

## Decision on an application for resource consent under the Resource Management Act 1991.

### Mangawhai Central Limited - for a supermarket and main street development, including a subdivision, at 83 Molesworth Drive, Mangawhai.

#### Proposal

- To establish and operate a supermarket, establish a main street for a new township, undertake a subdivision of the site to create four super-lots, a balance allotment and two roads to vest. This includes site preparation and infrastructure works to service the development and subdivision.

Consent, pursuant to section 104B and 104D of the Resource Management Act 1991, is **GRANTED**. The full decision and reasons are set out below.

<b>Application Number:</b>	RM190282
<b>Site address:</b>	83 Molesworth Drive, Mangawhai
<b>Applicant:</b>	Mangawhai Central Limited
<b>Hearing:</b>	20 May 2020
<b>Hearing panel:</b>	Mr Greg Hill and Mr Bill Smith
<b>Parties in Attendance</b>	<p><u>For the Applicant:</u></p> <ul style="list-style-type: none"><li>• Ian Gordon (legal counsel)</li><li>• Steve Mutch (legal counsel)</li><li>• Ian Munro (urban design)</li><li>• James Dufty (engineering)</li><li>• Mark Tollemache (planning)</li></ul> <p><u>For the Submitters<sup>1</sup></u></p> <ul style="list-style-type: none"><li>• Jo Gough</li></ul> <p><u>For the Council:</u></p> <ul style="list-style-type: none"><li>• Vishal Chandra (Planning)</li><li>• Ueli Sasagi (Major Projects Leader and Principal Planner)</li><li>• Sarah Jones (Technical Support Officer Resource Consents)</li></ul>
<b>Commissioner site visit</b>	20 May 2020
<b>Hearing closed.</b>	20 May 2020

<sup>1</sup> Mr Hall and Mr Warden filed written statements.

## Introduction

1. This decision is made on behalf of the Kaipara District Council (“the Council”) by Independent Hearing Commissioners Greg Hill and Bill Smith appointed and acting under delegated authority under section 34A of the Resource Management Act 1991 (“the RMA”).
2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The application was publicly notified on the 17 December 2019. At the close of the submissions on the 5 February 2020 three submissions, in opposition to the proposal, had been received.
4. The submissions raised a range of matters including:
  - Economic effects of a new supermarket on existing supermarkets.
  - Adverse visual and coastal character effects.
  - Adverse effects on the local estuary from bulk earthworks and stormwater discharges.
  - Earthworks and construction effects regarding ecology, flooding and noise and dust.
  - Infrastructure issues regarding wastewater, stormwater and water supply.
  - Traffic affecting the existing network.
  - Matters relating to cycling<sup>2</sup> -
    - The need to provide an off road cycle network within the development;
    - The need to connect the cycle way within the development to the Molesworth Drive cycle way; and
    - Need to provide dedicated cycle crossing points and parking facilities.

## Summary of proposal

5. Mangawhai Central Limited (MCL) has sought the consents necessary to establish and operate a supermarket, establish a main street for a new township, undertake a subdivision of the site to create four super-lots, a balance allotment and two roads to vest. This includes site preparation and infrastructure works to service the development and subdivision. The proposal includes a total of 3,260m<sup>2</sup> retail gross floor area within the town centre and 2,965m<sup>2</sup> for the supermarket.
6. A total of 399 private car parking spaces are proposed for the supermarket and town centre retail shops. Angle and parallel street parking spaces are proposed within the main street and road to vest.

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<sup>2</sup> It is noted while Mr Hall opposed the application, in his submission and written statement, the intent of his submission was to ensure that safe off road cycling connections were provided for in the development linking the proposed Molesworth Drive shared path and the final points of where people would dismount their cycles within the development.

7. A reservoir is proposed for water storage, and is supported by treatment and reticulation infrastructure for drinking and fire fighting water supply. Landscaping is proposed within the roads to vest and private allotments, and along the Molesworth Drive frontage.
8. More specific details of the proposal were set out in the Applicant's Assessment of Environment Effects (AEE), and in the Officer's section 42A report at section 3.0 – Description of Proposal.

**Background – The planning framework and existing environment.**

9. In determining whether to grant consent to this proposal it is relevant to set out the district planning framework for this proposal as well as the resource consents already held in relation to it. This is highly relevant to the context in which the proposal needed to be evaluated and, in part, the reasons to grant consent.
10. The site is identified for intensive town centre development in the Kaipara District Plan 2013 (District Plan) as part of a comprehensive mixed-use development on the wider site enabled by the District Plan. The zoning for the site, which enables this development, has been in place for a number of years. According to the Applicant, the site has not been developed due to the very prescriptive and rigid planning provisions which required a very specific form and scale of development. In this regard, Mr Gordon, legal counsel for MCL set out in his submissions:<sup>3</sup>

*A key flaw of the District Plan is its rigid call for 17,000m<sup>2</sup> of retail/commercial space in the relevant sub-zone, which is approximately three times more than would be environmentally viable for a community of this size and character. The fundamentally flawed economic underpinnings of Chapter 16 flow on to the form and layout of development it prescribes. The decade old Chapter 16 simply does not provide for sustainable, resilient development.*

11. Mr Colegrave, the Applicant's economist, Mr Munro, the Applicant's Urban Designer and Mr Tollemache, the Applicant's planner, all addressed the flawed nature of the District Plan as submitted by Mr Gordon. We have relied on the evidence of those experts, as well as the Council's experts.
12. In addition to District Plan provisions for the site, a number of resources consents are already held in relation to this site, as well as surrounding sites (some of which are being given effect to now - such as bulk earthworks). These consents, whether implemented or not, form part of the "existing environment". Like the planning framework, these resource consents are relevant to this proposal; largely relating to the more 'technical' aspects of the proposal – including earthworks and infrastructural matters.
13. Relevant regional and district level resource consents, and archaeological authority, include the following:

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<sup>3</sup> Paragraph 3.5 of the opening legal submissions.

- (a) RM180243 relates to bulk earthworks over an area of 57.10 ha, and involves approximately 141,000m<sup>3</sup> of topsoil and 192,000m<sup>3</sup> of clay being redistributed around the site. These works are currently underway, and will be completed over three consecutive seasons. This consent was issued by Kaipara District Council on 28 May 2019. The proposed development is located within Stage 1 of these works. Refer to Figure 3 in the s42A Report.
  - (b) RM190096 involves importation of 20,000m<sup>3</sup> of hard fill over an area of 57.1 ha, and is in conjunction with the bulk earthworks being undertaken at present under RM180243. The fill is to assist with stabilisation of the site. This consent was issued by Kaipara District Council on 5 October 2019.
  - (c) RM190129 comprises of Molesworth Drive realignment and upgrade, two roundabouts, infrastructure and earthworks. The road works under this application enable the internal roads to the application site, to connect to Molesworth Drive. This consent was issued by Kaipara District Council on 25 November 2019.
  - (d) RM190283 relates to the service zone subdivision. It involves 15-lot fee simple subdivision with roads to vest, landscaping and earthworks. This consent was issued by Kaipara District Council on 14 May 2020.
  - (e) AUT.039619(01-03) relates to bulk earthworks (AUT.039619.01.01), discharge of stormwater (AUT.039619.02.01), and diversion of stormwater (AUT.039619.03.01). These consents were issued by Northland Regional Council on 27 November 2017.
  - (f) AUT.040574.01.01 is a water permit to take 100m<sup>3</sup> of groundwater per day for the purposes of supplying water to commercial and residential developments within the application site. This consent was issued by the Northland Regional Council on 6 June 2019.
  - (g) 2019/052 – 11013-028 comprises an authority by Heritage New Zealand to undertake earthworks. Heritage New Zealand issued this authority on 23 August 2018.
14. Moreover, a Regional Network Discharge Consent APP.002111 (01.03), (02.02) and (03.02) for diversion and discharge of stormwater into and beyond the coastal marine area applies to the Estuary Estates Structure Plan site. This consent was issued by Northland Regional Council to Kaipara District Council on 26 July 2017.
15. We note that Private Plan Change 78 – Estuary Estates, which seeks to rezone 130 ha of land contained within the Estuary Estates Structure Plan of the operative District Plan, was publicly notified on the 30 April 2020, with submissions closing on the 28 May 2020. The plan change area comprises of land at 83 Molesworth Drive, being Lot

4 DP 154785 and Lot 6 DP 314200 Old Waipu Road, Mangawhai<sup>4</sup>. This Plan Change has no legal effect until it is approved and we have not considered it in relation to these resource consents.

### **Activity Status**

16. Section 6 of the Section 42A report set out the Reasons for Consent. There was no contention between the parties over the reasons for consent under the District Plan, and they are set out below:

### **Section 9 of the RMA - Land Use Consents under the Kaipara District Plan**

#### *Parkside Residential Sub-Zone 4*

*Rule and Table 16.7.1-1 require consent for a small area of land to be utilised by the proposed development that is partially located in the Parkside Residential Sub-Zone 4. While this area of use comprises a portion of the supermarket building and associated loading and service lane, consent is being sought within this zone for all the activities associated with the supermarket and Township, as detailed below:*

- i. Non-complying activity land use consent for activities that are not provided for in the Parkside Residential Sub-Zone 4 namely the supermarket and public car parking areas.*
- ii. Restricted discretionary activity land use consent for the construction of a new building, and all future internal and external alterations to the proposed buildings.*
- iii. Discretionary activity land use consent for modifications to development controls set out in Under Rule 16.8 (excluding density) for the following:*
  - Staging of the development does not align with Maps 4 to 17 – 16.8.1.1.*
  - No structure landscaping is identified within Maps 20 and 21. Planting proposed for roading and streetscape include locations and a schedule, however it is not consistent with the Chapter 16 Maps and Design Guidelines given changes to the development layout – 16.8.1.2.*
  - No green open spaces network is proposed – 16.8.1.3.*
  - Establish a restaurant or tavern within 200m of residential sub-zone or residential activities, at a capacity in excess of 50 persons with a*

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<sup>4</sup> If and when Private Plan Change 78 takes effect (i.e. by an approval) it will replicate the development boundary and roading alignment proposed within this consent application.

gross floor area of more than 200m<sup>2</sup>, with a gross floor area of 430m<sup>2</sup> and outdoor area of 114m<sup>2</sup> anticipated – 16.8.2.1.

- Development layout is different to that anticipated by Maps of Chapter 16, with several buildings located over zone boundaries and within road reserves, and do not meet the height in relation to boundary standards – 16.8.2.4.
- Building coverage over the entire development is 19.4% or 6,060m<sup>2</sup> in area, and while this is complaint, given the revised layout from those that exist in Chapter 16 maps, building coverage is exceeded – 16.8.2.8.
- Paved impermeable surface over the entire development is 74.6% or 23,352m<sup>2</sup> in area, given the revised layout from those that exist in Chapter 16 maps, impermeable coverage is exceeded – 16.8.2.9.
- Earthworks exceed the maximum area of 700m<sup>2</sup>, which are required to form building and parking platforms, control overland flow paths and swales, facilitate road construction and landscaping, with a total combined earthworks area of 2.4 ha (and volume of 55,000m<sup>3</sup> involving cut and fill) over the development – 16.8.2.11.

Rule 16.7.2.3 requires a restricted discretionary activity which does not meet a performance standard in 16.8 and 16.10. This would duplicate the infringements listed above and any new infringements to the provisions contained in 16.10 are addressed under the subdivision matters below.

Business Sub-Zone 1 (Precincts 1 (large format businesses) and 2 (small scale retail and businesses))

Rule and Table 16.7.1-2 require consent for majority of the development located in the Business Sub-Zone 1 within any of the proposed buildings, as detailed below:

- i. Non-complying activity land use consent for activities that are not provided - namely the supermarket, community facility and services, healthcare services, visitor centre, and public car parking areas.
- ii. Discretionary activity land use consent is sought for the ability to provide for a conference and event centre, recreational facility, and restaurant and tavern.
- iii. Restricted discretionary activity land use consent is sought for the ability to provide for an entertainment facility and public toilet and/or changing rooms.
- iv. Restricted discretionary activity land use consent for the construction of a new building, and all future internal and external alterations to the proposed buildings.

- v. *Discretionary activity land use consent is sought within Precincts 1 and 2 for modifications to Development Controls set out in Section 16.8 (excluding density) for the following:*
- *Staging of the development does not align with Maps 4 to 17 – 16.8.1.1.*
  - *No structure landscaping is identified within Map 18 (Precinct 1) and Map 19 (Precinct 2), and no planting associated with the stormwater management area is proposed within Precinct 1. Planting proposed for roading and streetscape include locations and a schedule, however it is not consistent with the Chapter 16 Maps and Design Guidelines given changes to the development layout – 16.8.1.2.*
  - *No green open spaces network is proposed – 16.8.1.3.*
  - *Roading location and designs are not in accordance with Maps 2 and 4-26, and the Environmental and Design Guidelines – 16.8.1.4.*
  - *Establish a restaurant or tavern within 200m of residential sub-zone or residential activities, at a capacity in excess of 50 persons with a gross floor area of more than 200m<sup>2</sup>, with a gross floor area of 465m<sup>2</sup> and outdoor area of 145m<sup>2</sup> anticipated, and shops and offices in Precinct 2 exceeding 500m<sup>2</sup> GFA – 16.8.2.1. Development layout is different to that anticipated by Maps of Chapter 16, with several buildings located over zone boundaries and within road reserves, and do not meet the height in relation to boundary standards – 16.8.2.4.*
  - *Building footprint of a maximum of 2,000m<sup>2</sup> is allowed within Precinct 1 with 2,832m<sup>2</sup> proposed for the supermarket, and a maximum of 500m<sup>2</sup> is allowed within Precinct 2 with 715m<sup>2</sup> (Building No. 1), 695m<sup>2</sup> (Building No. 3) and 700m<sup>2</sup> (Building No. 4) proposed – 16.8.2.6.*
  - *Staging of the development does not align with Map 4 and it is not possible to confirm precincts, area percentages and staging, and the development does not meet the discretionary activity criteria – 16.8.2.7.*
  - *Building coverage over the entire development is 19.4% or 6,060m<sup>2</sup> in area, and while this is complaint, given the revised layout from those that exist in Chapter 16 maps, building coverage is exceeded – 16.8.2.8.*
  - *Paved impermeable surface over the entire development is 74.6% or 23,352m<sup>2</sup> in area, given the revised layout from those that exist in Chapter 16 maps, impermeable coverage is exceeded – 16.8.2.9.*
  - *Earthworks exceed the maximum area of 1,000m<sup>2</sup>, which are required to form building and parking platforms, control overland flow paths and*

*swales, facilitate road construction and landscaping, with a total combined earthworks area of 2.4 ha (and volume of 55,000m<sup>3</sup> involving cut and fill) over the development – 16.8.2.11.*

- *A veranda is required for all buildings with a minimum height of 2.9m from the average finished floor of the footpath, extending from the face of the supporting building to a maximum of 0.45m behind the face of the kerb, and has a fascia depth of minimum 0.3m and maximum 0.45m, with none of these being met where verandas has been provided, and no veranda is proposed for the supermarket – 16.8.2.13.*

*Rule 16.7.2.3 requires a restricted discretionary activity which does not meet a performance standard in 16.8 and 16.10. This would duplicate the infringements listed above and any new infringements to the provisions contained in 16.10 are addressed under the subdivision matters below.*

### *Community Sub-Zone 2*

*Rule and Table 16.7.2-2 require resource consent over part of the development located in the Community Sub-Zone 2, and within any of the proposed buildings, as detailed below:*

- i. Non-Complying activity land use consent is sought for activities that are not provided for, namely the supermarket, restaurant and tavern, offices, shop and commercial services, and public car parking areas.*
- ii. Discretionary activity land use consent is sought for the ability to provide for an entertainment facility.*
- iii. Restricted discretionary activity land use consent is sought for the ability to provide for a conference and event centre, public toilet and/or changing rooms and recreation facility.*
- iv. Restricted discretionary activity land use consent for the construction of a new building, and all future internal and external alterations to the proposed buildings*
- iv. Discretionary activity land use consent for modifications to development controls set out in Under Rule 16.8.2 (excluding density) for the following:*
  - *Staging of the development does not align with Maps 4 to 17 – 16.8.1.1 and 16.8.2.1.*
  - *No structure landscaping is identified within Map 19 and no planting associated with the stormwater management area is proposed. Planting proposed for roading and streetscape include locations and a schedule, however it is not consistent with the Chapter 16 Maps and*

*Design Guidelines given changes to the development layout – 16.8.1.2.*

- *No green open spaces network is proposed – 16.8.1.3.*
- *Establish a restaurant or tavern within 200m of residential sub-zone or residential activities, at a capacity in excess of 50 persons with a gross floor area of more than 200m<sup>2</sup>, with a gross floor area of 430m<sup>2</sup> and outdoor area of 114m<sup>2</sup> anticipated – 16.8.2.1(c).*
- *Development layout is different to that anticipated by Maps of Chapter 16, with several buildings located over zone boundaries and within road reserves, and do not meet the height in relation to boundary standards – 16.8.2.4.*
- *Building coverage over the entire development is 19.4% or 6,060m<sup>2</sup> in area, and while this is complaint, given the revised layout from those that exist in Chapter 16 maps, building coverage is exceeded – 16.8.2.8.*
- *Paved impermeable surface over the entire development is 74.6% or 23,352m<sup>2</sup> in area, given the revised layout from those that exist in Chapter 16 maps, impermeable coverage is exceeded – 16.8.2.9.*
- *Earthworks exceed the maximum area of 1,000m<sup>2</sup>, which are required to form building and parking platforms, control overland flow paths and swales, facilitate road construction and landscaping, with a total combined earthworks area of 2.4 ha (and volume of 55,000m<sup>3</sup> involving cut and fill) over the development – 16.8.2.11.*
- *A Veranda is required for all building with a minimum height of 2.9m from the average finished floor of the footpath, extend from the face of the supporting building to a maximum of 0.45m behind the face of the kerb, and has a fascia depth of minimum 0.3m and maximum 0.45m, with no veranda proposed – 16.8.2.13.*

*Rule 16.7.2.3 requires a restricted discretionary activity which does not meet a performance standard in 16.8 and 16.10. This would duplicate the infringements listed above and any new infringements to the provisions contained in 16.10 are addressed under the subdivision matters below.*

### *Green Network*<sup>5</sup>

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<sup>5</sup> Green network is defined in Chapter 16 of the District Plan to include the following:

- road corridors and associated streetscape planting
- areas of revegetation as well as existing vegetated areas
- parkland and amenity areas
- stormwater management areas, and

*Rule and Table 16.7.2-3 require consent for a small area of land to be utilised by the proposed development is partially located on land prescribed for the “Green Network”.*

*This includes a portion of road within the “Village Green” shown within the Parkside Residential Sub-Zone 4 and Township development within the “Parkland and Amenity – Open Space” and “Stormwater Management” areas. While these areas comprises a portion of road, carpark, playground and landscaping, consent is sought within this overlay for all the activities associated with the supermarket and Township, in any of the proposed buildings, as detailed below:*

- i. Non-complying activity land use consent is sought for the supermarket, community facility and services, conference and event centre, entertainment facility, healthcare services, offices, public toilet and/or changing rooms, recreational facility, restaurant/tavern, shop and commercial services, visitor centre, and public car parking areas.*

*Public toilets/changing rooms up to 25m<sup>2</sup> (gross floor area) are permitted in the village green overlay and not the open space or stormwater management overlays.*

*Playgrounds including play equipment are permitted in the village green and open space overlay, and not the stormwater management overlay.*

- v. Discretionary activity land use consent for modifications to development controls set out in Under Rule 16.8.2 (excluding density) for the following:*
  - Staging of the development does not align with Maps 4 to 17 – 16.8.1.1 and 16.8.2.1.*
  - No structure landscaping is identified. Planting proposed for roading and streetscape include locations and a schedule, however it is not consistent with the Chapter 16 Maps and Design Guidelines given changes to the development layout – 16.8.1.2.*
  - No green open spaces network is proposed – 16.8.1.3.*
  - Establish a restaurant or tavern within 200m of residential sub-zone or residential activities, at a capacity in excess of 50 persons with a gross floor area of more than 200m<sup>2</sup>, with a gross floor area of 430m<sup>2</sup> and outdoor area of 114m<sup>2</sup> anticipated – 16.8.2.1(c).*
  - Development layout is different to that anticipated by Maps of Chapter 16, with several buildings located over zone boundaries and within road reserves, and do not meet the height in relation to boundary standards – 16.8.2.4.*

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*• pedestrian and cycleways.*

- *Building coverage over the entire development is 19.4% or 6,060m<sup>2</sup> in area, and while this is complaint, given the revised layout from those that exist in Chapter 16 maps, building coverage is exceeded – 16.8.2.8.*
- *Paved impermeable surface over the entire development is 74.6% or 23,352m<sup>2</sup> in area, given the revised layout from those that exist in Chapter 16 maps, impermeable coverage is exceeded – 16.8.2.9.*
- *Earthworks exceed the maximum area of 1,000m<sup>2</sup>, which are required to form building and parking platforms, control overland flow paths and swales, facilitate road construction and landscaping, with a total combined earthworks area of 2.4 ha (and volume of 55,000m<sup>3</sup> involving cut and fill) over the development – 16.8.2.11.*
- *Veranda is required for all building with a minimum height of 2.9m from the average finished floor of the footpath, extend from the face of the supporting building to a maximum of 0.45m behind the face of the kerb, and has a fascia depth of minimum 0.3m and maximum 0.45m, with no veranda proposed – 16.8.2.13.*

*Rule 16.7.2.3 requires a restricted discretionary activity which does not meet a performance standard in 16.8 and 16.10. This would duplicate the infringements listed above and any new infringements to the provisions contained in 16.10 are addressed under the subdivision matters below.*

#### Transportation

*Rules 16.9.3.2(d) and 16.9.4.1 require restricted discretionary activity consent to vary to the alignment and/or formation standards of roads as defined on the Map 2 and as shown in the Design and Environmental Guidelines.*

*Rules 16.9.3.2(a) and 16.9.4.5 require restricted discretionary activity consent for the below veranda comprehensive business signage for the Township as these exceed the maximum vertical dimension of 450mm with 600mm proposed.*

#### Hazardous Substances<sup>6</sup>

##### Comprehensive / Blanket Consents

*The applicant seeks flexibility to undertake future external additions/alterations to buildings within the extent of the Township development under this resource consent. This comprehensive approach to resource consent will enable façade*

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<sup>6</sup> Council's expert for Environmental Health and Hazardous Substances, Conal Summers has confirmed subsequent to the section 92 response from the applicant that the proposed supermarket carries and uses hazardous substances which are within the permitted thresholds under the District Plan. No consent is therefore required in related to hazardous substances.

*alterations by way of design certification process by the Council, avoiding the need for multiple future consents for minor façade alterations to support a range of tenants and activities over the lifetime of the development. To support this the Buchan Architectural Drawings illustrate a range of acceptable shop front designs to the main street in terms of glazing, finishes and doors, along with a range of façade variations to contribute to what will be a vibrant and high-quality outcome for the Mangawhai community.*

*Internal alterations to individual fitout of each block/tenancy is also sought to be authorised under this resource consent.*

### **Section 11 of the RMA - Subdivision Consents under the Kaipara District Plan**

*Rule 16.10.10 and Table 16.10.5-1 require discretionary activity consent where subdivisions do not meet one or more of the standards, with standard 16.10.10.4(5) not met that relates to staging and implementation which must be consistent with the Structure Plan Maps 1 to 26.*

*The proposed subdivision does not comply with the following:*

- i. 16.10.4 Activities Rules:*
  - Roding layout is not consistent with the Structure Plan Maps given changes and the proposed development layout - 16.10.4(1).*
  - Subdivision precedes creation of sub-zone development block - 16.10.4(2).*
  - Staging method for the subdivision, roading and planting are inconsistent with those outlined in the Structure Plan maps - 16.10.4(3).*
  - Landscaping proposed in not in accordance with the Structure Plan - 16.10.4(6).*
- ii. 16.10.6.1 General Rules where the subdivision boundaries, roads to vest and planting are inconsistent with the Structure Plan.*
- iii. 16.10.10 Development Controls:*
  - Layout proposed varies from that of Chapter 16 Maps and extends over multiple sub-zone boundaries - 16.10.10.1.*
  - Buildings are not sited in accordance with the Structure Plan Maps 4 to 17 - 16.10.10.2.*
  - The roads to vest do not align with the Structure Plan Maps - 16.10.10.4(1).*
  - Pedestrian links are proposed throughout the Township within road reserves and through proposed allotments for access to car parks and*

*recreational facilities however as the layout varies to those of the Structure Plan Maps inconsistency exists – 16.10.10.4(2).*

- *Open space and green networks will be established in combination of landscaping, parkins area, service lane and community playground within part of the green network adjacent to Molesworth Drive, and due to the changes proposed inconsistency exists with the Structure Plan Maps – 16.10.10.4(4).*
- *Lots are being created prior to stage blocks, lot boundaries have changed and do not align with the sub-zone boundaries. The preferred staging method is not adopted. The development is inconsistent with the Structure Plan Maps – 16.10.10.4(5).*

#### Section 9 of the RMA - National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011

*Resource Management (National Environmental Standards for Assessing and Managing contaminants in Soil to Protect Human Health) Regulation 2011 (the NES for Soil) has been addressed under bulk earthworks application RM180243. That application included a Detailed Site Investigation to determine if there were contaminated soils within the property and if any remediation measures were required.*

*The report determined that potential ground contaminants may exist from the use of lead-based paint in areas around existing buildings, presence of potentially uncertified fill materials, and stock holding yards and areas where burning were located on the site.*

*Further investigations, by way of soil samples, were undertaken within these areas in the site. These indicated elevated levels of several contaminants in proximity to the implement shed, and wool shed. Remediation was therefore required prior to any earthworks commencing on the site. The minor disturbance and soil that is required to be removed was of a concentration and volume that could be carried out as a permitted activity under Regulation 8 of the NES for Soil, subject to compliance with the recommendations of the DSI and removal of the contaminated soil to an approved facility. These are included under RM180243.*

*No further consents under the NES are therefore necessary.*

17. There was no contention between the planners about the consents required and the activity status. Mr Tollemache set out in his evidence that<sup>7</sup>:

*I agree with Mr Chandra regarding the activity status and consents required as outlined in the Section 42A Report and in Section 3 and Appendix 1 of the Assessment of Environmental Effects (“AEE”) that I prepared dated October 2019.*

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<sup>7</sup> Paragraph 1.2 of Mr Tollemache’s evidence-in-chief.

## Overall Status of the Application

18. As the triggers for resource consent under overall in terms of sections 9 and 11 of the RMA, and bundling of the applications - overall they are collectively to be assessed and determined as a non-complying activity.

### Relevant statutory provisions considered

19. As the application is a non-complying activity, we have addressed section 104D which states (in summary) that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either:
- 1(a) the adverse effects of the activity on the environment will be minor; or
  - 1(b) the application is for an activity that will not be contrary to the objectives and policies of:
    - (i) the relevant plan, or
    - (ii) the relevant proposed plan, or
    - (iii) both the relevant plan and the relevant proposed plan.
20. For the reasons that follow, we are satisfied that proposal satisfies one limb of section 104D – that being 104D 1(a) - that the proposal will have no more than minor adverse effects on the environment. Accordingly, as the proposal satisfies the non-complying 'gateway test' it can therefore be assessed on its merits and decision made pursuant to section 104B of the RMA.
21. As required, we have considered the application in terms of the matters set out in section 104 of the RMA which requires us to, subject to Part 2, have regard to –
- (a) any actual and potential effects on the environment of allowing the activity; and
  - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
  - (b) any relevant provisions of —
    - (i) a national environmental standard:
    - (ii) other regulations:
    - (iii) a national policy statement:
    - (iv) a New Zealand coastal policy statement:
    - (v) a regional policy statement or proposed regional policy statement:
    - (vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

21 Section 104 is subject to Part 2 of the RMA. The Court of Appeal in the RJ Davidson case stated, among other things:

*"Having regard to the foregoing discussion we agree with Cull J's conclusion that it would be inconsistent with the scheme of the Act to allow regional or district plans to be "rendered ineffective" by general recourse to pt 2 in deciding resource consent applications, providing the plans have been properly prepared in accordance with pt 2. We do not consider however that King Salmon prevents recourse to pt 2 in the case of applications for resource consent. Its implications in this context are rather that genuine consideration and application of relevant plan considerations may leave little room for pt 2 to influence the outcome"*<sup>8</sup>.

22 In our view that judgment (in short) says that notwithstanding the King Salmon judgment, decision makers need to consider Part 2 when making decisions on resource consents. However, where the relevant plan provisions have clearly given effect to Part 2, there may be no need to do so as it would not add anything to the evaluative exercise. For the reasons that follow, we find that recourse to Part 2 of the RMA is important to our decision.

23 Mr Gordon, in his legal submissions addressed this matter in some detail under the heading "Overall approach to s104 and Part 2"<sup>9</sup>. He submitted, in summary, that due to the flawed nature of the Chapter 16 –Estuary Estates of the District Plan and that it was not prepared so as to reflect Part 2 of the RMA as particularised in the higher order RMA documents, that<sup>10</sup>:

*Recourse to Part 2 will add significantly to the evaluative exercise required to be undertaken in determining the applications for the Proposal under the RMA.*

24 We agree with Mr Gordon's submissions and agree that recourse to Part 2 will add significantly to our evaluative exercise in determining the application. We particularly accept, based on the evidence of Messrs Colegrave, Munro and Tollemache, that the proposal presented to us would be efficient (section 7 (b)) and promote the sustainable management purpose of the RMA (section 5), whereas a development 'complying' with the District Plan provisions (Chapter 16) would not. We address Part 2 in more detail later in this decision.

### **Relevant standards, policy statements and plan provisions considered**

22. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents.

- New Zealand Coastal Policy Statement (2010);
- National Policy Statement for Freshwater Management 2014 (amended 2017);

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<sup>8</sup>Court of Appeal Judgment - paragraph 83

<sup>9</sup> Paragraphs 5.30 – 5.67 of the opening legal submissions.

<sup>10</sup> Paragraph 5.34 of the opening legal submissions.

- National Policy Statement for Urban Development Capacity (2016);
- Northland Regional Policy Statement (2016);
- Northland Regional Water and Soil Plan (2004);
- Northland Regional Air Quality Plan (2005);
- Northland Regional Coastal Plan (2004);
- Proposed Northland Regional Plan (2016); and
- Kaipara District Plan 2013.

### Summary of evidence heard

23. The Council's reporting planner's section 42A report was pre-circulated, and assessed the application in terms of the statutory requirements. Having considered the effects of the proposal and the relevant objectives and policies of the District Plan (and other statutory documents), Mr Chandra<sup>11</sup> recommended that the application be granted consent, subject to a suite of conditions.
24. Mr Chandra provided a supplementary statement responding to matters raised subsequent to the circulation of the section 42A report – including:
- Addressing matters raised in the evidence of Mr Tollemache, dated 6 May 2020;
  - Comments on statement presented by submitter, Mr Hall dated 7 May 2020; and
  - Provided a status update of resource consent application RM190283.
25. Mr Chandra also advised that all of the conditions and advice notes he recommended be imposed if consent was granted, had been agreed with the Applicant. These included the issues relating to financial contributions and development contributions – and that the Applicant and Council are in discussions regarding a “Private Development Agreement” to determine the level of contributions that will be payable.
26. We had legal submissions and extensive expert evidence on behalf of the Applicant addressing: the statutory framework in which this application needed to be assessed and determined – including recourse to Part 2 of the RMA, economics/retail distribution, urban design, cultural, natural character, landscape and visual amenity, ecology, arboricultural, transportation, earthworks, infrastructure, hazards, land stability, soil contamination, construction and planning.
27. The Applicant's expert evidence addressed the proposal (within the expert's area of expertise), addressed the concerns raised by submitters, addressed the officer's 42A report and the recommended conditions of consent. Mr Tollemache provided a revised suite of conditions that the Applicant would be prepared to accept.
28. Ms Gough gave a verbal presentation setting out why she opposed this application. It was her view that Mangawhai had and was developing in a way that did not respect the beach/small community that attracted her to it some years ago. She did not see

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<sup>11</sup> Including the input from a number of experts (addressed in the Section 42A report)

the need for this development, and the existing shops and facilities already catered for the residents of the area, as well as visitors. It was her view that the supermarket was not required; it would adversely affect the existing smaller food market/shops; and that supermarkets at Warkworth and Whangarei were sufficient, and that those supermarkets deliver groceries to Mangawhai.

29. Overall, her view was that Mangawhai was developing in a way that did not reflect the community; was too big and too rapid. She sought that the proposal be refused consent.
30. Mr Warden was unable to attend the hearing and provided a written statement. He remained concerned about ecological issues – particularly in relation to a number of “*outstanding retrospective resource consents*” including the Mangawhai Golf Course, the Mangawhai Museum and the Gumdiggers Track. He also addressed the issue of the manuka gumland, and that it required formal legal protection. He addressed how and what form that protection should be (conservation covenant and the completion and implementation of an ecological mitigation plan )
31. Mr Hall was unable to attend the hearing and provided two written statements prior to the hearing. He set out that the intent of his submission was to ensure that safe cycling connections were provided for in the proposed development linking the proposed Molesworth Drive shared path and the final points where people would dismount their cycles within the development.
32. While Mr Hall accepted that a connection to the proposed Molesworth Drive shared path had been provided for and also a circular shared path provided around the development, he wanted greater certainty around the provision of dedicated cycleways between the shared path and the cycle parks. In this regard he sought a more specific condition of consent to give greater certainty to the provision of cycleways including requiring a Cycle Network Plan.

### **Principal issues in contention**

33. The entire proposal was in contention with respect to the concerns of the submitters whom opposed the proposal and sought that it be refused consent. Their reasons for this were set out in their submission, the section 42A report and their statements made at and provided at the hearing. A summary of their concerns has been set out in the Introduction section of this decision report.
34. Having reviewed the application material, in particular the reports from the applicant’s ‘technical’ experts, the Council’s section 42A report and technical memorandums from its experts and the Applicant’s evidence, there is very little, and in some cases no, matters in contention between the experts. Mr Tollemache and Mr Chandra, planners for the Applicant and Council respectively, are also in agreement on the planning aspects of the proposal, including what they considered to be the appropriate conditions of consent.

## **Main findings on the principal issues in contention and reasons for granting consent**

35. Prior to specifically addressing the issues in contention, we record that we largely agree with Applicant's AEE and the section 42A report noting as we have earlier, that there was little (and nothing fundamental) in contention between the Applicant's and Council's experts. The main issues remaining in contention related to the appropriate conditions of consent. We adopt the AEE and section 42A report (including Mr Chandra's supplementary statement to the section 42A report) pursuant to section 113(3)(b) of the RMA, and cross reference to that material accordingly.
36. Adopting the Applicant's AEE and the section 42A report and cross-referencing to them, means there is no need to, and little point in, repeating in any detail what was addressed in a very comprehensive manner.
37. The three submitters opposed the proposal and sought that it be refused. Notwithstanding this, Mr Warden's concern was mostly in relation to the ecological effects from land disturbance activity, Mr Hall's was in relation to cycling, with Ms Gough's opposition being much wider and philosophically based. It was her view that this proposal was not required, would have a range of adverse economic, social, ecological and traffic related effects.
38. While we acknowledge the submitters' concerns, we set out why we find the effects of the proposal are no more than minor. It is also clear to us that the urbanisation, and the nature of that urbanisation in terms of this application, is envisaged by the statutory planning documents – in particular the District Plan and Chapter 16 – Estuary Estates.
39. We accept that the effects of the proposal in relation to economics/ retail distribution, urban design, cultural, natural character, landscape and visual amenity, ecology, arboricultural, transportation, earthworks, infrastructure, hazards, land stability, soil contamination, construction, will be no more than minor. This is due to: the planning framework (mainly the provisions of the District Plan and Chapter 16 in particular) that provides that this site and the surrounding area be urbanised; the existing consents held in relation to bulk earthworks, discharges and the provision of infrastructure, subdivision; and the suite of conditions we have imposed on this consent. We are satisfied that the adverse effects have been appropriately avoided, remedied or mitigated.
40. We also record that notwithstanding Ms Gough's concerns, there are a number of positive effects arising from the proposal. These include:
  - Delivery of an attractive and functional town centre which will be a valuable resource; enabling the community to provide for its social, cultural, and economic wellbeing.
  - A range of enduring economic benefits; including the creation of local jobs and wider business/economic development; better enabling local residents to live and work locally, minimising retail "leakage" and the range of inefficiencies associated with the current practice of travelling out of Mangawhai to work and shop.

- Efficiently utilising a valuable land resource which has to date failed to attract any meaningful development, despite being zoned for business activity for many years.
41. In terms of the statutory planning framework Mr Gordon and Mr Tollemache have set out in detail, in the AEE, legal submissions and evidence, the operative planning framework for this site and immediate area. Mr Chandra has done the same in the section 42A report.
  42. In brief the site and surrounding sites underwent detailed structure planning in 2006; the results of which now form Chapter 16 of the Kaipara District Plan. The Estuary Estates Structure Plan (Chapter 16 and Maps 1 to 24 of the District Plan) provides the operative planning framework for development within 83 Molesworth Drive<sup>12</sup>.
  43. The land associated with the town centre and supermarket development and associated works occupies the eastern, central portion of the site, and predominantly comprises the Business Sub-Zone 1. The development also occupies small portions of adjacent Business Sub-Zone 1 and Parkside Residential Sub-Zone 4 land.
  44. The purpose of the Business Sub-Zone 1 is to provide for a business centre to serve both the business and retail needs of the Estuary Estates Structure Plan area and the wider community. The Sub-Zone is located so as to be the 'gateway' to the Estuary Estates Structure Plan area and enable easy access to business activities using the ring road that will connect with Molesworth Drive<sup>13</sup>.
  45. Chapter 16 of the District Plan set out the following:

*16.1.2 Relationship of the Mangawhai Structure Plan and the Estuary Estates Structure Plan*

*In order to reflect the directions of the Mangawhai Structure Plan and create an attractive "gateway" to Mangawhai Heads, Chapter 16 - Estuary Estates seeks to provide for a commercial centre adjacent to Molesworth Drive to provide for future retail and service needs beyond those able to be provided for at the historical village centres. This includes provision for activities requiring larger retail buildings but limits the extent of those to preserve a rural village character. The Estuary Estates Structure Plan will also enable some mixed-use development where residential activities can merge with business type activities in close proximity to the centre (underlining added for emphasis).*

*16.1.4 Description of the Estuary Estates Structure Plan Provisions*

*The Sub-Zones contained within the Estuary Estates Structure Plan area include the: – Business 1 Sub-Zone; – Community 2 Sub-Zone; – Residential 3 Sub-Zone; – Parkside Residential 4 Sub-Zone; – Rural Cluster 5 Sub-Zone; – Rural Residential 6 Sub-Zone; and – Service 7 Sub-Zone.*

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<sup>12</sup> 1.114 AEE - Chapter 16 Estuary Estates Structure Plan –Kaipara District Plan

<sup>13</sup> 1.116

46. While there is a range of objectives and policies – in relation to this proposal which is mostly located in the business sub zone – is to:

*16.3.4 Business Objective*

*To provide for business and servicing activities while, ensuring that the adverse effects of those activities are avoided, remedied or mitigated.*

47. As has been fully addressed, the proposed mainstreet and supermarket development proposes to utilise land located predominantly within in the Business Sub-Zone 1. However, small portions of the proposed land use will be sited within Business Sub-Zone 2, and Parkside Residential Sub-Zone 4, as well as on land prescribed for use as Green Network (specifically Parkland and Amenity - Open Space and Stormwater Management), where the site adjoins the Molesworth Drive roading upgrades.
48. Moreover, a very small portion of the proposed roading network is located within the Business Sub-Zone 2 that is overlaid by the Village Green identified within this sub-zone. No buildings are proposed within Sub-Zone 2, though a small portion of the supermarket is proposed in Sub-Zone 4.
49. With respect to the objectives and policies we accept Mr Tollemache's evidence where he states<sup>14</sup>:

*The assessment also identifies that there are both inconsistencies and areas where the Proposal is contrary to some of the Chapter 16 (Estuary Estates) objectives and policies of the District Plan. This occurs where objectives and policies require the implementation of the pattern of roads and development, along with the green network, only as identified in the prescriptive Estuary Estates Structure Plan maps. While the Proposal is contrary to a number of policies which explicitly seek implementation of the Estuary Estates Structure Plan, these result from aspects of Chapter 16 that are not supported by the technical assessments provided in support of the AEE nor the evidence for MCL (particularly Messrs Colegrave and Munro). However, the Proposal is not considered to be contrary to the District-wide policies associated with the natural and urban environment, or growth management. (Underlining added for emphasis)*

50. Mr Colegrave, in summary, has set out in his evidence that<sup>15</sup> :

*My assessment of the Proposal..., shows that the District Plan provisions enable far more retail and commercial floorspace than could ever be needed given Mangawhai's projected future population. Conversely, the development associated with this Proposal reflects the current level of district commercial floorspace per capita, and is thus a better fit with likely future needs, and a more appropriate use of this scarce urban land.*

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<sup>14</sup> Paragraph 1.9 of Mr Tollemache's evidence-in-chief.

<sup>15</sup> Paragraphs 30 and 31 of Mr Colegrave's evidence-in-chief

*My assessment also shows that the Proposal will have significant and enduring economic benefits, including better access to cheaper groceries, improved opportunities for local employment, and a greater capacity for the community to cater for its own social and economic needs over time. At the same time, the Proposal will not have any adverse retail distribution effects on the existing commercial areas at the Heads or Village.*

51. Mr Munro, in his evidence<sup>16</sup> and in the AEE states that:

- (a) *The proposal is for a different configuration, and much smaller overall extent, of commercial development than prescribed in the Estuary Estates Structure Plan and its associated planning maps.*
- (b) *Analysis identified that the development pattern prescribed within the Estuary Estates zone is not feasible or practicable. Using many of the underlying principles of the Estuary Estates zone, an alternative vision for the site has been developed since 2016 based on a high-quality main street as a community focal point and gateway into the site, and a supermarket as a retail anchor. The design has been based on predictions of likely commercial floorspace demand and this has influenced how much active edge and street-based activity can be achieved.*
- (c) *The design is logical and integrates well with Molesworth Drive via two (separately proposed) roundabouts. The main street is north-south orientated and has been designed to be a visually interesting and pedestrian-focussed space.*
- (d) *The building design masses height to the street and exhibits a relaxed, beach /coastal architecture that is considered appropriate to its context. The street elevations are appropriately modulated and varied, and include pedestrian canopies for weather protection and comfort. The supermarket building is also appropriately modulated, including the incorporation of internal gutters and division of the roof into three pitched elements.*
- (e) *Car parking has been provided as per the District Plan requirements and a real world acknowledgement that in Mangawhai there is little alternative to the private vehicle. Parking has been placed to have the least possible adverse visual or pedestrian amenity effects, and be landscaped. This has resulted in parking being located behind the retail main street in preference to development being set back away from the street with car parking in front of it (noting that the supermarket 'sides on' to the street with a stand-alone building proposed in front of that along the main street).*

52. We accept Messer's Colegrave's, Munro's evidence as set out above. Having accepted that evidence, we agree with Mr Tollemache's opinion that the proposal is contrary to a number of policies as it does not explicitly implement some of the Chapter 16 - Estuary Estates provisions. However, we accept that if those explicit

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<sup>16</sup> Paragraph 10 of Mr Munro's evidence-in-chief

provisions, if 'given effect to' would result in an unsustainable development (or not a viable development) as set out in the evidence of Messer's Colegrave and Munro.

53. We find that the proposal would be consistent with the district-wide policies associated with the natural and urban environment and the growth management provisions. This is based on all of the Applicant's expert evidence as well as the Council Officer's Section 42A report.
54. With respect to Ms Gough's submission, while we acknowledge her concerns (which are essentially that the scale and pace of development is inappropriate) we find that 'the horse has already bolted'. Significant development is provided for in the District Plan in this locality (Chapter 16 – Estuary Estates). This has been addressed above, and as set out in the legal submissions and evidence, the Applicant is proposing a much smaller development than prescribed in the District Plan. We note that the District Plan provides 17,000m<sup>2</sup> of retail/commercial GFA while this proposal is for 6,225m<sup>2</sup>, consisting of 3,260m<sup>2</sup> of retail/commercial and 2,965m<sup>2</sup> for the supermarket.
55. Mr Warden was mainly concerned about the ecological values of the area, and that this and other development proposals would adversely affect those values. As we have set out earlier in this decision, a number of consents, such as for bulk earthworks and the provision of infrastructure have already been granted, where the ecological effects have been addressed. We are not able to 're-visit' those consents. In terms of this consent we have imposed a condition that it shall be carried out in accordance with the application, including the ecology assessment prepared by Fresh Water Solutions Limited, dated October 2017. We are satisfied that any adverse ecological effects have been appropriately avoided, remedied or mitigated.
56. Mr Hall raised issues about cycling and the provision of safe and efficient access for cyclists and to reduce possible conflicts between motorists, cyclists and pedestrian's. Mr Hall provided two statements with Mr Tollemache providing a supplementary statement addressing Mr Hall's concerns and Mr Chandra addressing Mr Hall's concerns in his supplementary statement. Mr Hall sought, among other things, amendments to and retention of a condition requiring a Cycle Network Plan.
57. While we understand Mr Hall's requests, given the scope of this application, we agree with Mr Chandra's following statement<sup>17</sup>:

*Requiring a Cycle Network Plan for this locality under the current consent is therefore outside the area to which the consent applies or the scope of the application which I agree with Mr Tollemache (as noted in his supplementary evidence dated 14 May 2020) being reasonably restricted to the length of site frontage to Molesworth Drive.*

58. We are satisfied that the issues related to cycling and a Cycling Network Plan is being addressed by the Council (through its Local Government Act 2002 processes) including the Mangawhai Community Plan and the Mangawhai Spatial Plan that is currently under development. Mr Chandra addressed these in his supplementary

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<sup>17</sup> Paragraph 3.4 of Mr Chandra's supplementary statement.

statement. In summary, we agree with the evidence of Mr Tollemache and Mr Chandra.

### **Non Complying Activity – section 104D of the RMA**

59. For the reasons set out above, we find the proposal satisfies at least one of the limbs – namely the ‘effects’ limbs of section 104D (104 (1)(a) - that the proposal will have no more than minor adverse effects on the environment.
60. We find that at the broader policy level of Chapter 16, as set out above, the proposal is not contrary to those relevant objectives and policies; those that provide for business and servicing activities while, ensuring that the adverse effects of those activities are avoided, remedied or mitigated. However, we accept that the proposal is contrary to those provisions that require the specific development proposal as set out in Chapter 16. That development, based on the Applicant’s expert evidence (economic, urban design and planning), will not be built as it is not sustainable.
61. Mr Gordon set out in his legal submissions<sup>18</sup> that *“What is required is engagement with the detail, as opposed to a simplistic focus. More is required than simply looking at certain prescriptive policies and concluding that because the Proposal does not meet those policies it does not achieve the objectives and policies of the Plan and is not deserving of consent. In having regard to the statutory planning documents under s 104(1)(b) you “must undertake a fair appraisal of the objectives and policies read as a whole.””*<sup>19</sup> (Underlining added for emphasis). Based on that we find that, overall, the proposal is not contrary to the objectives and policies. However, if we are wrong in that, we note that as only one limb of section 104D needs to be satisfied. As already addressed, the application satisfies section 104D(1)(a) of the RMA.

### **Section 106**

62. Pursuant to Section 106 the Council may refuse subdivision consent in certain circumstances. These include if the land is likely to be subject to material damage by erosion, falling debris, subsidence, slippage or inundation from any source or inadequate legal and physical access.
63. We find there are no matters under Section 106 which would have precluded the granting of this consent.

### **Part 2 of the RMA**

64. As we set out earlier, we agree with Mr Gordon’s legal submissions that we should have recourse to Part 2 of the RMA in determining this application. This is notably in regard to section 5 (wellbeing) and section 7(b) (efficiency), to overcome the deficiencies of the plan objectives and policies which the proposal is contrary to.

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<sup>18</sup> Paragraph 5.27(a) of the Opening Legal Submissions.

<sup>19</sup> *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2020] NZEnvC 43 at [267], citing *Dye v Auckland Regional Council* [2002] 1 NZLR 337 at [25] (CA); *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [73].

65. In this respect, rather than repeat it we record we agree with Mr Gordon's legal submission at – Part 2 – application to proposal<sup>20</sup>. This included detailed submission on sections 5, 6, 7 and 8 of the RMA. We find that the proposal would promote the sustainable management purpose of the RMA.

### **Decision**

66. We have found that the proposal satisfies the section 104D gateway test of the RMA, and therefore the proposal has been assessed on its merits in terms of section 104 of the RMA.

67. In terms of section 104 of the RMA we have had regard to the effects of the proposal and the relevant objectives and policies of the District Plan and the other statutory planning documents where necessary. For the reasons set out above, and subject to the conditions we have imposed, the actual and potential effects of this proposal can be appropriately avoided, remedied or mitigated and the proposal, while contrary to a number of the very specific provisions regarding the development of a specific development, overall it is consistent with the broader strategic provisions seeking to enable urban development and the development of a town centre.

68. In exercising our delegation under section 34A of the RMA and having regard to the foregoing matters, including sections 104 of the RMA, and having evaluated the proposal against Part 2 of the RMA, we have determined that the resource consent application by Mangawhai Central Limited is **granted** for the reasons set out above.

69. The conditions of consent are attached as Appendix 1 to this decision.



Greg Hill

Chairperson – Independent Hearings Commissioner.

28 May 2020

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<sup>20</sup> Paragraphs 5.48 to 5.67 of the Opening Legal Submissions.