028 at the earliest, any additional retail and hospitality space would be likely to result in the closure or much reduced viability of Te Kowhai's few retail/hospitality businesses.

The analysis undertaken by Mr Foy demonstrates that there is no need for additional retail supply at present and there is a strong reliance on the growth cells within Waikato 2070 plan being implemented to create additional demand for retail space. At this point in time it is unknown as to the likelihood of the timeframes identified in Waikato 2070 being enacted. Waikato 2070 increases the density of residential areas above that which are proposed under the PDP. There is no certainty that these additional residential areas identified in Waikato 2070 will start to develop by 2028 or that rezoning of the identified areas in the PDP would occur by this date to the medium residential density necessary to provide the additional demands. The village of Te Kowhai remains unserved by reticulated wastewater and water supply meaning that infrastructure servicing would need to occur prior to the approval of single density housing indicated in Waikato 2070. I asked the Development Engineer Mr James Templeton to explore with Watercare what the future plans for reticulated infrastructure are for the Te Kowhai area. At present there are no adopted plans to provide publicly reticulated wastewater and water supply for Te Kowhai. The draft LTP proposes to set aside funding for the years 2028/29 and 2029/30 for a rising main and pumping station to service Te Kowhai with a Wastewater network and allow further residential growth. However this is only draft and a decision on this is yet to be made by Council, it could be that Council decide that this is not the place where growth money will be spent and the figure is removed from the LTP.

I can only conclude that if constructed within the 5 years that the applicant has to give effect to the consent, there is a strong likelihood that most of the shops will be left untenable for a number of years due to lack of demand.

This is due to the lack of certainty on the future development of Te Kowhai to increase the population demand to a level that would sustain the proposed commercial development from an economic perspective.

It is my opinion that the likelihood of long term vacancies of the retail space (should consent be granted) is high. This has the potential to impact the amenity of the directly surrounding

area, and the overall amenity of the town as you arrive and leave through the northern gateway to Te Kowhai. Vacant shops will also have the potential to impact on the sense of pride and place and community cohesion aspired to by the community. I share the submitters concerns that the lack of retail demand will potentially lead to adverse amenity effects on the village and directly surrounding area through vacancies of retail space.

The lack of demand identified and uncertainty on when intensification will occur within the Te Kowhai residential areas erodes the positive effects identified earlier in my report (with the exception of economic benefits during construction) because these benefits were on the reliance that the complex would be tenanted with high occupancy rates. Further to this I observe that the Church Café, directly to the south of the site has been advertising for a tenant since at least December 2019, (as observed from Google Street view) and to my knowledge is yet to be tenanted.

Effects on Existing Shops

Mr Foy has concluded that if the new shops are tenanted it is likely that this will have a direct impact on the existing shops within Te Kowhai.

He states:

*“..the creation of additional retail or hospitality space in Te Kowhai (over and above the activities identified in section **Error! Reference source not found.**) would be likely to result in either much of that space remaining vacant or the closure of existing businesses. However, we are not clear as to the implications of any such potential closures in the case of Te Kowhai. Generally in resource management case law in New Zealand, a concern with distributional effects arises because:*

- new retail/commercial activities can generate trade competition effects on existing businesses.*
- while those direct (trade competition) effects are not able to be considered as effects under the RMA, the (indirect) effects flowing from those direct effects are able to be taken into consideration in evaluating the merits of a proposal.*

- *Those indirect effects include effects on the viability and vitality of centres, and the ability for centres to continue to function as strategically valuable community assets that play an important role in providing for the needs of communities.”*

However, in the case of Te Kowhai, there is no centre zone to be concerned about effects on. The very limited commercial zones are restricted to three separate Business spot zones, each accommodating a single business, with a fourth business location at the site of the Te Kowhai Village cafe. Of those four locations:

- *The automotive workshop, a type of activity that is not usually included in retail impact assessments, nor likely to be affected by the proposed development from the current application which is unlikely to contain any automotive presence.*
- *The grocery store is a single business and therefore does not constitute a centre as discussed in the District Plan. It cannot be said that a standalone store plays any role in consolidating activity (section 6.3.3 of the Plan), nor that it has a social coherence or sense of place (objective 11.2.1).*
- *The café consented for the site adjacent (to the south) of the application Site would likely benefit from co-location of additional retail activities, although any disbenefit would be limited to trade competition effects, and not generate flow-on effects of any consequence for community wellbeing and functional amenity.*
- *The Te Kowhai Village café on Horotiu Road is not zoned Business, and so in our opinion it is questionable how much regard should be had to avoiding effects on it.*

Given the standalone and non-centre, non-clustered nature of these four activities, it is to our mind questionable how much the District Plan would (or could, under the constraints of RMA case law on indirect effects) seek to avoid indirect effects on them. While our assessment indicates it is likely that some of those businesses could close, or shift to reduced operating hours as a result of the trade competition generated by the proposed development, those effects would be mostly limited to trade competition effects, and therefore be precluded from consideration when evaluating the merits of the application. That is perhaps a technical matter for the planning assessment to consider.

Mr Foy has set out an accurate description of the existing shops.

I consider that regard can and should be had to the Te Kowhai Village Café/Bakery and fruit and vegetable shop as these businesses are a legitimate part of the established existing environment therefore any indirect effects on these businesses can be considered.

However, I do not think this alters much in terms of the conclusions reached. I agree with Mr Foy that the resource management implications of any such closures are limited by the current scattered nature of the town's existing businesses, the absence of any clusters of economic activity in the identified "town centre gateway", and the inability to consider trade competition when assessing the merits of an application.

If the new complex is tenanted then it appears likely that existing shops will close, but due to the scattered nature of the existing shops, it is my view that the effects on amenity and community sense of pride and place will be less adverse than if the proposed new shops remain untenanted and the existing shops remained. This is because the proposal is a consolidated set of seven shops so many empty shops will be more noticeable. Mr Foy has noted that closure of the existing shops will have some accessibility effects on the residents of the southern area. I agree that this will be the case. In part this would be offset by those in the north now having greater accessibility. However, the growth for the town has been earmarked within the southern areas, so in the long term the location would have the potential to adversely affect accessibility to what will become a quasi town centre. One could argue that due to the total size of Te Kowhai, the proposed complex would still be only located approximately 1km from the southern most residential areas. The Village has established footpaths and enough parking is provided on the site. However I am of the view that accessibility should be viewed in the context of the Village size and characteristics and that a town centre is typically located in the centre of the town. When taking account of these matters, it is my view that accessibility will be adversely affected.

In conclusion the lack of retail demand demonstrated and the uncertainty around when this demand will eventuate, has the potential to contribute to adverse amenity effects on the village, by leaving shops potentially vacant for a long period of time. The conclusions by Mr Foy sums up the economic effects nicely:

"In summary, we consider the proposed development to be much larger than would be sustainable in the current township of Te Kowhai, and the better part of a decade ahead of demand. The Site is

poorly located with reference to Te Kowhai's future growth areas."

I accept Mr Foy's overall findings. I note that on the basis of these, the potential positive benefits such as job creation (referenced in section 8.1 of my report), that would normally be expected from a retail development such as the proposed, may not arise from the current application. This is due to the low current levels of demand that are unlikely to increase materially for more than five years.

8.4 Acoustic Effects

The proposal for retail, takeaways, superette and associated traffic movements has potential to result in adverse noise effects, particularly when located near residential activities. The applicant has provided an Acoustic Assessment by Earcon and this has been reviewed by Mr Mat Cottle from Marshall Day Acoustics.

Mr Cottle requested further information be provided to understand the current background noise levels during the evening and night time period. The request for this information coincided with the Level 4 lockdown period required due to Covid-19 Pandemic. Mr Cottle has commented as follows:

We previously requested commentary from Earcon around predicted night-time noise levels and associated effects. The intent of our request was to focus on all outdoor plant which may operate continuously such as, as noted in Earcon's original assessment: "...external heat pump units, extractor fans and chillers may produce noise originating from ground level along the eastern side of the building..." rather than any breakout noise from inside tenancies.

Nonetheless, Earcon have provided night-time predictions from mechanical plant anticipated to operate continuously. A level of 33dB LA10 has been predicted by Earcon for both 557 Horotiu Road and Lot 4000 DP 527122.

The predicted level of 33dB LA10 is similar to the existing albeit, predicted, night-time ambient noise level from traffic movements on Horotiu Road (Earcon predict 31dB LAeq / 34dB LA10 at the

eastern boundary). We consider sound from operating mechanical services may be audible, particularly during breaks in traffic.

However, based on the above we consider noise will be reasonable and will not result in adverse night-time effects. Our conclusion is the same for evening operation.

Mr Cottle considers that there are however some additional Best Practicable Options that could be undertaken to further screen the service areas behind each shop. He has recommended that instead of the slated screens that a 1.8m high acoustic fence around each service area is implemented. On asking for comment from the applicants agent Mr Chris Dillon as to whether the applicant would implement this measure they have agreed to do this in an email dated 21st April 2020 and note the following in relation to the visual effects of changing from slated to solid fencing:

“I think the change from slated to solid fencing around the service areas of each tenancy will be ok, as they are setback from the rear boundary, and because of the presence of the proposed 1.8m timber fence that will be erected along the northern and eastern boundaries as set out in the Landscape Plans, effectively screening the service areas from view from most vantage points outside the site.”

Mr Cottle has also recommended an acoustic screen between the church café site and the subject site to mitigate the noise infringement in this location, however as the owners have provided written approval I do not consider this to be necessary as any infringement of noise along this boundary can be disregarded. Further to this the landscaping plan seeks to facilitate interconnection between the café site and the subject site.

One question I have in this space, which I have been unable to obtain confirmation on from the Council engaged Acoustic engineer at the time of writing my report. Is whether the proposal complies during the day on a Sunday? The predictions provided by Earcon for the cumulative daytime noise measured at numerous receiver properties are over the 40dBAL₁₀ limit set for Sunday during the daytime. I have set these out below for ease of reference:

it is clear whether the proposal meets the Sunday daytime limits at the receiver properties listed in their calculations. Aside from the Sunday daytime noise considerations, I am satisfied that the acoustic effects can be managed and that due to the level of road noise experienced in this location there will not be such a change in noise levels that will be so noticeable as to alter the amenity values associated with the acoustic effects.

8.5 Transportation Network and Parking Effects

A review of the Integrated Traffic Assessment undertaken by CKL has been undertaken by Gray Matter dated 26 September 2019. With further clarifications and recommendations in email correspondence dated 8th April 2020 and recommended conditions updated on 23rd October 2020.

The review concludes the following in relation to Parking, Loading and Manoeuvring and cycle parks:

Parking

The proposal includes 36 parking spaces, the District Plan requires 33. There is a surplus of 3 parking spaces. The parking spaces will typically be 2.5m wide with 5.1m stall depth. The further information request shows manoeuvring space as 7.7m (previously shown as 7.6m) which complies with the District Plan. Two accessible parking spaces are provided on site. One space is located near the superette, the other near the general retail activities. The location of the accessible parking spaces appear reasonable. There appears to be sufficient parking on site to cater for parking demand.

Loading

The ITA states that three loading spaces are required under the District Plan, only one loading space is provided on site. The loading space is approximately 16m x 5.5m and located on the southeast side of the site directly in line with the exit only vehicle crossing.

Servicing at the supermarket is likely to be more frequent and require larger vehicles when compared to the other activities on site. One loading space provided on site is likely to be sufficient for servicing the site.

Manoeuvring

The parking spaces comply with District Plan manoeuvring width requirements. There does not appear to be significant issues related to vehicle manoeuvring into or out of parking spaces.

Following our further information request swept paths have been provided for a semi-trailer entering the site parking within the loading space and exiting the site via the exit only vehicle crossing. We note that the required clearance (300mm) for the swept paths is not shown on the drawings. There are some locations where it appears that adequate clearance may not be achieved and damage to the kerbs within the site may result. We recommend providing minimum 300mm clearance from vehicle body to kerbs.

Cycle Parking

The District Plan requires four cycle parking spaces. No parking spaces are shown on the plans. The ITA states that there is sufficient space on site to provide cycle parking spaces. We recommend that cycle parking spaces are provided in accordance with the District Plan.

I accept the findings and recommendations in relation to the above matters. I conclude that (if the consent is granted), conditions of consent as per the recommendations noted above can adequately manage effects to ensure that traffic safety and function in relation to the above matters will be no more than minor.

Access

The proposal includes two vehicle crossings, all access will be via the northern vehicle crossing with a secondary vehicle crossing for exit only movements.

The Traffic review has commented as follows:

North Vehicle Crossing

The vehicle crossing is located approximately 130m from the Ngaruawahia Road / Horotiu Road intersection and will be approximately 12.5m wide at the edge of seal. The vehicle crossing effectively forms a crossroads intersection with the opposite residential crossing servicing approximately three residential dwellings (approximately 30 veh/day).

The ITA states that the vehicle crossing fails due to non-compliant separation and visibility. We note that this is based on a posted speed of 100km/h. The posted speed has since changed to 50km/h

which requires 90m visibility at the vehicle crossing. There appears to be sufficient visibility in both directions. The required separation between accesses reduces from 100m to 15m.

South Vehicle Crossing

The southern vehicle crossing is shown on the plans as 4m wide at the property boundary and approximately 11m wide at Horotiu Road. There appears to be sufficient visibility at the vehicle crossing for a 50km/h speed.

Council's Traffic Engineer team from Gray Matter raised concerns as to whether the second crossing was necessary and considered that mitigation was required to address safety effects. On subsequent discussions with the applicant Traffic Engineer Judith Makinson it was agreed between Ms Makinson and Mr Black from Gray Matter that the following would address the concerns of having two vehicle crossings.

The following mitigation measures are proposed to be provided within the detailed design proposed condition:

- Installation of right turn bay/break in the flush median at the main site access (2 way crossing) and continuous flush median along the site frontage to be provided. This will be amendments to road markings only and no seal widening will be required.*
- The above road markings can be subject to a consent condition requiring detailed design, approval by WDC and installation before the site is operational.*
- With the continuous flush median in place, and appropriate signage the second exit only crossing for service vehicles can be retained.*

Based on the above mitigation measures accepted by Mr Black and Mr Prakash, I conclude that the effects on access and traffic safety will be no more than minor and acceptable under section 104(1)a.

Traffic Efficiency and Roding Network

Section 7.3.1 of the applicants ITA estimates that Horotiu Road carries around 4,200vpd, with the proposal likely to increase traffic demands by some 984vpd to 1,388vpd in the

vicinity of the subject site.

Whilst the estimated generation of vehicles from the proposal is proportionately high compared to the existing anticipated volumes, Horotiu Road was previously State Highway 39 and therefore designed to carry a larger capacity than the existing 4,200vpd. Typical traffic lane capacity is between 800vph and 1,200vph therefore assuming a worst case of 800vph capacity and assessing the likely future demand as being some 690vph (i.e. 504vph existing + 186vph development traffic) it is clear that the overall traffic demand is less than the capacity of a single traffic lane. As such, the effects of the proposed development are considered to be less than minor.

The review undertaken by Gray Matter states: The SIDRA modelling provided indicates that the additional traffic is unlikely to result in adverse efficiency effects on Horotiu Road. There does not appear to be significant issues relating to capacity or traffic efficiency on Horotiu Road.

On the basis of the opinions above I conclude that the actual and potential effects on efficiency and the road network will be no more than minor and are acceptable under section 104(1)a.

8.6 Onsite Servicing - Stormwater Management. Water Supply and Wastewater

Three Waters

There is no public reticulation available in Te Kowhai for wastewater, water supply and stormwater. Therefore it is proposed to manage the three waters on site. The proposal has been supported by a Three Waters Management Plan prepared by Wainui Environmental, and outlines the following:

Stormwater

Stormwater management is by way of an underground soakage system. A 10m wide easement in gross is located over the drain which runs along the northern and eastern boundaries. This drain is

part of the Waikato Regional Council drainage network. The swale will convey all secondary overland flow during storm events that exceed the design loading of the soakage system, as will be the case with development of all lots within this subdivision.

The Council Land Development Engineer Mr James Templeton has reviewed the report and comments as follows:

The Three water report states “All roof and runoff from the proposed carpark and other handstand areas shall be conveyed to an underground soakage system.” The statement is incorrect as the roof supply will need to provide for water tank supply.

Pre-treatment is necessary before entering the soakage system.

I have asked Mr Templeton to help me understand the flooding implications of the proposal. Mr Templeton is satisfied that the flooding assessment undertaken by the applicant's Engineer addresses the necessary requirements in relation to flooding matters. The stormwater has been designed to ensure that there are no downstream flooding effects. Mr Templeton has now confirmed that it is in fact likely that a Regional Consent will be needed for undertaking earthworks within a flood plain area and that through the Regional Council consenting requirements any displacement of flood water affecting downstream flooding will need to be addressed. Unfortunately, as this has only come to light very close to pre circulation dates I have been unable to explore this matter further with the applicant or Regional Council. I invite the applicant to confirm the status and requirements of their regional consenting requirements in their pre circulated evident. I consider a clear understanding of the consenting requirements at both Regional and District levels allows for best practice integrated resource management decision making.

Wastewater

Wastewater will be disposed of via an advanced secondary treatment system with disposal to ground via a conventional bed. The volume of effluent expected to be generated by the commercial activity has been estimated to be 3m³, which complies with the permitted thresholds of the Waikato Regional Plan (refer to Rule 3.5.7.6 of the Waikato Regional Plan).

The Council Land Development Engineer Mr James Templeton has reviewed the report and comments as follows:

The site is limited with available open spaces for an EDA that is separated adequately from the Stormwater Management devices. The wastewater field should also include a 50% reserve area for disposal and this has not been detailed on the plans. The final arrangement could be adjusted within the site with further considerations at detailed design stage.

Water Supply

Water supply will be provided via two 25,000L water tanks which will be partially or fully buried. The Three Waters Management Plan estimates 2000L/day of potable water when the development is operating at full capacity.

Mr Templeton has reviewed the proposal and notes that “the assumptions for water supply will require further investigation at detailed design stage to further establish the number of total water tanks required to provide adequate supply as well as adequate firefighting storage capacity.” He notes that as a last resort this could be provided underneath the carpark.

Findings on Servicing

Mr Templeton proposes that the applicant can prove the assumptions made for the water supply and wastewater disposal at detailed design stage as a condition of consent. Typically, I would agree with this approach. However, I do have some concerns in relation to this particular proposal leaving the detail until condition stage. The site has a number of limitations restricting the location of the servicing. The wastewater disposal field and reserve area is shown to be located in close proximity to the outdoor seating area and appears to be in conflict with the Landscaping Plan provided by Ms Soanes. In my view, further detail should be provided to show that the wastewater system and required reserve area can be provided within the limitations of the site, while avoiding conflicts with the proposed landscaping mitigation. In terms of water supply, the number of actual tanks on the site are yet to be confirmed and the requirement for tanks for firefighting supply have also not been confirmed at this stage.

The Three waters report notes that the café facility next door has 180m³ of water for firefighting purposes and it may be possible to enter into a shared arrangement for the supply. No such arrangement has been forthcoming to date and if such an arrangement cannot be made I question where the firefighting water supply tanks will be located and what the effects of these will be?

Due to the limitations on the site and the visual effects these tanks can have and the fact that based on the neighbouring site (approximately 8 partially buried tanks), the number of tanks is not going to be insignificant. I do not consider that there is enough information from a planning perspective to draw conclusions on the effects of the onsite servicing. If tanks are to be buried due to lack of space or to reduce visual effects, then the earthworks figures will need updating to reflect this.

8.7 Earthworks and Construction Effects

The earthworks plan shows 3670m² of earthworks with cut volume of 5872m³ and fill volume of 6239m³. All cut material will be removed from the site and the fill volume will be imported. The applicant proposes erosion and sediment controls to be installed prior to earthworks which includes a silt fence along the edge of the drain and a stabilised construction entrance. As well as a buffer between the earthworks and the drain. The controls will remain in place throughout the works.

It is estimated that approximately 605 truckloads of material in total will be removed and imported to the site. This is assuming the use of double truck and trailer units to remove the cut material from the site and import the fill volume. Earthworks will be completed over approximately 43 days assuming a total of 14 trucks per day. This ensures that the traffic movements for earthworks are undertaken within the permitted maximum movements of 30 per day.

Sediment and Erosion control measures can be implemented for the site and a temporary traffic management plan can be conditioned to ensure that trucks arriving and leaving the site removing and importing material can be managed to ensure less than minor effects on traffic safety. No assessment has been done by the Acoustic Engineers on whether the

proposal will meet the Construction Noise effects however a condition requiring a Construction Noise Management Plan can address this matter to ensure compliance with the rules.

8.8 Conclusion on Actual and Potential Effects s104(1)a

My assessment above identifies that there are adverse effects on the character of the village. The development is at a scale larger than any other Business development within the Village effectively creating a town centre for the village of Te Kowhai on the northern outskirts of town. The addition of the economic effects identified by Mr Foy that show that the demand is very low for retail and the likelihood of empty shops is high. This in turn has the potential to also affect amenity and character of the village. The lack of certainty around when the retail demand will be created provides no further comfort or assurance that these effects will be short term. As a result of these findings there is a lack of positive economic benefits identified that often in a case like this would help to offset the adverse effects. The effects on the Transportation effects and Acoustic effects have been satisfied. I have some concern as to the appropriateness in this case to leave details of servicing to conditions stage if consent is granted.

I conclude based on the matters raised in the sections above that overall the adverse Character effects cannot be avoided, remedied or mitigated against in this case.

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

In accordance with section 104(1)(b) of the RMA, the following assessment considers the proposed retail complex in terms of relevant provisions of policy statements and plans. The focus is to establish if the proposal is consistent with the objectives and policies of relevant plans in addition to consideration of issues, environmental outcomes, rules, explanations and reasons.

9.1 National Policy Statements

9.1.1 Urban Development 2020

This National Policy Statement on Urban Development 2020 (NPS-UD) came into effect on the 20 August 2020.

The NPS-UD 2020 recognises the national significance of:

- having well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future
- providing sufficient development capacity to meet the different needs of people and communities.

The NPS-UD 2020 requires councils to plan well for growth and ensure a well-functioning urban environment for all people, communities and future generations.

This includes:

- ensuring urban development occurs in a way that takes into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi)
- ensuring that plans make room for growth both 'up' and 'out', and that rules are not unnecessarily constraining growth
- developing, monitoring and maintaining an evidence base about demand, supply and prices for housing and land to inform planning decisions
- aligning and coordinating planning across urban areas.

The NPS-UD 2020 contains objectives and policies that councils must give effect to in their resource management decisions.

Section 1.3 of the NPS-UD sets out when the NPS applies.

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

Urban Environment is defined in the NPS-UD as:

- a) urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that: is, or is intended to be, predominantly urban in character; and*
- b) is, or is intended to be, part of a housing and labour market of at least 10,000 people*

In this case the Village of Te Kowhai does not meet the definition of urban environment. It is expected to grow to a population of 4000 in the next 50 years as set out in Waikato 2070. The NPS- UD is therefore not a relevant consideration for this proposal.

There are no other National Policy Statements that I consider relevant.

9.2 National Environmental Standards

9.2.1 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 a change in land use 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.

In this case the underlying subdivision assessed the site and concluded that the site is not a HAIL site and as such the proposal is not triggered under the NES.

9.2.2 Other NES

The NES for Fresh water and the NES for Air Quality have not been assessed as both of these are relevant to the Regional Authority rather than the Territorial Authority. I do not consider assessments against these standards would be of use to the Commissioners decision making process.

9.3 Waikato Regional Policy Statement

The Waikato Regional Policy Statement (RPS) provides an overview of the significant resource management issues of the region and puts in place objectives, policies and methods to achieve integrated management of the natural and physical resources of the region.

The Waikato Regional Policy Statement became operative on the 20 May 2016.

Set out below are the relevant objectives and policies from the Waikato Regional Policy Statement and assessments of this proposal in relation to them.

The relevant Objectives and Policies are set out below:

- **Objective 3.12 Built Environment**

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:

- a) promoting positive indigenous biodiversity outcomes;*
- b) preserving and protecting natural character, and protecting outstanding natural features and landscapes from inappropriate subdivision, use, and development;*

- c) *integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors;*
- d) *integrating land use and water planning, including to ensure that sufficient water is available to support future planned growth;*
- e) *recognising and protecting the value and long-term benefits of regionally significant infrastructure;*
- f) *protecting access to identified significant mineral resources;*
- g) *minimising land use conflicts, including minimising potential for reverse sensitivity; h) anticipating and responding to changing land use pressures outside the Waikato region which may impact on the built environment within the region;*
- i) *providing for the development, operation, maintenance and upgrading of new and existing electricity transmission and renewable electricity generation activities including small and community scale generation;*
- j) *promoting a viable and vibrant central business district in Hamilton city, with a supporting network of sub-regional and town centres; and*
- k) *providing for a range of commercial development to support the social and economic wellbeing of the region.*

Whilst the proposal is within the urban limits of the town and within a defined growth area, I am concerned that the proposed land use does not occur in “*an integrated, sustainable and planned manner*”. The establishment of this scale of development undermines the planned development of the town as it stands in the Operative District Plan, as the proposal seeks to establish what will be effectively the town centre for Te Kowhai within the Country Living zone usually reserved for Large Lot residential living. The economic assessment undertaken demonstrates that due to the lack of demand there is little in the way of positive economic outcomes that would result from the establishment of this centre as demand is not present and relies on Waikato 2070 being given effect to by 2028. Whilst the proposal will provide for some additional choice and opportunity for social interaction/meeting places for the residents of the town. The location within the Country Living zone means that the centre is not centrally located to serve the residential areas, meaning that accessibility is affected.

- Chapter 6 - Built Environment - 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; and*
- d) has regard to the existing built environment.*

I am satisfied that the proposal has regard for the principles set out in section 6A, which includes establishing within existing urban areas and not compromising the infrastructure and traffic infrastructure. However, the number of shops proposed in this location and the scale of the activity would serve more as a town centre than a set of neighbourhood shops to service the immediate area, particularly when considering the population of the town. Typically in the long term, densities decrease out from the town centre. Based on this, demand and pressure to intensify the areas directly surrounding the retail complex will likely occur. This will move any growth pressure for the town north around the proposal, and into the nearby adjoining country living and rural areas. These areas of country living have been set aside to provide for rural/residential type living and avoid proliferation of rural residential living in the rural zone. The pressure to intensify these areas into more densely populated residential living, will likely in turn put pressure back on the rural zones by those persons seeking a more rural character than residential. The establishment of a town centre within the Country Living zone location will in my view lead to unplanned growth pressure and intensification demands around the proposed retail complex and will likely have the effect of undermining the spatial planning for the town of Te Kowhai but will not likely undermine the spatial planning of the region as a whole. The effects will be localised to Te Kowhai.

- Policy 6.16 Commercial development in the Future Proof area

Management of the built environment in the Future Proof area shall provide for varying levels of commercial development to meet the wider community's social and economic needs, primarily through the encouragement and consolidation of such activities in existing commercial centres, and predominantly in those centres identified in Table 6-4 (section 6D). Commercial development is to be managed to:

- a) support and sustain the vitality and viability of existing commercial centres identified in Table 6-4 (section 6D);
- b) support and sustain existing physical resources, and ensure the continuing ability to make efficient use of, and undertake long-term planning and management for the transport network, and other public and private infrastructure resources including community facilities;
- c) recognise, maintain and enhance the Hamilton Central Business District as the primary commercial, civic and social centre of the Future Proof area, by:
 - i) encouraging the greatest diversity, scale and intensity of activities in the Hamilton Central Business District;
 - ii) managing development within areas outside the Central Business District to avoid adverse effects on the function, vitality or amenity of the Central Business District beyond those effects ordinarily associated with trade competition on trade competitors; and
 - iii) encouraging and supporting the enhancement of amenity values, particularly in areas where pedestrian activity is concentrated.
- d) recognise that in addition to retail activity, the Hamilton Central Business District and town centres outside Hamilton are also centres of administration, office and civic activity. These activities will not occur to any significant extent in Hamilton outside the Central Business District in order to maintain and enhance the Hamilton Central Business District as the primary commercial, civic and social centre;
- e) recognise, maintain and enhance the function of sub-regional commercial centres by:
 - i) maintaining and enhancing their role as centres primarily for retail activity; and
 - ii) recognising that the sub-regional centres have limited non-retail economic and social activities;
- f) maintain industrially zoned land for industrial activities unless it is ancillary to those industrial activities, while also recognising that specific types of commercial development may be appropriately located in industrially zoned land; and
- g) ensure new commercial centres are only developed where they are consistent with a) to f) of this policy. New centres will avoid adverse effects, both individually and cumulatively on:
 - i) the distribution, function and infrastructure associated with those centres identified in Table 6-4 (section 6D);
 - ii) people and communities who rely on those centres identified in Table 6-4 (section 6D) for their social and economic wellbeing, and require ease of access to such centres by a variety of transport modes;
 - iii) the efficiency, safety and function of the transportation network; and

iv) the extent and character of industrial land and associated physical resources, including through the avoidance of reverse sensitivity effects.

The proposal is within an identified future proof urban area identified in Map 6D of the Regional Policy Statement. The subject site is located along a transportation corridor where development is expected to occur. The size of the development proposed will not significantly draw away business from the main town centres of Ngaruawahia or The Base. The proposal will therefore not impact the hierarchy of functions associated with the different town centres. The efficiency safety and function of the transportation network will be maintained. In this regard it is my opinion that the proposal is consistent with Policy 6.16 of the RPS.

9.3.1 Conclusion on the RPS

I am satisfied that the proposal is consistent with the overarching provisions of the Waikato Regional Policy Statement that seek to direct growth into the villages and towns and is consistent with Policy 6.16. I have found the proposal to be inconsistent with Objective 3.12 and Policy 6.1. The size and scale of the proposal will result in establishment of a set of small scale retail shops that will form a town centre for Te Kowhai. The location of this within the Country Living zone, on the periphery of the towns northern residential limits, will create unanticipated and unplanned growth pressure into the Country Living and Rural periphery that is beyond the boundaries of the identified growth area and “urban limits” of the town. For these reasons I consider that overall the proposal is inconsistent with the Regional Policy Statement due to the long term consequences of establishing a retail complex of this size and scale within the Country Living Zone.

9.4 Waikato Regional Plan

The 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 applicant has stated that the proposal complies with the Regional Plan and no further analysis has been undertaken by myself in this regard.

9.5 Waikato-Tainui Raupatu (Waikato River) Settlement Claims Act 2010

9.5.1 Vision and strategy

The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 was endorsed with the purpose of implementing co-management of the Waikato River. The overarching purpose of the Act is to restore and protect the health and wellbeing of the Waikato River for future generations. This Act has the same statutory standing as a Regional Policy Statement.

The subject site is located within the Waikato River Catchment. The applicant is proposing appropriate sediment and erosion control measures be implemented to ensure sediment does not enter the waterways. The activity is and will be undertaken in such a way that ensures there is no adverse effect on the Waikato River and its catchments. The proposal is therefore considered to be consistent with the relevant provisions of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

9.6 Operative Waikato District Plan (Waikato Section) 2013

Assessments of this proposal against the relevant Operative Waikato District Plan - Waikato Section is provided below.

9.6.1 Chapter 1 – Waikato District Resources and Pressures

Section 1.6 of the District Plan sets out the aspirations for towns and villages and provides the context for what outcomes are anticipated.

1.6 Towns and Villages

The vision for the future of the towns and villages of the district is that:

1. *the amenity, quality of life and wellbeing of the residents and their communities will be maintained and improved*
2. *the environment will be safeguarded as development proceeds*
3. *urban forms of growth will be focused into existing towns and villages which will be consolidated in preference to new towns being created.*
4. *services will be provided for new residential development*
5. *a sense of place will be fostered, with urban design that complements both human scale and physical setting*
6. *business, industrial, and residential uses will be separated, except occupations that are carried out from home, which have acceptable effects on residential amenity*
7. *town centres will retain their social and commercial focus*
8. *historic heritage is protected from inappropriate subdivision, use and development*

Section I.6.5 sets out the anticipated outcomes for ‘rural villages.’

I.6.5 Rural Villages

The villages will be managed as part of the surrounding countryside. Limited provision is made for growth in business or industrial uses in most villages. An increase in residential use in key villages near Hamilton is promoted as a way of meeting some of the demand for larger residential allotments, while addressing the potential adverse effects of rural subdivision. Industry is expected to expand at Horotiu. Development of the Waikato Expressway will affect several towns and villages that are currently on State Highway 1. The diversion of traffic onto the expressway is expected to improve the residential amenity of some of these towns and villages and will contribute to the economic and social growth of the Waikato. It may mean some adverse economic effects on businesses within the district that cater to travellers.

The development of villages will be supported to enhance heritage and character.

The proposal is located within an existing village and therefore meets the premise that seeks to establish and locate urban form development within the defined growth areas, towns and village boundaries. However, the Plan seeks to maintain and improve amenity, and seeks to foster a sense of place through appropriate urban design for the setting. In this case the effects assessment undertaken above identifies concern with the effects on the character

and built form of the village. The economic assessment demonstrates there is little to no demand for additional retail space which is likely to result in vacant shops either existing or within the new complex.

A new sense of place could be fostered from the establishment of the proposal giving the community more opportunity for choice if the retail demand was there, however it is my view the location, combined with the scale of the proposal does not foster urban design that complements human scale and physical setting of the Village.

The proposal is of a size and scale that effectively creates a town centre for Te Kowhai on the northern outskirts of the town away from the existing community meeting points around the school and hall area and away from the identified potential growth areas to the south of the town (see section 10.5 below). It is my opinion that on balance this proposal will not meet the outcomes set out in the District Plan under Chapter 1.6 and 1.6.5.

9.6.2 Chapter 1A – Waikato District Growth Strategy

Chapter 1A of the District Plan identifies the overarching strategic direction of the plan and implements the Waikato District Growth Strategy and Future Proof.

Managing Growth Pressures:

The District Plan seeks to direct urban form development into Villages and Towns.

Objective 1A.2.1

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

Policy 1A.2.2

Subdivision, use and development of an urban nature should occur within clearly defined boundaries of towns and villages rather than in rural areas.

Policy 1A.2.2A

Industrial and commercial activities that do not have a genuine functional connection with the rural land or soil resource and that do not require a rural setting should not locate in rural areas.

On face value the proposal is consistent with Objective IA.2.I and associated policies because the development is within a village boundary and a defined growth area and the urban limits of the town. However, as I have already set out in my assessment under the RPS the proposal is of a size and scale that will form a town centre for Te Kowhai within the Country Living Zone where surrounding zones are predominately Country Living and the Rural Zone is located only 100-150m north of the site. It is my opinion that establishment of the proposal in this location will place unplanned pressure on the surrounding Country Living and Rural Zones to intensify in the long term. This would therefore undermine the northern urban limit of the town and establish pressure outside of the defined growth areas. It is my view that the consequences of establishing the proposal within the Country Living Zone in this location will result in long term inconsistencies with the Objectives and Policies above that seek to focus areas of growth into the village. However, despite their intention to avoid pressures on the rural land due to how these are written, the proposal will be consistent with the Objective and Policy.

Sustainable Settlements:

Objective IA.4.I states: *Residential and rural residential areas achieve and maintain high amenity values.* (emphasis added)

Associated Policy IA.4.2 seeks that “*development in villages should be sympathetic to their existing character.*”

The Country Living zone is a rural residential area and Objective IA.4.I requires the area to achieve and maintain high amenity values. In a rural residential area the rules of the plan around development controls set out the standards to achieve a high amenity value. In this case building coverage is over double the allowable coverage set out by the rules, vehicle movements are restricted by the rules to 30 per day with the proposal likely to increase traffic demands by some 984vpd to 1,388vpd in the vicinity of the subject site. This is a very large increase in traffic movements within an area currently zoned Country Living and has

the potential to create amenity effects associated with additional traffic, noise, comings and goings, headlight glare and cumulatively these effects associated with additional traffic being introduced to the immediate area will in my view impact on the amenity values currently enjoyed within the immediate vicinity.

As already discussed within my effects assessment it is my view that the built form proposed (signage, retail building and parking area) is not of a design and scale that complements the established or aspired village character of Te Kowhai. In my opinion the proposal is inconsistent with Objective and Policy IA.4.1 and IA.4.2. High amenity values will not be achieved or maintained to a level expected within the Country Living Zone and will be more at a level expected in a Town/Village Centre.

Objective IA.4.5 and associated Policies

Development patterns support the cost-effective maintenance, provision and efficient use of both existing and new infrastructure and services.

Servicing of the proposal will be via onsite measures as discussed within the effect's assessment above. It has been concluded that onsite servicing can provide for the level of development proposed. There are no future plans to connect Te Kowhai to Reticulated Water Supply or Wastewater at this stage. The roading network can cater for the amount of traffic proposed and the roading hierarchy will not be altered as a result of the proposal.

In conclusion I do not consider that the proposal will adversely affect servicing although there is the potential for retail of this density to create a greater demand for reticulated water supply and wastewater within the future, above that which would be created if a dwelling was to be established on the site. For example if the site was to run out of water during a drought there would be the potential for seven retailers to then lobby Council to provide reticulated infrastructure as opposed to one occupier of a dwelling if the site was development in keeping with the zone. This highlights the intensity of development proposed within the site however the district plan does not identify this common infrastructure planning issue through its objectives and policies. I am overall satisfied that the proposal is consistent with Objective IA.4.5 and associated policies.

9.6.3 Chapter 6 - Built Environment.

Scattered Development

Objective 6.2.1

Development that is connected or grouped around infrastructure.

Policy 6.2.2

Subdivision or development should be located, and have a density, scale and intensity, to ensure efficient use of land, public facilities and utilities.

Policy 6.2.3

Residential and business development should occur in current towns and villages in preference to isolated rural locations.

This Objective and associated Policies again touch on the need to establish development within the village urban limits and group around infrastructure. The same thinking, I have applied above also applies here. The density, scale and intensity of the proposal on the periphery of the Village and within the Country Living Zone is such that in my view it will promote intensification out from the proposal putting pressure into the northern edge of the town where growth areas are not identified. At this stage it is difficult to say what effect this would have on servicing and infrastructure as Te Kowhai Village has no reticulated infrastructure at present. However the long term growth pressure that will occur within the north means that the town will potentially sprawl in northern directions not anticipated, when growth is planned for south of the village. The more sprawl the higher the cost of infrastructure servicing.

The Transportation infrastructure is existing and has sufficient capacity to service the development.

Provision of Utilities Avoids Adverse Effects

Objective 6.6.1

Adverse effects of use and development are avoided by provision of wastewater and stormwater disposal, supply of water, energy and telecommunications.

Policy 6.6.4

The density and type of development should not exceed the capacity of the area to absorb the adverse effects of the development on amenity, water quality, stormwater runoff, ecological values, health or safety.

There are no reticulated services available in Te Kowhai, however the site can provide onsite services. Water tanks can be provided beneath ground to ensure they do not create an adverse visual effect on the neighbourhood. As I have discussed in my effect's assessment on servicing within section 8.6. I do not consider that I have enough information in relation to how the onsite servicing will be managed in relation to onsite tanks and conflicts with the landscaping mitigation in order to come to conclusions on the adverse effects of the development to address the amenity matters. I therefore come to no conclusions in regard to these matters.

9.6.4 Chapter 8: Land Transport Network

The integrated, safe, responsive and sustainable operation of the land transport network, particularly the road network, can be adversely affected by inappropriate design and construction, and connection between the network and adjoining land, as well as through the adverse effects of land use activities and subdivision.

The relevant objectives and policies under Chapter 8 are as follows:

Objective 8.2.1

An integrated, safe, responsive and sustainable land transport network is maintained, improved and protected.

Policy 8.2.2A

Subdivision, use and development should not compromise the road function as specified in the road hierarchy.

Policy 8.2.2B

Subdivision, use and development should be in a location and at a scale that

- (a) is consistent with the existing or planned capacity and design of the roading network, and*
- (aa) is consistent with the intended function of any roads that may be affected by the subdivision, use and development (roading hierarchy), and*
- (b) does not compromise the safety and efficiency of the roading network, and*
- (c) does not compromise the safety and efficiency of the railway network.*

Policy 8.2.3

The integrated, safe, responsive and sustainable operation of the land transport network should be promoted through:

- (a) carriageway, intersection and site design*
- (b) appropriate siting of and access for traffic generating activities*
- (c) traffic management, signage, road marking, lighting, and rest areas and parking as appropriate*
- (d) provision for pedestrians, cyclists and the disabled, including off road routes and connections including pedestrian malls*
- (e) provision of public transport*
- (f) provision for network utilities*
- (g) appropriate access for existing land uses*
- (h) railway crossing design.*

Policy 8.2.5

Subdivision, use and development should be located and designed to connect safely to an existing road.

Policy 8.2.5A

Land use activities should provide adequate on-site parking.

Policy 8.2.6

Buildings, structures, night lighting, glare, advertising signs, aerial distractions and vegetation should not compromise the safe and efficient operation of the land transport network, or obscure RAPID numbers.

The proposal has been assessed by the applicants Traffic Engineer and this assessment peer reviewed by a Council engaged Traffic Engineer. These findings are discussed in Section 8.5 of this report and demonstrate that the transportation network is sufficient to accommodate the effects on the traffic network.

9.6.5 Chapter 11- Social, Cultural and Economic Wellbeing

Chapter 11 of the Operative District Plan (Social, Cultural and Economic Wellbeing) states:

Development that does not correspond with, or respect the context of, the place and the established development pattern can cause towns, villages, neighbourhoods and localities to lose social coherence and a sense of place, resulting in loss of social and cultural wellbeing. This in turn directly affects the amenity of the town.

The Objectives and Policies are set out as follows:

Objective 11.2.1

Towns, villages, neighbourhoods and localities have social coherence and a sense of place.

Policies 11.2.2

Town centres should have a primary role as shopping, service and social centres.

11.2.3

The boundary between towns, villages and rural areas should be defined by a clear difference in development density, by natural features and open space.

11.2.4

Focal points in towns and villages, including natural and built features, should be retained and enhanced.

11.2.5

Social infrastructure such as open space, halls, libraries, schools and shopping areas should be located so that a social focus, identity and identifiable gathering space is provided to the community.

11.2.6

Activities should avoid breaking up community and neighbourhood coherence, having particular regard to the cumulative effects of activities.

Objective 11.2.7

Valued social and cultural characteristics of communities are retained.

Policy 11.2.14

Activities in villages should enhance their social character and reflect their importance to the district.

The economic assessment notes (and I agree) that the town of Te Kowhai has little in the way of defined town centre with business activities scattered adhoc along the length of the town's core residentially zoned area. However as discussed earlier in my report, on visiting the site there are several meeting points for the community with the School, Hall and tennis courts appearing to be focal social points of the town. Submitters may be better placed to comment on this, however the non statutory Structure Plan from 2017 undertaken through public consultation appears to support my observations. The scale and nature of the activities proposed will result in effectively creating a town centre for Te Kowhai within the Country Living Zone on the periphery of the town away from the existing Business Zone activities, the town hall, school and existing and future residentially zoned areas. It is my opinion that establishment of what will effectively be a town centre into the Country Living Zone on the northern outskirts of the town will erode the potential for solidifying the existing community coherence. The proposal is inconsistent with directive Objective 11.2.1 and 11.2.7 and inconsistent with non directive Policies 11.2.4, 11.2.6, 11.2.14. Overall I am of the view that the proposal is inconsistent with the provisions in Chapter 11.

9.6.6 Chapter 13 - Amenity Values

The relevant objectives under Chapter 13 are as follows:

Objective 13.2.1

Adverse effects of activities on amenity values are managed so that the qualities and character of the surrounding environment are not unreasonably compromised.

Policy 13.2.4

Adverse effects that cannot be contained on the site where they are generated must be remedied or mitigated.

My assessments above detail my opinions on character and the amenity effects of the lack of retail demand. I am not going to repeat those arguments here. The applicant has been provided with the economic assessment and have to date offered me no further counter argument or mitigation to address the concerns relating to lack of demand having amenity effects on the village. I do not consider that the landscaping mitigation proposed will manage the effects in a manner that the qualities and character of the surrounding environment are not unreasonably compromised. The effects in relation to Character will in my view affect the village as a whole. These adverse effects have not been remedied or mitigated as required by directive policy 13.2.4. The proposal is contrary to Objective 13.2.1 and Policy 13.2.4.

Objective 13.2.6

Amenity values of localities are maintained and enhanced.

Policy 13.2.7

Scale, intensity, timing and duration of effects of activities should be managed to be compatible with the amenity and character of the locality.

Policy 13.2.9

Activities sensitive to noise, dust, smoke, odour, spray drift, lighting, litter, electromagnetic radiation, vermin or traffic should locate in areas where local amenity values are not already compromised by those effects.

Policy 13.2.10

Activities with dissimilar effects or a dissimilar expectation of amenity should be separated where possible.

In relation to the above Objective and Policy set, I conclude that the Amenity Values of the existing area will not be maintained and enhanced. The establishment of the proposal will reduce the amenity values of the locality for the reasons I have set out in sections 8.1 (character), 8.2 (economics) and to some extent 8.3 (acoustic) of my report. The proposal is a retail complex within an area dominated by rural residential and residential living. The neighbouring café/gift shop that was granted beside the proposed site is of such a scale and design that it does not degrade the amenity values of the locality where-as this proposal does. The proposal is contrary with the above Objective and Policies 13.2.6 to Policy 13.210.

9.6.7 Conclusion on Objectives and Policies of the Operative District Plan (Waikato Section)

Whilst the proposal is located within a defined urban area and transportation network, and onsite servicing can be provided for the proposal. Due to the scale of the activity proposed, the proposal effectively creates a new town centre for Te Kowhai within the Country Living Zone. The intensification of the site on the northern periphery will place growth pressures on adjoining country living and rural zones located within the close vicinity of the site. As persons seek to establish activities close to the town centre. The amenity values of the locality will not be maintained and enhanced as a result of changing from rural residential to business/town centre. The proposal is inconsistent to the directive Objectives and Policies around Amenity Values and inconsistent with the directives and policies around Social, Cultural and Economic Wellbeing. As such, I consider that overall the proposal is inconsistent with the Objectives and Policies of the Operative District Plan (Waikato Section).

9.7 Proposed District Plan - Objectives and Policies

The court authority *Bayley v Manukau City Council* [1998] NZRMA 513 (Court of Appeal) sets out that when you have both an Operative Plan and a Proposed Plan (with rules that have legal effect) then you must undertake a dual assessment and reach conclusions on whether to grant or decline under each plan.

In this case there is an incomplete rule framework because the Business Zone rules under the PDP have no legal effect at this stage in the PDP process. This means that the dual assessment cannot be carried out under the PDP and only the Operative Plan assessment can be undertaken.

The Act however states that you must have regard for any Proposed Plan when coming to a conclusion under Section 104.

The Proposed District Plan (Notified Version 2018) was publicly notified in July 2018. In accordance with s86A(2) the Objectives and Policies, methods, reasons and issues set out in this plan have legal effect from that date. The Proposed District Plan rezones the site to Business Zone. The Business Zone rules of a plan have no legal effect under s86B of the RMA.

I have undertaken an assessment against the Objectives and Policies taking into account the methods, reasons and issues set out in the PDP.

9.7.1 Chapter 4 – Urban Environment

4.1.1 Objective – Strategic

(a) Liveable, thriving and connected communities that are sustainable, efficient and co-ordinated.

(b) National Policy Statement on Urban Development Capacity Minimum Targets

The minimum targets for sufficient, feasible development capacity for housing in the Waikato District area are met, in accordance with the requirements of the National Policy Statement on Urban Development Capacity 2016.

4.1.2 Objective Urban Growth and Development

Future settlement pattern is consolidated in and around existing towns and villages in the district

4.1.3 Policy - Location of development

(a) Subdivision and development of a residential, commercial and industrial nature is to occur within towns and villages where infrastructure and services can be efficiently and economically provided.

- (b) *Locate urban growth areas only where they are consistent with the [Future Proof Strategy Planning for Growth 2017](#).*

4.1.6 Policy – Commercial and industrial activities

- (a) *Provide for commercial and industrial development in the following zones:*
- (i) Business Town Centre;*
 - (ii) Business;*
 - (iii) Industrial; and*
 - (iv) Heavy Industrial.*

The proposed commercial development will occur within the boundaries of a village. I have discussed in other sections of this report that the proposal seeks to establish a series of small scale retail shops. Due to the number of shops and current lack of any competing town centre in Te Kowhai, the proposal will effectively become the town centre for Te Kowhai. This disrupts the future settlement pattern described under objective 4.1.2. As with any town centre, development will seek to intensify around the periphery. The Rural zone is within 100-150m to the north, this urban edge is not changing in the PDP. The establishment of this proposal will in the long term put growth pressure on areas not anticipated to develop. I therefore am of the view that the proposal is inconsistent with Strategic Objective 4.1.2.

Policy 4.1.3 does not specify whether the infrastructure mentioned is the public reticulated network or could be on site. (I understand that this has been recommended to be clarified through the PDP processes to mean public reticulated network). As it stands, the applicant has demonstrated that they can service the site through onsite wastewater and water supply. The proposal will be within the boundaries of the Future Proof Strategic Planning for Growth 2017. I am satisfied that the proposal will meet Policy 4.1.3.

4.1.7 Objective – Character of towns

- (a) *Development in the Residential, Village, Industrial and Business zones is attractive, connected and reflects the existing character of towns.*

As discussed in the assessment of effects I have concerns that the development effectively creates a town centre for Te Kowhai on the northern periphery of the town. Town centres are usually in the centre of town. There will be reduced accessibility to the residential areas to the south of the town, however due to the small size of Te Kowhai the parking and footpath networks mean that the proposal is connected. In terms of whether the development is attractive this is a very subjective assessment and best given in the context of the existing surrounding environment and character of the town. In the context of the Te Kowhai Village, I am of the opinion that the design does not reflect or respond to the existing character of the village. It is my view that the proposal is partially inconsistent with Objective 4.1.7.

4.5.1 Objective – Commercial function and purpose

- (a) *Commercial activity is focused within a differentiation of commercial zones and development (comprising the Business Town Centre Zone, the Business Zone, the Business Zone Tamahere and neighbourhood centres)*

4.5.4 Policy – Commercial purpose: Business Zone

- (a) *The role of the Business Zone is to support the local economy and the needs of businesses by:*
 - (i) *Providing for a wide range of commercial activities; and*
 - (ii) *Providing for commercial activities at a scale that supports the commercial viability of towns and villages; and*
 - (iii) *Ensuring that commercial activities complement and support the role of business town centres*

4.5.8 Policy – Role and function of the Business Zone

- (a) *Ensure the role of the Business zone is complementary to the Business Town Centre Zone by:*
 - (i) *Enabling a wide range of commercial activities including large format retail activities within the Business Zone; and*

- (ii) *Discouraging small scale retail activities, administration and commercial services within the Business Zone.*

4.5.9 Policy – Employment opportunities: Business Town Centre Zone and Business Zone

- (a) *Commercial development within the Business Town Centre Zone and Business Zone increases employment opportunities within the district.*

4.5.10 Policy – Retail: Business Town Centre Zone and Business Zone

- (a) *Locate small scale retail activities within the Business Town Centre Zone and discourage large scale activities from establishing within the Business Town Centre Zone.*
- (b) *Locate large scale retail and commercial activities to within the Business Zone.*

To provide some context to the terms referenced in the above Objectives and Policies I have turned to the corresponding definitions in Chapter 13 of the PDP.

Retail activity: *Means the sale or hire of goods or services or equipment directly to the public.*

Commercial activity: *Means activities involving the sale or distribution of goods and services.*

The set of Objectives and Policies above seek to differentiate Business Town Centre Zones from Business Zones. In this case the proposal is in the Proposed Business Zone and seeks to establish small scale retail activities directly to the public. This type of development is discouraged in the Business Zone. Further to this, the economic assessment demonstrates that there is little demand for retail space, I therefore cannot conclude that the proposal will support the commercial viability of the village. Overall, I consider that the proposal is inconsistent with the above Objectives and Policies for the Business Zone.

4.5.25 Objective – Business Zone - Character

- (a) *The commercial scale, form of buildings and character of the Business Zone is maintained.*

4.5.26 Policy – Landscaping of onsite parking areas – Business Zone

- (a) *Provide a degree of amenity for onsite parking areas within the Business Zone by ensuring a planting strip is established and maintained.*

4.5.27 Policy – Front setback – Business Zone

- (a) *Ensure buildings within the Business Zone are designed and setback from roads by:*
 - (i) *Retaining the predominant building setback within the street; and*
 - (ii) *Allowing sufficient space for the establishment of landscaping on the site.*

4.5.28 Policy – Height: Business Zone

- (a) *Ensure the height of new buildings is complementary to, and promotes, the existing character of the Business Zone and adjoining residential and village zones.*

The landscaping, setbacks and heights of the proposed built form and parking areas will not offend the Business Zone. The proposal is consistent with these policies.

4.5.29 Policy – New buildings: Business Zone

- (a) *New buildings within the Business Zone are consistent with the Waikato District Council Urban Design Guidelines Town Centres ([Appendix 3.3](#)), and in particular:*
 - (i) *Responds to the specific site characteristics and wider street;*
 - (ii) *Promotes architectural form, building features and placement;*
 - (iii) *Provides landscape and open space design that responds to the characteristics and qualities of the area;*
 - (iv) *Minimises visual and amenity impacts of accessways and parking facilities; and*
 - (v) *Accommodates pedestrian access and safety.*

As discussed in my assessment of effects I do not consider that the proposed design and built form responds and respects the existing character of the directly surrounding area and wider Te Kowhai Village. However the Landscaping and fencing treatments proposed is expected to minimise the visual impacts of the parking facilities as discussed within the Landscape and Visual Report undertaken by Ms Soanes. The applicant has not provided an assessment of the Building against the Urban Design Guidelines Town Centres under Policy 4.5.29.

4.5.30 Objective – Business Zone and Business Town Centre Zones – Amenity

- I. *The amenity values of residential activities within, and activities in, adjoining zones are protected from the adverse effects of developments and activities in the Business and Business Town Centres Zones.*

4.5.35 Policy – Noise

(a) Adverse effects of noise generated within the Business Town Centre and Business Zone on sensitive land uses are minimised by:

- (i) Ensuring that the maximum sound levels are compatible with the amenity values of adjacent Residential Zone or Village Zone;*
- (ii) Limiting the timing and duration of noise-generating activities, including construction and demolition activities;*
- (iii) Maintaining appropriate setback distances between high noise environments and sensitive land uses; and*
- (iv) Limiting the timing and duration of servicing and operation of commercial activities;*
- (v) Requiring acoustic insulation for dwellings within the Business Zone and Business Town Centre Zone.*

The acoustic engineers have concluded that the noise effects of the proposal are acceptable. There is a high level of traffic noise associated with the road that will mean acoustic effects are deemed reasonable. *The proposal is consistent with this Policy.*

4.5.36 Policy – Signage

(a) In the Business Town Centre and Business Zone provide for:

- (i) The establishment of signs where they are associated with the activity carried out on the site on which they are located;*
- (ii) Public information signs that are of benefit to community well-being; and*
- (iii) Establishment of signage to support the commercial function and vibrancy of the zones with controls on the size, location, appearance and number of signs to ensure they do not detract from the visual amenity of the surrounding environment.*

The conclusion of the Landscape Architect Ms Soanes concludes that in the context of the PDP the signage will not detract from the visual amenity of the surrounding environment. I agree that if the site was zoned Business for the context of this assessment that the signage would not detract from the visual amenity of the surrounding environment as the existing

environment and what is permitted by the plan would change the context of the surrounding environment.

4.5.37 Policy – Managing the adverse effects of signs

- (a) In the Business Town Centre and Business Zone ensure that:*
 - (i) The location, colour, content, and appearance of signs directed at traffic are controlled to ensure signs do not distract, confuse or obstruct motorists, pedestrians and other road users;*
 - (ii) Signs that generate adverse effects from illumination, light spill, flashing or reflection are avoided;*
 - (iii) the placement of signs do not obstruct the free movement of:*
 - A. Pedestrians along the footpath;*
 - B. Vehicle use of the road carriageway.*

I am unsure at this stage whether the proposal will comply with the Sunday noise limits of the District Plan, landscaping and fencing is proposed to assist with reducing effects on neighbouring residential properties. However, I do not think that I can reach conclusions that they are protected from the amenity effects associated with establishment of a retail complex, more that effects are minimised through the mitigation.

The signage complies with the policy 4.5.37 and the traffic engineer has raised no concerns in relation to safety issues surrounding the sign.

9.7.2 Chapter 6 – Infrastructure and Energy

6.1.8 Objective – Infrastructure in the community and identified areas

(a) Infrastructure takes into account the qualities and characteristics of surrounding environments and community wellbeing.

6.1.9 Policy - Environmental effects, community health, safety and amenity

(a) Require the development, operation, maintenance, repair, replacement, upgrading and removal of infrastructure and its associated structures to avoid, remedy or mitigate adverse effects on the environment, community health, safety and amenity.

6.1.11 Policy – Undergrounding new infrastructure

(a) Encourage new infrastructure to be placed underground unless:

- (i) The adverse effects on the environment are greater than placing the infrastructure above ground;
- (ii) A natural or physical feature or structure renders underground placement impractical or undesirable; or
- (iii) There are significant operational, functional, technical, cultural or economic reasons that require the infrastructure to be above ground.

6.1.12 Policy – Co-location of compatible facilities

(a) Encourage compatible infrastructure to share location or facilities where operational advantages can be achieved or adverse effects are reduced.

6.1.16 Policy – Water conservation

(a) Encourage water conservation measures and, where appropriate, low impact stormwater design and facilities.

6.4.3 Policy – Infrastructure Location and Services

(a) 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) Three waters (water, wastewater and stormwater supply);
- (ii) Telecommunication services;
- (iii) Electricity services; and
- (iv) Adequate water supply within urban areas for firefighting purposes.

As discussed in section 8.6 of my report, I have been unable to gain confirmation on how many tanks are necessary on the site and where these will be located in order to meet the firefighting requirements and the water supply. I am therefore apprehensive at this stage to draw conclusions on the Objectives and Policies surrounding Infrastructure and how this impacts on amenity effects.

9.7.3 Conclusions on Proposed District Plan with Legal Effect

The proposal fails to meet strategic directive 4.1.1 (a) set down by the PDP, and does not meet Strategic Objective 4.1.2. This is because the proposal disrupts the future settlement pattern through establishing a quasi town centre for Te Kowhai on the outskirts of the Village urban area. The proposal is inconsistent with the Zone specific Objectives and Policies of the PDP as the proposed Business Zone seeks to establish commercial activities and larger scale retail activities as opposed to the small scale retail activities proposed. Small scale retail activities are more appropriately located within Business Town Centre Zones. In this case Te Kowhai has no proposed Business Town Centre Zoning for additional small scale retail. One can assume because the Te Kowhai Village is deemed too small to command the supply of any additional small scale retail beyond that which already exists.

The economic assessment demonstrates that there is no retail demand at this point in time and therefore the contribution towards the local economy will be limited.

The proposal to establish small scale customer facing retail activities in the Business Zone is contrary and therefore inconsistent to the Objectives and Policies of the Plan as notified.

The direction taken by Council in the PDP Hearings

The hearing in relation to the Business Zone has been held and I have reviewed the Council Reporting Officers (Mr Alan Matherson) 42A assessments and rebuttal evidence. I note that some submissions seek to include “retail activities” within the Business Zone land. The recommendation from the Council Consultant Planner set down in the 42 Report was follows:

The submissions from Hugh Green Limited [392.3] and Van Den Brink Group [633.19] seek the addition of ‘Retail activity’. [into the business zone] However, the addition of this activity would be contrary to the policy direction (such as Policy 4.5.2(a)(i)), that seeks to direct retail activity to the Business Town Centre.

Further to this the Council sought in the 42A report to quantify the Commercial Activities sought on the Business Zone to tenancies of at least 500m² in floor area.

This positioning further supports that the establishment of small retail tenancies are not the

anticipated form of development within this proposed zone.

I also note that the definition of Retail Activities is proposed by Council to be amended. The proposal would still meet the proposed amended definition of 'retail activity'. The rebuttal evidence from Mr Matherson holds that there is a differentiation between retail activities and commercial activities and the Business Town Centre zone seeks to establish small retail activities while the Business Zone is for large scale retail and commercial activities.

The proposal is inconsistent with the Business Zone provisions that hold legal effect.

9.8 Conclusion on Relevant Plan Provisions under Section 104(1)(b)

The proposal is demonstrated to be inconsistent with the Regional Policy Statement.

In terms of the Operative District Plan, I have found in my analysis that the proposal is inconsistent with Objectives and Policies associated with Amenity as well as Social, Cultural and Economic wellbeing. The proposal is inconsistent with the outcomes and vision for Rural Villages listed within Chapter 1 of the Plan.

Under the Proposed District Plan I have found that the proposal is inconsistent with both the Strategic and the specific Objectives and Policies of the Business Zone.

Because the proposal is inconsistent with both the Operative and Proposed Plan provisions (despite a significant change in zoning from Country Living to Business), I consider that undertaking a weighting exercise between the two plans to be superfluous to requirements.

However, the applicant argues that weighting should be applied in favour of the PDP, so to assist the Commissioner I have set out the caselaw that might be helpful in this matter and how I view this can be applied to this specific case.

9.9 Weighting of the Plans under section 104(1)(b)

The most recent relevant case is that of *Willowridge Developments Limited v Queenstown Lakes District Council* [2018] NZEnvC 83.

In this case, the Court considered the objectives and policies of the operative and proposed plan together in one assessment and concluded that more weight should be given to the

operative district plan objectives and policies. This was on the basis that the proposed district plan's objectives and policies did not demonstrate a significant shift in Council policy. This case referenced the high court authority *Keystone Ridge Limited v Auckland Council* (AP24/01)

In the case of *Keystone Ridge* the courts found that weighting must be determined on case by case basis, taking into account:

- The Extent to which the proposed plan has been exposed to testing and independent decision making
- Possible injustice, but note the effect of s88(1A)
- Extent to which the new measure may implement a coherent pattern of objectives and policies in plan change/PDP

Of note is also *Mapara Preservation Society Inc. v Taupo District Council* (A083/

In this case substantive weight was given to new plan in early stages of Schedule One process (notified but submissions not heard) where the new plan:

- Represents a significant shift in Council policy (clear and deliberate change); or
- Introduces policy provisions to fill a vacuum or absence of policy in the district plan; and
- Is more likely to accord with Part 2

I have applied the concepts in these cases to this proposal and offer the following analysis:

The extent to which the Proposed Plan has been exposed to testing and independent decision making.

There is one specific submission in support of the rezoning (from the applicant) and no other submissions about this spot zone change. However, there are many submissions against the rules and provisions on the Business Zone and the interrelationship with the Business Zone Town Centre and what types of activities are suitable to be established within each Zone. I have discussed some of this above in my PDP objectives and policies

assessments. Until the decisions are made on the hearings in relation to the Business Zone we really do not know what this set of rules will look like. We do know that if the rebuttal evidence for the hearing on the zone change is adopted from Council the proposal will continue to be inconsistent with the Objectives and Policies of the PDP.

Further to this, submissions from Waikato Regional Council and Hamilton City Council raise concerns regarding the rezoning of land to Village Zone. The rezoning hearing is not due to start until March 2021 and Decisions for the Business Zone rules and the Rezoning's are not expected until later in 2021. The matters around which towns and villages are earmarked for growth and servicing is yet to be considered through the PDP processes. Large areas of land around Te Kowhai have been proposed to be rezoned Village which would allow rural residential development down to 3000m² in areas unserved by wastewater.

Whilst there are no specific submissions in opposition to the change of zoning to Business. If the rezoning hearings results in amendments to the size and scale of the Village zoned land which is a potential outcome based on submissions, this could have directly flow on effects to the size of the business zoned land needed. In my view this leaves this site rezoning in scope for change.

Has there been a significant policy shift?

The Proposed District Plan seeks to change the Zoning from Country Living to Business Zone. I have considered the question is a spot change in zoning considered a significant Policy shift? I do not consider that it was the courts intention to reference "a policy shift" to mean that every proposed zone change in a PDP received elevated status by weighting towards it over the operative zone. In this case the proposed zone change is a spot zone change that has not been referenced in any of the section 32 analysis undertaken for the PDP. The proposed zone change is not aligned with any previous structure planning document. I therefore cannot conclude that the policy shift is a clear and deliberate change, or particularly significant as it is a spot zone change.

The site which is located within the urban limits of the town under ODP, continues to be within the urban limits under the PDP. The strategic directions set out in the Operative Plan

and the Proposed plan around directing growth into urban areas are similar in nature. In that sense there is no significant shift in Policy.

There is a significant deliberate shift in policy in relation to the PDP Business Zone and the interrelationship with the newly established Business Town Centre Zone from the ODP. In the ODP the Business Zone allowed small scale retail however in the Proposed Plan the Business Zone is for larger format retail and Commercial activities over 500m². With the Business Town Centre being reserved for small scale retail.

However I question how relevant this shift in policy is to this proposal when the previous zone was Country Living and not Business under the Operative.

Matters of Injustice

I do not consider there are any matters of injustice to the applicant by not applying weighting towards the PDP over the ODP. Because the proposal is inconsistent with both the ODP and the PDP Objectives and Policies. The application was lodged after the PDP was notified, when the applicant knew what the proposed directions were for the Business Zone.

9.9.1 Conclusions on weighing between the ODP and PDP

The specific set of circumstances above has led me to conclude that the proposed rezoning is not of a significant policy shift that would warrant weighting towards it in order to better align with Part 2 of the Act. The PDP hearings on the Business Zone have been undertaken but no decisions have been released. There are a number of submissions that could potentially affect how this proposal aligns with the provisions of the Business Zone. The hearings on the Rezoning is scheduled for March 2021. I do not consider that the PDP is significantly advanced through the public process to weight towards the rezoning and the Business Zone provisions. I do not consider there are any matters of injustice to the applicant by not applying weighting towards the PDP over the ODP.

In my view any weighting applied should favour the ODP.

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.

10.1 Future Proof Strategy Nov 2017

The future proof strategy was updated in 2017 and the PDP gives effect to this strategy so I am not going to go into too much detail in this regard to avoid repetition. The proposal aligns with the strategy in that it seeks to establish within the boundaries of the urban limits. However as I have previously detailed, the nature and scale of the proposal effectively creates a town centre for Te Kowhai on the northern edge of the urban limits as shown in the map below.









Figure 8: Red Star indicates approximate location of proposed development.

FUTURE PROOF SETTLEMENT PATTERN – Waikato And Waipa Districts

-  Railway
-  State Highway
-  Waikato Expressway Completed
-  Waikato Expressway Uncompleted
-  Proposed extension to Waikato Expressway
-  Southern Links
-  Urban Areas
-  Indicative Urban Limits[#]
-  Indicative Village Limits[#]
-  Current RPS Urban Limits
-  District Boundary
-  Airport

Major Commercial Centres*

- | | |
|--|---|
|  C1 Te Kauwhata |  C7 Raglan |
|  C2 Huntly |  C8 Cambridge |
|  C3 Ngaruawahia |  C9 Te Awamutu |

Strategic Industrial Nodes*

- | | |
|--|---|
|  I1 Pokeno |  I4 Horotiu |
|  I2 Tuakau |  I8 Hamilton Airport |
|  I3 Huntly/Rotowaro |  I9 Hautapu |

Residential

- | | |
|--|--|
|  R1 Pokeno |  R8 Tamahere |
|  R2 Tuakau |  R9 Cambridge |
|  R3 Te Kauwhata |  R10 Te Awamutu |

* = as per Waikato Regional Policy Statement

= Growth in these areas is subject to further investigation

^ = To be investigated as part of Phase 2

While the Waikato Regional Council has exercised all reasonable skill and care in preparing and controlling the contents of this report, the Council accepts no liability in contract, tort or otherwise, for any loss, damage, injury or expense (whether direct, indirect or consequential) arising out of the provision of this information or its use by you or any other party.

Figure 9: Key to above diagram

On face value the application aligns with the Settlement pattern and with Future Proof 2017 but my concerns remain that establishment of this type of development in this location will cause growth pressures to expand north outside the urban limits of the town.

10.2 Waikato Tainui Environment Plan

The plan is to provide a map or pathway that will return the Waikato-Tainui rohe to the modern day equivalent of the environmental state that it was in when Kiingi Taawhiao composed his maimai aroha. To do this, the plan seeks to:

- 1 provide the overarching position of Waikato-Tainui on the environment (s1.3.1);
- 2 consolidate and describe Waikato-Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment (s1.3.2);
- 3 underpin the development of a consistent and integrated approach to environmental management within the Waikato-Tainui rohe (s1.3.2);
- 4 describe Waikato-Tainui environmental issues (s1.3.4);
- 5 provide tools to enhance Waikato-Tainui mana whakahaere and kaitiakitanga, particularly when participating in resource and environmental management through (s1.3.5):
 - (a) influencing the development of all environmental policies and plans that affect Waikato-Tainui;
 - (b) establishing a framework for resource and environmental management to support tribal members, whether as whaanau, marae, hapuu, or whatever grouping Waikato-Tainui, from time to time, choose to adopt;
 - (c) providing mechanisms to restore and protect the natural environment of Waikato-Tainui, whilst recognising the reasonable needs of local communities;
 - (d) actively contributing to the co-management of the Waikato river;
 - (e) influencing local and national decision makers;
 - (f) providing a guide for resource users or developers in the Waikato-Tainui rohe;
 - (g) affecting how and where development may occur; and
 - (h) providing clear and consistent issues statements, policies, and methods to manage natural resources.

- 6 provide guidance to external agencies regarding Waikato-Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment (s1.3.6).

Section 25 of the Plan sets out matters relating specifically to Land Use Planning. The Objectives and Policies generally seek to achieve urban development that is well planned and the environmental, cultural, spiritual and social outcomes are positive.

Stormwater from the development will remain onsite through onsite treatment and soakage, wastewater is proposed to be managed onsite, construction management plans can ensure that sediment is controlled appropriately. The overall engineering design of the proposal are all measures that cumulatively ensure the proposal meets the Objectives and Policies set out in Chapter 25 of the Environmental Plan. No submissions have been received from Mana Whenua in relation to this application. I am of the view that the proposal is consistent with the Waikato Tainui Environmental Plan.

10.3 District Plan Integrity and Precedent Effect

There is no statutory provision for precedent effect or adverse effects on the integrity of the District Plan to be considered. These are formulated by the Courts and commonly used to reinforce principles and aid in assessments.

Precedent effect

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

In *Manos v Waitakere CC*, the High Court held “the consent authority is in terms of s104 required to have regard to the rules, policies and objectives of a district plan and is fully entitled to consider the precedent effect of granting an application for a Discretionary activity when doing so.”

That view was subsequently stated to be correct by the Court of Appeal when refusing leave to appeal to that court. The Court of Appeal stated a grant of consent to a Discretionary activity can be a precedent in the sense of creating an expectation that a like application be treated in a like manner [43]. The Court of Appeal acknowledged this may not be as important as in the case of a Non-Complying activity however it said each application must be assessed on a case by case basis.

The Court of Appeal also said the terms of the particular district plan in question is relevant to the issue of precedent.

In *Norwood Lodge v Upper Hutt CC*, the Court of Appeal again confirmed that precedent was a legitimate consideration for a discretionary activity.

In *Stirling v Christchurch CC*, the High Court relied on the Court of Appeal decisions. In that case, the High Court held that granting a substantial retail complex in the business zone would create a precedent effect. It is significant that, the relevant policies in the CC plan contained strong policy directives.

The case law sets out that, Precedent can be relevant matter for Discretionary Activities. However, to use Precedent for Discretionary activities the Courts have qualified this with also requiring a strong Policy directive.

In this case I do not consider that the Objectives and Policies have a particularly strong directive nature overall. Whilst Directive in relation to Amenity, many of the other Objectives and Policies are set out in a non directive way. This is typical of the Operative District Plan that overall has little in the way of Directive Objectives and Policies within it. It is therefore my opinion that the Precedent is not a relevant consideration in this case.

Administration of the District Plan (District Plan integrity)

District Plan integrity reflects the public confidence in the plan. The Environment Court (EC) in the case *Berry v Gisborne District Council* (2010) considered precedent and plan integrity and cautioned the use of such factors. 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.

In this case I do consider that the proposal clashes with important plan provisions, the proposal seeks to establish a retail complex within a zone reserved for rural residential living. The basis of applying for the proposal is in reliance of the Proposed Plan Zone changes and rules that do not yet have legal effect. As the entire district is undergoing proposed changes to zoning. I consider it likely that further applications will follow that will not be materially indistinguishable, in the reliance that applications can be made that clash with operative plan provisions in favour of Proposed Plan provisions, that are yet to have decisions made upon them.

10.4 Ngaaruawaahia, Hopuhopu, Taupiri, Horotiu, Te Kowhai & Glen Massey Structure Plan - March 2017

The Structure plan was established through community consultation and adopted by Council in 2017. It is a non statutory document and therefore holds less weight than both the Operative and Proposed District Plans. The structure plan identifies that a “neighbourhood centre” could be established within the immediate area surrounding the subject site. The Plan identifies a town centre focal point for Te Kowhai near the existing school and hall area, the neighbourhood centre is smaller than the town centre.

TE KOWHAI
Key Moves

Legend:

- Rivers & Streams
- Existing Reserves
- Natural Environment
- Future Employment Focus
- Community Amenities Focus
- Future Residential Expansion
- Existing/ Potential Walking and Cycle Trail
- Potential On-road Cycle Route
- Potential Road Connections
- Rail Line
- Proposed / Enhanced Green Spaces
- Town Centre Gateway
- Township Gateway
- Town Centre as a Focal Point
- Indicative Location for Future Neighbourhood Centre
- Opportunity for Cultural Art Installation

The map shows the town of Te Kowhai with various roads including Richardson Road, Te Kowhai Road, and State Highway 39. Key locations marked include Te Kowhai Kindergarten, Te Kowhai Community Hall, Te Kowhai Primary School, and Te Kowhai Athletic. The map also indicates future development areas such as Future Residential Expansion (pink), Future Employment Focus (orange), and Future Neighbourhood Centre (green). A scale bar and north arrow are provided at the bottom.

The AEE undertaken by Ms Hansen (now adopted by Mr Dillon) argues that the proposal is consistent with the structure plan as the retail complex sought establishes the neighbourhood centre anticipated within the Structure plan. I do not share this opinion. The scale of the proposal is more akin to that which would serve as a town centre for Te Kowhai rather than a neighbourhood centre. That is evident from the economic assessment undertaken by Mr Foy that assesses the demand of retail space for the village. I suggest that the neighbourhood centre proposed within the Structure has already been given effect to via the establishment of the Café/gift shop directly adjoining and south of the

subject site. It is my view that the proposal is in conflict with the outcomes sought by the Structure Plan.

10.5 Waikato 2070 - 2020

Waikato 2070 Growth and Economic Development Strategy was adopted by Council 19th May 2020. The plan identifies areas set out for intensification over the next 50 years. In this case Residential intensification has been identified to the south of the town centre area identified in the Ngaruawahia Structure Plan 2017. No Commercial or Town Centre Development is identified in the plan.



Figure 11: Waikato 2070 Te Kowhai Plan

Waikato 2070 does not demonstrate any additional Commercial areas for growth within Te Kowhai or any town centre zoning. It looks to intensify residential areas to the south of the town centre area identified in the Ngaruawahia Structure Plan. Identification of these areas does not align with a proposal to establish a town centre sized development within the northern periphery. It is therefore my view that the proposal is inconsistent with Waikato 2070.

10.6 Hamilton Metropolitan Spatial Plan - 2020

This plan is a non statutory document undertaken as a collaborative effort between Hamilton City Council, Waikato District Council and Waipa District Council. The plan sets out where growth is anticipated around Hamilton and the surrounding areas. Te Kowhai is not identified as an area earmarked for Growth or one that is earmarked for further investigation.

10.7 Conclusions on section 104(1)(c) Other Matters

The proposal is partially consistent with the non statutory Future Proof Strategy 2017 in that it is located within the bounds of the urban area however due to the nature and location of the activity proposed will lead to pressure to intensify the surrounding rural and country living land. The proposal is inconsistent with the non statutory documents such as Waikato 2070 and the Structure Plan, which do not identify establishment of a town centre in or near the location of the subject site within the next 50 years. The proposal will undermine the Integrity of the District Plan. Whilst the Operative District Plan offers a set of directive policies associated with amenity value, overall I do not consider that the Policy Directive of the ODP is enough to warrant consideration of a precedent effect for a Discretionary activity.

11.0 ASSESSMENT OF PART 2 MATTERS

I now turn to the assessment under Part 2. The Court of Appeal in *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA determined that, in the context of resource consents, 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 s 104). However, it stated 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 as it cannot be said that the Operative Waikato District Plan – Waikato Section contains a coherent set of policies or gives effect to the Operative Waikato Regional Policy Statement due to the timing of the two plans. There is therefore potential for incomplete coverage in the Operative Waikato District Plan. 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 against Part 2 below. Furthermore, given the Operative Waikato District Plan was prepared before the *King Salmon* decision, it cannot be said with certainty that the plan was “competently prepared”.

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

Section 8

Section 8 of the Act concerns the principles of the Treaty of Waitangi. The application was fully notified, and notice was also served directly on Tangata Whenua. No submissions were received from Tangata Whenua. There are no known sites of interest to Maori on the land of the subject site. The onsite servicing has been designed to ensure that wastewater treatment and stormwater disposal meet engineering standards, this includes matters relating to water quality. 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*

It is my view based on the assessments above that the proposal to the size and nature will undermine the spatial planning for the village of Te Kowhai by establishing a town centre type development on the northern edge of town. This is not an efficient use of the land. My assessments conclude that the amenity values will not be maintained and enhanced.

Section 6

Section 6 of the Act requires a number of matters of national importance to be recognised and provided for. The only matter I consider relevant to this proposal is:

(h) the management of significant risks from natural hazards.

The engineering report and the review by the LDE lead me to conclude that this matter of national importance has been recognised and provided for.

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.*

Part 2 allows for an overall broad judgement to be made on whether to grant or decline consent, having regard to the competing considerations under s104. It is important to note that s104 does not give primacy to any one section (104(1)(a)-(c) over the others.

- In my conclusion on actual and potential effects under section 104(1)(a) I have found:
 - (i) That there will be effects on Character and Amenity that have not been sufficiently mitigated.
 - (ii) The economic assessment provided demonstrates there is no retail demand for some years to come and no guarantee when that will occur

due to lack of reticulation in the area. Meaning there is the potential for shops to be left vacant for some time yet.

- (iii) The lack of retail demand, limits the potential positive economic benefits of the proposal which I have found are not enough to balance out the adverse effects found on character and amenity of the locality and the village.
 - (iv) I do not consider enough detail has been provided in relation to the servicing on site to address the effects associated with the tanks and any conflicts with the activities or mitigation proposed.
 - (v) I am concerned that the proposal will not comply with the daytime noise limits on a Sunday. Effects in relation to this apparent infringement have yet to be addressed.
- In my conclusion on relevant plan provisions under section 104(1)(b) I have concluded that:
 - (i) the NPSUD or the NESCS are not relevant considerations,
 - (ii) the proposal is inconsistent with the Regional Policy Statement
 - (iii) consistent with the Waikato-Tainui Raupatu (Waikato River) Settlement Claims Act 2010.
 - (iv) The provisions of the Operative District Plan have been assessed where it is concluded that the proposal is inconsistent with the Objectives and Policies of the Plan. Although the proposal is within the bounds of a defined growth area, the proposal seeks through the scale and nature of the activities to effectively create a town centre on the northern periphery of the village. This in turn has the potential to lead to growth pressure outside the urban boundaries of the village. The directive objectives and policies pertaining to Amenity Values and the objectives and policies for Social, Cultural and Economic wellbeing have not been met by the proposal. I have found that the development does not align with the vision for rural villages set out in Chapter 1 of the Plan.
 - (v) I have found the proposal to be inconsistent with the Proposed District Plan Objectives and Policies. These seek to encourage large format commercial activities and discourage small scale retail within the Business Zone. I find weighting between the two plan provisions somewhat

arbitrary because the proposal is inconsistent with both the Operative and Proposed Plans despite the proposed zone change from Country Living to Business.

- Under section 104(c) Other Matters I have found that:
 - (i) The proposal is partially consistent with the non statutory Future Proof Strategy 2017 in that it is located within the bounds of the urban area. However due to the nature and location of the activity proposed, the proposal will lead to pressure to intensify development of the surrounding rural and country living land.
 - (ii) The proposal is inconsistent with the non statutory documents such as Waikato 2070 and the Structure Plan, which do not identify establishment of a town centre in or near the location of the subject site within the next 50 years.
 - (iii) The proposal will undermine the Integrity of the District Plan.

11.1 Recommendation

In the wider sense, the proposal is located within a defined growth area and the urban limits set out for the Region and development within Te Kowhai aligns with this direction. However the scale and detail of the proposal in the location chosen leaves the development in conflict with section 104(1)(a) and (b) and with (c). The applicant offers no specific measure under 104(1)(ab) to offset or compensate the adverse effects of allowing the activity. Overall it is my opinion based on the assessments above that Part 2 would be better met through the decline of this application than the granting of it.

Nevertheless, despite my recommendation, if the Commissioner is of the mind to grant consent, I have formulated a set of Draft Conditions for consideration and to assist the Commissioner. These have been initially reviewed by the applicants' agent, however at the time of precirculation some experts (Council and Applicant) have yet to provide feedback on the condition set. The draft set is attached in **Appendix G**. It is the intention of the reporting officer and the applicants agent to continue to work through the conditions to present an agreed set prior to or at the hearing.

