

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of a resource consent application by
Quattro Property Holdings Ltd to
Waikato District Council for land use
consent for a commercial
development at 561 Horotiu Road,
Te Kowhai.
(LUC0427/19)

SECTION 113 RESOURCE MANAGEMENT ACT 1991

DECISION ON APPLICATION

1. For the reasons outlined in this decision notice and pursuant to section 104B of the Resource Management Act 1991 ("**RMA**"), consent is granted.

Introduction

2. This decision records a summary of the public hearing held on the application in Ngaruawahia, 24 November 2020, the decision made, and the principal reasons for this.
3. A site visit was undertaken to the site and surrounds on 24 November 2020.
4. As the application had been subject to the RMA's pre-circulation requirements, the application material, written submissions, Council's s.42A report, and expert evidence on behalf of the applicant had been read before the hearing.

5. On behalf of the Council in its capacity as a Consent Authority the following were in attendance:
 - a. Mr. Wade Hill (planning team leader)
 - b. Ms. Michelle Carmine (planner)
 - c. Mr. Derek Foy (economics)
 - d. Mr. James Templeton (engineer)
 - e. Ms. Bridget Parham (counsel)
6. On behalf of the Applicant the following were in attendance:
 - a. Mr. Phil Lang (counsel)
 - b. Mr. Jason Barnes (corporate)
 - c. Mr. Fraser Colegrave (economics)
 - d. Ms. Joanna Soanes (landscape)
 - e. Mr. Alex Jacob (acoustic)
 - f. Mr. Christopher Dillon (planner)
7. On behalf of the submitters the following were in attendance:
 - a. Ms. Shirong Tang
 - b. Mr. Tao Liu
 - c. Ms. Amanda Ravlich
 - d. Mr. Jeffery Stewart
 - e. Mr. Julian Stone
8. The hearing was adjourned on the basis that I asked the Applicant and Ms. Carmine to further collaborate regarding potential conditions of consent (should consent be granted). On receipt of this information, and then having determined that I had sufficient information to progress to a decision on the application, I closed the hearing on 15 December 2020.

Background

9. I have been appointed by the Waikato District Council under s.34A of the RMA to hear the evidence and submissions, and to make a decision on the application.

10. The application, site and its environment have been comprehensively explained in the application documents and Council's s.42A report prepared by consultant planner Ms. Carmine, and also in the evidence of Mr. Dillon. There was no disagreement regarding the site context and description. Based on my site visit I also agree with the descriptions provided to me. The following is a brief summary:
- a. The Site is subject to the Operative Waikato District Plan ("**ODP**") and the Proposed Waikato District Plan ("**PDP**").
 - b. The site is approximately 5,029m², of an irregular (deformed pentagon) shape, and at 561 Horotiu Road, at the northern end of Te Kowhai.
 - c. The site is zoned Country Living in the ODP, and Business Zone in the PDP.
 - d. The site is generally flat.
 - e. The proposal is a new commercial development comprising seven retail tenancies within a 1,290m² single-storey building, car parking area, landscaping, and associated infrastructure.
 - f. Land to the immediate east has been consented for development as 19 rural residential allotments ranging in size from 3,000m² to 3,450m² per allotment (SUB0007/20). According to Ms. Carmine's s.42A report (page 32), this density is in line with the Village zone proposed for that land under the PDP rather than the Country Living zone of the ODP.
11. For more detail on the proposal, I refer to the application documents and the description provided by Ms. Carmine in her s.42A report at section 1. I adopt this in full given that it was accepted by Mr. Dillon.

Consents required

12. Mr. Dillon and Ms. Carmine have each identified the consents required. There was broad agreement between the two planners as to the consents required,

including that overall consent is required as a Discretionary Activity under the ODP. No consents are required under the PDP.

13. I accept and adopt the consent requirements set out in Ms. Carmine's s.42A report at section 3. Consent is in summary required under ODP rules 27.10, 27.16, 27.17, 27.18, 27.24, 27.36, 27.37, 27.47, and 27.48.

Statutory and planning considerations

14. Section 113 of the RMA outlines requirements for decisions on applications that were notified and this decision has been prepared in accordance with these requirements.
15. In making this decision, the following provisions of the RMA have been particularly considered:
 - a. Sections 113, 104, 104B, and 108.
 - b. Part 2 in its entirety.
16. In making this decision, the following provisions of RMA planning instruments have been particularly considered:
 - a. Waikato Regional Policy Statement: sections 3 and 6.
 - b. Operative Waikato District Plan (Waikato Section): chapters 1, 1A, 6, 8, 11, and 13.
 - c. Proposed Waikato District Plan: chapters 4 and 6.
17. Both Ms. Carmine and Mr. Dillon considered the proposal to be consistent with the Waikato-Tainui Ruapatu (Waikato River) Settlement Claims Act 2020 and I accept this advice.
18. Both Ms. Carmine and Mr. Dillon considered that there was no National Policy Statement or National Environmental Standard directly applicable or relevant to the determination of the application. I accept this advice.

19. In terms of s.104(1)(c) of the RMA, I have considered the non-statutory Futureproof sub-regional growth strategy; Waikato 2070 (2020), the Council's non-statutory growth strategy; and the Council's structure plan for Te Kowhai (2017). I find that these raise relevant and reasonably necessary matters to be considered.

Notification, submissions and late submissions

20. Ms. Carmine identified in her s.42A report, section 4, that twenty-five submissions were received on the application within the submission period. No late submissions were received. By her count, twenty-two were in opposition, one was neutral, and two were in support. Having read the submissions, I agree with and accept Ms. Carmine's summary of the submissions and the issues raised. The written submissions were included as Appendix F to Ms Carmine's s.42A report.
21. Ms. Carmine identified that one submitter (Ms. Shirong Tang) self-identified as a trade competitor. Ms. Carmine was concerned that at least one other submitter, Mr. Tao Liu, may also be a trade competitor. This submitter did not speak at the Hearing and I have only been able to consider the written submission. I am not satisfied that it is appropriate to disregard Mr. Liu's submission without being able to confirm his status as a trade competitor.
22. I am satisfied that Ms. Shirong Tang is a trade competitor and I have disregarded her submission insofar as it relates to matters of trade competition.

Summary of evidence given at the hearing

23. The following is a brief summary of the evidence presented at the hearing. For full accounts, I refer to the s.42A report, pre-circulated evidence, written submissions, information given at the Hearing, and the minutes of the Hearing kept by the Council.
24. The Hearing proceeded in the usual manner, with the Applicant's presentation followed by the submitters and then the Council officers. However, because of the nature of the disagreements between the experts for the Applicant and the Council, I took something of a topic-by-topic approach, engaging in discussion with the relevant Council expert as I

worked through each of the Applicant's experts. I express my gratitude to the experts collectively for what I felt was a constructive and helpful process in that regard.

Applicant

25. Mr. Lang (counsel) presented his legal submissions and explained why the Council officer recommendation set out in the s.42A report should not be preferred. Mr. Lang submitted that I should prefer the evidence and conclusions of the planner called on behalf of the Applicant, Mr. Dillon.
26. I asked him a number of questions relating to the PDP process and the status of those provisions as they relate to the Site.
27. Mr. Barnes (corporate) spoke to his pre-circulated evidence and explained the Applicant's reasons and rationale for making the application. In response to my questions, Mr. Barnes advised that, in his estimation, approximately 60% of the customers coming to the development would be visitors or passers-through, and 40% of the customers would be locals. He also advised me that he anticipated that all of the seven tenancies would be occupied by new businesses to Te Kowhai rather than being relocations of existing businesses.
28. Mr. Colegrave (economics) summarised his written evidence and economics analysis, and then engaged with me for some time working through the differences of opinion between he and the Council's economics expert Mr. Foy.
29. As a part of this discussion I invited Mr. Foy to discuss Mr. Colegrave's points with me. What transpired from this was in summary:
 - a. The experts had arrived at similar yield predictions.
 - b. The substantive point of disagreement between the two witnesses was the extent of customers that would be drawn to the development from outside the catchment (i.e., passers-by).
 - c. A key difference between the two was that Mr. Foy estimated that it may take 5 years longer than Mr. Colegrave to 'fill' the tenancies.

- d. In any scenario, the difference of 5-years between the two experts is unlikely to result in significant adverse effects.
 - e. If Mr. Foy was correct (less demand) but the current application was granted, then the adverse effects of this 'oversupply' would likely be character and amenity effects of some commercial buildings (either some of the proposed tenancies and/or some of the existing commercial properties in Te Kowhai) being vacant for an interim time period.
 - f. If Mr. Colegrave was correct (more demand) but the current application was refused, then the adverse effects of this 'undersupply' would likely be more people having to travel further to Te Rapa for an interim time period (assuming an alternative commercial development resource consent was granted in due course). This was referred to by Mr. Foy as "leakage" from the catchment.
 - g. Neither expert considered that bulky goods or 'large format' retailing would be successful on the Site because of the proximity and superior setting (for that type of retail) at Te Rapa.
30. During the above discussion the Applicant also confirmed to me that it already has six of the seven proposed tenancies subject to (provisional) lease agreements with operators, with discussions occurring for the seventh. I have no reason not to accept that this is the situation, and I find that it is of itself indicative that those persons who would be taking the most commercial risk tend to see the demand profile and likelihood of customers being present as being in line with Mr. Colegrave's estimation.
31. Ms. Soanes (landscape), summarised her evidence. In her opinion the proposal would have acceptable landscape and visual effects. My discussion with her included incorporation of water tanks and the process of revising the landscape plan if this occurred.
32. I also discussed with Ms. Soanes the character effects on Te Kowhai village as a whole if the proposed development was granted and proceeded from the point of view of the development becoming the village focal point or 'centre' despite being at the village's northern edge. Ms. Soanes' was of the opinion that this would be acceptable primarily from the point of view that Te Kowhai currently has no commercial centre in any event and existing commercial uses are somewhat spread out across the village.

33. Mr. Jacob (acoustics) summarised his evidence including additional analysis he had undertaken of the likely noise characteristics of the proposal on Sundays (this was a criticism in Ms. Carmine's s.42A report). In Mr. Jacob's opinion the ambient noise from Horotiu Road will likely exceed the noise limit, and the principal noise coming from the Site would be associated with vehicles and service plant. In Mr. Jacob's opinion this would be compatible with the ambient noise and not materially change its characteristics.
34. It was also important, Mr. Jacob noted, that the proposed building formed a physical shield for containing noise on the western (Horotiu Road) side, and that there would be no plant or noise-generating activities proposed behind the building relative to adjacent neighbours to the east. This would include acoustic doors at the back of the tenancies.
35. Mr. Vink (engineer) was available on-call and although I had no specific questions for him, he did participate with the Council's engineer Mr. Templeton in helping address issues relating to Site servicing.
36. Mr. Dillon (planner) spoke to his written evidence. He expressed disagreement with many aspects of Ms. Carmine's s.42A evaluation of the application including how she had approached the existing environment and the likely character effects of the proposal on Te Kowhai.
37. I also engaged in a lengthy discussion with him regarding the PDP and the types of commercial activity that could occur within the proposed Business zone. In Mr. Dillon's opinion, the PDP provides for commercial activity as a permitted activity within the Business zone, and commercial activity is proposed to be defined as the sale and distribution of goods and services.
38. Mr. Dillon agreed that the PDP does signal a different (less enabling of retail) approach to the Business Zone where the settlement also includes a Town Centre zone, but that in the context of Te Kowhai no such Town Centre zone is proposed. I took from Mr. Dillon's opinion that he understood the Business zone to be more allowing of small-scale retail in villages where there was no Town Centre zone, as otherwise no such retailing at all might be enabled for those small settlements like Te Kowhai in the PDP.
39. Mr. Dillon also considered that the existing businesses in Te Kowhai, assuming in a worst-case scenario that they were unable to continue operating in light of the proposal also occurring, were subject to a wide range

of enabled alternative uses within the zone framework. He disagreed with Ms. Carmine's s.42A report contention that adverse effects from buildings falling into disrepair was a likely outcome.

40. Overall, Mr. Dillon continued to consider that the proposal was acceptable and that consent could be granted.

Submitters

41. No expert evidence was called on behalf of any submitter.
42. Of the submitters in attendance, none wished to speak. Ms. Shirong Tang, with assistance from a support person, did table a written statement outlining her concerns with the proposal.

Council officers

43. After hearing from the Applicant and the submitters, the Council staff requested a brief adjournment to compile their response.
44. I heard from Ms. Parham, Ms. Carmine and Mr. Foy. Ms. Carmine's opinion had not changed over the course of the hearing and she continued to recommend that consent be refused. She did not agree with the Applicant's interpretation or proposed reliance on the PDP, and it was very important in her mind that within the PDP there was a separate definition of "retail" to "commercial", meaning that Mr. Dillon's interpretation that retailing could be seen as a sub-set of commercial must be incorrect.

Hearing adjourned

45. At this time I adjourned the hearing to allow:
- a. Ms. Carmine and Mr. Dillon to collaborate on potential conditions of consent in the event that consent was granted;
 - b. Ms. Soanes to update the landscape plan to include water tanks as had been discussed through the hearing; and
 - c. Mr. Lang to complete a written right of reply.
46. The information requested was ultimately provided to me by the 14th December, and I determined to close the Hearing on 15th December 2020.

Applicant's right of reply

47. In its written right of reply, the Applicant reiterated the reasons why I should favour the evidence of its experts and grant consent. Revised conditions of consent were proposed along with an updated landscape plan.
48. Much of the reply was focused on economic effects and the PDP, with Mr. Lang providing detailed responses to Ms. Carmine's conclusions and interpretations. Put simply, he was of the view that Ms. Carmine's interpretations lacked common sense and were impractical.
49. Mr. Lang also reiterated the following matters that were in his view uncontested:
 - a. Te Kowhai is a centre that is identified for growth in all of the Futureproof sub-regional growth strategy, RPS, ODP and PDP.
 - b. The land immediately east of the Site is being developed and in the PDP is identified as changing from Country Living zone to Village zone.
 - c. There is currently limited business activity in Te Kowhai, and it is spread out across the village.
 - d. The PDP Business zone for the Site has not been challenged by any relevant submission.
 - e. Neither the ODP nor PDP identify a centre or 'focal point' for Te Kowhai. The only site identified for additional or new Business zone is the Applicant's site.
50. Mr. Lang's overall reply submission was that consent should be granted.

Principal issues in contention

51. The information and evidence before me raised the following principal issues in contention:
 - a. Relevance of the PDP and its weighting.
 - b. Trade competition and economic effects.
 - c. Character and amenity effects – Te Kowhai.

- d. Character and amenity effects – Site and immediate surrounds.
 - e. The proposal's fit with the ODP.
 - f. Overall appropriateness of the activity.
 - g. Part 2 of the Act.
 - h. Conditions of consent.
52. In respect of all other matters, including other adverse environmental effects than those listed here, and concerns identified by submitters, I find that there are no pathways that would lead to the refusal of consent, and that conditions of consent such as were proposed by the Applicant and Council staff could appropriately avoid, remedy or mitigate adverse environmental effects. This specifically includes the matters of noise and transportation effects.
53. In terms of infrastructure and servicing, by the conclusion of the Hearing this matter had been resolved to the extent that the disagreement between the experts was one of the construction of conditions of consent rather than a fundamental matter of whether a consentable solution could be found. This issue is therefore addressed in my consideration of conditions of consent.

Findings on principal issues in contention

Relevance of PDP and its weighting

54. I accept Mr. Lang's central submission that the zoning of the Site, and land to the immediate east, will change. For the Site, the land will become zoned Business in the context of the PDP framework.
55. But I decline to take the direction and ultimate provisions that may result from the PDP process any further than that high-level signal. On the basis of the many documents referred to me by the Applicant and the Council, it is clear that the PDP process is in flux and a variety of changes to the notified version are likely (including as signalled by the evidence and reporting of the Council itself). These changes may impact on the extent to which the proposal would or would not be permissively enabled within the future Business zone. I am not at all inclined to consider various amendments to the notified provisions made to date through the PDP process including expert evidence and

Council s.42A reports. That would be selective and speculative from the point of view of me putting myself into the shoes of the PDP decision makers.

56. Because I accept as certain that the Site's zone will change to Business zone, but I lack certainty as to the final form and shape of the provisions that might sit within that zone (including whether or not retail might be either a permitted or a non complying activity), I do not accept Mr. Lang's submission that I should treat the Business zone as operative under s.86F of the Act, and the Operative Country Living zone as no longer effective. That decision would leave the Site unacceptably stranded in planning terms.
57. The Site has an Operative zone and planning framework and it is Country Living.
58. It follows that I have approached my assessment from the point of view of an Operative planning regime that is certain but which will only apply for a limited time into the future. It will be replaced with a new PDP regime including a Business zone applying to the Site. I have taken the notified provisions as a guideline or signal of what that likely replacement planning framework will be, but in so doing I have accepted that the Site will become zoned for business uses (of some sort) as part of a policy framework, at least insofar as it relates to the Site, very different to the current Country Living zone.
59. One significant and highly pertinent aspect of this PDP change is that, other than the existing sites in Te Kowhai that accommodate business activities, the Site is the only new or additional such Business-zoned site proposed in Te Kowhai. I accept that in whatever combination of business activities the PDP may eventually enable on the land, it seems clear that the Site has been singled out as a business node in the village to which existing residents are likely to frequently visit for goods and services (or employment). This, more than whether or not 'commercial' activity also includes 'retail' activities in the notified PDP definitions (discussed later) has been influential in my decision.

Trade competition and economic effects.

60. I find that the submission of Ms. Shirong Tang relates directly to trade competition. Subject to s.104(3)(a)(i) I have disregarded her submission insofar as it relates to trade competition. I have also disregarded the content of the remaining submissions that also relate to trade competition.

61. That the proposal may result in changes or even potential closure of existing businesses as a result of new competition is not an effect that I may take into account. The Applicant advised me that it has signed lease agreements for six of the proposed tenancies. None of those are operators of existing businesses in Te Kowhai. I am satisfied that if any existing businesses close, it will be as a result of trade competition only. Having found that, it is also relevant to note that being closer to the existing developed areas of Te Kowhai, those existing businesses will continue to enjoy the competitive advantage over the proposal of being closer to existing residents.
62. I am satisfied that the difference in opinions of Mr. Foy and Mr. Colegrave would not result in significant adverse real-world economic effects. Having evaluated the differing scenarios of a notional 'over supply' or an 'under supply' occurring for an interim period, I find that no lasting damage to Te Kowhai is likely as a result of the proposal being granted consent.
63. I find the Applicant's evidence to be the more persuasive. Even if it is not able to lease the seventh unit for some time, or some of its units fail to sustain a lasting operator presence, I am satisfied that this will not of itself result in any permanent adverse effect of concern (noting that occasional vacant premises are a fact of life in all commercial developments from time to time).
64. In terms of a more strategic filter of economic efficiency, and considering Ms. Carmine's concerns that the development may create a de-facto 'centre' to Te Kowhai, I am satisfied that any economic inefficiency would not be of a concerning magnitude. Currently Te Kowhai has no centre, and if I accepted Ms. Carmine's interpretation of the PDP that no additional retail at all might be being purposefully sought by the Council, then it would seem that at some future point travel for locals from Te Kowhai to Te Rapa might become increasingly necessary as growth occurs. I see no scenario where such an outcome could be regarded as preferable to allowing locals to remain in Te Kowhai, even if in a commercial centre that is not spatially located in the literal centre of the village.
65. In reaching this conclusion it has been relevant to me that the Council has not elected to advance a centre or focal point zone within either the ODP or PDP for Te Kowhai. I see no centre identified for the village in the Waikato 2070 (2020) growth strategy despite it projecting a 50-year growth framework and noting that commercial and centre outcomes are identified in that strategy for other settlements in the District. A Council structure plan for Te Kowhai

(March 2017) does indicate a future town centre focal point at the intersection of Te Kowhai Road and Horotiu Road. But it is silent on how or when or by whom such a focal point might come about. The document does refer to the District Plan review and also has details of staging and timing for various changes to Te Kowhai – but only for residential and future open space outcomes. Overall, I find that I should give little weight to the Te Kowhai Structure Plan including because the Council has in subsequent planning documents not seen fit to advance or otherwise recognise its concept of a future centre.

66. I find that this position is reinforced by the content of the PDP itself. It is very relevant to my mind that the only additional Business zone proposed for the village in the PDP other than existing businesses, is the Site. Accepting the disagreement between the Applicant and the Council's officers surrounding whether or not retail would be a permitted commercial use under the PDP, in any event and in whatever form, the future business activities on that Site would have the function of meeting the needs of the local community and the local community would need to travel to that Site to access them. This can only be regarded as the Council's intent. I cannot see a pathway to finding that such travel would be acceptably 'compact' and efficient for all commercial uses other than retail but not acceptably 'compact' for retail itself. To the contrary, I find the Council's notified PDP can only be interpreted as signalling that the Business zone needs of Te Kowhai will be most appropriately met by the combination of existing single-sites accommodating existing businesses and the Site, and that this is line with the PDP and RPS settlement planning principles.
67. In other words, I am satisfied that the PDP Business zone for the Site has the real-world effect of signalling that it will be at least a quasi-centre for the village.
68. I also find Mr. Dillon's comments pertinent, where he discussed with me the issue that even if the Council did ever seek to create a centre or focal point in the village it would be on private land currently used for other activities. It would need to also have willing and supportive landowners on board to help deliver such a vision. It would not be as simple as marking a potential zone on a map.

69. The absence of a formal Council preference for a centre or focal point in Te Kowhai in either the ODP or PDP does not in my opinion go so far as to mean that no suitably-scaled centre is wanted or would be appropriate. As I see the RPS, ODP and even PDP, compact urban forms based on making each settlement as self-sufficient as possible is a driving resource management outcome. I am satisfied that the proposal will result in the creation of a focal point commercial node within Te Kowhai and I find that this will fundamentally be a better resource management outcome, insofar as what the relevant planning documents seek, than continuing to not have one and in addition not, at least following Ms. Carmine's PDP interpretation, allowing one in the foreseeable future.
70. On the basis of the above, I prefer the Applicant's evidence including that of Mr. Colegrave and Mr. Dillon. Not only do I find the proposal unlikely to give rise to any problematic retail or 'centre' related economic effect for Te Kowhai, I find that it is likely to be positive for the community inasmuch as, although perhaps not ideally positioned within the village, it will provide a focal point and long-term self-sufficiency benefits that may not otherwise be likely to occur.
71. I record that Ms. Carmine's concerns would have been more persuasive if there was an existing centre zone or identified community focal point within either the ODP or PDP, or other evidence since the 2017 structure plan that such a centre was intended to be sought by the Council.

Character and amenity effects – Te Kowhai

72. I find that the proposal will not give rise to any unacceptable character or amenity effects.
73. For the reasons given above, I find that the proposal will not adversely affect the character of the village and will likely have positive effects of providing a focal point or centre where none exists, on a Site that the Council has itself nominated as the location of new business activity in the Village through the PDP. It may currently be at the edge of the settlement, but if anything, the signal in the Waikato 2070 growth strategy is that future residential zones in north Te Kowhai (north of the Site) will help better embed the Site into the body of the village.

74. The more specific amenity values effect of concern to Ms. Carmine was the potential effect of existing businesses closing and the buildings falling into disrepair.
75. I find that Ms. Carmine's concern cannot be sustained without evidence that there is no potential activity that could occupy those existing buildings, or that they could not be potentially enhanced by way of replacement activities and buildings. No such evidence was provided and ultimately Ms. Carmine's position is based on a number of speculative assumptions all being necessarily accepted. These are in summary, and in order, that:
- a. the proposal would over-supply commercial demand in a way that could not allow the existing businesses and the new spaces to co-exist without some necessarily closing; and
 - b. the existing businesses would not be able to compete successfully with the new businesses, despite having potentially favourable accessibility to existing residents and her economics expert Mr. Foy (whose opinion she preferred over Mr. Colegrave) advising that only as much as 10% of trade for the new stores come from passers by (making them in her thinking dependent on existing residents choosing to bypass the nearby existing businesses in favour of the further-afield new businesses); and
 - c. existing businesses closing as a result; and
 - d. no other uses being plausibly viable or attracted to those sites; and
 - e. the buildings not being maintained and then falling into disrepair such that they would materially detract from the pleasantness of their neighbourhood.
76. I find that I must instead prefer the Applicant's position, that the existing businesses may continue trading. If some or even all of them do close, a wide variety of alternative uses remain enabled within the Plan framework (the ODP as well as the PDP) and may be viable.

Character and amenity effects – Site and immediate surrounds

77. I find that the proposal will not achieve an outcome that is in keeping with what is sought by the Country Living zone, but that the adverse effects of the proposal will be acceptable and adequately avoided, remedied or mitigated.

78. The development will have an acceptable level of visual interest and design quality. It will be pleasant for visitors and overall I find it will be visually consistent with many other one-storey commercial developments around the District.
79. Adverse effects on users of adjacent Sites have been mitigated as a result of the design decisions made by the Applicant including landscaping, and building location, form and appearance. The proposal will not be aggressively dominant or overbearing although it will be prominent, including due to signage and lighting.
80. The landscape plan prepared by Ms. Soanes will provide visual amenity to the Site, soften views of the building and car parking area, and overall integrate the development into the environment.
81. I accept that to those in the community expecting to only see a Country Living outcome on the Site, the proposal may seem overly urbanised and adverse. However I am mindful that the zoning of the Site is going to change and that some form of business activity will likely occur in the foreseeable future. The retail development proposed may well have superior visual and character qualities than other forms of business use where, if no public customers are sought to be attracted, a lower-quality built form might well eventuate. Because of this probability, I accept in-part the evidence of Ms. Carmine, Mr. Dillon and Ms. Soanes on this matter.
82. Any interim amenity or character effect of the land being occupied by a business use prior to the land being formally zoned business will not be severe or inappropriate.
83. In reaching the above conclusion, I have not been persuaded that a recently consented café south of the Site – emphasised quite strongly in the Applicant's case - has any particular relevance to the merits of the proposal.

The proposal's fit with the ODP

84. I find that the proposal does not reflect the typical outcomes sought by the Country Living zone. Although I do not see the proposal being contrary or fundamentally opposed to the ODP, it does not at all sit comfortably with all of those provisions due to the:
- a. scale of commercial activity and car parking proposed;

- b. proportion of hard surface and buildings to green landscaped open space proposed;
 - c. visual character and appearance of the development as a commercial centre-type development; and
 - d. presence of commercial signage and lighting that exacerbates the commercial amenity values of the proposal.
85. In the above respects I prefer Ms. Carmine's assessment over Mr. Dillon's, although I do not share the extent of concern that Ms. Carmine has reached. This is because I am satisfied that the ODP framework is going to change in the near term, to a Business zone under the PDP. In light of the change that will occur, possibly within the next 12-18 months, I do not agree with Ms. Carmine that the severity of misalignment between the proposal and the Plan to be significantly problematic in real-world terms or would lead to a refusal of consent.
86. In reaching this conclusion it has been relevant that commercial and retail activity is a Discretionary activity under the Country Living zone rather than a Non Complying activity. I have interpreted from the activity status that the land use activity proposed itself is not inherently inappropriate within the zone, with the key issue to be managed one of amenity (character, scale and intensity).

Overall appropriateness of the Activity

87. In cumulative consideration of all of the above, and also in consideration of the RPS, ODP, PDP, Futureproof growth strategy, Waikato 2070, and the Council's Te Kowhai structure plan, I find that the proposal is acceptable.
88. If only assessed in light of the ODP framework and if there were no PDP intending to considerably change the planning framework applicable to the Site, then I record that the proposal would likely not be acceptable. However from the outset the Applicant has been clear that the context that the proposal sits within is one of change and a future Business zone. This has been a key part of its case. The Applicant has taken the risk of seeking a consent before the PDP process has been resolved, and although I have not been persuaded to take the PDP's provisions and weighting as far as the Applicant would like, I am satisfied that on overall balance it would not be

sound resource management to ignore or improperly downplay that context of change either.

89. I am satisfied that the proposal will not result in problematic adverse effects and when I consider that in light of what I have been able to glean from the notified and likely direction of the PDP, it would not be reasonable or proportionate to refuse consent due to it not better-reflecting the outcomes sought by the ODP's existing Country Living zone.
90. To the extent that the proposal does not sit comfortably with the ODP Country Living provisions, this does not lead me to refuse consent to the proposal.

Part 2 of the Act

91. I have considered all of the above in light of Part 2 of the Act. I determined to undertake a Part 2 analysis because:
- a. Both Ms. Carmine and Mr. Dillon did so; and
 - b. There is uncertainty in relation to the medium and long-term planning framework that will apply to the land in light of the differences between the operative Country Living and the proposed Business zones; and
 - c. The proposal does not sit comfortably against the Operative plan framework.
92. My consideration under Part 2 leads me to also support the granting of consent. Refusing the proposal is in my mind likely to simply forestall a business development of a similar character, intensity and scale by a short period. I see no beneficial resource management purpose in that course of action.
93. The proposal will enable the social and economic wellbeing of the community by providing for its long-term compact and self-contained retail needs. The location of what will in all likelihood be a de-facto centre does not reflect a more 'ideal' outcome centrally located within Te Kowhai. But I am satisfied that the Site proposed will be acceptable because:
- a. it is superior to the village having no defined commercial centre or focal point; and

- b. there is no planned or likely future centre in Te Kowhai other than via the proposal; and
 - c. the Site is the only site in Te Kowhai identified by the Council in its PDP as being most appropriate for Business use, including commercial activities, other than existing business premises. I am satisfied that in light of the similarities between the PDP definitions of retail and commercial use, that the Site is compatible with the use proposed and will remain broadly in line with the urban form outcomes sought by the Council for Te Kowhai in its notified PDP; and finally
 - d. the information I have on future growth and change in Te Kowhai includes the potential for residential growth north of the Site and that, overall, would embed the Site within the village rather than it sitting at the northern edge (i.e., the Site will likely in time become more 'central' as the village grows around it).
94. The proposal will not literally "maintain" (i.e., 'keep things the way they are') all existing amenity values of the Site or for immediate neighbours but this is not fatal to the application, and amenity values will remain reasonably safeguarded. This is because s.7 of the RMA is a set of matters to have particular regard to, not matters that must be recognised and provided for. I am satisfied that the proposal will provide an acceptable character and amenity outcome in light of the changes signalled in the PDP for the locality.
95. Overall, I therefore prefer the conclusions of Mr. Dillon that the proposal is consistent with Part 2 of the Act.

Conditions of consent

96. By the close of the hearing, Ms. Carmine and Mr. Dillon were largely agreed on the conditions of consent that should be imposed were consent granted.
97. Disagreement remained in terms of conditions 10 and 11 (storm water and water supply).
98. In terms of condition 10, the disagreement related to inclusion of the words "or is not achievable at a reasonable cost". Ms. Carmine considered that this was not an appropriate matter. I agree with Ms. Carmine. At the hearing the matter of undergrounding the tanks was discussed and geotechnical confirmation was the only matter discussed with myself with the Applicant. I

find that the proposed tanks should be located underground if it is technically feasible and that there will be landscape amenity benefits from this occurring.

99. I prefer Ms. Carmine's wording for this condition.
100. In terms of condition 11, I also prefer the argument of Ms. Carmine that this should be imposed. It has not been demonstrated that the activity will be operate without potential user restrictions depending on the changes in individual business type over time. I do not accept that there is an unreasonable burden in ensuring that at each change of tenancy the capacity constraint can be accommodated.
101. However, I do not agree that this needs to be in the form of a full engineering report, and to that end a simpler engineering certification will suffice. I have also changed the wording of the condition to require that each new tenancy shall operate at all times in accordance with any limitations identified in the engineering certificate so as to ensure the Site's capacity constraint will not be exceeded.
102. I otherwise accept the conditions as per the version provided to me in Microsoft Word format from the Applicant on 14 December 2020.

Section 104 analysis

Section 104(1)(a)

103. In terms of section 104(1)(a) of the Act, and for the reasons above, the proposal will have acceptable effects, with adverse effects avoided, remedied or mitigated – including by way of conditions of consent.

Section 104(1)(b)

104. The proposal could be described as 'jumping the gun' on the PDP and it entails what appears to include a matter of uncertainty regarding what the PDP might intend a commercial activity to be relative to a retail activity. This may well be very relevant to whether or not retailing as is proposed is or is not envisaged within the proposed Business zone. For my purpose, I am satisfied that my decision would not turn on that matter and overall, taking a real-world approach, the proposal is for a business use on land identified within the PDP for business use including, if not retail, commercial uses with characteristics that could be very close to a retail activity. The land is the only such land identified in the PDP for Te Kowhai for new business zone, and no town centre zone is proposed.

105. I struggled to see the logic or practicality in Ms. Carmine's view that it may be that the PDP did not envisage any retail being enabled at all within Te Kowhai and the other villages, but ultimately that determination will be made by the separate PDP decision makers in due course.
106. The proposal is not a comfortable fit with the outcomes sought for the Country Living zone but the context of the PDP and the change of zone that will occur limits my willingness to refuse consent solely on the matter of the misalignment between the proposal and the outcomes sought by the ODP.
107. What has ultimately turned my decision is that when I read the RPS, ODP and PDP collectively, they seek healthy, prosperous settlements that are compact, self-sufficient and lively. The proposal will contribute to these planning outcomes more than it will detract from them. I have understood Ms. Carmine's concerns to include the question of the location of what would in all likelihood become the centre or focal point for Te Kowhai. To an extent, I agree with these concerns. But other than the Council's 2017 non-statutory structure plan that identified but then did not otherwise discuss a potential future town centre in Te Kowhai, and which was not then followed through by the Council into the PDP, there is no basis to the idea that such a centre might be 'on the way'. I found it particularly problematic, from the point of view of following Ms. Carmine's concerns, that over and above the PDP, the Council also did not include any reference to the structure plan's Te Kowhai centre in its own 50-year Waikato 2070 growth strategy for the village.
108. I find my position can only and must be that there is no planned or intended centre or focal point for Te Kowhai that the proposal might in turn be said to conflict with or undermine. Following on from that, the provision of such a node, even if spatially imperfect in terms of being in the northern part of the village, is overall likely to have positive long-term effects for the community.
109. On the basis of the above, I find that the proposal is:
- a. Consistent with the notified PDP framework at Chapter 4 in particular, but that other than a change of zone from Country Living to Business zone, the PDP is not sufficiently advanced or resolved for it to be given dominant weighting or priority in my decision. But it remains an important part of the planning context.

- b. In tension with, but is not outright contrary to, the outcomes sought for the ODP Country Living zone, and is consistent with the more general settlement and growth / urban form principles of the ODP collectively at 1.6, 1.6.5, 1A.2.1, 1A.2.2, 1A.2.2A, 1A.4.1, 1A.4.2, 1A.4.5, 6.2.1, 6.2.2, 6.2.3, 6.6.1, 6.6.4, 8.2.1, 8.2.2A, 8.2.2B, 8.2.3, 8.2.5, 8.2.5A, 8.2.6, 11.2.1, 11.2.2, 11.2.3, 11.2.4, 11.2.5, 11.2.6, 11.2.7, 11.2.14, 13.2.1, 13.2.4, 13.2.6, 13.2.7, 13.2.9, and 13.2.10.
- c. Consistent with the RPS principles for settlement growth and development including objective 3.12 and policies 6.1, and 6.16.

Section 104(1)(c)

- 110. I have considered the Futureproof sub-regional growth strategy, Waikato 2070 growth strategy, and the Te Kowhai structure plan. These documents have been most helpful in understanding the drivers and context of growth in the District and in Te Kowhai.
- 111. I find that the proposal is not in conflict with these documents, although as discussed elsewhere in this decision, the potential future town centre identified in the Te Kowhai structure plan has not been a matter that I have taken as a position of firm Council preference because of its absence from both the PDP and Waikato 2070.

Balance of s.104

- 112. I have followed the balance of s.104 in the making of my decision but nothing warrants a particular comment being made (noting my earlier discussion related to trade competition).

Section 104B analysis

- 113. Having completed my evaluation of the proposal under s.104, I have proceeded to make my decision under s.104B of the Act. In so doing I have also considered the written submissions and the concerns of the submitters.
- 114. I find that consent should be granted, subject to conditions. My detailed reasons are as follows.

Decision

Under section 104B of the Resource Management Act 1991, the application for land use consent by Quattro Property Holdings Ltd at 561 Horotiu Road, Te Kowhai, is

granted subject to the conditions attached to this notice as **Attachment 1**. The reasons for this decision are:

- a. Pursuant to s.104(1)(a), the proposal's adverse effects have been avoided, remedied or mitigated including by way of the conditions of consent that have been imposed. The proposal's overall adverse effects are acceptable. In particular, although the proposal is not for a land use with the character, scale or intensity likely of a more 'compliant' Country Living zone outcome, the Site is well suited for the proposed use and will provide acceptable and reasonable amenity outcomes for users of the Site, Horotiu Road, and neighbouring sites.
- b. In terms of s.104(1)(a), I find that the proposal is likely to result in some positive social and economic effects for Te Kowhai by formalising and providing a focal point and real-world centre where none exists and, as summarised below, none has been proposed by the Council. The Site is suited for this role, at least in part, by way of the PDP's recognition of the land as the site of the village's new business land.
- c. Pursuant to s.104(1)(b), the PDP has signalled that the Site will be zoned Business and while the provisions of that zone and the remainder of the PDP are subject to numerous submissions, the change of zone on the Site to Business zone has not attracted any submissions and can be accepted as therefore very likely to happen. This has the effect of promoting the Site to the role of a business focal point or at least quasi-centre for Te Kowhai. The proposal is consistent with the outcomes sought by the notified PDP although in light of the flux that the PDP and its specific content is experiencing, I have not given this particular finding significant weighting. I have not been persuaded that the difference in the PDP definitions of "commercial" and "retail" activities would have of itself turned the decision in any event.
- d. Pursuant to s.104(1)(b), the proposal does not sit comfortable with the outcomes sought by the ODP Country Living zone but is not outright contrary to them, and is consistent with the balance of the ODP provisions for urban growth and development.
- e. Pursuant to s.104(1)(c), the proposal is consistent with the Futureproof sub-regional growth strategy, Waikato 2070 growth strategy, and the Te

Kowhai structure plan. I have placed less importance on the Te Kowhai structure plan (2017) given that neither the subsequent PDP (2018) or Waikato 2070 (2020) have pursued the potential of a centre within Te Kowhai.

- f. In terms of Part 2 of the Act, the granting of consent will best promote sustainable management. The application sits in a planning process of change from a Country Living to a Business policy framework. Although the proposal does not sit comfortably with the ODP framework for the Country Living zone it is not problematic in terms of the balance of the ODP, and is broadly in line with the scale and intensity of business use envisaged in the notified Business zone. In this instance, I find that refusing consent on the grounds of the application being slightly 'in front of' the PDP; or on the basis of uncertainty regarding the final composition of the future zone's provisions; or on the basis of it not more closely fitting-in with the outcomes sought in the Country Living zone would all be disproportionate and unjustified.

A handwritten signature in black ink, appearing to read 'Ian Munro', with a stylized, flowing script.

Ian Munro

Independent Commissioner

21 January 2021.

ATTACHMENT 1 – CONDITIONS OF CONSENT: LUC0427/19, 561 HOTORIU ROAD

Conditions of consent

- I The retail complex development shall be undertaken in general accordance with the information and Waikato District Council approved plans submitted by the consent holder in support of land use application number WDC Ref: LUC427/19 and officially received by Waikato District Council on the 23rd May 2019 and all further information received during the processing of this application except as amended by the conditions below.

In the case of inconsistency between the application and the conditions of this consent, the conditions of consent shall prevail.

Copies of the Waikato District Council approved plans referenced below are attached.

The following plans produced by DDL Architecture

	Plan / Drawing Title	Dated	Drawing number
(a)	Te Kowhai Village Commercial Development COVER	15/02/2019	SK0 18/039 Rev I
(b)	Te Kowhai Village Commercial Development SITE PLAN	15/02/2019	SK01 18/039 Rev I
(c)	Te Kowhai Village Commercial Development ELEVATIONS A-C	15/02/2019	SK02 18/039 Rev I
(d)	Te Kowhai Village Commercial Development ELEVATIONS D-F	15/02/2019	SK03 18/039 Rev I
(e)	Earthworks	15/02/2019	SK05 18/039 Rev I

The following plans produced by Boffa Miskell

	Plan / Drawing Title	Dated	Drawing number
(g)	Commercial Complex – 561 Horotiu Road, Te Kowhai - Planting Plan	6 th November 2020	Figure 8 Rev A
(h)	Commercial Complex – 561 Horotiu Road, Te Kowhai Landscape Palettes	6 th November 2020	Figure 9 Rev A

Monitoring Costs

- 2 Pursuant to Section 36 of the Resource Management Act 1991 the consent holder shall pay the actual and reasonable costs incurred by the Waikato District Council when monitoring the conditions of this consent.
- 3 Prior to commencing any construction works, the Consent Holder shall appoint appropriately qualified and competent **Developer's Representative/s**, to provide all designs, supervision, certification and final signoff, in accordance with the requirements of the Regional Infrastructure Technical Specifications (RITS).

Monitoring Notification and Pre Start Meeting

- 4 The Consent Holder shall arrange and attend a pre-start meeting with the Waikato District Council Monitoring Department at least 10 working days prior to the commencement of any activities associated with this consent.

The pre-start meeting shall address:

- (a) Construction Management including Traffic Management
- (b) Methods for controlling dust, erosion and sediment runoff
- (c) Construction Noise Management Plan

Advice note

To notify Waikato District Council Monitoring Department, email monitoring2@waidc.govt.nz with the consent number, address of property and date for when the works will commence.

Construction Management Plan (CMP)

- 5 The consent holder shall prepare and submit a Construction Management Plan (CMP) to Waikato District Council's Team Leader Monitoring for certification a minimum of 15 working days prior to the commencement of earthworks associated with this consent.

The CMP shall include the following information:

- (a) Staging of works planned and the description of works including site plans;
- (b) An erosion & sediment control plan;
- (c) Detail management procedures for material, fill placement and treatment, stockpiling and disposal of unsuitable materials;
- (d) A Dust Management Plan;
- (e) Communications Plan;

- (f) Health and Safety Plan;
- (g) Providing safe pedestrian access along Horotiu Road during construction
- (h) Address and provide a construction parking and loading management plan to ensure all parking and loading/unloading is completed within the construction site.

Construction Noise Management Plan (CNMP)

- 6 15 working days prior to commencement of excavation construction activities on the site the consent holder shall prepare and submit a Construction Noise Management Plan (CNMP) for certification by the Team Leader, Monitoring.

The objective of the CNMP is to determine and require the adoption of the Best Practicable Option for minimising all construction noise effects and to set out the measures required to ensure compliance with the noise limits of the Waikato District Plan. The CNMP shall set out, at a minimum:

- i. a description of noise sources, including machinery, equipment and construction techniques to be used;
- ii. the identification of activities and locations that will require the design of noise mitigation measures;
- iii. the measures that will be undertaken by the Consent Holder to communicate noise management measures to affected stakeholders;
- iv. the Best Practicable Option for compliance with relevant noise levels
- v. methods for monitoring and reporting on construction noise;
- vi. methods for receiving and responding to complaints about construction noise;
- vii. contact details of the key staff responsible for the implementation of the CNMP and for the handling of complaints;
- viii. construction operator training procedures;
- ix. duration of the construction works

The CNMP shall be implemented and maintained throughout the entire construction period and shall be updated when necessary with the certification by the Council.

Engineering Design Plans

- 7 At least 15 working days prior to construction starting, engineering design reports and plans for Roading, Stormwater, Water Supply and Wastewater shall be submitted to, and approved by, the Waikato District Council's Senior Land Development Engineer. Engineering designs for the overall project shall be undertaken in general accordance with the following

documents and shall address the specific design matters set out in conditions 8 to 12 below:

- a) The Operative Waikato District Plan (Waikato Section);
- b) Regional Infrastructure Technical Specifications (RITS),
- c) The Approved Plans (referenced at condition 1); and
- d) Any proposed departures from the RITS shall be noted in a design Statement accompanying the engineering approval plans, for approval by Waikato District Council's Senior Land Development Engineer.

These designs/plans shall be accompanied by a completed Producer Statement Design (PSI). A copy of the form is attached with this consent.

Roading

- 8 The Consent Holder shall prepare and submit Engineering Detailed Design Plans for roading and accesses/vehicle crossings (including geometric standards for the new signage, road markings, footpath design). The works shall be designed in general accordance with the approved plans and RITS except where changed by conditions of consent. The Engineering Design Plans shall be submitted to the Waikato District Council's Senior Land Development Engineer for approval. The works shall include:

- a. Installation of a 1.5m wide flush median in general accordance with MOTSAM, Part 2 Markings, Figure 3.28 at the northern vehicle crossing, except that the 1.5m wide flush median shall extend at least 10m south of the northern vehicle crossing before tying to the existing flush median. (no seal widening is required).
- b. Formation of a two-way vehicle crossing and an exit only service vehicle crossing as shown on DDL Architecture (Job No. 18-039 dated 15-02-2019) concept plans. The design and construction of the vehicle crossings shall be in general accordance with the Regional Infrastructure Technical Specification (RITS) diagram D3.3.4 for commercial vehicle crossings except the width shall be modified to accommodate movements by a 17.9m semi-trailer.
- c. Extension of the existing footpath to the proposed pedestrian access to the site.
- d. Signs and markings restricting the southern vehicle crossing to exit only movements for service vehicles.

Independent Road Safety Audit (RSA)

- 9 At the time of submitting the detailed design required by Condition 8 above, the consent holder shall provide an Independent Road Safety Audit (RSA) of the detailed design for roading and accesses/vehicle crossings in accordance with NZTA guidelines for Road Safety Audit Procedures for Projects (interim release May 2013)

The Audit shall address:

- (a) Pedestrian access and safety in the immediate vicinity of the subject site.
- (b) Safety at the northern and southern vehicle crossings
- (c) How the proposed flush median ties into the existing flush median and right turn bay.

The Road Safety Audit shall separate out the decision tracking between designer, client – developer, WDC safety engineer and WDC as road controlling authority client role (final decision).

The design shall be amended until all significant and serious concerns identified in the safety audit have been addressed to the satisfaction of WDC as road controlling authority, and where any safety concerns have not been addressed, engineering drawings shall be accompanied by a statement explaining why those safety concerns have not been addressed.

Stormwater and Water Supply

- 10 The Consent Holder shall prepare and submit Engineering Detailed Design Plans and a design report for stormwater treatment and management, and for Water Supply. The engineering design plans and design report shall be in accordance with the report Proposed Commercial Development, 561 Horotiu Road, Te Kowhai – Three Waters Management Plan by Wainui Environmental dated 4th April 2019 Ref: WE1919-01 and shall include:
- a. Evidence of a contract with a local water contractor to provide potable water to the development if required.
 - b. Details on site specific limitations, load capacity and methods to measure and monitor activities.
 - c. Tanks for water supply shall be located beneath the car parking area unless a report from a suitably qualified and experienced Engineer confirms that full undergrounding is not feasible from a geotechnical perspective. If water supply tanks are limited to being wholly or partially above ground they shall be shown in the location on the Planting Plan (Dated: 6th November 2020), and details of screening and/or landscaping shall be provided in accordance with Condition 13.
 - d. Written evidence shall be provided of a signed agreement or easement with the owner/s of Lot 27 Deposited Plan 522977 to

allow access to the firefighting water supply tanks on the adjoining property legally described as Lot 27 Deposited Plan 522977.

- 11 Prior to the establishment of any new business(es) within one or more tenancies on the site, a Wastewater and Water Supply design capacity certificate from a suitably qualified engineer shall be provided to Council's Land Development Engineer. The certificate shall confirm that the proposed new business(es) will meet or continue to meet the water supply and wastewater capacity limitations for the site, when combined with all other business activities on the site. The certificate shall include any limitations on the business operation identified as necessary by the engineer to ensure that this will be the case. All business activities on the Site shall at all times adhere to the limitations on their operations (if any)_specified on the relevant engineering certificate.

Wastewater

- 12 The Consent Holder shall prepare and submit Engineering Detailed Design Plans and a design report for onsite wastewater and maximum design loadings. The engineering design plans and design report shall be in accordance with the report Proposed Commercial Development, 561 Horotiu Road, Te Kowhai – Three Waters Management Plan by Wainui Environmental dated 4th April 2019 Ref: WE1919-01 and shall include:
- a. The site-specific limitations, load capacity and methods to measure and monitor activities
 - b. Ongoing Monitoring considerations.

Landscaping – Onsite

- 13 Prior to commencement of works, the consent holder shall submit to Council Monitoring Officer for certification, a finalised set of detailed landscape design drawings and supporting written documentation which have been prepared by a landscape architect or suitably qualified professional. The submitted information shall be consistent with the consented landscape concept. At a minimum, shall include landscape design drawings, specifications and maintenance requirements including:
- An annotated planting plan(s) which communicate the proposed location and extent of all areas of planting, including mitigation planting (if relevant).
 - Annotated cross-sections and/or design details with key dimensions to illustrate that adequate widths and depths are provided for planter boxes / garden beds.

- A plant schedule based on the submitted planting plan(s) which details specific plant species, plant sourcing, the number of plants, height and/or grade (litre) / Pb size at time of planting, and estimated height / canopy spread at maturity.
- Details of draft specification documentation for any specific drainage, soil preparation, tree pits, staking, irrigation and mulching requirements.
- An annotated pavement plan and related specifications, detailing proposed site levels and the materiality and colour of all proposed hard surfacing.
- An annotated street furniture plan and related specifications which confirm the location and type of all seats, bins, lights, fences, walls and other structural landscape design elements.
- Details of screening measures required for any above ground tanks or if tanks are located underground, then landscape planting to be shown at the tank location as shown on Planting Plan Dated 6th November 2020.
- A landscape maintenance plan (report) and related drawings and specifications for all aspects of the finalised landscape design, including in relation to the following requirements:
 - i. Irrigation
 - ii. Weed and pest control
 - iii. Plant replacement
 - iv. Inspection timeframes
 - v. Contractor responsibilities

Advice note:

It is recommended that the consent holder consider a minimum three-year management / maintenance programme for plant establishment and provide, in particular, details of maintenance methodology and frequency, allowance for fertilising, weed removal / spraying, replacement of plants, including specimen trees in case plants are severely damaged / die over the first five years of the planting being established and watering to maintain soil moisture.

Lighting – Onsite

- 14 Prior to commencement of works, the consent holder shall submit for certification by the Waikato District Council Monitoring Team Leader, a

lighting design plan for the outdoor areas within the site in particular but not limited to the signage, outdoor seating amenity area and security lighting within the service and parking areas. The lighting design plan shall demonstrate how the lighting across the site will comply with the light spill/glare requirements in condition 44 of this consent.

Acoustic Design of the Mechanical Plant

- 15 Prior to application for building consent for the retail complex, the consent holder shall submit for certification by the Council Monitoring Team Leader, a report from a suitably qualified acoustic expert demonstrating that any proposed mechanical services design for the Retail complex (all external mechanical plant and ventilation equipment) will comply with the permitted noise levels of Rule 27.18 of the Waikato Section of the District Plan.

Implementation of the Management Plans

- 16 All earthworks and construction activities carried out on site shall be conducted and managed in accordance with the certified Construction Management Plan and certified Construction Noise Management Plan throughout the duration of construction works.
- 17 Prior to operation of the retail complex, all construction shall be carried out in accordance with the approved Engineering Design Plans.
- 18 Prior to operation of the retail complex, all onsite lighting shall be installed in accordance with the approved lighting plan and in accordance with the ongoing condition 44 for glare and lighting below.

Complaints

- 19 Any complaints received by the consent holder as a result of the construction activities authorised by this resource consent shall be recorded by the consent holder in the form of a complaints register. The information recorded shall include:
- (a) The date, time and nature of the complaint;
 - (b) Name, phone number and address of the complainant unless the complainant wishes to remain anonymous;
 - (c) Action taken by the Consent Holder to remedy the problem;
 - (d) Any equipment failure and remedial action taken;
 - (e) The weather conditions at the time, including wind direction, wind strength and temperature; and
 - (f) Date and Name of the person making the entry.

This complaints register shall be made available to the Waikato District Council Monitoring Department within 24 hours of a request from a Waikato District Council Monitoring Officer.

Hours of Operation – Construction and Earthworks

- 20 All construction works (including earthworks) on the site must only be undertaken between 7:30am – 6.00pm Monday to Saturday. This does not prevent works that comply with the relevant standards from being undertaken outside these hours, as specified in the certified Construction Noise Management Plan (CNMP).

Accidental Discovery Protocols

- 21 In the event of any archaeological artefacts being discovered the works shall, in the vicinity of the discovery, cease immediately and the Waikato District Council, Heritage New Zealand Pouhere Taonga and representatives of local iwi (where artefacts are of Maori origin) shall be notified within 24 hours. Works may recommence on the written approval of the Waikato District Council after considering:
- a) Tangata Whenua interests and values;
 - b) Protocols agreed upon by Tangata Whenua and the consent holder, where required;
 - c) The Consent Holder's interests;
 - d) Any approvals from Heritage New Zealand Pouhere Taonga; and
 - e) Any archaeological or scientific evidence.

Dust Control

- 22 All earthwork activities carried out on site shall be conducted and managed in such a manner as to ensure that all dust and particulate emissions are kept to a reasonable practical minimum.
- 23 The consent holder shall ensure that an adequate supply of water for dust control (sufficient to apply a minimum of 5 mm/day to all exposed areas of the site during the winter period, and a minimum of 10 mm/day to all exposed areas of the site during the summer period), and an effective means for applying that quantity of water, is available at all times during construction, and until such time as the site is fully stabilised.
- 24 The consent holder shall ensure that, at all times, the soil moisture of exposed areas is maintained at sufficient levels, under prevailing wind conditions, to prevent dust generated by normal earthmoving operations from remaining airborne beyond the boundary of the work site.

Debris on the Road

- 25 The consent holder shall take all practical measures to ensure that any debris tracking/ spillage onto any public roads as a result of the exercise of this consent shall be removed as soon as practical, and within a maximum of 24 hours after the occurrence, or as otherwise directed by the Waikato District Council's Roding Area Engineer, to the satisfaction of the Waikato District Council's Team Leader-Monitoring.

The consent holder, upon becoming aware of the need to clean up the roadway, shall advise Waikato District Council's Roding Area Engineer of the need for the road to be cleaned up, and what actions are being taken to do so.

The cost of the clean-up of the roadway and associated drainage facilities, together with all temporary traffic control, shall be the responsibility of the consent holder.

Earthworks and Cleanfill Activities

- 26 Any fill areas shall be undertaken in accordance with NZS4431:1989 (Code of Practice for Earthfill for Residential Development) unless otherwise approved by the Waikato District Council's Senior Land Development Engineer. Any fill areas shall be certified by a Geo-professional as meeting the approved standard prior to any further development in those areas.
- 27 Any underfill drainage systems shall be designed by, and their installation supervised by, a suitably qualified and experienced Chartered Professional Engineer (CPEng) and their position recorded by a Registered Surveyor.
- 28 The site shall be stabilised against erosion as soon as practicable and in a progressive manner as earthworks are finished over various areas of the site. Appropriate methods of site stabilisation may include re-spreading of topsoil and grassing, hay mulching or placement of aggregate surfaces (roads/building platforms). The consent holder shall monitor and maintain the site until stabilisation is achieved to such an extent that it prevents erosion and prevents sediment from entering any watercourse.

Geotechnical Completion Report

- 29 After completion of the earthworks, and prior to undertaking any building works, the consent holder shall provide a "Statement of Professional Opinion as to Suitability of Completed Earthworks" completed and signed by a Geo-professional (who carries appropriate professional indemnity insurance for the works being supervised/certified) to certify that the site is suitable for:
- (a) Erection of commercial buildings, and;
 - (b) Provide details of any specific foundation design considerations/limitations necessary for the construction of commercial buildings.

The format for the “Statement of Professional Opinion as to Suitability of Completed Earthworks” shall be as per Volume 4, Part 2 checklist 2.2 of the Hamilton City Council Development Manual.

The Statement is to be accompanied by the following:

- (a) A schedule with dates/results etc of all supervision and testing undertaken to certify the areas of cut/fill, and
- (b) An as-built plan of the earthworks, clearly showing the areas/depths of cut and fill, and defining areas of fill which have been engineered, and those areas of fill which have not been engineered.

The above is to be submitted to, and gain the approval of, the Waikato District Council’s Team Leader-Monitoring prior to undertaking any building works on site.

Landscaping Design Implementation

- 30 In the planting season (May to Sept) following completion of site works, all landscaping designs and planting included in the Landscaping plan approved under condition 13 shall be implemented in accordance with the approved methodologies schedules and Landscaping Plans.

Acoustic Fencing

- 31 Prior to the operation of the retail complex, acoustic screening shall:
- a) Replace the proposed horizontal slatted fences around each 18m² outdoor service area. The acoustic fences shall be installed in the location shown currently as proposed horizontal slatted fences on the Site Plan SK01 and Elevations D-F SK03.
 - b) Be constructed along the shared boundary with 557 Horotiu Road (Part Allotment 166 Parish of Horotiu DP 21971).

The acoustic fences shall be 1.8m high and constructed from a material with a minimum surface mass of 10 kg/m², such as 20-25mm thick timber palings or 17mm plywood. The fence shall be free from gaps at its base. Where timber palings are used these shall be either overlapped or close-boarded with battens over gaps between palings.

As Built Information

- 32 As Built information for all works covered in the approved Engineering Design Plans shall be provided to Council for acceptance. As Built information shall be in accordance with Section 1.7.3 of the requirements of the RITS and shall also include all details of street lighting installed, in a format suitable for entering into Council’s RAMM database.

- 33 The Consent Holder shall:

- (a) Appoint a suitably qualified and competent person, to the satisfaction of Waikato District Council's Roading Compliance Officer who shall be responsible for gathering all information necessary for RAMM data collection for the works to Horotiu Road.
- (b) This representative shall gather and submit RAMM data, which shall conform to Waikato District Council's ROAD ASSET DATA STANDARD SPECIFICATION, to the Waikato District Council's Roading Compliance Officer for assessment and technical certification. All RAMM data shall be provided on the prescribed forms.

Construction Certification

- 34 A 'Contractors Certificate – construction', for each separate work undertaken by each individual contractor as part of the consent, shall be provided to the satisfaction of the Land Development Engineer, Waikato District Council.

Advice Note: An acceptable format for certification upon completion of works can be found in the NZS4404-2010 Schedule 1B (Contractor's certificate upon completion of land development).

- 35 A 'Certificate of Completion of Development Works' prepared and signed by the Developers Representative/ a suitably qualified professional, shall be provided to the satisfaction of the Land Development Engineer, Waikato District Council, to confirm that all works have been carried out in accordance with the approved plans and appropriate standards.

Advice Note: An acceptable format for a 'Certificate of Completion of Development Works' can be found NZS4404-2010 Schedule 1C (Certification upon completion of land development).

Onsite Parking

- 36 Prior to occupation and during operation of the retail complex, the consent holder shall provide car parking generally in accordance with site plans from DDL Architecture, Job No. 18-039 Dated 15-02-2019. and shall meet the following:
- a. Provision shall be made for a minimum of 36 parking spaces including two accessible parking spaces.
 - b. Provision shall be made for a minimum of four cycle parking spaces.
 - c. Parking and manoeuvring areas shall be maintained on site in a weed free, dust free, with a permanent surface.
 - d. Vehicle parking spaces shall be delineated with white painted lines with the exception of the accessible needs and loading spaces, which shall be delineated with yellow painted lines and have appropriate signage in accordance with NZS 4121 requirements. Spaces are to be appropriately

identified by numbering or other means. Markings shall be regularly maintained.

Hours of Operation

- 37 The hours of trading shall seven days a week (Monday to Sunday) as follows:
- One Takeaway / pizza outlet – 10am to 10pm
 - Retail and hairdressers - 8am to 6pm
 - One Superette - 7am to 10pm
- 38 Delivery of goods, loading dock use, heavy vehicle movements and waste collection shall be limited to between 7am and 7pm, seven days a week. Loading and unloading and rubbish removal shall be restricted to within the rubbish and loading service area shown on the approved plans.
- 39 Noise from the operation of the consented activity shall not exceed 45dBA_{L10} on Sundays between the hours of 7am to 7pm, when measured at any other site.

Acoustic Mitigation to be maintained

- 40 The acoustic fences required to be installed in accordance with condition 31 shall be maintained for the duration of the activity and any damages repaired in accordance with the design specifications listed in the condition 30.

Landscaping / Planting to be maintained

- 41 Landscaping and planting located within the site as approved and undertaken in accordance with the approved Landscaping Design shall be implemented and maintained on an ongoing basis.

Signage

- 42 Signage shall be attached to the building and shall be restricted to the size and location shown on the approved plans listed in Condition 1.

Advisory Note: For clarity this condition excludes small scale directional signage and other small scale signs such as bicycle parking signs.

- 43 During the operation of the retail complex, the consent holder shall ensure that all signs associated with the activity are maintained to a high standard and ensure that signage does not fall into a state of disrepair.

Glare and Lighting

- 44 All outdoor lighting shall be positioned, mounted and directed in such a way that light coming directly or indirectly from it:
- (a) Is not a serious distraction or danger to motorists, and
 - (b) Is not a serious distraction or annoyance to occupants of other sites at any time, which shall be deemed to be the case where once an effect is brought to the Council's attention the condition continues for more than 30 minutes in any 24 hour period and the affected person/s have no ready means of relief from it.
 - (c) All artificial lighting shall be installed and operated such that the luminous intensity of any light source is less than 1000 candelas in the direction of any affected property or road.

Advisory Notes

I Lapse Date

This Resource Consent for land use lapses five years after the commencement of the consent, unless:

- (a) the Consent is given effect to prior to that date.
- (b) an application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account
 - (i) whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and
 - (ii) whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and
 - (iii) the effect of the extension on the policies and objectives of any plan or proposed plan.

2 Other consents/permits may be required

To avoid doubt; except as otherwise allowed by this resource consent, all land uses must comply with all remaining standards and terms of the relevant Waikato District Plan. The proposal must also comply with the Building Act 2004, Hamilton City Infrastructure Technical Specifications and Waikato Regional Plans. All necessary consents and permits shall be obtained prior to development.

3 Corridor Access request

Prior to any works within road reserve, the consent holder shall attain an approved Corridor Access Request (CAR), including traffic management plan. The application is to be completed by a qualified Site Management Traffic Supervisor (STMS), and provided to the Waikato District Council's Traffic Management Co-ordinator for approval not less than 15 working days prior to any works within the road corridor being undertaken. No works may be undertaken until approval for the CAR is obtained in writing.

4 Enforcement Action

Failure to comply with the conditions of consent may result in Council taking legal action under the provisions of Part XII of the Resource Management Act (1991).



RESOURCE CONSENT
 No:LUC0427/19
 Approved by: Ian Munro - Hearings
 Commissioner
 Date: 21/01/2021
 NOT FOR CONSTRUCTION

TE KOWHAI VILLAGE COMMERCIAL DEVELOPMENT

561 Horotiu Road, Te Kowhai

SKO COVER

DATE 15-02-2019
 SCALE
 ISSUE TYPE LANDUSE REV I
 JOB # 18-039



HOROTIU ROAD

ELEVATION A

ELEVATION F

NORTH

561 Horotiu Road, Te Kowhai
Lot 28 DP 522977
Site Area - 5029m2
Building coverage - 1290m2 (25.6%)
Proposed total GFA - 1050m2
pervious surfaces - 1900m2 approx (37%)

RESOURCE CONSENT
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proposed 7m tall x 2.5m
wide signage board for
development,
RHS posts with 6 of
2.2mx0.6m signage
panels and 1 of
2.2mx1.2m signage panel
refer to SK04 for
elevation

FOOT PATH
EXTENSION

Exit Only

ELEVATION C

ELEVATION E

ELEVATION D

access path to rubbish area

Communal
rubbish collection area
screened with horizontal
timber screens

TE KOWHAI VILLAGE COMMERCIAL DEVELOPMENT

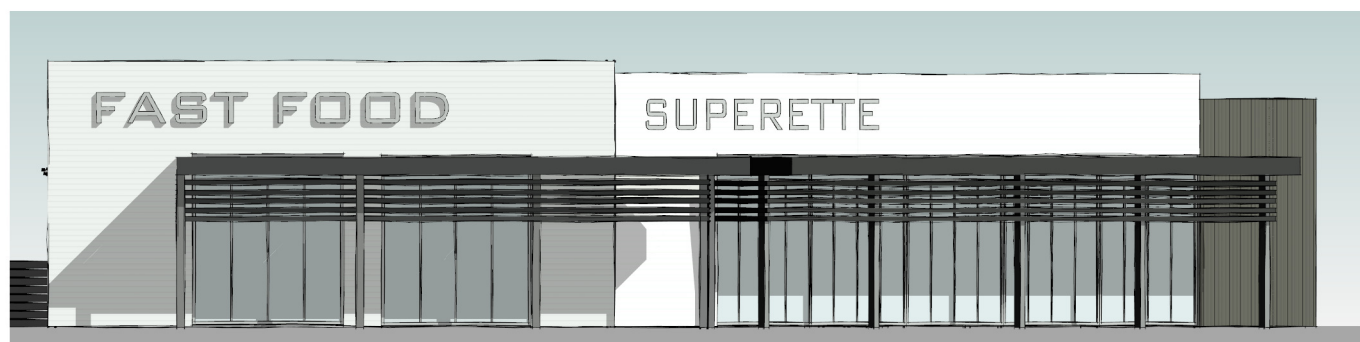
561 Horotiu Road, Te Kowhai

SK01 SITE PLAN

Document Set ID: 2993653
Version: 1, Version Date: 21/01/2021

DATE 15-02-2019
SCALE 1 : 400
ISSUE TYPE LANDUSE REV I
JOB # 18-039





ELEVATION - A

RESOURCE CONSENT
No: LUC0427/19
Approved by: Ian Munro -
Hearings Commissioner
Date: 21/01/2021
NOT FOR CONSTRUCTION



ELEVATION - B



ELEVATION - C

TE KOWHAI VILLAGE COMMERCIAL DEVELOPMENT

561 Horotiu Road, Te Kowhai

SK02 ELEVATIONS A-C

Document Set ID: 2993653
Version: 1, Version Date: 21/01/2021

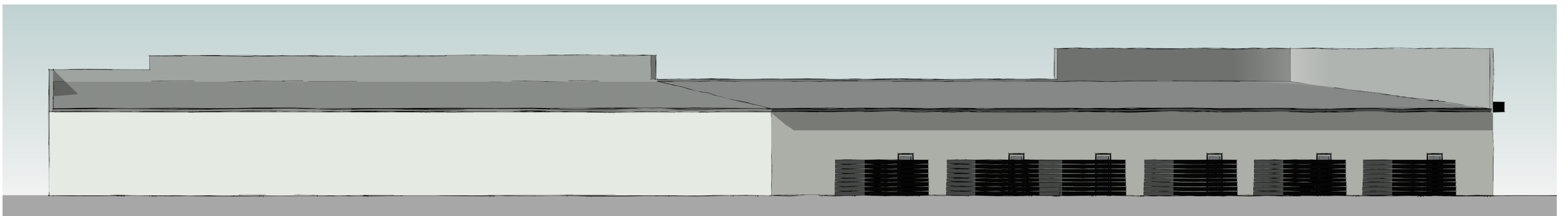
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JOB # 18-039



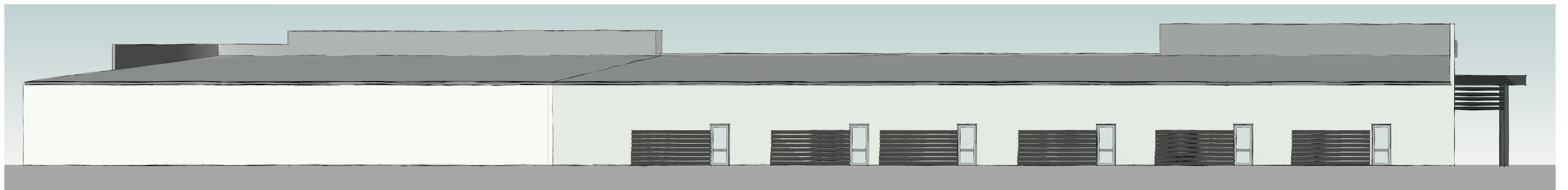


ELEVATION - D

RESOURCE CONSENT
No: LUC0427/19
Approved by: Ian Munro -
Hearings Commissioner
Date: 21/01/2021
NOT FOR
CONSTRUCTION



ELEVATION - E



ELEVATION - F

TE KOWHAI VILLAGE COMMERCIAL DEVELOPMENT

561 Horotiu Road, Te Kowhai

SK03 ELEVATIONS D-F

DATE 15-02-2019

SCALE 1 : 200

ISSUE TYPE LANDUSE REV I

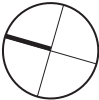
JOB # 18-039



Key

- Site Boundary
- Kowhai Trees
- Titoki Trees
- Nikau Trees
- Amenity Planting
- Corokia Hedge - clipped to 800mm high.
- Grassed Swale
- Concrete Paving
- Walkway Threshold Paving
- Native Hedge Planting (3m min)

RESOURCE CONSENT
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Soft Landscape Palette

Specimen Trees



Alectryon excelsus



Rhopalostylis sapida



Sophora microphylla

Hedging - Clipped to 800mm



Corokia 'Geentys Green'

Amenity Planting



Astelia nervosa 'Westland'



Dianella nigra



Carex buechananii



Coprosma prostrata



Acaena purpurea



Muhlenbeckia astonii



Poa cita

Plant Schedule

Trees			
Botanical	Common	Centres (m)	Size
Alectryon excelsus	Titoki	As shown	45L
Rhopalostylis sapida	Nikau	As shown	45L
Sophora microphylla	Kowhai	As shown	45L

Hedging			
Botanical	Common	Centres (m)	Size
Corokia 'Geentys Green'	Green corokia	1	1L

Amenity Planting			
Botanical	Common	Centres (m)	Size
Acaena purpurea	Purple bidibidi	0.75	1L
Astelia nervosa 'Westland'	Astelia	0.75	1L
Dianella nigra	Turutu	0.75	1L
Carex buechananii	Leatherleaf Sedge	0.5	1L
Coprosma prostrata	Coprosma	1	1L
Muhlenbeckia astonii	Shrubby tororaro	1	1L
Poa cita	Silver Tussock	0.75	1L

RESOURCE CONSENT

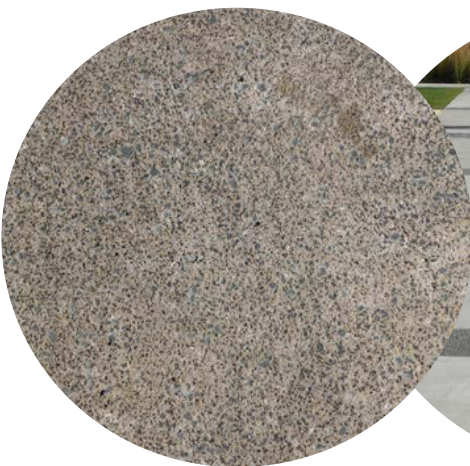
No:LUC0427/19

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NOT FOR CONSTRUCTION

Hard Landscape Palette



Exposed aggregate walkway



Walkway with paving detail



Threshold paving



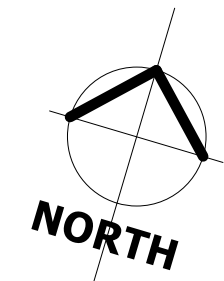
Threshold paving

RESOURCE CONSENT
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Approved by: Ian Munro - Hearings
Commissioner
Date: 21/01/2021
NOT FOR CONSTRUCTION

stabalised
construction entrance

HOROTIU ROAD

sediment control fence
along edge of drain



cut / fill area (SHADED)
cut volume
fill volume

-3670m²
-5872m³
-6239m³

TE KOWHAI VILLAGE COMMERCIAL DEVELOPMENT

561 Horotiu Road, Te Kowhai

SK05 EARTHWORKS

Document Set ID: 2993651
Version: 1, Version Date: 21/01/2021

DATE 15-02-2019
SCALE 1 : 400
ISSUE TYPE LANDUSE REV I
JOB # 18-039

