

CONSULTATION SUMMARY – 56 POHUTAKAWA PLACE DEVELOPMENT

Below is a summary of the consultation the applicant Mr Ben Hawke (and his consultants) performed with the relevant parties relating to the Waipu Lagoons (and the proposal generally) which is listed as a Site of Significance to Māori. The consultation summary below takes place over two years from about November/December 2020 to December 2022. It is anticipated (and hoped) that the applicant will also further consult between now and the filing of the applicant's evidence (for the hearing) and the likely hearing in due course. Mr Hawke has made it very clear to all relevant parties (including the Council) that his "door is always open"¹ to further consultation - and it is hoped that further genuine meaningful consultation will occur.

The application to provide a 110 Lot subdivision at Pohutukawa Place was lodged with the NPDC on 26 May 2021. At the time, both the Operative and Proposed New Plymouth District Plans (NPDP) were in place. The Operative NPDP lists the Waipu Lagoons as a Site of Significance to Māori (SASM) (Site 675), with no defined extent shown (see **Figure 1** image below).

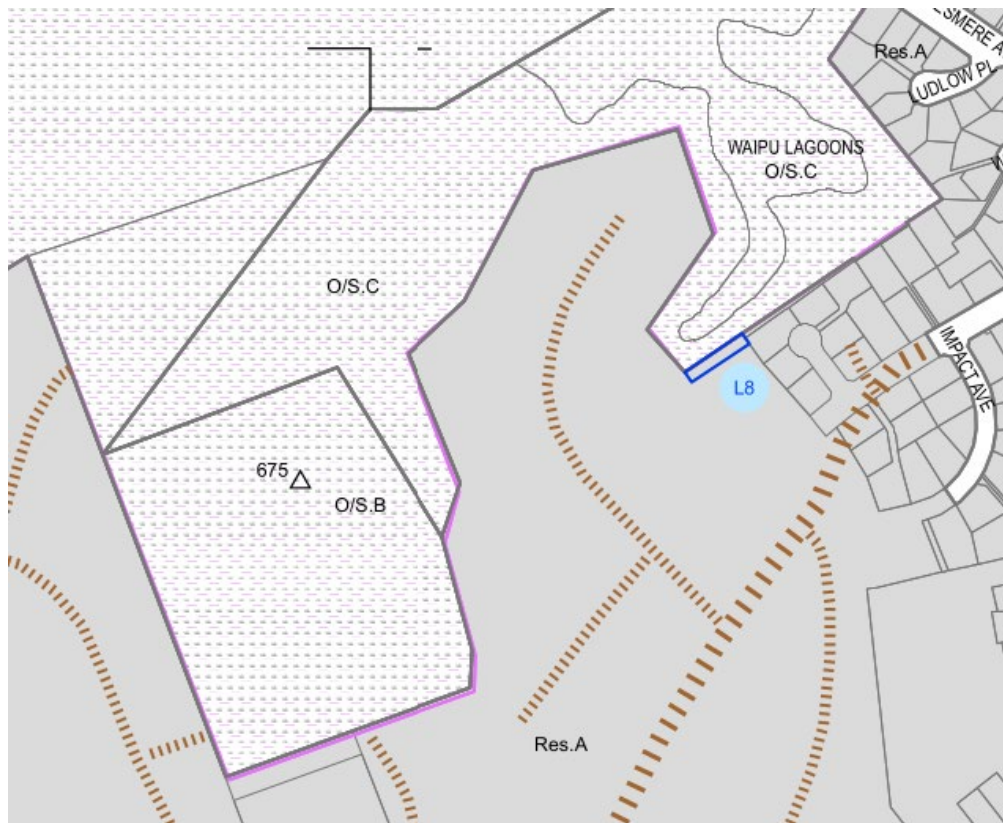


Figure 1: Operative NPDP Map B28+B29 with SASM 675 – Waipu Lagoons shown by Triangle Symbol.

As part of the Proposed NPDP and the NPDC's review of SASM sites which began in 2007, the Waipu Lagoons and the cultural extent was reviewed and updated to be included in the Proposed NPDP which was publicly notified in 2019. These reviews involve the local Hapū and Archaeologists to determine a more accurate location of the site, and to define the extent of the sites area.

¹ As stated by Mr Hawke to Juliet Johnson, Kevin Strongman (NPDC - Group Manager Planning and Infrastructure) and Miriam Taris (NPDC – Interim CEO) - at a meeting with them on 6 December 2022 discussed further below

The Waipu Lagoons have since been listed as a SASM (Site ID: 165) with a defined extent shown on the Proposed NPDP (see **Figure 2** image below).



Figure 2: Proposed NPDP showing Defined Extent of SASM – Waipu Lagoons

The Proposed NPDP includes two relevant rules to SASM sites that have immediate legal effect:

- SASM-R8 - Earthworks on or within 50m of a scheduled site or area of significance to Māori, including earthworks associated with the clearance of trees and the erection of new structures.
- SASM-R9 - Subdivision of land that contains any part of a scheduled site or area of significance to Māori.

Both these rules are listed as a discretionary activity. The defined extent of the SASM protrudes approximately 18m into the south-western end of the applicant's site and approximately 2m into the north-western end. Due to the defined extent of the SASM protruding onto the applicant's site and the proposed subdivision including earthworks within 50m of the SASM extent, these rules are applicable and consultation with tangata whenua has been sought.

In January 2021, prior to the application being lodged, Mr Hawke began consultation with Te Atiawa Iwi and the two Hapū of the area, Ngāti Tawhirikura Hapū and Puketapu Hapū. Mr Hawke engaged Mr. Brad Kisby of Fortius Group Limited to assist in reaching out to the parties in the early stages of preparing the scheme plan, to obtain an understanding of the cultural sensitivity of the land and allow for codesigning. Mr Hawke is committed to ensuring the Hapū's knowledge of the land and their perspective is used in the designing of both the development and consent conditions.

Mr Kisby and Mr Hawke carried out consultation with each group over the next five months (and thereafter) with a detailed summary which is included in **Appendices 1 and 2**. Over these five months, positive meetings took place with Te Atiawa Iwi and Ngāti Tawhirikura Hapū, with agreement to proceed with the submission of the application and that both groups would be part of co designing the consent conditions. Mr Kisby and Mr Hawke attempted to meet with Puketapu Hapū many times over this period, however Puketapu Hapū were unable to due to capacity issues. A project introduction was sent to Puketapu Hapū and attempts to meet were continued by the applicant.

The application for subdivision of 56 Pohutakawa Place was lodged with the NPDC on the 26th of May 2021. A meeting was able to be organised and held onsite with Puketapu Hapū members on the 8th of June 2021 with Mr Hawke, Mr Kisby, Alan Doy (McKinlay Surveyors - Director), Sarah Roth (Mounga Ecology), Luke Bunn (Red Jacket Engineering), and Sarah Mako (Te Atiawa Iwi) also attending.

The site visit discussed the proposed development and the applicant's willingness for Hapū involvement in co-designing, managing and/or monitoring throughout the development and the proposed measures to protect the neighbouring wetland/Waipu Lagoons. The meeting was positive with discussion on how to advance the project taking place. During the meeting, some members of Puketapu Hapū felt physically unwell and believed there was a 'bad vibe'. The discussions on the project continued and the meeting was finished with agreement to meet again to continue discussions.

Mr Hawke engaged Sarah Roth from Mounga Ecology to perform an ecological assessment of the Waipu Lagoons and determine a required setback to protect the wetland area. This was performed with a 20m setback being ascertained as an effective buffer to prevent any potential adverse effects (see notification documents for Mounga Ecology ecological assessment reports). The project scheme plan was then modified to include a 20m setback from the wetland margins as per the recommendations of Mrs Roth.

A video conference was held with Mr Hawke, Puketapu Hapū and Te Atiawa Iwi on the 31st of August 2021. Mr Hawke presented the updated development scheme plans which included the 20m setback from the wetland, which would be left and vested as reserve land. During the meeting Puketapu Hapū stated that they felt a 'bad vibe' from the property and were apprehensive about the development. Mr Hawke questioned if there were any measures they could put in place to alleviate this, including the provision of a voluntary setback along the entire length of the Waipu Lagoons boundary. Puketapu Hapū were unable to provide any guidance or measures towards their concerns, and it was determined that Mr Hawke would reassess the development scheme plan and provide draft resource consent conditions as a starting point.

Mr Hawke also engaged Ivan Bruce (Archaeological Resource Management) to perform an archaeological assessment of the proposed development on the property. This was performed in November 2021 (see notification documents for the full report). Mr Bruce determined that there was potential for artifacts to be within the area, as there had been on the adjoining sites which had been developed, and recommended that earthworks are completed under authority from Heritage New Zealand Pouhere Taonga (HNZPT).

Physical controls were recommended to include monitoring of earthworks by a qualified archaeologist, with topsoil being removed first to expose the subsoil. At this point the sub soils can be cleaned down using hand tools and archaeological features, should they exist, will be evident in plain view. Once archaeological evidence is encountered, excavations would be undertaken to record the site in accordance with accepted archaeological practice, prior to any further development taking

place. Mr Bruce stated that this method had been used successfully to identify archaeological sites in the Bell Block area to date. A copy of the report was submitted to Rowan Williams (NPDC) who forwarded it to Puketapu Hapū and Te Atiawa Iwi.

Mr Hawke worked with Alan Doy and Ben Lawn (McKinlay Surveyors - Planner) to provide an updated scheme plan and draft consent conditions. The scheme plan was altered to allow for an additional 5m voluntary setback from the edge of the Waipu Lagoons, which would be vested as reserve. This reduced the size of many proposed sections and would have an adverse economic impact on the development.

The draft consent conditions were developed which included the recommendations from Mr Bruce's archaeological assessment as well as conditions on Puketapu Hapū being involved in the operation of the development to ensure that the Waipu Lagoons were not adversely affected. This included weekly silt control monitoring, joint earthworks monitoring with an archaeologist and accidental discovery protocols. Cultural aspects were also included such as opening ceremonies, design and management of the reserve areas adjoining the Waipu Lagoons, road naming and information boards to allow for the history of the area to be communicated to the public (see **Appendix 3** for full draft conditions).

A follow up video conference call was held with Mr Hawke, Puketapu Hapū, Te Atiawa Iwi, Alan Doy (McKinlay Surveyors), Ben Lawn (McKinlay Surveyors) and Rowan Williams (NPDC – Relationships Manager) on the 3rd of March 2022 to discuss the updated information. The voluntary setback and proposed consent conditions were presented in the meeting. Puketapu Hapū members stated that these measures did not alleviate their concerns with the 'bad feeling' they had when walking on the property.

It was reiterated by Mr Hawke that the development, including the earthworks and buildings, would not take place within the SASM extent, and the proposed setback and consent conditions would protect any potential adverse effects from earthworks/building next to the SASM. Mr Hawke was open to altering the controls based on advice/recommendations from Puketapu Hapū, with the proposed consent conditions and setback being used as a starting point for the discussion.

Puketapu Hapū were unable to provide any recommendations towards the development design or consent conditions. Members stated that they were not able to provide advice as they did not have enough knowledge on the area. The need for a Cultural Impact Assessment (CIA) was discussed to provide further knowledge on the area and the cultural aspects. Puketapu Hapū believed a CIA was required before they could provide support to the development, however their resourcing and difficulty in finding a member who could complete the CIA meant that achieving this in a timely manner would be a challenge. [It should be noted that Puketapu Hapū had already prepared a CIA for the adjoining Summerset development at Pohutukawa Place in July 2019, only 2 ½ years prior to this meeting. A copy of the Summerset CIA is attached as **Appendix 9** and referenced further below.]

It was agreed to proceed with the CIA to allow for the cultural aspects to be better understood. Rowan Williams stated that the NPDC would lead the coordination of this, as the NPDC have an interest in the application moving forward for the land to be developed. She stated that the NPDC would fund 50% of the cost of the report. This is due to the property having been zoned as residential for decades with indicative roading shown on the operative and proposed district plans which allow for connection between the adjoining 'Links' development and Summerset Retirement Village on the West to the Parklands area. The property provides a natural connection between the developed areas and contributes to the NPDC's requirements under the National Policy Statement for Urban Development (NPS-UD) to provide development capacity.

Mr Hawke agreed with the NPDC coordinating the CIA development with the Hapū, and Mrs Williams stated that she would also assist by putting NPDC work on hold that Puketapu Hapū were engaged with, thereby freeing up resources. After the meeting Mr Hawke and Mr Lawn requested Mrs Williams to arrange a follow-up meeting with Puketapu Hapū and Ngāti Tawhirikura Hapū to discuss the CIA timeline. It was requested that a joint CIA was developed between Ngāti Tawhirikura Hapū and Puketapu Hapū, as they both are mana whenua of the area and had been involved in discussions. This was also the approach taken on the development of Summerset Retirement Village, with a joint CIA by both Hapū being produced (as discussed further below). Mrs Williams stated that she wanted to have a meeting with Sarah Mako (Te Atiawa Iwi) and Sean Zieltjes (Consultant Planner) to discuss development in the wider area (on the adjoining land which could be further developed). She stated that the CIA would be discussed also and would be a high priority.

Mrs Williams held a meeting with Sarah Mako and Sean Zieltjes on the 1st of April 2022 which the applicant was not invited to. Mr Lawn contacted Mrs Williams after the meeting to discuss the outcome. Mrs Williams advised that further talks were required with Te Atiawa Iwi representatives on the CIA development. When questioned on the content of the meeting it was discovered that the NPDC were engaging Mrs Mako and Mr Zieltjes to develop a 'master plan' on the remaining undeveloped land between Parkland Ave/Pohutukawa Place and the Links development. This was outside the scope of the CIA for the applicant's property (and outside the scope of the applicant's consent application) and was contrary to the statements made to reduce NPDC workload on the Hapū. When questioned if this increase in scope would delay the CIA being produced, Mrs Williams stated that the CIA would be given priority.

Since the meeting with Puketapu Hapū on the 3rd of March 2022, Mr Lawn continued to email/call Mrs Williams to try organising a meeting with Puketapu Hapū, Ngāti Tawhirikura Hapū and Te Atiawa Iwi to discuss the CIA as soon as possible. This continued for approximately 2 months with no meeting being organised by the NPDC. To date the NPDC has not organised this requested meeting.

On the 31st of March 2022 Mr Hawke's lawyer, Tim Coleman (Connect Legal Taranaki), sent a letter to the NPDC requesting the coordination of the CIA to be progressed immediately as agreed upon – a copy of which is included as **Appendix 4**. Juliet Johnson (NPDC – Planning Manager) responded by letter on the 8th of April 2022 stating that the NPDC was commissioning the CIA report and are also creating a 'master plan' of the area, however priority will be given to the CIA for the application to continue; a copy of that letter is included as **Appendix 5**.

The applicant put together a proposed timeframe for the NPDC to coordinate the CIA, including organising a meeting with Mr Hawke and the Hapū and providing weekly updates as the project progresses with an aim to have a draft CIA within 8 weeks; that proposed timeframe was sent to NPDC by letter dated 6 May 2022 from Tim Coleman included as **Appendix 6**².

Mrs Johnson responded with a proposal for the NPDC engaging Puketapu Hapū, Te Atiawa Iwi and Mr Zieltjes to perform a residential development feasibility assessment of the wider area. This assessment included two outputs with one being the cultural risks and opportunities and the other being the CIA for the applicant's (proposed subdivision) property. The proposal had a timeframe of 10 months – a copy of which is included as **Appendix 7**.

Mrs Johnson subsequently stated (in a series of emails between her and Tim Coleman between 6 May and 3 June 2022, included as **Appendix 8**) that the CIA would be performed in conjunction with the wider assessment and that she did not believe it would take the full 10 months to complete, and would

² Which letter also, inter alia, provides further details on the applicant's endeavours to consult with iwi/hapū up to that time.

instead be around 3 months. She stated that it is important for the Iwi to look at the land as a whole to inform the CIA. It was questioned why this was not required for the CIA's for the Links development or the Summerset Retirement Village, which are adjoining the property to the west, and why the wider area assessment was a suggestion of the NPDC rather than the Hapū. No clear reason was given for this.

Mr Hawke also reinforced to Mrs Johnson and Mrs Williams throughout the discussions since March 2022 that Ngāti Tawhirikura Hapū should be approached by the NPDC to determine if they wish to be involved in the development of the CIA. As noted above, the applicant had consulted with Ngāti Tawhirikura Hapū in the early stages of the consent and they had expressed a keen interest in codesigning the consent conditions and providing cultural expertise. This was also the case with the Summerset Retirement Village CIA, July 2019, which was developed by both Ngāti Tawhirikura and Puketapu Hapū (Summerset CIA). Mrs Williams stated many times that she would raise this with Te Atiawa to determine which Hapū will be involved, however this has not been communicated to the applicant.

While the applicant acknowledges that the abovementioned Summerset CIA (a copy of which is included as **Appendix 9**) is not site specific to the applicant's proposed subdivision – in the absence of a site-specific CIA, as canvassed, to date – the applicant and its consultants have nevertheless found the Summerset CIA to be a useful guide in the interim for the following reasons, for example:

- It was written by the relevant Iwi / Hapū in respect of land *immediately adjacent* to the applicant's proposed subdivision land – and includes wider commentary in respect of, for example, the ecological significance of Waipu;
- Parts of it are, it is respectfully considered, relevant to the applicant's proposed subdivision and likely to be relatively generic in terms of any site-specific CIA produced for the applicant's proposed subdivision; for example – the Introduction³, the Cultural Impact Assessment objectives and process⁴, the Planning framework and Summary⁵, the tangata whenua associations/values⁶, and much of the Assessment of effects on tangata whenua values and summary and conclusions⁷ - and Appendices such as Appendix 3⁸.

The relevant Officer's Decision Report dated 7 October 2019 and Resource Consent LUC19/47493 subsequently granted to Summerset Villages Limited (also included in **Appendix 9**) also contain consent conditions (and reasons in respect of same) - which Mr Lawn has found helpful to cross-check against the applicant's proposed consent conditions for Pohutakawa Place. In Mr Lawn's view the proposed consent conditions for Pohutakawa Place cover all of the consent conditions imposed under Resource Consent LUC19/47493 in this context – as well as improving on those, and offering other more significant controls – such as the increased set-back from Waipu Lagoons (which Mr Lawn also notes does not appear to be a control mechanism offered up by Summerset Villages Limited, or imposed in respect of that consent (and goes beyond the requirements of the District Plan in this context)).

It was stated by Mrs Johnson that public notification was not preferred by the NPDC as she believed that an assessment from Puketapu Hapū would be required to understand the cultural values. Mr

³ At paras 1-7

⁴ At paras 8-9

⁵ At paras 14-29

⁶ At paras 30-50

⁷ At paras 51-69

⁸ Ecological significance of Waipu

Hawke was concerned in regard to the time required to complete the CIA and no set timeframes being proposed. The applicant (and landowner) continued to voice frustration at the fact that the consent had been submitted over a year ago at this time. However, it was agreed that the CIA would progress under the NPDC's coordination to allow for the application to proceed (without public notification as preferred by the NPDC). Mr Hawke again requested for priority to be given to the CIA and regular updates from the NPDC.

On the 21st July 2022 a site meeting was held with Mr Zieltjes, Mr Lawn and Mr Hawke. A discussion took place on the development design with Mr Zieltjes questioning the engineering aspects such as wastewater, stormwater and roading which was part of the NPDC residential feasibility study. Mr Hawke and Mr Lawn discussed the Red Jacket engineering reports that had already been produced in respect of the application and provided to NPDC. Mr Hawke and Mr Lawn enquired as to the status of the CIA as the NPDC had not provided any updates at this point. Mr Zieltjes advised the CIA was being coordinated by Sera Gibson, Te Atiawa Iwi/Hapū Consultant. Mr Lawn emailed Mrs Gibson to discuss the CIA, with Mrs Gibson replying and requesting the plans and technical reports for the subdivision and that she would call to discuss within the next week. [Note that the plans and technical reports had already been provided to NPDC and yet the Council had not passed those on to Mrs Gibson]. The plans and reports were provided to Mrs Gibson (by Mr Lawn) with phone contact details by email dated 8th August 2022 however no call from Mrs Gibson took place. Mr Lawn followed up with Mrs Gibson via email 17th August 2022, however no response was received.

On the 1st of November 2022 Scott Grieve and Tim Coleman (Connect Legal Taranaki) provided a letter to the NPDC on behalf of Mr Hawke (and Mr & Mrs Bolton who currently own the land proposed to be subdivided) outlining the frustrations of the consent application being lodged over 17 months ago and there being no progression under the coordination of the NPDC – a copy of which is included in **Appendix 10**.

Subsequently, on 6 December 2022, a meeting was held at Council with Juliet Johnson, Kevin Strongman (NPDC - Group Manager Planning and Infrastructure), Miriam Taris (NPDC – Interim CEO), Scott Grieve, Tim Coleman, Ben Hawke, Kathryn Hooper (Director – LandPro) and Ben Lawn.

During the meeting Mrs Johnson advised that the contract to engage Puketapu Hapū to perform the wider area assessment and CIA was not yet finalised and was being reviewed by the NPDC's lawyers. The timeframes to complete the assessment would be similar to the initial estimate (about 10 months after the contract was entered into between those parties) - with a further promise that priority would be given to the CIA. It was estimated that work on the assessment could likely begin sometime in the first quarter 2023 (if the contract had been entered into by then).

Due to the fact that Mr Hawke had been working on consultation for nearly 2 years at that time, and there being no set timeframe for when the contract with Puketapu Hapū would be entered into and, moreover, when the CIA would be completed, the NPDC advised that notification of the application would be beneficial, to allow for the defined consenting timeframes and statutory processes to take place.

After the meeting Mr Hawke decided to proceed with public notification to allow for progression of the application with certainty - whilst also allowing all interested parties in the area to contribute to the proposed subdivision application.

By allowing for public notification a greater number of parties can be reached and all discussions can be brought together to allow for a successful outcome.

Mr Hawke has continued to reach out to both Ngāti Tawhirikura and Puketapu Hapū to discuss the development and remains open to engaging with the parties to genuinely and meaningfully consult and endeavour to address any concerns they might have.

The proposed subdivision will provide much needed housing for the district and region (and more generally for New Zealand) and significant beneficial positive effects for people and communities – and is consistent with (and will assist the NPDC to meet its obligations under) the NPS-UD - and the applicant is committed to managing this development in a manner that will ensure that any potential adverse effects on the environment, including cultural aspects, are adequately and appropriately addressed.

Ben Lawn
Resource Consent Planner
McKinlay Surveyors

1. APPENDICES

Appendix 1 – Summary of Consultation from Brad Kisby – Dated 26/05/2021

Brad Kisby
Managing Director
Fortius Group Ltd

Record of Consultation and Engagement

Puketapu Hapū

Starting in January 2020 I asked Hone Tipene if he could connect me with a contact at Puketapu Hapū. Several attempts were made by Hone to connect with Anaru Wilki all went unanswered.

I attempted to contact Mr Wilki personally and again all calls went unanswered.

Mr Tipene provided me with a contact number for Teresa Patu chair of Puketapu Hapū Trust, contact was successful and a request by me to meet in person was made, on the 17th of February 2021 after a telephone conversation with Theresa Patu a formal request to engage in consultation was made via email. I requested an introduction to the applicant and walk over the land to start the discussion around co designing future consent conditions.

22 February 2021 a request for an introductory summary of the project was received.

24 February 2021 a project introduction was sent to Puketapu Hapū office via email as requested.

3 March 2021, a follow up email was sent to Puketapu Hapū office, a reply was received to inform the project has yet to be discussed, and the project was unlikely to be discussed in the immediate future due to lack of capacity and high work volume. A 15-minute window at the next trustees' hui was offered but no date or time was given. Aerial photographs of the proposed site were sent as requested.

7 April 2021, I made another request for a date and time to meet, a response was received to inform us we are in the queue and that 3 other sizable subdivisions were in the queue ahead of the Parklands project. This was the last direct correspondence between the applicant and Puketapu Hapū.

The applicant respects there are capacity issues and remains committed to engagement with Puketapu Hapū and is looking forward to building a long-lasting meaningful relationship.

Note: A hui has been arranged for Tuesday 1st June at 1pm, a meet and greet between the applicant and trustees of Puketapu Hapū.

Te Atiawa Iwi

Ongoing correspondence between myself and Sarah Mako from Te Kotahitanga o Te Atiawa

A meeting was held between Sarah Mako, Ben Hawke (applicant) Alan Doy (planner/surveyor) and myself on the 15th of April to discuss the project and the consent application. The meeting was meaningful and productive. At that meeting it was discussed the time bound nature of the applicant agreement to purchase the land and the requirement to proceed with the application and to design conditions in parallel to the application being processed with NPDC. This was agreed to be a sensible and practical way forward given the current capacity of Puketapu. Communication is ongoing, encouraging and helpful.

Ngāti Tawhirikura Hapū

Through conversation with Sarah Mako, Ngamata Skipper Chair of Ngāti Tawhirikura Hapū

expressed a keenness to engage with the applicant on the proposed development. I made contact with Ngamata Skipper on the 12th of May 2021, and a meeting was arranged for Wednesday the 19th of May. A very productive meeting between Ngamata and myself resulted in agreement to move forward with the application with NPDC and to start co designing conditions to be added to the consent at the appropriate time. An engagement agreement is being co designed between parties and a stakeholder meeting and walk over the land is planned. Development of the lagoon area and cultural narrative are being discussed.

Appendix 2 – Summary of Consultation from Brad Kisby – Dated 5/05/2022

From: Brad Kisby <brad@fortiusgroup.co.nz>

Date: 5 May 2022 at 4:26:25 PM NZST

To: timc@connectlegal.co.nz

Subject: Parklands

Giddy Tim

Below are the details I have on file pertaining to the engagement with Puketapu Hapū, let me know if you need more detail I can forward you the emails, dates of phone calls potentially, I could also have correspondence on my devices from the Chamber as there was a crossover in my calendar and emails.

Nov/Dec 2020 I made several phone call attempts to Anaru Wilki requesting to meet, all phone calls went unanswered and no messages were returned.

17th Feb 2021 I secured a number for Teressa Patu, a call was made, I requested to meet, followed up with an email requesting formal engagement with Puketapu Hapū and an introduction to the applicant.

22 Feb 2021 response from Fern Brand at Puketapu requesting introductory summery to assign resources, I provided the summery on 24 Feb 2021, at the same time offered a walk over the land with Puketapu Trustees.

3 March FB offered a potential 15 minute slot at a trustee meeting, FB requested an aerial photo of the land. BK provided aerial photo, FB responded to inform the trustees have limited capacity to engage. BK updated Sarah Mako of the situation in an email. BK acknowledged FBs email and reiterated the applicant and consultants just wanted to introduce themselves.

Several requests for update, 7 April 2021 FB responded to inform that the Trustees were very busy and that they are addressing 3 sizable sub division's before looking at the Parklands Ave extension plus many civic projects.

BK engaged with SM requesting assistance in arranging meaningful engagement with Puketapu.

1 June 2021 first face to face hui was held with Puketapu Trustees, Sarah Mako, Ben Hawke and BK at Puketapu Hapū offices Grey St Waitara.

1 June 2021 walkover the land was arranged by SM

8 June 2021 walkover the land and visit to the site lagoons attended by Tiara Puke, Kasey Ballamy, Sarah Mako, Ben Hawke, Luke Bunn, Alan Doy, BK. In my professional opinion the walk over was encouraging and agreement to work together was confirmed.

30 June email received from SM committing to engagement with the applicant and the applicants consultants.

31 Aug 2021 Zoom meeting with the trustees, SM, the applicant and the applicants consultants, In summary FB indicated no matter what mitigation measures the applicant agreed too Puketapu Hapū did not want to see the site developed as no mitigation measure would address the Wairua (spirit of a person) of the site.

No further correspondence.

3 March 2022 Teams meeting was arranged by FB, the time was changed and BK didnt receive the invite until the following day, BH and AD updated BK that the spirit of the meeting was negative and no progress was made.

BK met with Rowan Williams at NPDC to express concern the applicant and land owner had become very fateiged with the process and engagement with mana whenua

BK met with David Langford and Craig Stevenson at NPDC on a number of occasion to express frustration and fatigue on behalf of the applicant.

BK currently engaged with Ngamata Skipper of Ngati Tawhirikura Hapū to assist in any cultural engagement pertaining to the site.

Brad Kisby

Managing Director & Senior Project Manager

Fortius Group Ltd

Appendix 3 – Draft Resource Consent Conditions Developed by Mr Lawn – Dated 2/3/2022

Draft Resource Consent Conditions

Earthworks

1. The consent holder shall appoint a suitably qualified engineer to design, control and certify all earthworks
2. An Erosion and Sediment Control Plan (ESCP) shall be submitted to the Council's Planning Lead for certification prior to any enabling earthworks on the site. The ESCP shall be prepared by a suitably qualified expert and include the following:
 - Demonstrate how the earthworks undertaken on site shall employ the best practical means of minimising the escape of silted water or dust from the site
 - Ensuring no effects to the Waipu Lagoons occur
 - Measures to minimise dust generation
 - Remedial measures for exposed earthworks areas including stabilisation
 - Measures for preventing tracking of material onto the road network, and if any occurs measures to clean up such material

The ESCP shall be developed in collaboration with Puketapu to ensure all risks to cultural areas are managed appropriately.

3. Prior to beginning of the project, Puketapu Hapū are invited to hold a hui/induction with the relevant staff to discuss the history and cultural values of the area and how these can be protected during the project.
4. Prior to any earthworks beginning Puketapu Hapū are invited to perform a karakia ceremony on the land.
5. Excavation works associated with the subdivision will be kept within the boundaries of the subdivision and not encroach past the boundary onto neighbouring land or current reserve areas without permission from owners.
6. Weekly monitoring of the silt control measures in accordance with the ESCP may be undertaken by a Puketapu Hapū representative to collaborate with the applicant on silt control performance.
7. A Hapū monitor from Puketapu Hapū and a Qualified Archaeologist shall be onsite during excavations of top soil to the underlying sub soil to assist in identifying any cultural items that may be discovered.

Accidental Discovery Protocols for Archaeological Sites, Taonga and Koiwi Tanata

1. The applicant will complete all earthworks under authority to modify archaeological sites from Heritage New Zealand Pouhere Taonga. As part of this an accidental discovery protocol will be in place for all parties.
2. If the consent holder discovers archaeological sites, taonga (treasures) or Koiwi Tanata (Human Remains), work will cease immediately and Puketapu Hapū, a Qualified Archaeologist and the Consent Authority will be informed. In the case of Koiwi Tanata the NZ Police are also required to be informed. Consultation will take place with all parties on the discovery and work will only recommence once all are in agreement.

A detailed Accidental Discovery Procedure will be created by the applicant in collaboration with Puketapu Hapū and a Qualified Archaeologist, which will outline the steps to take and the contact details for each party. This will be a document that can be used for inducting staff on the project and will be held by all staff performing excavations.

Reserves

1. The proposed areas to be vested as reserves will require design and planting. A reserve plan shall be developed by the applicant in collaboration with Puketapu Hapū who may advise on the reserve design, planting and infrastructure. It is envisioned that the plants shall be native species endemic to the Taranaki Region and locally sourced.
2. Puketapu Hapū may take part in the planting of the reserve areas if they wish.
3. Information boards may be placed at the reserve entrances which detail the history of the area. Puketapu are welcome to provide information for these boards to help teach the history of the land.

Road Naming

1. The applicant will consult with Puketapu Hapū on the naming of the roads within the subdivision. Puketapu are invited to provide names that represent the area and their Hapū.

Appendix 4 – Letter to Juliet Johnson from Tim Coleman on behalf of the Applicant – Dated 31/03/2022

31 March 2022

The District Planning Lead
New Plymouth District Council
Private Bag 2025
NEW PLYMOUTH 4340



INCORPORATING RMY LEGAL AND BILLINGS

Attention: Juliet Johnson

Dear Juliet

PARKLANDS AVE/POHUTUKAWA PLACE DEVELOPMENT

We advise that we act for Robe & Roche Investments Limited, the applicant for a Resource Consent (Subdivision) of the land at Parklands Ave/Pohutukawa Place, Bell Block, New Plymouth.

The Resource Consent application was filed with Council in May 2021, 10 months ago, and still there is no significant progress with the issuing of the Resource Consent.

Our client and their consultants have tried every possible avenue to engage with Council and iwi in relation to the resource consent application. Our clients are now in a position where they have expended many hundreds of thousands of dollars to try to progress this development and the landowner whom they have the development contract with is now threatening to terminate their agreement due to the inordinate delays in getting the subdivision consent issued. This will see our clients incur direct losses of several hundred thousand dollars and millions of dollars of lost opportunity.

It is also our understanding that if the landowner withdraws from the development, he plans to sell the entire block to a Wellington developer whose intention is to landbank the property.

This will deny our District the opportunity to have prime residential land opened up for development to meet the needs of our growing district and reduce the ever-increasing cost of residential land in our region which is becoming more scarce as land is not being opened up for development.

We understand the Council has scheduled a meeting with Te Atiawa Iwi representatives tomorrow to progress the Cultural Impact Assessment report that is only now being sought in relation to the Resource Consent application.

Our clients see that meeting as a tipping point for this development.

If the outcome of that meeting is not the immediate engagement of appropriate consultants to prepare the Cultural Impact Assessment report on an urgent basis, the landowner is likely to pull the pin on the development.

DIRECTORS - Charles Wilkinson Tim Coleman Bridget Burke Scott Grieve Linda Wilkinson Scott Chamberlain Eleanor Canneto Adam Thame Stephanie George
CONSULTANTS - John Middleton Ian Matheson

P +64 6 769 8080 0800 733 837 **E** info@connectlegal.co.nz www.connectlegal.co.nz
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If that transpires, our client will consider its options which are likely to involve the following:

- (a) Engagement with the media and Central Government/politicians in relation to the issues they have faced with the proposed development of this land in New Plymouth and the role that Council have in the failure to open up land in our District;
- (b) A legal claim against Council for the losses our clients will sustain as a result of the protracted and unreasonable delays in having a resource consent issued in respect of the development. As noted earlier in this letter, that claim is likely to be in the millions of dollars.

We sincerely hope that tomorrow's meeting is in fact productive and that urgent progress can be made with the Cultural Impact Assessment report and the issuing of the resource consent for the development.

We await your urgent reply following tomorrow's meeting.

Yours faithfully

CONNECT LEGAL



Tim Coleman |
Director |
T: +64 6 7573957 |
E: timc@connectlegal.co.nz |

Jane Garner
Legal Executive
T: +64 6 7698080
E: janeg@connectlegal.co.nz

- cc. His Worship the Mayor, Neil Holdom
Craig Stevenson, Chief Executive, New Plymouth District Council
Rowan Williams, Team Lead, New Plymouth District Council
Ben Hawke, Robe & Roche Investments Ltd
Alan Doy, McKinlay Surveyors
Ben Lawn, McKinlay Surveyors

TRC-N-20-V1

Appendix 5 – Letter from Juliet Johnson responding to Tim Coleman – Dated 08/04/2022



When replying please quote: SUB21-47803

8 April 2022

Tim Coleman
Connect Legal
timc@connectlegal.co.nz

Dear Tim

PARKLANDS AVE/POHUTUKAWA PLACE DEVELOPMENT

This is a response to your letter dated Thursday 31st March. The purpose of this response is to outline the options for the applicant to consider with resource consent application SUB21/47803.

As you can appreciate Council is committed to working in good faith with applicants and iwi hapū to assist with achieving land supply targets and responsible development outcomes.

With the original lodgement of the application, there was a recognition that input and support from hapū would be necessary in terms of the scheme plan layout and conditions. Council took the position of facilitating a process between the applicant and hapū to achieve this outcome. As you are aware the significance of the cultural values at this site have become more evident as the consent process has progressed.

However, Council has consistently indicated that formal engagement with hapū is required and while Council has endeavoured to facilitate an outcome, it has been up to your client to provide a scheme plan and framework for conditions to present and discuss with hapū.

From the meeting on 3 March 2022 with your client, Puketapu Hapū and Council representatives, it was clear that the current scheme plan raised significant cultural issues and that a cultural impact assessment (CIA) will need to be commissioned to advance the subdivision application. We acknowledge that your client has approached Puketapu Hapū to work on the process and timetable for a CIA.

Consistent with previous discussions Council offers to commission a report from Puketapu Hapū under Section 92(b) of the RMA. The Council is hopeful that this will provide clear direction of the cultural significance of the development site and the development options. It is noted that the outcomes of the CIA cannot be pre-determined however the discussion to date indicates that there are likely to be important cultural concerns that may need to be addressed by the applicant. For the process to be successful the applicant may need to be able to show some flexibility in design to meet these concerns.

Alternatively, to the above there is the option of progressing the application straight to public notification. However, this process is not preferred as Council will still need to understand the cultural values associated with the site and would likely commission an assessment from Puketapu Hapū under Section 92(b). If the application is publicly notified and the CIA is undertaken post this notification this may limit the ability of the applicant to proactively address the matters in the CIA.

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P 06-759 6060 | F 06-759 6072 | E enquiries@npdc.govt.nz

As a next step Council would engage the cultural expertise of Puektafu Hapū to review the subdivision consent application and to identify any issues with development in the area subject to consent within a reasonable timeframe.

It is also recognised that Council will work with Puektafu Hapū to develop a Master Plan over the remaining undeveloped land between Parkland Ave/Pohutukawa Place and the Links development. However, it is agreed that priority will be given to assessing the cultural aspects associated with this consent application as a first step.

I trust that this addresses the concerns you have outlined in your letter and please let me know if you need anything further. Otherwise we will await confirmation of what process your client wishes to follow.

Yours faithfully



Juliet Johnson
MANAGER PLANNING

Appendix 6 – Letter from Tim Coleman on behalf of the Applicant to Juliet Johnson– Dated 06/05/2022

6 May 2022

The District Planning Lead
New Plymouth District Council
Private Bag 2025
NEW PLYMOUTH 4340



Attention: Juliet Johnson

Kia ora Juliet

PARKLANDS AVE/POHUTUKAWA PLACE DEVELOPMENT – SUB21/47803

We refer to your letter of 8 April 2022.

We have taken further instructions and details from our client and advise as follows.

We accept that there is a need for input from iwi and hapū on the proposed development. Our clients have been trying to engage with iwi and hapū for many months in relation to the proposed development and we have provided details in this letter to give some background to the engagement so far.

It is noted that the Waipu lagoon site does not appear as a site of significance to Māori on the current operative district plan. The site of significance has only appeared on the proposed district plan. The land is zoned residential, is rated as residential land and is clearly shown in the district plan as land available for residential development to meet the housing needs of our district.

Engagement so far with iwi/hapū

- Nov/Dec 2020 - Brad Kisby (BK) on behalf of the applicant made several phone call attempts to Anaru Wilkie requesting to meet in relation to the proposed development at Parklands Ave extension. All phone calls went unanswered and no messages were returned.
- 17th Feb 2021 - BK obtained a contact number for Teresa Patu, and a call was made to discuss the proposed development. BK requested to meet and followed up with an email requesting formal engagement with Puketapu Hapū and an introduction to the applicant.
- 22 Feb 2021 – A response was received from Fern Brand of Puketapu requesting an introductory summary to assign resources. BK provided the summary on 24 February 2021 and at the same time offered a walk over the land with Puketapu Trustees.
- 3 March 2021 – Fern Brand offered a potential 15 minute time slot at a Trustee meeting. Fern Brand requested an aerial photo of the land. BK provided an aerial photo. Fern Brand responded to advise that the Trustees have limited capacity to engage. BK updated Sarah Mako of the situation in an email. BK acknowledged Fern Brand's email and reiterated the applicant and their consultants just wanted to introduce themselves.

DIRECTORS - Charles Wilkinson Tim Coleman Bridget Burke Scott Grieve Linda Wilkinson Scott Chamberlain Eleanor Connole Adam Thame Stephanie George
CONSULTANTS - John Middleton Ian Matheson

P +64 6 769 8080 0800 733 837 **E** info@connectlegal.co.nz www.connectlegal.co.nz
Powderham Chambers 136-138 Powderham Street, Private Bag 2031, New Plymouth 4340, New Zealand

- Several requests were made by BK for an update from Puketapu Hapū. On 7 April 2021 Fern Brand responded to advise that the Trustees were very busy and that they were addressing 3 sizeable subdivisions before looking at the Parklands Ave extension plus many civic projects.
- BK then engaged with Sarah Mako requesting assistance in arranging meaningful engagement with Puketapu Hapū.
- 1 June 2021 - First face to face hui was held with Puketapu Trustees, Sarah Mako, Ben Hawke and BK at Puketapu Hapū offices at Grey Street, Waitara.
- 1 June 2021 – A walkover of the land was arranged by Sarah Mako.
- 8 June 2021 – A walkover of the land and a visit to the site lagoons was attended by Tiara Puke, Kasey Bellamy, Sarah Mako, Ben Hawke, Luke Bunn, Alan Doy and BK. In the applicant's opinion, the walk over was encouraging and agreement to work together was confirmed.
- 30 June 2021 - An email was received from Sarah Mako committing to engagement with the applicant and the applicant's consultants.
- 31 Aug 2021 - A Zoom meeting was held with Puketapu Trustees, Sarah Mako, the applicant and the applicant's consultants. In summary, Fern Brand indicated that no matter what mitigation measures the applicant agreed to, Puketapu Hapū did not want to see the site developed as no mitigation measures would address the wairua of the site.
- Communications then ceased.
- 3 March 2022 – A Microsoft Teams meeting was arranged by Fern Brand. The applicant and their advisors considered that the spirit of the meeting was negative and no progress was made.
- BK met with Rowan Williams at NPDC to express concern the applicant and land owner had become very fatigued with the process and engagement with mana whenua.
- BK met with David Langford and Craig Stevenson at NPDC on a number of occasions to express frustration on behalf of the applicant.
- BK is currently engaged with Ngamata Skipper of Ngāti Tawhirikura Hapū to assist in any cultural engagement pertaining to the site.
- Our clients have also modified their scheme plan of subdivision to accommodate the needs and requirements of iwi/hapū as set out in the Te Atiawa Iwi Management Plan (see **attached** the three versions of the scheme plan so far). In essence the original development plan started following the boundary of the Waipu lagoon wetland, then an ecologist performed an assessment on the lagoons and recommended a setback which the second scheme plan addressed. The third scheme plan added an additional 5m reserve buffer from the lagoons and extended the existing reserve buffers to be larger than what the ecologist had recommended to try to accommodate iwi/hapū.

The fact that iwi cultural concerns have now come up 10 months after the application for subdivision consent was submitted is frustrating, especially given the considerable communication and consultation with iwi/hapū both prior to the consent application being lodged in May 2021 and subsequent to the application to Council.

Our clients acknowledged the request for a Cultural Impact Assessment report in the meeting with Council in early May and in our subsequent correspondence with Council. We were seeking a meeting with Council and iwi/hapū to develop a framework for the CIA report to be done and a timetable within which that would be undertaken. That is needed so that our clients can keep their contractual agreement on foot with the landowner. We are now two months further along since that meeting in early May and we are still no clearer on the CIA framework and timetable.

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This is what we have been asking for all along. An agreed process for commissioning the CIA report, a meeting with iwi/hapū to discuss the CIA report to see if the cultural concerns can be met by agreement and a timeframe within which all this would happen. Council acknowledged the need for Council to take the lead on this matter, for this to be given priority and for other work commissioned with iwi/hapū to be put on hold so that the CIA report and engagement with iwi/hapū for this development could be given urgency. We are two months on from that meeting and no clearer as to any of these matters. I'm sure you can appreciate our frustration.

We would like the Council to commission the report from iwi/hapū as a matter of urgency. We also need an agreed timetable within which the engagement with iwi/hapū and the CIA report will be undertaken. In our opinion a realistic timetable would be:

- (a) 1 week for Council to confirm the hapū that will be involved in developing the CIA and any external support required (13 May 2022)
- (b) 2 weeks for Council to facilitate a meeting with all relevant parties to discuss the CIA process and timeframes and any support hapū require [including a clear directive to put on hold all other Council work that is using iwi/hapū resources so this CIA report can be prioritised] (27 May 2022)
- (c) 5 weeks to then complete the CIA (1 July 2022)
- (d) 1 week for Council to facilitate a review of the completed CIA and its recommendations with all interested parties (8 July 2022)
- (e) Council to provide weekly updates on the above.

As indicated in our earlier correspondence, we are at a delicate point with the landowner who may at any stage pull the pin on the proposed development by our clients. In order to keep our contract on foot with the landowner we need a timetable for completion of the CIA that the parties will adhere to so that we can try to reach an agreed scheme plan without the need to go for a publicly notified application.

We look forward to hearing from you in relation to the commissioning of the CIA report and the above matters as soon as possible.

Yours faithfully

CONNECT LEGAL



Tim Coleman |
Director |
T: +64 6 7573957 |
E: timc@connectlegal.co.nz |

Jane Garner
Legal Executive
T: +64 6 7698080
E: janeq@connectlegal.co.nz

TRC-N-20-V1

Appendix 7 – NPDC Residential Development Feasibility Assessment Scope of Work provide by Juliet Johnson– Dated 20/05/2022

Scope – Residential development feasibility assessment – Tapuirau to Bell Block

1.0 Background

The purpose of this document is to outline a scope of works to consider urban development between Tapuirau and Bell Block. There are three main properties within this area as follows:

1. Tapuirau Native Reserve, currently administered by Parininihi Ki Waitotara (PKW) Inc.
2. The Broadcasting Land located between the Summerset development, and the coastal reserve area administered by New Plymouth District Council (NPDC); and
3. 56 Pohutukawa Place (the Bolton property, containing an active subdivision application made by GJ Gardner New Plymouth).

All of these properties are zoned residential in the Operative District Plan. Both the Operative District Plan (ODP) and the Proposed District Plan (PDP) include an indicative roading overlay. There are sites and areas of significance to Māori (SASM) identified around the Waipu Lagoons. Recent development in this area has resulted in the rediscovery of many sites, including kōiwi.

A piece of work is now required to understand that what is feasible and reasonably expected to be realised in respect to yield for residential development across this area.

Tapuirau

Tapuirau is currently utilised as a grazing support block, despite being zoned residential, with a SASM (Tapuirau Kāinga, Pā, Urupā) and indicative roading overlays.



Figure 3: image showing the extent of Tapuirau

The Broadcasting land

This property is currently on the market. It is zoned residential, with coastal environment and SASM overlays. It is also currently designated by Radio New Zealand. Access is provided by a right of way easement over 56 Pohutukawa Place.



Figure 4: The Broadcasting NZ land, including the access easement over 56 Pohutukawa Place

56 Pohutukawa Place, Bell Block

Incremental development of the parent title has occurred, generally through the extension of Parklands Avenue at the northern end of the property, and more recently with the subdivision and development of the Summerset property in the south-western corner of the site.

A further residential development is currently being designed in the northern part of the property surrounding Waipu Lagoons by GJ Gardner (the GJ subdivision). That development is being designed to yield over 100 residential sized allotments. A resource consent for that has been submitted and is not progressing as it awaits input from Puketapu Hapū. A number of conversations/commitments have been made between the applicant and NPDC around this application to date. Similarly, it is understood that Puketapu has undertaken some assessment of the proposal and cannot support it in the current location or form. The application remains lodged with the Council and on hold subject to a further information request.



Figure 5: Proposed area to be consented for urban development

The New Plymouth District Council (NPDC or the Council) has included residential development of the entirety of the property in calculating the 'development ready' land available to meet residential housing demand.

Engagement with Mana Whenua

The engagement of the cultural expertise of Puketapu (the Hapū), and Te Kotahitanga o Te Atiawa Trust (TKoTA) has been sporadic and generally limited to a development-by-development approach. Cultural Impact Assessments have been prepared for the Cooke's Farm area west of The Links, and for the Sumerset development more recently.

No specific engagement occurred for this area through the District Plan Review process; however, it is important to recognise that both Puketapu and TKoTA provided very clear advice and expectations to NPDC regarding the process of land development, and expectations regarding outcomes to be achieved through the land development process with respect to the cultural landscape, and their relationship with it. This was made through the Ngā Kaitiaki forum, and through the submission/hearing process.

The Council now wishes to undertake a wider development feasibility assessment for this area. As part of this assessment the Council will commission a report(s) from Puketapu and TKoTA that will be key inputs into the assessment process as follows:

1. Articulate the cultural landscape, the relationship tangata whenua hold with the area, and the appropriateness of the current residential zoning in this location and any particular issues with residential development from a tangata whenua perspective; This is to inform either:
 - a. a future plan change to refine the zoning and/or overlays on the property; and/or
 - b. b) a set of design considerations for future subdivision/land use activities to include in their design process which recognise and provide for the relationship of Puketapu with their cultural landscape.
2. A specific consideration of the actual or potential adverse effects on that landscape that may result from the proposed GJ subdivision. This is to be written into a Cultural Impact Assessment (CIA) document. This is to inform that resource consent process for this particular application.

2.0 Scope:

The scope of the work requested from Puketapu and TKoTA is as follows:

Output 1 (Cultural risks and opportunities assessment):

1. Articulate the cultural landscape, the relationship tangata whenua hold with the area.
2. Consider the appropriateness of residential development on this land from a tangata whenua perspective; or whether a different urban landuse is more appropriate in certain locations. Articulate this in a way which can inform:
 - a. a future plan change to refine the zoning and/or overlays on the property; and
 - b. b) a set of design considerations for future subdivision/land use activities to include in their design process which recognise and provide for the relationship of Puketapu with their cultural landscape.

Output 2 (Cultural Impact Assessment):

1. A specific consideration of the actual or potential adverse effects on that landscape that may result from the proposed GJ subdivision. This is to be written into a Cultural Impact Assessment (CIA) document. This is to inform that resource consent process.

Each output is linked but are specific deliverables.

3.0 Process:

Output 1 – feasibility assessment for residential development (10 months –)

1. Initial wānanga – landowners, developers, NPDC, technical experts (scope of works, site walkover) – 1 day.
2. Confirm the scope of technical memos to be produced following initial wānanga.
3. Compilation of technical memos – delivered through an iterative series of half-day hui held six weekly. This is to ensure the sharing of expertise across disciplines resulting in fit-for-purpose technical memos. The following technical memos are to be developed:
 - a. Cultural landscape assessment (working up from the Puketapu CVS).
 - b. 3-waters.

- c. Traffic and transport.
 - d. Ecology.
 - e. Urban design.
 - f. Planning/resource consent processes.
4. Compilation of technical memos, maps (GIS) as an overarching Residential Development Feasibility report Tapuirau to Bell Block.

Output 2 – Cultural Impact Assessment for the GJ Gardner subdivision proposal.

It is proposed to run this process partially concurrent with the feasibility assessment outlined above. The CIA itself being initiated as the technical memos are being compiled.

Appendix 8 – Correspondence between Juliet Johnson and Tim Coleman RE the NPDC Wider Area Assessment and CIA – Dated 06/05/2022 – 03/06/2022

From: [Juliet Johnson](#)
To: [Tim Coleman](#)
Cc: [Rowan Williams](#); [ben.hawke@gjgardner.co.nz](#); [alan.doy@mckinlay.co.nz](#); [benlawn@mckinlay.co.nz](#)
Subject: RE: Parklands Ave/Pohutukawa Place Development
Date: Friday, 3 June 2022 3:01:35 pm
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Kia ora Tim

I have checked in on the Section 92 letter and we will get this to you.

In terms of the timeframes these will be confirmed at the first site meeting. However the intention is to deliver your cultural impact assessment early on in the process. It will not take the full 10 months, but you will likely have a clear steer on the consent in around 3 months. However, it is important that iwi look at the land as a whole initially to inform your assessment.

To move this forward I suggest we meet and discuss the scope and get a common understanding of the process. Do you or anyone in your team have any time next Thursday so we can meet and be on the same page.

Let me know.

Ngā mihi

Juliet Johnson

Manager Planning

New Plymouth District Council | Liardet St | Private Bag 2025 | New Plymouth 4342 | **CELL** 027 807 6118
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From: Tim Coleman <timc@connectlegal.co.nz>
Sent: Wednesday, 1 June 2022 10:01 AM
To: Juliet Johnson <Juliet.Johnson@npdc.govt.nz>
Cc: Rowan Williams <rowan.williams@npdc.govt.nz>; ben.hawke@gjgardner.co.nz; alan.doy@mckinlay.co.nz; benlawn@mckinlay.co.nz
Subject: RE: Parklands Ave/Pohutukawa Place Development
Importance: High

Kia ora Juliet,

Thank you for your email of 23 May and the proposed scope of work.

Can you please urgently confirm that the s92 request has been initiated as per your email of 23 May.

Our client's Resource Consent application has been with Council for 12 months now. We need the CIA for our client's proposed development to be given urgency and priority over other work as has already been discussed (and we thought agreed) with Council.

The proposed outputs in the draft scope of work (pages 4 and 5) are not accepted. Those should be reversed and the CIA for our client's resource consent should be the first output to be achieved and then the wider assessment of residential development in the area should be the second output/second priority.

We are gravely concerned by the proposed timeframe of 10 months as set out in the proposed scope of work. That is simply not acceptable given that our client's RC application has been lodged with Council for 12 months already. We do not want our client's application any further delayed as a result of the proposed wider assessment of residential development in the area. Our application must be given urgency and priority. The wider assessment could follow once the CIA for our client's resource consent application has been done.

We note that the previous resource consent application for the Summerset development did not require a wider assessment of residential development in the area and we are of the opinion that our client's application should be treated no differently.

There does not appear to be any reason why the CIA for our client's development could not be achieved within the timeframes we have previously suggested. If all parties act in good faith to progress the CIA as quickly as possible, those timeframes could reasonably be achieved. We accept that some minor delays may be inevitable. But within reason our proposed timeframes should be achievable. If not, we would ask "why not"? Our client's application has already been with Council for 12 months and our clients have tried and tried to engage constructively with iwi/hapū. There should be no further delays.

Finally, we are concerned that the scope of work does not mention Ngati Tawhirikura as part of the CIA. Why is this the case? It appears to us that Ngati Tawhirikura should be included as they are mentioned specifically in the proposed District Plan as having mana whenua over this land. For the Somerset development we note that Ngati Tawhirikura and Puketapu performed a joint CIA, which is what was agreed with at the start of this process. Can you please explain.

Ngā mihi

Tim



Tim Coleman

Director

E: tmc@connectlegal.co.nz

P: +64 6 769 8080 0800 733 837

Powderham Chambers, 136-138 Powderham Street
Private Bag 2031, New Plymouth 4340, New Zealand

www.connectlegal.co.nz

We are pleased to let you know that RHY Legal and Billing Lawyers have merged into a new firm, Connect Legal Taranaki | [RHY Legal & Billing Mergers](#) | [AWJ PPT - Important Notice](#)

Our clients and community are of the utmost importance to the Connect Legal team. We are able to remain accessible to everyone in the community at this time and our current Covid Protection Framework operational guidelines are [here](#). Please ensure you have an appointment if you wish to attend the office to meet with us in person, but we are also happy to meet by video or telephone.

From: Juliet Johnson <Juliet.Johnson@npdc.govt.nz>

Sent: Monday, 23 May 2022 5:27 PM

To: Tim Coleman <tmc@connectlegal.co.nz>

Cc: Rowan Williams <rowan.williams@npdc.govt.nz>; ben.hawke@gjgardner.co.nz; alan.doy@mckinlay.co.nz; benlawn@mckinlay.co.nz

Subject: RE: Parklands Ave/Pohutukawa Place Development

Kia ora Tim/Ben

We have made good progress on this matter and now have a scope of work that includes a CIA for the application you have made that will run concurrently with a wider piece of work around development feasibility of the wider area of undeveloped residential land between Tapuirau and Bell Block.

It is intended that this process will alleviate the current frustration around the consenting process so that there is there is greater certainty for all parties about development feasibility in this area. Please find a draft scope attached.

The wider output from the process is a Residential Development Feasibility Assessment for the undeveloped residential land between Tapuirau and Bell Block. This includes 56 Pohutukawa Place and also the neighbouring properties to the west. The process for this will include group site visits, wānanga, technical expert inputs (including cultural inputs) to develop an overarching master plan that indicates high level land-use and development patterns for the area. This is similar to approaches we are using in other areas where consenting is becoming challenging.

The draft cultural impact assessment will be available early in this process and before the completion of the full feasibility assessment. This will give you sufficient certainty to determine next steps in the resource consent process. Timeframes for delivery of the draft CIA will be determined in the initial wānanga, but is not likely to meet the expectations identified in your original letter.

As indicated Sean Zieltes will be coordinating the development of the feasibility assessment and the CIA. Todd Whitaker will continue to be the processing planner for the application.

We will now formalise the section 92 request. If you have any questions please get in touch as I am more than happy to discuss.

Ngā mihi

Juliet Johnson
Manager Planning

New Plymouth District Council | Liardet St | Private Bag 2025 | New Plymouth 4342 | | CELL 027 807 6118
www.newplymouthnz.com | [Facebook](#) | [Twitter](#)

From: Juliet Johnson
Sent: Friday, 13 May 2022 5:50 PM
To: Tim Coleman <timc@connectlegal.co.nz>
Cc: Rowan Williams <rowan.williams@npdc.govt.nz>; ben.hawke@gjgardner.co.nz; alan.doy@mckinlay.co.nz; benlawn@mckinlay.co.nz
Subject: RE: Parklands Ave/Pohutukawa Place Development

Kia ora Tim/Ben

Thank you for your letter that confirms your agreement to Council's suggestion around commissioning a report under section 92. The Council is now actioning this matter. As a first step Sean Zieltes is working on a scope of work.

In regards to your expectations around timing for this work I hope to be in a better position to respond to this later next week following this scoping work.

I also note your comments in regards to the landowner and can confirm that we will be contacting him to discuss this scope and how it relates to the wider piece of land in his ownership.

We will be back in touch next week but do not hesitate to contact me if required.

Ngā mihi

Juliet Johnson
Manager Planning

New Plymouth District Council | Liardet St | Private Bag 2025 | New Plymouth 4342 | | CELL 027 807 6118
www.newplymouthnz.com | [Facebook](#) | [Twitter](#)

From: Tim Coleman <timc@connectlegal.co.nz>
Sent: Friday, 6 May 2022 9:48 AM
To: Juliet Johnson <Juliet.Johnson@npdc.govt.nz>
Cc: Rowan Williams <rowan.williams@npdc.govt.nz>; ben.hawke@gjgardner.co.nz; alan.doy@mckinlay.co.nz; benlawn@mckinlay.co.nz
Subject: RE: Parklands Ave/Pohutukawa Place Development
Importance: High

Kia ora Juliet,

Please find attached our letter in relation to the above so we can hopefully progress this subdivision application as a matter of urgency.

If you have any queries or require any further information, please do not hesitate to contact me.

Ngā mihi

Tim

Tim Coleman
Director
E: timc@connectlegal.co.nz
P: +64 6 759 8080 0800 733 837
Powderham Chambers, 136-138 Powderham Street

**Appendix 9 – Summerset Development - CIA – Dated July 2019 &
LUC19/47493 Resource Consent- Dated 7/10/2019**

Cultural Impact Assessment

Summerset New Plymouth | Pohutukawa Place

July 2019

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Introduction

Consultation with manawhenua/tangata whenua

1. Ngāti Tāwhirikura and Puketapu hapū (collectively referred to as hapū for the purpose of this CIA) supported by Te Kotahitanga o Te Atiawa Trust (the Trust) have prepared this cultural impact assessment to assess the effects of a proposed lifestyle village by Summerset on Tapuirau, and on the beliefs, values or physical being of tangata whenua associated with this area. Only tangata whenua who *whakapapa* have the mandate to carry out CIAs, and only tangata whenua can determine the issues that affect themselves and to what extent these may be.
2. For a variety of reasons, including time and resource constraints and information sensitivity, a CIA can never be a full cultural assessment. A CIA is both a process and a document. The completion of the CIA does not signal the end of tangata whenua's interest in this proposal or the obligations of the applicant to tangata whenua. The process will continue at least until such time as the issues that have been raised by tangata whenua have been fully addressed.

Tangata whenua kaitiaki

3. The rohe of hapū are a cultural landscape of historical importance. It was occupied and utilised to sustain our people and contains a wealth of occupation such as marae (meeting house), kāinga nohoanga (dwelling place), umu (oven), wāhi mahi kohātu (quarry sites), ara tawhito (traditional travel routes), māra (gardens), Tauranga waka (canoe landing sites), Tauranga ika (customary fishing grounds), mahinga kai (customary freshwater fishing grounds), wāhi pakanga (battle sites), pā (fortified villages) and urupā (n.b. this is a non-exhaustive list).
4. Today however, many sites have been destroyed by development and those that remain are in varying conditions of degradation. We seek to protect our values, cultural landscapes, waterbodies, ecology and remnant habitat for native species in our rohe from further inappropriate subdivision, use and development. With a good development process it is possible to avoid, mitigate or offset adverse effects, restore habitat and ensure built environments reflect tangata whenua, our values and its history.

Kaitiakitanga

5. Through the relationship with ngā kaitiaki atua, hapū have a duty or obligation to their ancestors, those living and future generations to come, to take care of, and protect places of cultural significance, natural resources and other taonga (collectively ngā taonga tuku iho – the treasures passed down) in their rohe. In former times, kaitiaki controlled and regulated access over natural resources within their rohe. Kaitiaki (an inherited role that included the guardianship of natural resources) were mandated by and on behalf of whanau, hapū and iwi to care for and protect the productive and spiritual well-being of ngā taonga within a particular rohe. The duty of kaitiaki is to protect and strengthen both the intangible mauri and the physical well-being of the resource, place or taonga.
6. Kaitiaki carried out their responsibilities and obligations using kaitiakitanga - the responsibilities and customs used by kaitiaki to take care of ngā taonga tuku iho. This included a system of resource management practices, rules and techniques for managing natural resources which were both practical and spiritual in nature and included concepts such as tapu (sacredness) and Rahui (temporary restrictions on use).

7. Tangata whenua believe that these kaitiaki obligations still exist; that they still have relevance and that iwi still have a right to practice them. Kaitiakitanga is carried out through the use of tikanga (customs), kawa (protocol) and matauranga Māori (traditional knowledge) which have all been developed and passed down through the generations, for example through waiata, karakia, and whakatauki as well as through oral tradition. The practices associated with kaitiakitanga are also closely linked with mana (status and pride) and tino rangātiratanga (self-determination).

Cultural Impact Assessment objectives and process

Objectives

8. To:

- document cultural values, interests and associations (including beliefs) of the specific area or resource; and
- identify the potential effects of the proposed activity on these; and
- recommend methods to support (positive impacts), avoid, remedy or mitigate (adverse impacts) those effects.

Purpose

9. To provide assistance to the Applicants, Heritage New Zealand Pouhere Taonga, Taranaki Regional Council and the New Plymouth District Council in meeting their statutory obligations under the Resource Management Act 1991, and the Heritage New Zealand Pouhere Taonga Act 2014 including:

- preparation of an Assessment of Environmental Effects (AEE) (s.88(2)(b) and the fourth schedule of the RMA);
- requests for further information (s.92) in order to assess the application;
- providing information to assist the council in determining notification status (s.95-95E);
- providing information to enable appropriate consideration of the relevant Part 2 matters when making a decision on an application for resource consent (s.104); and
- consideration of appropriate conditions of resource consent (s.108).

Proposal Description

10. Summerset are proposing to establish and operate a lifestyle/retirement village at Pohutukawa Place, Bell Block. The application site is 8.3ha currently zoned Residential A Environment Area under the operative New Plymouth District Plan. The current land use is dairy grazing with the property subdivided into paddocks. The application site is located in an area with an extensive history; this is reflected in the density of sites and areas of significance to Māori some of which are also identified archaeological sites.
11. The construction phase will require earthworks across the entire application site generally levelling the property. Earthwork will extend into the adjoining property immediately west of the application site. This property is owned by Paraninihi ki Waitotara and contains Tapuirau pa/kainga/urupa¹. The earthworks will be undertaken over three stages, with sediment control including sediment settling ponds prior to discharge of stormwater to land. A floccing system will be used in the sediment settling ponds to further reduce the level of suspended solids in the stormwater discharge. The overland flow regime will be modified as a result of these earthworks, with a small portion of the flow heading overland toward Waipu, and the remainder now being directed toward Pohutukawa Place where interception drains will be installed.
12. These earthworks will facilitate the development of a lifestyle/retirement village, which will include flats, a main building, pocket parks, walkways and landscaping (plantings, boundary fences and the like). Private roads and access will also be constructed. No subdivision (unit title or otherwise) is proposed to enable occupation/ownership of flats within the village². As such the development will be stormwater neutral; requiring onsite treatment of all stormwater generated through the proposed development and level of hardstanding. The current proposal is to utilise soak holes to achieve this.
13. The landscaping plan and design philosophy (including principles) is set out in the documents attached as appendix 2 and not repeated here. Proposed tree species to be planted are predominantly exotic. This is not in line with the ongoing trend to encourage native flora and fauna

¹ An archaeological assessment outlining the density of archaeological material is attached as appendix 1.

² We understand a licence to occupy will be utilised as opposed to a unit title subdivision.

Planning framework

Te tiriti o Waitangi

14. The purpose of this CIA is to ensure that the spiritual and physical well-being of a resource, area or site is maintained and that their kaitiaki obligations are upheld. These roles and responsibilities apply to the ocean, rivers, lakes, forests, fisheries and wildlife as they do to natural resources.
15. These resources were guaranteed to tangata whenua under Article 2 of the Treaty of Waitangi and Te Tiriti o Waitangi (the Māori language version) for as long as tangata whenua so desired. Tangata whenua have not relinquished these rights and responsibilities. Below is a transcript of the Second Article of te Tiriti o Waitangi followed by the translation into English (Professor IH Kawharu) and the first part of "Article the Second" of the Treaty of Waitangi.

"Ko te Kuini o Ingarani ka wakarite ka wakaae ki ngā Rangātira ki ngā Hapū, ki ngā tangata katoa o Nu Tirani te tino rangātiratanga o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko ngā Rangātira o te wakaminenga me ngā Rangātira katoa atu ka tuku ki te Kuini te hokonga o era wāhi wenua e pai ai te tangata nona te Wenua - ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona."

"The Second The Queen of England agrees to protect the Chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent." (trans. IH Kawharu)

"Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full and exclusive and undisturbed possession of their land and Estates, Forests, Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession....."

16. Since the signing of the Treaty of Waitangi in 1840, land and other natural resources have been gradually alienated from Tangata Whenua. This has diminished the authority of iwi, Hapū and whanau over ngā taonga tuku iho for which kaitiaki responsibilities were previously held. Despite this loss, the tikanga, rights and responsibilities over natural resources by manawhenua iwi, Hapū and whanau still remain strong.

Resource Management Act 1991

17. The Resource Management Act 1991 (RMA or the Act) further affirms both the guarantee set out in Article 2 of the Treaty, as well as the rights and responsibilities of Tangata Whenua. In brief, the purpose of the RMA is *"the sustainable management of natural and physical resources"*³ with the Principle of the RMA (sections 6-8) requiring all persons exercising functions and powers under the Act to:
 - recognise and provide for matters of national importance. These include the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and

³ Part 2, Section 5, RMA 1991

other taonga⁴; and the protection of historic heritage from inappropriate subdivision, use and development; and

- have particular regard to other matters including kaitiakitanga, where this is defined in the RMA as *“the exercise of guardianship; and in relation to a resource, includes the ethics of stewardship based on the nature of the resource itself”*; as well as the maintenance and enhancement of the quality of the environment; and
- take into account the principles of the Treaty of Waitangi, noting that these principles of the Treaty are not the same as the Treaty of Waitangi itself. These principles have been developed from debate and case law over the exact meanings of the words and represent a simplification and summary of the basic concepts and agreements contained within the two original documents, the Treaty of Waitangi and Te Tiriti o Waitangi. These principles now appear in various New Zealand statutes and under the RMA is of particular importance to tangata whenua in terms of resource management.

National Policy Statement for Freshwater Management 2014

18. The National Policy Statement for Freshwater Management (NPSFWM) includes clear direction regarding the concept of Te Mana o Te Wai and its consideration through resource management process. Importantly for this application, this includes consideration of integrated management of freshwater resources by all local authorities. This includes ensuring tangata whenua rights and interests are reflected in freshwater management.

19. The application site is located within the Waiwhakaiho catchment, specifically draining to the Mangaone stream, and towards the Waipu wetlands. The Mangaone Stream is recognised as a Statutory Acknowledgement Area through the Te Atiawa Claims Settlement Act 2016. In the opinion of tangata whenua this catchment is severely degraded, with a number of threats to water quality, quantity and use elevated in the Mangaone due to the level of urban development within its catchment. Despite regulations the Mangaone continues to have ongoing illegal discharges

20. Similarly, the Waipu wetland area is significantly reduced through a combination of land use changes and the impact of discharges over time. Nonetheless it remains a significant natural area supporting a number of threatened and critically endangered native species of fauna.

The Regional Freshwater Plan for Taranaki

21. The Regional Freshwater Plan for Taranaki (RFP) contains a number of provisions relevant to the application, mainly for the construction phase, and the management of stormwater. Consent is required for the earthwork in the construction phase of the proposal due to the size of the area to be active. This is pursuant to rule 27 of the RFP (fully discretionary).

The Operative New Plymouth District Plan 2005

22. The Operative New Plymouth District Plan (NPDP) contains several provisions relevant to this application. Two areas in particular are methods which protect historic heritage, subdivision provisions as these apply to retirement villages and the adoption of NZS4404:2010 Land Development and Subdivision Infrastructure Standards with local amendments.

⁴ Case law has defined that ‘ancestral lands’ do not have to be in Māori ownership; however the Court of Appeal found that councils and courts should base resource management decision on the well-being of the community as a whole even if that was at the expense of a segment of the community, including Māori.

23. Rules OL81 to OL87 relate to the protection of wāhi taonga and archaeological sites. The rules state that a land use or subdivision resource consent may be required from the council before carrying out the following activities on, or in close proximity to, a wāhi taonga or archaeological site listed in the District Plan:
- Erection of structures (excluding fences) on or within 50m of any wāhi taonga or archaeological site.
 - Erection of fences on any wāhi taonga or archaeological site.
 - Excavation and filling, or clearance of vegetation, on or within 50m of any wāhi taonga or archaeological site.
 - Subdivision of an allotment that contains a wāhi taonga or archaeological site
24. The NPDP states that the accuracy of the location of sites listed in Table 26.1 is to +/- 200m (Appendix 26). As a result, it is the current practise of the NPDC planning staff to extend the 50m buffer zone as indicated above to 250m, to allow for the variation of accuracy noted in the plan.
25. Site 679 (pa – unnamed) is listed in Appendix 26 and is identified in proximity to the application site.
26. This assessment is made on the understanding that both rules OL83 (erection of structure on a site) and OL85 (earthworks on an in proximity to a site) are triggered by this application. The activity status for each of these rules is restricted discretionary. Rule OL83 and OL85 of the New Plymouth District Plan limit the Council's ability in declining consent, or granting subject to conditions to the following matters:

Rule OL83

- 1) *The nature, layout, form and extent of the proposed structure and its effects on the wāhi taonga/sites of significance to māori and/or archaeological site.*
- 2) *The necessity for the structure and any alternative methods and locations to position the structure.*
- 3) *The duration that the structure will be located in this position.*
- 4) *The effect of the work on the cultural significance of the wāhi taonga/site of significance to māori as assessed by iwi or hapū.*
- 5) *The effect of the work on the significance of the archaeological site as assessed by Heritage New Zealand Pouhere Taonga.*
- 6) *Whether, and the extent to which the proposal responds to the objectives of any operative IWI planning document formally lodged with new plymouth district council relating to the rohe.*
- 7) *The degree to which the wāhi taonga/sites of significance to māori and/or archaeological site is already modified.*
- 8) *The level of information available about the wāhi taonga/sites of significance to māori and/ or archaeological site.*
- 9) *The cumulative effects of structures on the cultural values of the wāhi taonga/sites of significance to Māori and/or archaeological site.*
- 10) *Provision of management plans, iwi/ hapū monitoring or Discovery Protocol to mitigate adverse effects of proposed works.*

Rule OL85

- 1) *The nature, form and extent of the proposed excavation and filling and any alternative methods and locations available for these activities.*
- 2) *The necessity for the excavation and filling and any alternative methods and locations available for these activities.*
- 3) *The duration and proposed rehabilitation of the excavation and filling.*
- 4) *The effect of the work on the cultural significance of the wāhi taonga/site of significance to māori and/or archaeological site as assessed by iwi or hapū.*
- 5) *The effect of the excavation and filling on the significance of the wāhi taonga/site of significance to māori and/or archaeological site as assessed by Heritage New Zealand Pouhere Taonga.*
- 6) *Whether, and the extent to which the proposal responds to the objects of any operative iwi planning document formally lodged with new plymouth district council relating to the rohe.*
- 7) *The degree to which the wāhi taonga/site of significance to māori and/or archaeological site is already modified.*
- 8) *The level of information about the wāhi taonga/site of significance to māori and/or archaeological site.*
- 9) *The extent to which restoration/rehabilitation of wāhi taonga/site of significance to māori and/or archaeological site is likely to be achieved.*
- 10) *Consideration of where earthworks material from excavation or filling will be disposed of.*
- 11) *Provision of management plans, iwi/hapu monitoring, Accidental Discovery Protocol.*

Tai Whenua, Tai Tangata, Tai Ao – an iwi planning document for Te Atiawa.

27. Tai Whenua, Tai Tangata, Tai Ao is an iwi planning document for Te Atiawa. This document is required to be taken into account through resource management process, including the consideration of resource consent applications. This iwi planning document contains a number of directive policies relevant to the proposal. These include:

- dual notification processes (hapū and iwi), as well as ongoing engagement with tangata whenua through the planning process;
- land development, including earthworks and urban design;
- stormwater management and support for low impact urban design; and
- the quality of the built environment.

Puketapu Hapū Cultural Values Statement 2019

28. Puketapu Hapū has recently completed a Cultural Values Statement (CVS) for its rohe with a view to using this tool to inform local authorities and applicants' important values that are present to inform resource management processes. The application site falls within the area articulated in the CVS, however it is important to note that Ngāti Tāwhirikura also maintain mana whenua status over this area and their values are also incorporated within this document.

Summary

29. The Treaty of Waitangi/Te Tiriti o Waitangi 1840, particularly Article 2, conferred on tangata whenua a right in respect of full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties/taonga. The RMA, regional and district planning documents, and tangata whenua management plans, are amongst the legislation, policies and statements that affirm the manawhenua status of tangata whenua. The role of kaitiaki in regard to the management and monitoring is affirmed as is the relevance and practice of kaitiakitanga. As such this report articulates the values of both Ngāti Tāwhirikura and Puketapu hapū.

Tangata whenua associations/values

Receiving environment

30. The application site is located within the rohe of Ngāti Tāwhirikura and Puketapu hapū. It is made up of rolling pastureland, containing small hillocks, bisected by a former wetland area.
31. Tapuirau (native reserve, pa, urupa and kainga) is located adjacent and into the application site. The relationship of Tapuirau with other pa/kainga including Ngahinepouri, Hoewaka and Te Oropuiriri who are immediately within a 300 meter radius. There are additional pa, urupa and kainga within a 1km radius which indicates this area was a major settlement with a long pre-european occupation. There are over 15 recorded archaeological sites associated with our occupation of this area in the near vicinity of the application site, with a number of these (predominantly the pa sites) also identified in the New Plymouth District Plan. This broader context is fundamental to interpreting Tapuirau, and the significance of this area to hapū.
32. Tapuirau is known to be the burial place of the important rangitira Raniera Ngaere. There are at least two burials on the eastern edge of the hilltop indicated in an early survey plan (ML 191), others cannot be discounted elsewhere⁵.
33. Waipu wetland (SNA, KNE, Wāhi Tapu) now considerably reduced in size is located north of the application site. The ecological significance of this area is set out in the Key Native Ecosystem assessment attached as appendix 3.

Te Ao Māori – Māori world view

34. As Māori, Ngāti Tāwhirikura and Puketapu hapū have a holistic view of the environment based around whakapapa (genealogy) and whanaungatanga (relationships), connecting us and all physical and spiritual things in the world. Our relationship with the environment stems from our whakapapa to Papatūānuku (Earth Mother) and Ranginui (Sky Father) who gave rise to many children, also known as the Atua (guardians) of the domains of the natural world. Therefore, it is important to understand that potential impacts of any proposed activity would be conceptualised holistically. For example, we would not consider environmental impacts separately to impacts on our health and wellbeing.
35. Over the last 200 years the prominence of the Māori worldview has been eroded across the political landscape of Aotearoa/ New Zealand. This began with the denigration of Rangi, Papa and the other Atua with the arrival of the early Christian missionaries. This continued with the gradual loss of control by tangata whenua over land and other resources. The strengthening of the Western Worldview's focus over this time on the individual and his material needs has further eroded the values inherent in the Māori Worldview. It is of no coincidence that over this time the condition of natural resources has generally degraded and the amount available for use have diminished. The reversal of this trend both in the condition of natural resources and the relevance of Te Ao Māori is most welcomed by tangata whenua.

Mātauranga – Knowledge systems

36. Mātauranga can be described as “the pursuit and application of knowledge and understanding of Te Taiao, following a systematic methodology based on evidence, incorporating culture, values and world view”. It draws on the knowledge of our ancestors, contributes to present day

⁵ See Archaeological Resource Management Report attached as appendix 1.

knowledge, and passes on to our future generations. It is dynamic and has the ability to adapt and respond to all situations. Mātauranga is intergenerational and is passed down through whakapapa, waiata (song), haka (war dance), whakataukī (proverbs), pūrākau (legends), kōrero tuku iho (ancestral stories), or whakairo (carvings). Some of our mātauranga is described below as the rationale for our cultural values.

37. Through these concepts of Te Ao Māori and mātauranga, we have developed the following cultural values which are the basis from which we inform our decision-making processes, to sustain and enhance our environment and its resources.

Cultural Values Assessment

Kaitiakitanga – Guardianship, enhance, protect, preserve

38. For us, kaitiakitanga is an active intergenerational responsibility to care for, preserve and enhance the mauri of our natural and cultural resources within our rohe, today and for future generations.

39. Our mātauranga pertaining to kaitiakitanga is transmitted through kōrero tuku iho of Te Ika Mata Whero or the red shark, that is the kaitiaki of kāhawai and a good omen for fishermen as it brought the kāhawai closer to shore.

RaNgātiratanga – Exercise authority, self-determination, sovereignty

40. RaNgātiratanga in relation to natural resources connects back to our value of kaitiakitanga. For us, RaNgātiratanga is the right of Puketapu to exercise authority and self-determination and have an integral part in the decision-making processes around the management of our natural and cultural resources within our rohe.

Mana Whenua – Inherited user rights

41. Through confiscation, we were disenfranchised from our lands, and thus ahi kā (the power associated with the possession of land) was lost. These events impeded our ability, as tangata whenua (people of the land), to live off the land and provide sustenance for our people. However, over time, we are reasserting mana whenua over our lands.
42. Mana whenua connects back to our value of raNgātiratanga. Mana whenua can be defined as inherited user rights, which guarantees us the mana to utilise, manage, sustain, protect and enhance our natural and cultural resources within our rohe in accordance with tikanga.

Mauri – Life force, energy, life principle

43. Mauri is the life force or life essence. It is an intangible and intrinsic value. It is held by all things through whakapapa linking to the Atua. Humans as well as animals, rocks, stones, lands, forests, mountains, oceans and rivers have their own mauri. Ecosystems also collectively have mauri, which manifests as the ecosystem's ability to sustain and preserve life, and as such a disruption to that life force causes negative effects to the ecosystem and the resources it contains. Mauri is therefore central to our role as kaitiaki and we seek to ensure the mauri of the ecosystem, the natural environment and its resources are protected and enhanced for future generations.
44. For Puketapu, Mātauranga pertaining to mauri is transmitted through kōrero tuku iho of Rakeiora's karakia on Puketapu hill which returned the mauri and food, and ended two years of starvation for Te Atiawa Iwi; Turanga-purehua's brother Te Amonga, carried off with him sand from Waiognana as mauri of the fish kahawai in order to provide himself with food in whatever place he settled;

Pani-tinaku, the goddess and mother of the kumara who was married to Rongo, her mauri was brought over in the Tokomaru waka and put into the whare wananga.

45. For Ngāti Tāwhirikura the use of Waiapu for its cultural practises uplifted the site to one of tapu. The placement of kōiwi for cleansing purposed prior to interment into Hoewaka. This ritual continued into the 1800 and ceased due to the alienation of whenua and tohunga practises. The placement of mauri kohatu continue today for Ngāti Tawhirikura when building new whare or structures of significents to ensure that the durability of the site is uncompromised.

Tapu – Sacred, treasured, valued, prohibited, unclean

46. Tapu can be an intrinsic value. A person is imbued or implanted with the tapu of ngā Atua. This kind of tapu is considered to be stable and does not change no matter what the external circumstances might be. For example, the tapu of a chief, or of a natural resource such as a river, lake or coastal area. Tapu can also be an extrinsic value and is bestowed via interactions with tapu-bearing people or resources. This kind of tapu can fluctuate, the results of which can manifest as sickness or possibly death of an individual, or degradation of the environment. Karakia can be undertaken in order to bring balance to tapu of this nature.
47. Tapu can be translated as sacred, treasured, valued, prohibited and unclean. Rendering possessions or places tapu is a safety measure implemented to bring a sense of caution, thereby restricting access. This prohibitive quality of tapu is used by Puketapu in the management of natural resources, through the implementation of management tools such as rāhui. Our matauranga pertaining to tapu is transmitted through kōrero tuku iho of Moke Ihu from Horotiu pa, his karakia sank the Puketapu fishing fleet
48. For Ngāti Tāwhirikura , taputanga has been used as a mechanism to open areas up for new use by involking tapu as in the repurposing of land for reuse. In a modern day context the new urupa Te Mangapouri, the new New Plymouth District cemetery site had rituals completed prior to any construction by tohunga, clearing the way for the development.

Rāhui – Protection, restriction, conservation

49. Rāhui involves the prohibition of an affected area. A rāhui may be put in place to restore and retain the productiveness, health and well-being of the land and people. If an area is rendered tapu, a complete prohibition rāhui is set in place for a period of time, or is subject to observations until the status of the resource recovers. When this assessment has been made and it is determined that the resource has recovered, the rāhui can be lifted.

Hauora – Health, wellbeing

50. There is a clear link between a healthy environment and our cultural, spiritual and physical well-being. We see ourselves as part of the environment rather than separate from it. Thus it is important to understand that the potential environmental impacts of any proposed activity would be conceptualised holistically, and not considered in isolation to impacts on our health and wellbeing.

Assessment of effects on tangata whenua values

Introduction and scope

51. This assessment of actual or potential effects on tangata whenua values resulting from the application is made cognisant of the resource consent processes that are relevant in this instance, and the scope of applicable rules/assessment criteria.
52. Damage to, or destruction of important historical records of human occupation whether middens, artefacts, structures, and other cultural material and the like results in both a spiritual and physical loss to tangata whenua. However, it should also be noted that Tapuirau sits within the cultural landscape important to interpret and understand the site that may be adversely affected by this proposal. This landscape goes much further than the physical and tangible "things" and covers:
 - biodiversity-conservation remediation, enhancement and long-term environmental sustainability social benefits derived from the cultural weight of the landscape, and sense of place;
 - the retention of aesthetic, historic and traditional values;
 - ensuring long-term site access for tangata whenua;
 - scientific benefits which holds not only material but also traditional information relevant to indigenous, historic and anthropological research; and
 - symbolism - for example, heritage ownership and "identity".

Actual and potential adverse effects of the proposal

Earthworks and construction effects

53. Significant earthwork of the site is proposed to facilitate the establishment of the lifestyle village as currently designed. This will alter overland stormwater flow paths, generally levelling the application site filling in the smaller gully area and removing small hillocks around the centre of the site. Potential effects of the proposed earthwork on the receiving environment including sensitive areas in Tapuirau and Waipu are the interference with wāhi tapu and other sites and areas of significance to Māori, sediment entrained in stormwater run-off migrating into sensitive environments, as well as adverse visual effects (both temporary and permanent) resulting from the change in landform.
54. As noted in preliminary archaeological advice received due to the level of ploughing and other agricultural practises it is not possible to identify the archaeological extent of Tapuirau, or other sites in general vicinity from surface assessment alone. Importantly, it is not possible to discount that further urupa or burials being located within the earthwork area. It is reasonable to suspect that archaeological material of a cultural nature will be encountered within the application site.
55. Considering this, it is recommended either the applicant or the New Plymouth District Council commission further archaeological and cultural advice prior to lodging the application, or pursuant to s.32 of the Act to inform this process if consent application is lodged. Without further archaeological assessment (e.g. test pits) it is not possible to determine the archaeological extent of Tapuirau, or the presence of other sites including other burial locations.
56. This approach is considered necessary to inform assessment criteria 4 of rule OL85 of the NPDP, as well as the value of raNgātiratanga, tapu and kaitiakitanga articulated above. The provisions of Tai Whenua, Tai Tangata, Tai Ao are directive regarding the protection of wāhi tapu.

57. It is not considered possible to condition this aspect of the application (should consent be granted) as it may materially alter the application, and assessment being made.
58. It is considered that potential sediment effects can generally be managed through staging of the earthwork to be undertaken, ensuring adequate silt fencing, settlement pond systems and bunding in place, as well as ensuring the discharge of any stormwater generated from the site through the construction phase is to land until such time as the area can be remediated are sufficient to mitigate any actual or potential adverse effects resulting from this aspect of the application.
59. It is recommended that a condition of consent requiring these issues to be addressed through a construction management plan is included. Further, this construction management plan should be certified by Ngāti Tāwhirikura and Puketapu Hapū prior to implementation. Certification would align with the values of kaitiakitanga and raNgātiratanga above, as well as assessment criteria 11 of rule OL85 of the NPDP. Management of stormwater in this manner would align with the provision of Tai Wenua, Tai Tangata, Tai Ao, and therefore take into account this iwi planning document.
60. Potential effects resulting from the change in landform are generally mitigated through remediation of the site, including the resulting built environment. We consider these further below. It is important to note that this change in context around Tapuirau (from farmland with existing topographical features, to a level more urban environment) impacts on the setting of this site. It is considered that proposed remediation falls within the scope of assessment criteria 4 of rule OL85 of the NPDP.

Built environment including landscaping

61. Assessment criteria 1 of rule OL83 of the NPDP requires the consideration of the nature, layout, form and extent of the proposed built environment in relation to Tapuirau, and subsequent impacts. As noted above, the application site is potentially located on Tapuirau, and within a broader landscape that includes Tapuirau, Ngahinepouri, Hoewaka and Te Oropuiriri that give context to the site or area of significance to Māori specifically affected by this proposal. Based on the plans provided to date, the application does little to reflect this context in the design of the lifestyle/retirement village.
62. The proposed built form is generally single level conjoined flats, with a larger communal building located towards the centre of the site. These building are generally orientated away from Tapuirau towards the centre of the site. A 1.8m close boarded fence will line the boundary between Tapuirau and the application site. Internal roads, smaller pocket parks and walkways provide connectivity within the application site. Landscaping generally consists of low maintenance exotic tree species. It is understood that the development will achieve stormwater neutrality through the use of soak holes, and directing stormwater generated from new hardstanding to a swale drain located along Pohutukawa Drive.
63. The cumulative result of these design elements is the alienation of Tapuirau from its cultural context.
64. Ngāti Tāwhirikura and Puketapu hapū recommend a number of design amendments to this that better enable the proposed built environment to reflect the cultural context associated with Tapuirau. These include:

- a. The opportunity to provide a name for the development reflecting this location, including the naming of internal roads and access.
- b. Amendments to the landscaping plan to native species; particularly those which are food for those native birds and lizards commonly recorded in this location, and to support key native ecosystems in the vicinity of the application site.
- c. Re-configuration of the development and introduction of design elements to acknowledge and address Tapuirau in its broader context. Amending the location of parks and reflection areas could achieve this.
- d. The adoption of low impact urban design methods of stormwater treatment and disposal, including from internal roads, access ways and parking areas. Where possible this includes allowing flowing water access to sunlight, and treatment through wetland systems prior to disposal into land.

65. These design considerations go some way to implementing the value of hauora outlined above. It is recommended that the applicant engages representatives of hapū to work alongside landscape architects and other professionals to amend development plans to address points a-d above. These are considered alternative methods to inform the consideration of assessment criteria 2 of rule OL83, as well as the rehabilitation of the site consideration of assessment criteria 3 of rule OL85 of the NPDP. Tai Whenua, Tai Tangata, Tai Ao includes a number of provisions which provide direction and address these matters that applicants and regulatory bodies must take into account.

66. The cumulative effects of urban/residential development on sites and areas of significance to Māori in this part of the rohe of hapū in recent times has resulted in an almost constant interference with wāhi taonga. This proposal would result in a higher density development than that received in the past. It will result in urban development on the eastern, northern and western sides of Tapuirau. The cumulative effect of this built environment in the absence of mitigation measures such as those described in a-d above have the potential to negatively impact on Tapuirau.

67. Reducing the density of development to be more aligned with existing urban development in proximity to Tapuirau is recommended to reduce the cumulative effect of buildings and structures on this site. This would then enable a greater alignment with the strategic setting of the site and in alignment with the key feature of the site and others.

Ongoing Engagement

68. This cultural impact assessment should be treated as a summary to this point. It is anticipated that impact assessment will continue through the consenting process. This will require ongoing engagement between the applicant, regulatory bodies, Ngāti Tāwhirikura / Puketapu hapū and the Trust.

69. It is expected that a combination of engaging hapū to provide expert advice, as well as conditions of consent that facilitate and require dialogue will provide for this ongoing engagement.

Summary and conclusions

The receiving environment contains a number of significant features, including Tapuirau adjacent to the sunset application site. The proposal has the potential to adversely affect Tapuirau through the destruction of wāhi tapu. It also has the potential to protect, acknowledge and remediate the

environment, and respond to cultural values present in this location. To ensure actual and potential effects on Tapuirau and hapū are avoided, remedied or mitigated it is considered that:

1. Further archaeological information is sought to confirm the archaeological extent of Tapuirau and identify potential hotspots elsewhere in the application site. As further burials cannot be discounted at this time this is considered a prudent next step. Discovery protocol, recording of site information processes or similar should be developed once a more complete archaeological information is known;
2. Development of a construction management plan addressing stormwater and sediment runoff and ensure that the condition of consent requiring this plan includes certification from hapū;
3. Engage hapū to work alongside landscape architects and other professionals to ensure the design of the lifestyle/retirement village avoids alienating Tapuirau from the cultural context of the area; and
4. Ensuring the process continues to provide for the ongoing engagement and dialogue between the applicant, hapū and regulatory bodies.



Te Kaunihera-ā-Rohe o Ngāmotu
NEW PLYMOUTH DISTRICT COUNCIL
newplymouthnz.com

When replying please quote document no: LUC19/47493

7th October 2019

SUMMERSET VILLAGES LIMITED
C/- URBAN PERSPECTIVES LIMITED
PO Box 9042
WELLINGTON

Attention: Alistair Aburn

Dear Alistair,

LUC19/47493: Consent is granted under the Operative and Proposed District Plans to undertake cutting and filling earthworks to provide a building platform to construct a retirement village and care facility.

Please find attached the approved resource consent decision and my planners report for the above site.

In accordance with section 37A(2)(a), it is advised that the timeframe for making a decision was extended to **36** working days. The time extension was considered necessary to allow for a full and robust assessment of the actual and potential traffic and parking related effects. It is noted that much of the additional time allowed for further discussions to take place between the applicant, hapū and iwi.

If you are unhappy with any part of this decision you have the right to object in accordance with Section 357A(2) of the Resource Management Act 1991. Any objection shall be made in writing, setting out the reasons for the objection. This must be lodged with Council within 15 working days after receiving this decision.

Yours Sincerely

Campbell Robinson
Consultant Planner



NEW PLYMOUTH DISTRICT COUNCIL

newplymouthnz.com

OFFICERS DECISION REPORT UNDER SECTION 104 OF THE RESOURCE MANAGEMENT ACT 1991. 56 and 106 Pohutukawa Place, Bell Block, New Plymouth - Council Ref: LUC19/47493

Applicant:	Summerset Villages (Bell Block) Limited
Site Address:	56 and 106 and Pohutukawa Place, Bell Block, New Plymouth
Legal Descriptions:	Lot 17 DP 508651 and Part Section 155 Tapuirau Block II Paritutu
Site Areas:	32.5156ha + 20.0618ha being a total of 52.5774ha
Environment Area:	Operative District Plan: Residential A Proposed District Plan: General Residential
Operative District Plan Overlays:	<ul style="list-style-type: none">- Waahi Taonga/Site of Significance to Maori/Archeological Site Ref No's 675 and 679 (Ngāti Tāwhirikura, Puketapu hapū, Te Atiawa iwi)- New Plymouth Entrance Corridor- Indicative Roads- Designation L8
Proposed District Plan Overlays:	<ul style="list-style-type: none">- Indicative Roads (Collector, Local, Pathways)- Designations (RNZ-1, NZME-3, NPDC-3)- Site of Significance to Maori No's 675 and 679- Archeological Site 679- Coastal Environment- Airport Flight Path Surface
Proposal:	Undertake approximately 157,000m ³ of cutting and filling earthworks to prepare the site for the construction of a new retirement village
Status:	Pursuant to Section 88(1) and (1A) of the Resource Management Act the proposal is a Restricted Discretionary Activity under Rules Res45 and Res47 and OL85 of the Operative New Plymouth District Plan 2015 and Rules SASM-R1, SASM-R8, HH-R10 and HH-R17 of the Proposed District Plan 2019.

PURPOSE OF THIS REPORT

1. The purpose of this report is to recommend either to grant or to decline the above proposal under Section 104 of the Resource Management Act 1991. This decision should be read in conjunction with the notification report decided under delegated authority on 26th September 2019. This report sets out the statutory context for making the application.

SECTION 104 ASSESSMENT

Effects Disregarded

2. Pursuant to s104(2), when forming an opinion for the purposes of s104(1)(a) a council may disregard an adverse effect of the activity on the environment if the plan or a NES permits an activity with that effect (the permitted baseline).
3. The permitted baseline has not been applied to this proposal given the amount of earthworks proposed is of a distinctly higher magnitude to the amount of earthworks than can be carried out as of right without the need for a resource consent.
4. Pursuant to s104(3)(a), when forming an opinion for the purposes of s104(1)(a) a Council must not have regard to any effect on a person who has given written approval to the proposal, nor any trade competition or effects of trade competition.
5. The following written approvals were provided with the application and effects have been disregarded:
 - **PARININIHI KI WAITOTARA** - The landowners 106 Pohutukawa Place.
 - **WARREN & CLAIRE BOLTON** - The landowners of 56 Pohutukawa Place.

SECTION 104(1)(A) – ASSESSMENT OF ACTUAL AND POTENTIAL EFFECTS

Indicative Road Layout:

6. The area of the site to be worked and contoured lies adjacent to two Indicative Roads under the Operative and Proposed District Plans. These roads will form the basis of the movement of all future road and pedestrian movement and therefore must be safeguarded.
7. The proposed cutting and filling has been designed in such a way as to ensure that there would be a smooth contoured transition from the application site to the areas where the new roads would be built. Given there would be no impediment resulting from this proposal which impede the ability to construct either of the indicative roads at a later date the effects of the development are considered to be acceptable. I have attached a condition to this report to ensure that the final levels of the site are consistent with the expected levels of the indicative roads.

Landscape Effects:

8. The Council's consult landscape architect, Richard Bain, of Blue Marble has assessed the landscape and visual effects of the earthworks proposal and has reviewed the landscape and visual assessment submitted by Boffa Miskell on behalf of the applicant.
9. As discussed in the notification report there are a number of mitigating factors which reduce permanent landscape effects to the point of acceptability including:
 - The final contouring of the land being flat in appearance and similar to the effects resulting from adhoc fee-simple residential subdivision of the application site over a number of years.

- None of the earthworked areas will be left exposed following the completion of the site works. All areas will be grassed and appear as paddocks pending construction of the various retirement village stages.
 - There would be no visible batter or terrace faces following the completion of the project with any cut faces being retained by walls. Where retaining walls are used Mr Bain believes they would not have an adverse visual effect on the landscape or surrounding residences given their relative height and setback from existing residential boundaries.
 - There are no regionally significant landscapes, priority water bodies or known natural hazards that would be impacted by the proposed earthworks.
10. Overall based on the assessment provided by Mr. Bain I consider that the permanent landscape and visual effects of the earthworks are acceptable.

Archaeological Effects:

11. The applicant has provided an archaeological assessment by Ivan Bruce, which addresses the possible impacts on the known archaeological sites within the area. The assessment undertaken is based on background research and non-invasive field surveys. Subsequent to the assessment of Mr Bruce, the applicant has applied for and been granted an archaeological assessment by Heritage New Zealand (HNZ).
12. The approval from HNZ allows for the modification of archaeological material subject to a number of conditions including the requirement to prepare and submit an Archaeological Management Plan for the site. The conditions of the granted Authority have been accepted by the applicant and have been formalised as part of this report.
13. Compliance with the stated conditions of Mr Bruce and the Archaeological Authority would in my opinion provide confidence that the archaeological risks on the site are well understood by the applicant and that adverse effects can be avoided, remedied or mitigated to the point where effects overall are acceptable.

Temporary Construction Effects:

14. The applicant states that the construction related effects of the development would last approximately 8 months. Whilst the proposed cut and fill design aims to use as much material on the site as possible there would be a number of truck movements to and from the site to remove excess topsoil and to bring in further higher-grade fill suitable for construction.
15. Overall based on the fact the cutting and filling would be a temporary exercise the effects of the development are considered to be acceptable subject to a suite of conditions. Any nuisance related construction impacts would cease after the construction phase of the development is completed.
16. I have included a number of detailed conditions to avoid, remedy or mitigate any temporary construction effects including the requirement to provide an Erosion Control Sediment and Dust Management Plan and Construction Traffic Management Plan. Further conditions regarding construction noise and lighting are also included as well as the requirement for the consent holder

to appoint a public liaison representatives and the establishment of a complaints process and procedures. This condition requires the consent holder to quickly investigate and if necessary take remedial action to address complaints any received. I have also attached a general review condition which allows further conditions to be attached to the consent to address any actual and potential effects which were either unforeseen at the time of this analysis or were as a result of any unintended factual inaccuracies contained within the application documents.

17. The applicant has been granted resource consent by the Taranaki Regional Council to undertake earthworks across 11ha of the total area of the site and to discharge sediment to land. The granting of this Regional Council consent is subject to a number of conditions which in conjunction with the conditions suggested in my report further assist in avoiding, remedying and mitigating potential effects.

Cultural Effect:

18. As discussed in the notification assessment the subject site and surrounding area has specific importance to Ngāti Tāwhirikura and Puketapu hapū as well as the Te Kotahitanga o Te Atiawa Trust.
19. The provision of an agreed set of conditions between iwi, hapū and the applicant demonstrates that the potential cultural effects of the proposal are well understood and can be mitigated to the point where effects on Hapū and iwi are acceptable. The conditions include the requirement for an Archaeological Management Plan, Erosion and Sediment Control Plan as well as the requirement for hapū representatives to be present during topsoil excavations. The agreed set of conditions also includes the establishment of a "Kaitiaki Forum" which is designed to foster ongoing collaboration between the parties and to allow for the adaptive management of any emerging issues or effects as they are discovered or reported from the site. The agreed set of conditions have been formalised as formal consent conditions under this report.

Effects Assessment Conclusion:

20. Overall I consider that the proposed landuse consent will have acceptable effects:

SECTION 104(1)(b) – RELEVANT PLANNING PROVISIONS:

Higher Order Planning Documents

21. I have given regard to the higher order planning documents specified at section 104(1)(b)(i) – (vi) of the Act. In particular, it is my opinion that there are no National Environmental Standards or National Policy Statements that are relevant to the consideration of this proposal. Similarly, the New Zealand Coastal Policy Statement is not relevant. The proposal is considered to accord with the general strategic direction of the Taranaki Regional Policy Statement 2010.

District Plan Provisions – Operative District Plan

22. Relevant Policies and Objectives:

Objective 1: To ensure activities do not adversely affect the environmental and amenity values of areas within the district or adversely affect existing activities.

Policy 1.1: Activities should be located in areas where their effects are compatible with the character of the area.

Objective 6 To ensure:

- sufficient space is available to protect residential amenity.*
- visual and aural amenity is protected.*
- traffic generation is consistent with the character of the residential area.*

Policy 6.3: Activities within the Residential Environment Area should be of a size, scale and visual character that do not adversely affect the amenity of the residential environment.

Objective 19: To recognise and provide for the cultural and spiritual values of Tangata Whenua in all aspects of resource management in the district in a manner which respects and accommodates Tikanga Maori.

Policy 19.2: Subdivision, land use or development should not adversely affect the relationship, culture or traditions that Tangata Whenua have with Waahi Toanga/Sites of Significance to Maori.

Policy 19.3: The cultural and spiritual values of Tangata Whenua should be recognised and provided for in the resource management of the district

Policy 19.4: The principles of the Treaty of Waitangi will be taken into account in the management of the natural and physical resources of the district.

Objective 20: To ensure that the Road Transportation Network will be able to operate safely and efficiently.

Policy 20.1: The movement of traffic to and from a site should not adversely affect the safe and efficient movement of vehicles, both on-site, onto and along the Road Transportation Network.

Policy 20.3: Potential conflict between vehicles, pedestrians and cyclists moving on the Road Transportation Network should be minimised to protect the safety and efficiency of Road and footpath users.

23. The proposed earthworks will not result in any inconsistencies with the provisions of the District Plan when considered against the relevant objectives and policies. This is based largely on the analysis undertaken in the above S1041(a) assessment and on the imposition of a number of conditions designed to mitigate effects.

District Plan Provisions – Proposed District Plan

24. Relevant Policies and Objectives of the Proposed District Plan notified on the 23rd of September 2019 have been listed below. As the policies are, in many cases, more specific and contextual than the Operative District Plan policies I have included an assessment for the sake of completeness.

SASM-O1 *Sites and areas of significance to Māori are recognised, protected and maintained.*

SASM-O2 *The relationship of tangata whenua with sites and areas of significance to Māori is recognised and protected.*

SASM-P2 *Protect and maintain sites and areas of significance to Māori from inappropriate activities by:*

1. *ensuring identified sites and areas of significance to Māori are not disturbed, destroyed, removed and/or visually encroached upon; and*
2. *requiring activities on, or in proximity to sites and areas of significance to Māori to avoid adverse effects on cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua.*

SASM-P3 *Allow the following activities to occur on, or adjacent to scheduled sites and areas of significance to Māori, while ensuring their design, scale and intensity will not compromise cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua:*

1. *land disturbance;*
2. *demolition or removal of existing buildings and structures;*
3. *alterations to existing buildings and structures;*
4. *maintenance and repair or upgrading of existing network utility structures; and*
5. *erection of signs.*

SASM-P4 *Manage activities that occur on, or adjacent to scheduled sites and areas of significance to Māori that have the potential to compromise cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua, including:*

1. *erection of, additions to and relocation of structures;*
2. *earthworks; and*
3. *subdivision of land containing sites and areas of significance to Māori.*

SASM-P5 *Ensure that activities on, adjacent to or affecting sites and areas of significance to Māori avoid adverse effects on the site or area, or where avoidance is not possible, appropriately remedy or mitigate adverse effects, having regard to:*

1. *the particular cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the site which may be affected;*
2. *the extent to which the activity may compromise tangata whenua's relationship with their ancestral lands, water, sites, wāhi tapu, and other taonga, and/or the ability to protect, maintain or enhance sites of significance to tangata whenua;*
3. *tangata whenua's responsibilities as kaitiaki and mana whenua;*
4. *any opportunities for tangata whenua's relationship with the site or area to be maintained or strengthened on an ongoing or long term basis, including practical mechanisms for mana whenua to access, use and maintain the identified site;*
5. *the outcomes of any consultation with and/or cultural advice provided by mana*

- whenua, in particular with respect to mitigation measures and/or the incorporation of mātauranga Māori principles into the design, development and/or operation of activities that may affect the site; and*
6. *where the site is also an archaeological site, the relevant objectives and policies in the Historic Heritage Chapter.*

SASM-P6 *Ensure that any structures that exceed permitted height limits on or adjacent to sites and areas of significance to Māori are appropriately located and that any adverse effects associated with the additional height are appropriately avoided, remedied or mitigated, having regard to:*

1. *the particular cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the site which may be affected by the over-height structure;*
2. *the prominence of the structure's location and the extent to which the over-height structure will visually encroach upon the site or area and affect tangata whenua's relationship with the site or area and/or their ability to exercise their customary responsibilities as mana whenua and kaitiaki;*
3. *the necessity for the structure, any alternative locations for the structure on the site and the duration that the structure will be located in this position;*
4. *the cumulative effects of the structure on the cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua; and*
5. *the outcomes of any consultation with and/or cultural advice provided by mana whenua, in particular with respect to mitigation measures and/or the incorporation of mātauranga Māori principles into the overall scale, form, composition and design of the structure, to:*
 - a. *minimise adverse visual effects on the site or area; and*
 - b. *acknowledge and reflect the importance of the site to tangata whenua.*

25. The submittal an agreed set of conditions between the hapū, Iwi and the applicant demonstrates that the potential cultural effects of the proposal are understood and that the risk of unearthing sensitive cultural artifacts or sites can be avoided, remedied or mitigated. The proposal is therefore considered to be not inconsistent with the stated objectives and policies.

HH-O1 *Historic heritage is recognised, protected and maintained.*

HH-P13 *Protect and maintain archaeological sites from inappropriate activities by:*

1. *Ensuring scheduled archaeological sites are not disturbed, destroyed, removed and/or visually encroached upon; and*
2. *Requiring activities on or adjacent to archaeological sites to avoid adverse effects on the sites' historic heritage values.*

HH-P14 Allow the following activities on or adjacent to an archaeological site provided they do not compromise the site's historic heritage values:

1. land disturbance;
2. demolition or removal of existing buildings and structures;
3. alterations to existing buildings and structures;
4. maintenance and repair or upgrading of existing network utility structures; and
5. erection of signs.

HH-P16 Ensure that activities on, adjacent to or affecting archaeological sites or on land where there is reasonable cause to suspect an archaeological site may exist avoid adverse effects on the site, or where avoidance is not possible, appropriately remedy or mitigate adverse effects, having regard to:

1. the particular cultural and/or historic heritage values present and their setting;
2. the reduction or loss of historic heritage values, including the ability to interpret the place and its relationship with other heritage features/items and/or archaeological sites;
3. the site's sensitivity to change or capacity to accommodate change without compromising the historic heritage values of the archaeological site and surrounds;
4. any opportunities to enhance historic heritage;
5. any assessments or advice from a suitably qualified and experienced heritage expert and/or archaeological expert;
6. the outcomes of consultation with Heritage New Zealand Pouhere Taonga; and
7. where the site is also a site or area of significance to Māori, the relevant objectives and policies in the Sites and Areas of Significance to Māori Chapter.

GRZ-O6 Adverse effects of activities are managed to maintain residential amenity.

GRZ-P7 Require the effects generated by activities to be of a type, scale and level that is appropriate for the General Residential Zone, including by:

1. controlling noise, vibration, light or glare (particularly at night);
2. minimising adverse effects on the local transport network, including from inappropriate traffic volumes by providing sufficient on-site parking, servicing, manoeuvring, pedestrian and cycling space;
3. managing earthworks, subdivision and construction work;
4. ensuring the size, design and type of signage is compatible with the character and amenity of the open space area that the signage is located in; and
5. minimising hard surfacing and, where possible, retaining or providing visually prominent trees, bush and/or landscaping.

EW-O1 Earthworks and associated retaining structures necessary for the construction, maintenance or operation of activities are enabled, provided that adverse environmental effects, including effects on health and safety and natural hazards, are avoided, remedied or mitigated.

EW-P2 Manage earthworks that have the potential to:

1. create new or exacerbate existing natural hazards, particularly flood events, or cause adverse impacts on natural coastal processes; or
2. result in adverse effects on:
 - a. the stability of land or structures;
 - b. visual amenity and character, or
 - c. historic heritage, sites and areas of significance to Māori, indigenous vegetation, waterbodies or other identified features.

EW-P3 Require earthworks and any associated retaining structures to be appropriately designed, located and undertaken to avoid or minimise adverse effects by:

1. ensuring that the works do not result in any instability of land or structures at or beyond the boundary of the site;
2. restricting cut depth and fill height;
3. limiting maximum volume or area of earthworks to maintain the predominant character of the zone and reduce effects on neighbouring properties;
4. providing adequate setbacks from site boundaries or structures;
5. demonstrating that the site will be stabilised, reinstated and/or recontoured in a manner consistent with the surrounding land;
6. controlling the movement of dust and sediment beyond the area of development, particularly to avoid nuisance or effects and/or adverse amenity effects on neighbouring sites, or silt and sediment entering stormwater system, overland flow paths and roads; and
7. following the accidental discovery protocol in the event of discovery of sensitive material.

26. Subject to a range of conditions attached to this consent the proposal is considered to be consistent with Objectives GRZ-O6 and EW-O1 and Policies GRZ-P7, EW-P1-EW-P3.

EW-P4 Ensure earthworks are undertaken in a way that avoids adverse effects on archaeological sites and sites and areas of significance to Māori, or where avoidance is not possible, appropriately remedies or mitigates adverse effects, having regard to:

1. the particular cultural, spiritual and/or historical values associated with the site and the extent to which these values may be affected;
2. following the accidental discovery protocol if koiwi, archaeology and artefacts of Māori origin are found;
3. the outcomes of any consultation with and/or cultural advice provided by mana whenua, in particular with respect to mitigation measures and/or the incorporation of mātauranga Māori principles into the overall scale, form and extent of the earthworks; and
4. the outcomes of any consultation with Heritage New Zealand Pouhere Taonga.

27. With regard to Policy EW-P4 the applicant has undertaken an archaeological investigation of the site and has applied for and been granted an Archaeological Authority by Heritage New Zealand. Furthermore the applicant has through consultation with iwi and Hapū provide an agreed set of conditions which would provide some confidence that any cultural or archaeological effects can be avoided, remedied or mitigated to the point of acceptability. The proposal is therefore considered to be consistent with the Policy.

EW-P5 *Ensure that earthworks are of a type, scale and form that is appropriate for the location having regard to the effects of the activity, and:*

1. *the impact on existing natural landforms and features and indigenous vegetation;*
2. *changes in natural landform that will lead to instability, erosion and scarring;*
3. *impacts on natural drainage patterns and secondary flow paths;*
4. *compatibility of the earthworks and the design and materials for any retaining structures with the visual amenity and character of the surrounding area;*

the extent to which the activity mitigates any adverse visual effects associated with any exposed cut faces or retaining structures, including through screening, landscaping and/or planting.

EW-P6 *Require earthworks and any retaining structures associated with future land development and/or subdivision to be designed, located, managed and undertaken in a coordinated and integrated manner, including by:*

1. *managing large-scale earthworks associated with subdivision, including for the purpose of site development and/or creating roads or access to/within the subdivision: and*
2. *considering the appropriateness of earthworks in conjunction with site design and layout of future subdivision and/or development of land, particularly for future infill or greenfield subdivision.*

28. With regard to EW-P6 the proposed earthworks provides for a large area of residentially zoned land to be developed in a compressive manner as part of a single project. The development is therefore considered be consistent with this policy. By undertaking earthworks over a large area and by minimizing the amount of cut to waste the development reduces the need for large retaining walls on the margins of the site and therefore avoids the adverse visual impacts they can create. Retaining walls that are proposed are generally limited in length and height would, based on the analysis of Mr. Bain, have acceptable effects on the wider landscape and surrounding residential properties.
29. Overall the proposed earthworks will not result in any inconsistencies with the provisions of the Proposed Plan when considered against the relevant objectives and policies subject to conditions.
30. Overall the development is able to be supported under the Operative and Proposed District Plans and a decision can be made to grant the application under both plans.

SECTION 104(1)(c) – ANY OTHER MATTERS:

31. There are no other matters considered relevant to this consent.

PART 2 – PURPOSE AND PRINCIPLES OF THE ACT

32. Part 2 of the Act sets out the purpose and principles of the legislation, which as stated in section 5, is “to promote the sustainable management of natural and physical resources”. Section 5 goes on to state that sustainable management should enable “people and communities to provide for their social, economic and cultural wellbeing and for their health and safety whilst (amongst other things) avoiding, remedying or mitigating any adverse effects of activities on the environment”.
33. For the reasons outlined in this report, I consider that consent should be granted when the proposal is assessed against the matters in section 104(1)(a)-(c) of the RMA. The planning and regulatory framework clearly indicates the outcome for this application. I have considered the objectives and principles in Part 2 of the Act and I do not consider that detailed evaluation of Part 2 matters would add anything to my evaluative exercise.

RECOMMENDATION

34. That for the above reasons the application be **approved** under the Operative District Plan 2005 and Proposed District Plan 2019 pursuant to **Sections 104, 104C and 108** of the Resource Management Act 1991, subject to the conditions suggested within resource consent application LUC19/47493 attached to this document.

Report and Recommendation Prepared By:



Campbell Robinson
Consultant Planner



Signed by:

Rowan Williams
Planning Lead

Date: 7th October 2019



RESOURCE CONSENT No. LUC19/47493

Granted under Sections 104, 104C and 108 of the Resource Management Act 1991.

Applicant:	Summerset Villages (Bell Block) Limited
Site Address:	56 and 106 and Pohutukawa Place, Bell Block, New Plymouth
Legal Descriptions:	Lot 17 DP 508651 and Part Section 155 Tapuirau Block II Paritutu
Proposal:	Undertake approximately 157,000m ³ of cutting and filling earthworks to prepare the site for the construction of a new retirement village and care facility
Status:	Pursuant to Section 88(1) and (1A) of the Resource Management Act the proposal is a Restricted Discretionary Activity under Rules Res45 and Res47 and OL85 of the Operative New Plymouth District Plan 2005 and Rules SASM-R1, SASM-R8, HH-R10 and HH-R17 of the Proposed District Plan 2019.

In accordance with Section 104 and 104C of the Resource Management Act 1991, consent is **granted** under the Operative and Proposed District Plans to undertake approximately 157,000m³ of cutting and filling earthworks to prepare the site for the construction of a new retirement village and care facility at 56 and 106 and Pohutukawa Place, Bell Block, New Plymouth.

Subject to the following conditions imposed under Section 108 of the Resource Management Act 1991:

General:

1. The landuse proposal shall be carried out substantially in accordance with the plans and all information including further information submitted with the application, and all referenced by the Council as consent number LUC19/47493.

Approved Plans:

2. The activity shall be carried out in general accordance with the following plans by Riley Consultants:
 - Drawing No: 180189-302 REV. 1 dated 29.3.19
 - Drawing No: 180189-303 REV. 1 dated 29.3.19
 - Drawing No: 180189-304 REV. 1 dated 29.3.19
 - Drawing No: 180189-305 REV. 1 dated 29.3.19
 - Drawing No: 180189-306 REV. 1 dated 29.3.19

- Drawing No: 180189-307 REV. 1 dated 29.3.19
- Drawing No: 180189-308 REV. 1 dated 29.3.19
- Drawing No: 180189-309 REV. 1 dated 29.3.19
- Drawing No: 180189-310 REV. 1 dated 29.3.19
- Drawing No: 180189-311 REV. 1 dated 29.3.19

Communications and Public Liaison:

3. 48 hours prior to the commencement of earthworks, the consent holder shall submit to the Council's Planning Lead, confirmation of the identify a liaison person who is to be the main contact for all persons affected by the construction of the project. If the liaison person is not available for any reason, an alternative contact shall be provided, to ensure that a liaison person is available by telephone 24 hours per day/seven days per week during the duration of the construction phase of the development.

Complaints:

4. At all times during exercising of this consent the consent holder shall maintain a register of any complaints received alleging adverse effects from, or related to, the exercise of the consent. The record shall include:
 - a) the name and address (where this has been provided) of the complainant;
 - b) identification of the nature of the complaint;
 - c) location, date and time of the complaint and of the alleged event;
 - d) weather conditions at the time of the complaint (as far as practicable), including wind direction and approximate wind speed if the complaint relates to air discharges;
 - e) the outcome of the consent holders investigation into the complaint;
 - f) measures taken to respond to the complaint; and
 - g) any other activities in the area, unrelated to the project, which may have contributed to the complaint (such as non-project construction or unusually dusty conditions generally).
5. Where a complaint is received the consent holder shall:
 - a) acknowledge the complaint within 2 working days,
 - b) promptly investigate, identify the level of urgency is respect of the complaint and communicate that to the complainant; and
 - c) take reasonable steps to remedy or mitigate the matters giving rise to the complaint if there are reasonable grounds for the complaint within 10 working days of receiving the complaint or such sooner time as may be reasonably necessary in the circumstances.
6. The consent holder shall also maintain a record of its responses and any remedial actions undertaken. This record shall be maintained on site and shall be made available to the Council's Planning Lead upon request. The consent holder shall provide the Council's Planning Lead with a copy of the complaints register every month.

Earthworks Management:

7. Prior to the commencement of any earthworks on the subject site the consent holder shall submit an Erosion and Sediment Control and Dust Management Plan (ESCDMP) to the New Plymouth District Council Planning Lead or nominee for approval. The ESCDMP shall be in general accordance with, but not limited to, the Draft Earthworks and Sediment Control Assessment, 56 Pohutukawa Place, New Plymouth; prepared by Riley Consultants; report reference 180189-G; issue 1.0; dated 29 March 2019. Once approved the development shall be undertaken in accordance with the Erosion and Sediment Control Management Plan (ESCDMP).

Construction Traffic Management Plan:

8. Prior to the commencement of any earthworks on the subject site the consent holder shall submit for approval a Construction Traffic Management Plan (CTMP) to the New Plymouth District Council Planning Lead or nominee that identifies how it will manage construction traffic to:
- a) protect public safety;
 - b) minimise delays to road users;
 - c) minimise disruption to property access; and
 - d) inform the public about any potential impacts on the road network.

The CTMP shall include, but is not be limited to:

- a) details of traffic management activities and sequencing;
- b) methods for managing effects from construction related traffic movements including but limited too noise and vibration;
- c) provisions to ensure that, as far as practicable, road users will not be held up by construction activities for an unreasonable period of time (such time period to be specified).

Hours of Work:

9. The working hours for the carrying out of earthworks on the site and transport of excavated material from (or to) the site, are restricted to:
- o Monday to Saturday 7:30am to 6pm.
 - o No work is to be carried out on Sundays or public holidays.

Site Levels:

10. Within 2 weeks of the completion of the earthworks, the consent holder shall provide to the Councils Planning Lead a survey plan showing the final ground levels on the site. The Council's Planning Lead shall liaise with the Council's Transport Team to confirm that the acceptability of the final levels.

Temporary Construction Access Points:

11. The temporary construction traffic access points approved under condition 1 shall have sealed entrance ways to a heavy industrial construction design. These crossings shall be removed at the end of the construction phase and reinstated. An application with the appropriate fee shall be made to the Council for the new heavy industrial Vehicle Crossing, and upon approval the vehicle crossing is to be installed by a Council approved contractor at the applicant's cost.

Construction Noise:

12. Construction noise shall comply with the relevant standards outlined under NZS6803:1999. Measurement and assessment of construction noise shall be undertaken in accordance with NZS6803:1999.

Revegetation Requirement:

13. All exposed areas of earthworks must be grassed/re-vegetated to reach a level of establishment satisfactory to the Council's Planning Lead within 3 months of the completion of the earthworks.

Construction Lighting:

14. The consent holder shall implement procedures at all times during construction to manage light spill (if any) to surrounding residential properties from any night lighting that is required on the site, in accordance with AS 4282 – 1997 "Control of the Obtrusive Effects of Outdoor Lighting".

Archaeological and Cultural Effects

15. Prior to the commencement of any earthworks on the subject site, the consent holder shall submit an Archaeological Construction Management Plan (ACMP) to the New Plymouth District Council Planning Lead or nominee for approval. The ACMP shall be in general accordance with the details set out in the Archaeological Authority granted by Heritage New Zealand (Reference No. 2020/016, dated 7 August 2019) except where amended by the letter from Heritage New Zealand dated 20 August 2019. Once approved the development shall be undertaken only in accordance with the submitted Archaeological Construction Management Plan (ACMP).

Adaptive Management of Cultural Effects:

16. No less than five working days prior to undertaking the works the consent holder shall engage one representative of Puketapu Hapū and one representative of Ngati Tawhirikura Hapū for on-site cultural monitoring of topsoil stripping earthworks.
17. The consent holder shall convene and resource a Kaitiaki Forum. This forum shall commence prior to preparation of the Archaeological Construction Management Plan (ACMP) as required by condition 15 and shall convene every month during the consented earthworks, or at more or less frequent intervals as agreed by the Forum. The Kaitiaki Forum will be attended by the following representatives:

- Ngati Tawhirikura Hapū (one representative);
- Puketapu Hapū (one representative);
- Te Kotahitanga o Te Atiawa Trust (one representative);
- The project archaeologist; Ivan Bruce;
- Summerset Villages (Bell Block) Ltd;
- New Plymouth District Council Planning Lead or nominee (one representative).

The function of the Kaitiaki Forum shall be to:

- provide input into the preparation of the Archaeological Construction Management Plan in condition 15;
- consider other cultural information the parties deem relevant to the exercise of this resource consent;
- support open communication between iwi, hapū and the consent holder on cultural matters arising from the earthworks on the site; and
- receive and discuss a report in relation to any matters of dispute that may arise during the consented works and its resolution.

Monitoring and Review:

18. Prior to starting work the consent holder must advise of the date when work will begin. This advice must be provided at least 48 hours before work starts to the Council's Planning Lead either by telephone or email and must include the address of the property and the consent reference number.
19. It is the consent holder's responsibility to ensure that all persons engaged or working on the project are aware of the conditions of consent.
20. The conditions of this consent may be reviewed by the Council in accordance with Section 128(1) of the Resource Management Act 1991 by serving notice within a period of 2 weeks of the date on which earthworks commence for a period of 1 year for any of the following purposes:
 - I. In order to deal with any adverse effects on the environment which may arise from the exercise of this consent, such effects may include (but not limited to) traffic generation and its effects on the adjoining roading network and surrounding neighbor's. These effects may come to the Council's attention via justified complaints, reports and/or observations by Council Officers; or
 - II. To deal with unintended inaccuracies contained in the consent application that materially influenced the decision made on the application and is such that it is necessary to apply more appropriate conditions.

Advice Notes

1. This landuse consent lapses on 7th **October 2024** unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for the Council to grant an extension of time for establishment of the use. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.
2. This consent is subject to the right of objection as set out in section 357A of the Resource Management Act 1991.
3. Any excavation that takes place within road reserve during this development shall require an approved Corridor Access Request (CAR). Refer to the National Code of Practice for Utility Operators' Access to Transport Corridors for additional information. Applications can be made via the website www.beforeUdig.co.nz or 0800 248 344. A CAR along with a Traffic Management Plan must be submitted a minimum of 5 working days before an operator intends to start work for minor works or 15 working days for major works and project works. All costs incurred shall be at the consent holders expense.
4. Any additional construction related signage shall comply with the provisions of the Operative District Plan.
5. The approval provided within this decision does not alter or supersede in any way the approved subdivision consent under Council reference No SUB18/47129. All conditions imposed under this approved consent remain valid and must be complied with by the consent holder.
6. The underlying site is recorded as Waaihi Taonga/site of significance to Maori/archaeological site. At all times the applicant should ensure to comply with the protocols of the archaeological authority granted for the site. It is an offence to damage or destroy a site for any purpose without an authority. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.
7. The consent holder shall ensure the trunk water main running along the northern side of Pohutukawa Place is protected from damage for the duration of the works. In the unlikely event the trunk water main is damaged, the consent holder shall undertake all necessary repairs at the consent holder's expense.

DATED: 7th October 2019



Rowan Williams
PLANNING LEAD

Appendix 10 – Letter from Scott Grieve on behalf of the Applicant to Miriam Taris and Mayor Neil Holdom – Dated 01/11/2022



1 November 2022

New Plymouth District Council
84 Liardet Street
New Plymouth 4340

BY SCANNED EMAIL AND DELIVERY
miriam.taris@npdc.govt.nz
neil.holdom@npdc.govt.nz

ATTENTION: Miriam Taris – Interim Chief Executive Officer
and Mayor Neil Holdom

Dear Ms Taris and Mr Holdom

**MR & MRS BOLTON AND GJ GARDNER HOMES TARANAKI – PARKLANDS
AVE/POHUTUKAWA PLACE DEVELOPMENT SUB21/47803 – NEW PLYMOUTH DISTRICT
COUNCIL**

Further to our letter to you dated 30 September 2022 about the issues canvassed in that letter in respect of private Plan Change PPC18/00049 – in which we, inter alia, noted:

"... we also act for a number of other businessmen etc around New Plymouth District that are also experiencing similar issues with the Council and have similar concerns which will no doubt be raised with you in due course."

we have been instructed by Mr & Mrs Bolton and GJ Gardner Homes Taranaki to write to you about their serious concerns with the Council's handling of matters since the above-mentioned resource consent application was lodged with the Council over 17 months ago in June 2021.

The subdivision applied for will, inter alia, provide for future urban growth areas badly needed in the New Plymouth District (and more generally New Zealand) – and our client's aim has been to make available new housing for that land supply – which is in the best interests of the Council (and its rate payers) to also facilitate - particularly given the national directives on the Council to do so.

The application to provide a 150 Lot subdivision at Pohutukawa Place was lodged with the NPDC in June 2021 - and the underlying land has been zoned residential by the NPDC in the Operative District Plan since 2005.

As we pointed out in a letter to the Council dated 6 May 2022 – copy **attached** –

"The land is zoned residential, is rated residential land and is clearly shown in the district plan as land available for residential development to meet the housing needs of our district."

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DIRECTORS Charles Wilkinson Tim Coleman Bridget Burke Scott Grieve Linda Wilkinson Scott Chamberlain Eleanor Connole Adam Thame Stephanie George
CONSULTANTS John Middleton Ian Matheson

P +64 6 769 8080 0800 733 837 E info@connectlegal.co.nz www.connectlegal.co.nz
Powderham Chambers 136-138 Powderham Street, Private Bag 2031, New Plymouth 4340, New Zealand

Our clients first approached the Council regarding the proposed development over 2 years ago. Council officers advised our clients (and their surveyor Alan Doy from McKinlays) not to devise and lodge a plan for resource consent but to work with Council regarding roading and services as the Council had a budget to redo the old sewer line and they wanted to make sure the new development would work in with the overall plan the Council had for the area.

Council officers have reinforced with our clients many times not to submit a consent application on a notified basis. Rather, Council officers have constantly asked our client to work together with Council on the basis that, in doing so, that would fast-track our clients' application.

Council officers encouraged our clients to engage Red Jacket Engineers to design the services for the development as that was who Council were using and they could work in with the Council's plans for the area. That was done by our clients at a significant cost to them in reliance on the Council's advice.

All along our clients have relied on Council's advice and guidance as to how to progress the subdivision consent. Council officers were solely focussed on the roading and services required in the initial stages of the subdivision and there was no mention from Council of iwi consultation requirements.

Prior to the application being lodged, in November/December 2020 the applicant tried (without success) of its own volition to contact Te Atiawa iwi to commence the consultation process. No messages were returned by Te Atiawa at that stage. In January 2021 the applicant was able to begin consultation with Te Atiawa iwi and the two hapū from the area, Ngāti Tawhirikura Hapū and Puketapu Hapū.

Initial conversations with Ngāti Tawhirikura Hapū were constructive with the Hapū wanting to engage in the development and co design resource consent conditions, to which the applicant agreed. The consultation with Puketapu Hapū has more recently shown the Hapū to have reservations on building next to the Waipu Lagoon and have stated that they "*get a bad vibe*" when walking on the development site.

The applicant has continued consultation (or endeavours to consult) with Puketapu Hapū for almost two years now.

Additional mitigation controls have been proposed that are above and beyond the New Plymouth District Plan requirements, including placing a set back from the Waipu Lagoon wetland margin of 10 metres (which is not required under the District Plan) and vesting this as reserve, implementing cultural monitoring with the Hapū throughout the project to identify any accidental discoveries (in conjunction with an archaeologist), and to allow Hapū to provide road names and informational signs in the reserve areas around the lagoon to communicate the story of that area.

In a meeting with Puketapu Hapū at the beginning of March 2022, Puketapu Hapū stated they were not comfortable with the development next to the Waipu Lagoon due to the "*bad vibe*" they feel.

When asked how this feeling could be addressed Puketapu Hapū stated that they are unable to answer that.

It was then decided that a Cultural Impact Assessment (CIA) was required to determine further information on the area to be developed and how any concerns could be further addressed.

Council officers suggested (and it was agreed) that the Council would drive engagement with hapū and the development of the CIA as it also had this area zoned as residential for future development.

Since that meeting the applicant has continuously been asking the Council to organise meetings with Ngāti Tawhirikura Hapū and Puketapu Hapū for the CIA to be developed and it has just gone nowhere.

The responses from the Council have been of no substance and have shown no progress towards completing the CIA in a timely manner.

The applicant noted its significant concerns – and put forward to the Council reasonable proposed timeframes in stages to complete the CIA to try and keep the project moving (as set out in our above mentioned letter of 6 May 2022), which the Council did not initially respond on – as is evidenced, for example, in a series of emails between Tim Coleman, Connect Legal Taranaki and Juliet Johnson and Rowan Williams between 4 August and 22 September 2022 - and between Tim Coleman and Ben Lawn (and Sera Gibson) between 5 August and 15 September 2022 – copies attached.

This is highly disappointing, unfair and unreasonable - particularly as it was agreed after the initial meeting (in March 2022) that the NPDC would put other work on hold that it was utilising the Hapū for - so that the CIA could progress quickly, however this has not been confirmed either.

The Council's only substantive action since that meeting almost eight months ago has been to meet with Te Atiawa representatives (without the applicant) and collaborate to expand the scope of the CIA - to be not just the applicant's development site - but the wider area - on other land - which is zoned as residential.

This is a benefit to the Council for future developments - but creates a larger scope in the CIA and will significantly extend the timeframe for the applicant (yet again).

The Council has stated that the applicant's development site will be given priority, however, with the current performance of this local authority, this does not provide confidence.

The applicant has continuously asked that Ngāti Tawhirikura Hapū be included in the CIA, as the Council regularly only mention Puketapu Hapū regarding the CIA. Although this is a simple request, to date there has been no answer to this from the Council, causing further confusion for the applicant on consultation.

It has now been seventeen months since the subdivision application was lodged and almost two years since consultation began.

The applicant has performed everything within its power to both consult with the required Hapū and determine what mitigation controls can be put in place to address any concerns.

The Council has been part of this consultation due to the investment it has in this area being housing for the community, however, has provided little to no support – and in fact has not kept its promises to the applicant and caused further unacceptable and unfair delays.

Since it was agreed almost eight months ago that the Council would lead the development of the CIA, there has only been one meeting to expand the scope.

This is placing significant undue stress and financial burdens on the applicant who cannot get the Council to facilitate the CIA as it promised and committed to - in what should be a simple process.

These matters have now caused considerable delays to our clients proposed subdivision – and this is of significant concern given that building costs have now risen and inflation and land holding costs have risen - meaning that our clients have been put in an extremely detrimental position by the Council in this context.

Council officers have steered the applicant away from a notified consent application as they were working with Puketapu hapū and, it appears, did not want to affect that relationship. It is the applicant's opinion that there must be another agenda at play with the Council and Puketapu hapū which is directly against our clients' interests and the Council's statutory duties and to our District to make residential land available for development.

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Now, after almost two years of liaison between Council officers and our clients regarding the proposed development, Council (via an email from Rowan Williams on 22 September 2022) have indicated that consultation with iwi could take a further 11 months! Rowan Williams is now indicating that to achieve a decision on the resource consent our clients should consider applying on a notified consent basis (contrary to the advice our clients have been receiving from Council all along).

Council officers appear to us / our clients to be deliberately stalling, and not abiding by, the relevant statutory processes, timeframes and, moreover, promises and commitments made to our clients - and with respect seem to have no idea of the real world - in terms of the significant costs and delays that our clients have incurred in respect of this proposal to date – and in terms of the above mentioned building costs which have now risen, increasing inflation and rising land holding costs etc.

It must also be noted that the relevant law under the Resource Management Act 1991 (RMA) (and more generally) in the context of these issues is clear.

Under section 36A of the RMA an applicant does not have a duty to consult any person – including iwi (although as noted our clients have made genuine endeavours to properly consult with iwi for almost two years now).

Consultation in this context is seen as best practice – and it is well established under RMA case law that the relationship of Māori (with ancestral lands, water etc), kaitiakitanga and the principles of the Treaty of Waitangi/Te Tiriti o Waitangi¹ are strong directions to be borne in mind at every stage of the planning process: McGuire v Hastings District Council² - which our client's application and proposed mitigation measures and consent conditions have factored in to date.

In this regard, Mr Lawn (our clients consultant RMA planner) specifically notes that the above mentioned proposed mitigation measures and consent conditions were also canvassed at the above mentioned meeting in early March 2022 – and comprehensively address issues such as what might be found in earthworks/excavations, stormwater discharges etc – as well as more significant controls such as the above mentioned setback from the Waipu Lagoon wetland margin of 10 metres (which is not required under the District Plan).

He also observes that these same (or similar) mitigation issues and recommendations arose when the Puketapu Hapū produced a Cultural Impact Assessment dated July 2019 in respect of the Summerset New Plymouth / Pohutukawa Place development (being adjacent to our clients proposed subdivision) – subsequently consented to by the Council on 7 October 2019 under resource consent No. LUC19/47493 – and that the proposed mitigation measures and consent conditions that our clients have offered to address iwi concerns in this case are more robust and go beyond what Summerset offered.

Moreover, while the issues raised under the relevant provisions of the RMA in respect of the relationship of Māori (with ancestral lands, water etc), kaitiakitanga and the principles of the Treaty of Waitangi/Te Tiriti o Waitangi are powerful - they are not necessarily decisive – nor do they provide tangata whenua with a right of veto.

A number of cases over many years have established that consideration of tangata whenua matters under sections 6, 7 and 8 RMA do not provide priority over, or trump, other values that are pertinent to achieving the purpose of the RMA, following the Court of Appeal's (1998) decision in Water Care Services Limited v Minihinnick³.

¹ Under ss. 6(e), 7(a) and 8 RMA

² [2002] 2 NZLR 577 (PC)

³ [1998] 1 NZLR 294

As do all factors arising under sections 6, 7 and 8 RMA – they inform the overall decision to be made under section 5 – being whether the proposal promotes sustainable management; see for example Outstanding Landscape Protection Society Inc v Hastings District Council⁴.

Further, as we have previously noted to the Council (for example at the hearing and in the applicant's right of reply in respect of private Plan Change PPC18/00049) - the leading case on what is required in law for an appropriate consultation process is the Court of Appeal's (1993) decision in Wellington International Airport Limited v Air New Zealand⁵.

That decision held that the word "consultation" did not require that there be agreement between the parties consulting one another - nor did it necessarily involve negotiations towards an agreement, although this might occur particularly as the tendency in consultation was at least to seek consensus; it clearly required more than mere prior notification.

Our clients have clearly endeavoured to carry out proper consultation to date - in that they have held meetings with the relevant parties - provided those parties with relevant information and with such further information as they requested - entered the meetings with an open mind - taken due notice of what was said and waited until they had had their say before then, for example, offering further mitigation measures - such as the above mentioned setback from the Waipu Lagoon wetland margin of 10 metres (which is not required under the District Plan).


The Court of Appeal's decision in Wellington International Airport Limited v Air New Zealand is also very clear that consultation is a two-way process; and our clients have genuinely endeavoured to appropriately consult with tangata whenua throughout the subdivision application process to date - but in our view tangata whenua have not reciprocated in this context, and the Council has not met its promises and commitments to our clients as agreed either.

The above situation is entirely unacceptable and unfair and, as noted, has caused our clients considerable delays and further expenses - and we are of the view that this has been caused by the Council - and that the Council is estopped from denying same - and should reasonably compensate our clients for these delays; and that the Council needs to progress these matters without further delays causing further costs and undue stress to our clients.

We would welcome a meeting with you to discuss these matters and the way forward as soon as possible.

We look forward to hearing from you about these matters again with urgency.

Yours faithfully
CONNECT LEGAL TARANAKI


Scott Grieve
Director
T: +64 6 769 8051
E: scottg@connectlegal.co.nz


Tim Coleman
Director
T: +64 6 757 3957
E: timc@connectlegal.co.nz

⁴W24/2007 EnvC, at para [85]

⁵[1993] 1 NZLR 671 (CA), at 672