

## Decision following the hearing of an application for resource consent under the Resource Management Act 1991

### Proposal

Resource consent to subdivide to create 67 rural residential allotments and a balance lot by way of an Integrated Development Subdivision on a 135.5ha site, inclusive of additional private accessways, on-site servicing, earthworks, public pedestrian access, and revegetation programme.

These resource consents **GRANTED**. The reasons are set out below:

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| <b>Application number(s):</b> | RM 210053   |
| <b>Site address:</b>          | 183 Devich Road, Mangawhai  |
| <b>Applicant:</b>             | Vermont Street Partners Limited   |
| <b>Application Type</b>       | Discretionary (land use and subdivision) Activity   |
| <b>Hearing commenced:</b>     | 9.30am Tuesday 22 March 2022  |
| <b>Hearing panel:</b>         | Dr Lee Beattie<br>Supported by Ms Jodi Tollemache, Council's Planning Technical Support Officer   |
| <b>Appearances:</b>           | <p><u>For the Applicant:</u><br/>Mr Simon Berry and Mr Chris Timbs: Counsel for the applicant<br/>Mr James Blackburn: Civil Engineering and Site Works<br/>Mr Wes Edwards: Traffic<br/>Dr Manu Davison: Ecology<br/>Ms Kylie McLaughlin-Brown: Landscape Architecture<br/>Ms Alice Hosted and Mr David Badham: Planning</p> <p><u>For the Submitters:</u><br/><i>Team at the Lake</i><br/>Ms Bronwyn Carruthers: Counsel for Team at the Lake<br/>Mr Phillip Brown: Traffic Engineering<br/>Ms Burnette O'Conner: Planning<br/>Ms Tania Brooker-Bailey<br/>Ms Tania Ngavaevae<br/>Mr Greg Cramond</p> <p><i>As Individual Submitters</i><br/>Mr Ben Hall<br/>Ms Marjane Francis<br/>Ms Tania Brooker-Bailey and Mr Richard Bailey</p> |

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|                                  | Mr Paul Wightman<br><br><u>For Council:</u><br>Mr Warren Bangma: Counsel for Kaipara District Council<br>Mr David Wright: Ecology<br>Mr Simon Cocker: Landscape Architecture<br>Mr Alister Hartstone: Consultant Planner |
| <b>Hearing</b>                   | Tuesday 22 and Wednesday March 2022  |
| <b>Commissioners' site visit</b> | 19 March and 2 April 2022  |
| <b>Hearing Closed:</b>           | 27 April 2022  |
| <b>s.37 Extension</b>            | 19 May 2022  |

### **Introduction, the hearing and information considered**

1. This decision is made on behalf of the Kaipara District Council ('the Council') by Independent Hearing Commissioner Dr Lee Beattie acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ('the RMA').
2. This decision contains the findings from my deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The applications were publicly notified on 18 October 2021, at the applicant's request. A total of 25 submissions were received, nine were in support, three neutral and 13 were opposed. A summary of the submissions received is contained in section 6 of Mr Alister Hartstone's (Consultant Planner to the Council) s.42A report.
4. The Hearing was held on Tuesday 22 and Wednesday 23 March 2022 in a hybrid fashion with the majority of the submitters appearing in person (at the Mangawhai Domain, 75 Moir Street, Mangawhai) and others, including the Vermont Street Partners Limited's ('applicant') Counsel and witnesses; and the Council officers appearing via MS Teams. I was present at Mangawhai Domain, where I had the benefit of significant amounts of information from all the parties to consider the application upon, including:
  - The application, its AEE and all its supporting documents and plans, as amended before and during the hearing process;
  - The Northland Regional Council's decision dated 19 Nov 2021;
  - Mr Warren Bangma's legal submissions for the Council;
  - The Council officer's (Mr Hartstone) s.42A report, with supporting reports attached to his s.42A report, including Mr Cocker's (Landscape Architect) and Mr Wright's (Ecology) assessment, with the other technical memos from the relevant Council officers;
  - Mr Hartstone's addendum to his s.42A report;
  - The opening legal submissions from Simon Berry;
  - The pre-circulated Evidence in Chief from the applicant witnesses (Engineering, Traffic ecology, landscape and planning);
  - Supplementary Statements evidence from the applicant witnesses (Traffic ecology, and planning);
  - The written submissions and correspondence from all the submitters, including that from Ms Burnette O'Conner (The Planning Collective);
  - Legal Submissions for Team at the Lake by Bronwyn Carruthers;

- The evidence for the Team at the Lake (Planning and Traffic)
  - The submissions from Tania Brooker-Bailey, Tania Ngavaevae, Greg Cramond, Marjane Francis, Tania Brooker-Bailey and Mr Richard Bailey and Paul Wightman;
  - The responses to our questions from all the parties during the hearing process;
  - The Applicant's right of reply, with the final set of plans and draft set of conditions of consent agreed between the Council and the applicant;
  - The submitters, including Team at the Lake's comments
  - Relevant sections of the Kaipara District Plan (District Plan);
  - The Mangawhai Structure Plan;
  - Mangawhai Spatial Plan; and
  - The matters I identified during my site visits on 19 March and 2 April 2022.
5. In reaching my decision I have considered these matters and the matters below relevant to my determination of this application.
6. I undertook two site visits, one before the hearing (19 March 2022) and one after (2 April 2022). For the second visit I invited the parties to highlight any areas they wished me to see, which I did with the assistance of Ms Jodi Tollemache (Council's Planning Technical Support Officer), including visiting existing communal facilities on Lot 51. Both times I also looked at the wider receiving environment the application would sit within, including the local roading conditions and the one lane bridge on Devich Road. Noting this was a point raised by a number of the submitters, both at the hearing and in their written submissions.
7. I would like to thank all the parties for the professional and courteous way that the hearing was undertaken especially the difficulties that can arise from a hybrid hearing with parties in different locations and Covid 19. I would also like to acknowledge the support I received from Ms Tollemache, Council's Planning Technical Support Officer.
8. Finally, given I contracted Covid-19, like many, I have unfortunately had to use s.37 of the RMA and double the timeframe for this decision. I would like to apologise for any inconvenience that may have caused any of the parties.

### **Procedural matters**

9. In this section I believe it is appropriate for me to cover several issues that arose before and during the hearing process, which in many ways were not directly relevant to my consideration of the application but need to be addressed for the benefit of completeness. Some of these issues also took up a disproportionate amount of time as opposed to focusing on the relevant resource management issues related to the application. These issues include:
- Was the amended application within scope of the notified application;
  - Was this a personalised consent;
  - Consultation undertaken by the applicant on the application;
  - Whether a covenant of a certificate of title prevented me from hearing submissions from these parties;

- The request from Mangawhai Development Limited for the Council not to hear the application;
  - Whether the application was prohibited (or became a Non-Complying Activity) by a consent notice on a previous subdivision consent;
  - The application to strike out Mr Cramond's submission; and
  - Issues surrounding the management etc of the residents society.
10. Before turning to these issues, it is clear to me that this application has raised a number of passionate concerns for some of the relevant parties (including the submitter and the applicant) which can be an outcome of the resource management process where one party seeks to undertake development or activities which may affect others. While I completely understand these concerns, and with no disrespect to any of the parties, I must focus my attention to the relevant resource management issues, and not move into, or consider issues which are better and more appropriately addressed through other forums.

### Scope

11. As I have signalled above the proposal was subject to a number of changes during the application process, including before the hearing and during the hearing process.<sup>1</sup> The final versions of the scheme plan (addressing the issues raised during the hearing) was supplied by Mr Berry as part of applicant's right of reply. This is not unusual approach, nor is the provision of a draft set of conditions agreed (or not) between the parties to be produced in this way (as where other issues considered below) inappropriate and are designed to enable me to reach the most informed decision I can.
12. However, the issue of whether these changes were within the scope of the application as it was notified was raised. To this, I asked Ms Carruthers, on behalf of the Team at the Lake submitters ('TAL submitters') if that was her position and that the application before me, was out of scope. To which she did not wish to proceed with this line of argument and returned to the issues raised to her submission, but invited the question. Mr Berry on the other hand was of the view, and in response to my questions advised that the changes were within scope and changes before and during the hearing process was usual practice to reflect the issues raised through submissions and issues arising during the hearing of evidence. Mr Bangma was of a similar view.
13. I agree with Mr Berry's and Mr Bangma's view on this matter and find that the amended application was within scope and I am open to considering the amended application. I also acknowledge that it is not unusual for the application to 'evolve' to address issues raised by submission and in response to evidence during the hearing as long as it remains in scope of the application.

### Personalised consent

14. The issue of a personalised resource consent to the applicant was raised by Ms Carruthers in her oral presentation of her submission, not directly, but by way of inference. Not to be seen as any form of criticism of Ms Carruthers, but I do believe it is appropriate for me to cover this issue off, as I was not presented with any formal request on this nature from the applicant. Mr Berry advised that the applicant was applying for resource consent in the

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<sup>1</sup> The changes before the hearing are covered in sections 27 and 28 of Mr Hartstone's s.42A report and section 2.3 of Ms Hosted and Mr Badham's evidence in chief.

'normal way' and no such request was sought by the applicant. I note for completeness, that while I was not presented with any evidence or formal request of this nature seeking a personalised consent, I would not have looked too kindly on such a request. As a general principle, resource consents are not real property and run with the land (s.122 of the RMA) and I would have needed a substantial justification to depart from that principle.

#### Consultation undertaken

15. A number of the submitters raised the issue that the applicant had not undertaken effective consultation nor undertaken consultation in good faith when developing their application. While undertaking consultation in a meaningful way is best practice, s.36A of the RMA does not mandate it. In this case, the application was publicly notified (at the applicant's request) and as I will explain upon below, no party was prevented from making a submission on the merits of the proposal thus enabling all parties who wish to make a submission to do so and actively engage in this hearing process.

#### Covenants Prevented Submissions

16. This issue was raised by some of the parties (and in evidence) and without going into the fine details of this, I agree with the Council's legal advice from Mr Bangma on this matter.<sup>2</sup> In essence, while there may be a question of whether or not these were enforceable in the District Court, that is the appropriate forum for these discussions, not this resource consent hearing. A point I think all the parties had reached by the beginning of the hearing as well. As a result, I have not excluded any submissions or parties who made a submission to this application and all the submissions have formed part of my consideration of the application.

#### The request from Mangawhai Development Limited

17. Again, while not going into detail of this request, this issue was addressed in the joint memorandum between the Applicant's and Council's (KDC) counsel dated 17 March 2022. A point I set out in my directions of 20 March 2022, where I found that this request from Mangawhai Development Limited was without merit and I could consider the application as it stood, including all the submissions.

#### Past Consent Notice prevents further subdivision

18. There was a significant level of discussion on this issue, including in the submissions and in all the planners evidence. In essence, as I understand this, there was a consent notice on the land subject to the current application (Lot DP 525736), which was the balance lot from a 2017 subdivision consent (RM160365)<sup>3</sup> preventing further subdivision of this land for a period of 10 years to give effect to Clause (5)(f) of the District Plan's Rule 12.14.2.
19. The relevance of this to the TAL submission and Ms O'Conner's planning evidence was that this provision could affect the application's overall status from Discretionary to Non-Complying as this application was within this 10 year time period. Then the question arose about how this consent notice has removed. This issue was then addressed by Ms Hosted's and Mr Badham's<sup>4</sup> and confirmed by Mr Hartstone.<sup>5</sup> In essence, the agreed position I think all the parties reached by the end of the hearing was that this consent notice was removed

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<sup>2</sup> Section 4.0 of Mr Bangma's legal submissions dated 21 March 2022.

<sup>3</sup> Section 7 of Mr Hartstone's amended s.42A report dated 16 March 2022.

<sup>4</sup> Section 3 of Ms Hosted's and Mr Badham's supplementary Planning evidence dated 21 March 2022

<sup>5</sup> Section 9 Mr Hartstone's amended s.42A report dated 16 March 2022.

by the Council as part of a s.357 objection in 2017, where the relevant issues were addressed as part of that process.<sup>6</sup>

20. By the time of the hearing there was general agreement between all the planners (Ms O’Conner, Mr Hartstone, Ms Hosted and Mr Badham) that the application was a discretionary activity and that there was no consent notice preventing further subdivision of this site. This is not to diminish their relevant professional evidence, just to acknowledge the relevance (or not, in this case) of the consent notice raised in evidence.

Application to strike out Mr Cramond’s submission

21. As I set out in my directions of 20 March 2022, I received a formal request from Mr Timb’s to strike out Mr Cramond’s submission on the grounds that it was vexatious, unreasonable and contained offensive language.<sup>7</sup> This was also reflected in Mr Berry’s opening legal submissions dated 22 March 2022. As I have considered above, it is clear to me that this application has raised a number of passionate feelings for some of the submitters and the applicant. Again, while I understand that passions can ‘run high’, this should not cloud my consideration of the relevant resource management issues for this application.
22. While I agree that some of Mr Cramond’s comments ‘run close to the wire’, in my view it is a high bar that needs to be reached to strike out a submission which potentially undermines the democratic principles at the heart of the hearing process. Moreover, as Mr Timb’s sets out, the key question for me, is the resource management merit of the submission and that I should not be distracted by non-resource management issues.<sup>8</sup> This is also a point, raised in Mr Berry’s opening legal submission to me as well.<sup>9</sup> I can confirm this is the case and for completeness I confirm my decision at the beginning of the hearing that I would not strike out Mr Cramond’s submission. However, as discussed the question of weight is a very relevant consideration to me and I have only taken into consideration the relevant resource management issues raised in his submission when considering this application.
23. Finally on this point, as Mr Berry suggested in our discussion on this issue (and his opening submissions), there is always two sides to the story. A point I agree with, and again highlights why I should not go down this ‘rabbit role’ and not engage in anything but those issues relevant to the resource management merits of this application.

The Management of the Residents Society

24. The issue of who has the controlling interest in the Society and who could make submission on behalf of the Lake View Estates residents was raised by a number of the submitters. Again as I have set out above, I have taken the view, that I would consider all the submissions, based on the resource management merits contained in those submissions. Moreover, on the issue of whether the Society or a ‘controlling member of that Society could prevent a submission, I agree with Mr Bangma’s view that these are civil issues and any issues that could arise over this issues are better addressed in other forums (potentially the District Court), opposed to this resource consent hearing under the RMA. As a result, I have not engaged in this issue either.
25. Finally in this section, I would like to confirm that I have considered the application on its own individual merits based on the existing environment (both legal and physical), as it is now,

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<sup>6</sup> Section 4.3 of Mr Bangma’s legal submissions dated 21 March 2022.

<sup>7</sup> Section 4 of Mr Timb’s application for strike out application dated 18 March 2022.

<sup>8</sup> Section 2.2 of Mr Timb’s application for strike out application dated 18 March 2022.

<sup>9</sup> Section 1.15 of Mr Berry’s opening submission dated 22 March 2022

against the relevant planning provisions under the District Plan and the RMA in accordance with s.104, s.104B, s.106, s.108 and s.108AA based on the evidence (both professional and lay), with the relevant weighting placed before me.

### **Summary of proposal and activity status**

26. As stated above, the proposal was subject to a number of changes during the application process, including before the hearing and during the hearing process. However, the underlying nature and scope of the application has not changed, where the applicant sought resource consent (subdivision and land use) to create 67 rural residential allotments and a balance lot by way of an Integrated Development Subdivision on a 135.5ha site, inclusive of additional private accessways, on-site servicing, earthworks, public pedestrian access, and revegetation programme.
27. There was also general agreement by the end of the hearing that the following consents were required under the District Plan:
- Discretionary Activity consent is required for a Intergrated Subdivision Development pursuant to Rule 12.14.2;
  - The wireless telecommunication provisions proposed do not need Rule 12.15.8 and consent as Discretionary Activity;
  - Discretionary Activity consent is required for a private road servicing more than seven lots under Rule 12.15.2; and
  - The earthwork requires Restricted Discretionary Activity consent under Rule 12.10.1a.
28. As a result I find that the application is a Discretionary Activity on the evidence of Mr Hartstone, Ms Hosted and Mr Badham. I note for completeness that the Northland Regional Council's consent issues have been addressed in their consent dated 19 Nov 2021 and I have only considered the relevant district plan consenting issues.

### **Relevant statutory provisions considered and the receiving environment**

29. In accordance with section s.104 of the RMA, I have had regard to the relevant statutory provisions including the relevant sections of Part 2 and section(s) 104, 104B, 106, and (for conditions) 108, 108AA and 220.
30. I note for completeness that no party asked me to refer back to Part 2 of the RMA and that I could consider the application within the existing District Plan provisions, a point I agree with and I have considered the application within the District Plan provisions.
31. Turning to the issue of the receiving environment and any permitted baseline to consider this application against. This matter was covered in some detail within Mr Hartstone's s.42A report<sup>10</sup>, with Ms Hosted and Mr Badham adopting his assessment.<sup>11</sup> I agree with Mr Hartstone's assessment and it is adopted for this decision. In saying this, it was clear to me

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<sup>10</sup> Sections 62 to 70

<sup>11</sup> Section 9.3 of their Evidence in Chief

from both my site visits that there are significant number of 'lifestyle blocks' in the local environment including surrounding Mangawhai Village generally, especially in Devich Road, Cames Road and the eastern side of Lawrence Road.

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

32. In accordance with section 104(1)(b)(i)-(vi) of the RMA, I have had regard to the relevant policy statements and plan provisions of the following documents.
- New Zealand Coastal Policy Statement 2010;
  - Northland Regional Policy Statement 2016 (RPS); and
  - District Plan.
33. Based on the evidence of Mr Hartstone,<sup>12</sup> I find that there are no other national environmental standards, policy statements, regulations, plans or legislation relevant to this application. The regional consent issues, NES (2020) and NPS (2020) for Freshwater were addressed through the regional consenting process. I note for completeness at this stage, that no parties raised any issues related to either the regional consents or the NES (2020) and NPS (2020) for Freshwater. A point I agree with and I will not address these issues further.
34. Turning to the issues of the relevant s.104(c) matters, it is clear to me that both the Mangawhai Spatial Plan and the Mangawhai Structure Plan would fall into this area and there was no disagreement between the parties on that matter.
35. However, Ms Carruthers suggested in her legal submissions that the history of the consent notices for Lot 1 (the application site), including the application's "clear non-compliance" were a relevant s.104(c) matter for my consideration.<sup>13</sup> A point that Mr Berry disagreed with. As I have considered above, there now appears to me that there is no disagreement that this consent notice was removed lawfully through the appropriate mechanism (a s.357 objection) and issues associated with the appropriateness of that consent condition removing this notice would have been through that process. It would not be appropriate for me now to 're-litigate' this issue and while it may be of historical interest I do not see its direct relevance to the current application, given the Council has agreed to its removal some time ago.
36. Ms Carruthers also suggested that Mr Sundstrum's actions, including with the resident's society were also a relevant s.104(c) matter for my consideration and that these actions could lead to the refusal of consent.<sup>14</sup> At this stage, I would like to say that Mr Sundstrum did not take any part in the hearing and it is my understanding from Mr Berry that he is part of Vermont Street Partners Limited. In saying this I do not see any value in exploring this issue further, as I have considered above the applicant is not seeking a personalised consent and issues associated with the resident's society are civil matters to be addressed in other forums. As a result, I do not agree with Ms Carruthers that this matter would warrant refusal of this consent.

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<sup>12</sup> Section 138 of Mr Hartstone s.42A

<sup>13</sup> Section 17 of Ms Carruthers legal submissions dated 22 March 2022.

<sup>14</sup> Sections 18 and 19 of Ms Carruthers legal submissions dated 22 March 2022.

## Summary of evidence heard

37. The Council consultant planning officer's (Mr Hartstone's) s.42A report was circulated prior to the hearing and taken as read. Mr Hartstone's report recommended approval, subject to appropriate conditions of consent. We also received an amendment to his report which clarified a number of issues, including
- The submission from Nick Pearson and Catherine Dilly;
  - The issues surrounding the consent notice preventing further subdivision, which I have addressed above; and
  - Covering the Council's position regarding the esplanade reserve to vest and confirming that it would be acceptable to the Council for Lot 2 DP 330158 to be vested as such.
38. I would like to acknowledge at this stage the quality of Mr Hartstone's s.42A report, including how it covered the relevant issues with the appropriate level of detail and length.
39. Expert evidence from the applicant was pre-circulated and read before the hearing. I note that the following is a summary of the key issues raised and must be read in conjunction with the actual submissions, pre-circulated evidence, and evidence presented at or after the hearing, right of reply etc. To reduce repetition, I concentrate on matters relating to the areas of contention between the parties as all the information/evidence/submissions are available from Council's website using the resource consent references/site addresses listed above.
40. The evidence presented by the parties at the hearing is summarised below.

### Applicant

41. **Mr Simon Berry** (applicant's Counsel) spoke to his legal submission (opening statement) on the application, noting he had supplied a memorandum covering similar issues on 8 March 2022, which I had the benefit of reading before the hearing. His 22 March 2022 submissions expanded on these issues and covered a number of issues that had arisen since 8 March 2022.
42. In doing so, he addressed a number of the procedural matters considered above and given I have addressed this, I do not propose to repeat these again. He then covered the application details, its context in the environment, consents required and Mr Hartstone's s.42A report and his supportive view on the application. He then covered the minor issues in contention with the Council and the draft conditions of consent and the suggested changes, outlined in Ms Hosted and Mr Badham's planning evidence.
43. He then turned to the evidence he was calling in support of the application and the order he proposed to present this at the hearing. He covered the issues in contention for the application including landscape, ecology and planning and based on the evidence he was calling the application meet the relevant section s.104 considerations and it was appropriate for me to grant consent.
44. Finally, in answering my questions about the need to refer back to Part 2 of the RMA, it was his view that the District Plan was complete and there was no need too, but this was always open to me.

45. **Mr James Blackburn**, Civil Engineer spoke to his evidence in chief (which was taken as read) and answered my questions about the engineering and roading issues relevant to the application.
46. **Mr Wesley (Wes) Edwards**, Traffic Engineer spoke to his evidence in chief (7 March 2022) and his rebuttal evidence of 21 March 2022 (both of which were taken as read), where we considered the relevant traffic engineering issues, including the traffic issues raised in the submissions. In his rebuttal evidence he addressed access, maintained Cotton Lane and speed limits within the overall development.
47. He answered a number of my questions surrounding this issue, including some of the submitters concerns about the one lane bridge on Devich Road, to which he was of the view that this development would not adversely affect the use of the bridge. He also discussed the Northern Roding Alliance approach to this bridge.
48. I think it's fair to say, that by the time of the hearing the traffic engineering issues between Mr Edwards and Mr Phillip (Phil) Brown (Traffic Engineer for TAL) had been resolved, to the point where Ms Carruthers did not call Mr Brown at the hearing. However, I note for completeness that his evidence was taken as read.
49. **Dr Manu Davison**, Ecology spoke to his detailed ecological evidence in chief (7 March 2022) and his rebuttal evidence of 21 March 2022 (both of which were taken as read), where we considered the relevant ecology issues for the proposal. He answered my questions around actually implementing the approaches proposed and the likely rate of success given that the ecological restoration proposed was a major element of the applicant's application. This was a major issue for me, as I was concerned about the management and implementation approaches proposed to ensure the ecology works would happen as suggested through the suggested conditions of consent.
50. As part of this, I was also interested in the likelihood of success given the applicant had amended the approach to ecological malmanagement from a 'common' ecology lot with joint management through a form of 'body corporate arrangement' to individual landowner responsible for each lot. He advised that he was of the view that this approach would be just as effective and now placed the onus of the individual which has worked in many examples of ecological restoration he has been involved in to achieve that ecological benefit.
51. He also addressed a number of points raised in Mr Wright's memo to Mr Hartstone, as part of his S.42A report. However, again by the end of the hearing it was clear to me that the ecological witnesses were in agreement of the likely ecological effects and benefits of the proposal.
52. **Ms Kylie McLaughlin**, Landscape Architect (noting she also had a planning qualification but only appeared as a landscape architect), spoke to her evidence in chief (which was taken as read) then walked me through the plans and her design decisions for the landscaping for the proposal. This included the location of some of the building platforms, landscaping choices and design guidelines for future development.
53. It was her view that the landscape effects were minor reducing to less than minor in a three to five year time period as the landscape and vegetation established. She was also of the view that the landscaping and vegetation proposed were based on the appropriate catchment management principles and would enhance the degraded nature of the site and its landforms.
54. I had a long discussion with her, on firstly that the proposed landscaping plans did not reflect the amended proposal, especially in terms of proposed walkways throughout the overall

development and the new approach to ecological management shown on her plans attached to her evidence. To which she said she would update the plans (which formed part of Mr Berry's right of reply) and this would not affect her assessment of the overall proposal. I then raised the issue of the 'design guidance' for the future built form, which I could not find in her evidence and how this would actually be implemented. She agreed that this would also form part of the applicant's right of reply. I would like to acknowledge at this stage that this did not form an integral part of my assessment of the proposal, as the future design of all the future dwellings was not a determining factor in this proposal, but was needed for completeness as it formed part of the applicant's proposal and scope of their application.

55. I then moved to the issue of the location of the proposed building platforms and why these were not shown for all the building sites. She advised that only the key sites, in landscape terms were shown but all the landscaping for each site was shown and she only included the building platforms that were relevant issue for her assessment. However, she would update the plans to the location of all the building platforms and disposal fields and that this would not impact on the landscape and ecological restoration proposed.
56. Finally, I raised the issue of connectivity throughout the overall development and its integration with the existing Lake View Estates development and the local environment generally given the 'path' shown on her landscaping plans were no longer proposed. To which she suggested the access to the esplanade reserve would provide access to the coastal environment and the existing and proposed roading connections would provide a suitable level of connections throughout the development.
57. **Ms Hosted and Mr Badham**, Planners, spoke to their detailed planning evidence in chief (7 March 2022 and their rebuttal evidence of 21 March 2022 (both of which were taken as read) and covered the relevant planning aspects of the proposal. They also provided a detailed set of conditions. Interestingly they were not involved in the development of the application's Assessment of Environment of Effects and were only involved in preparing evidence for the hearing process. This enable provided them with an opportunity to undertake a peer-review and refinement of the application and see if with a fresh set of eyes. This was reflected in the evidence.
58. It is fair to say that they were of the same view as Mr Hartstone over the appropriateness of the application and their evidence in many ways covered the same ground as his, save for their analysis of Ms O'Conner's evidence and the issues raised by the submitters. I raised a few questions with them, surrounding the amended scheme plan and whether the single public connection to the esplanade reserve was appropriate. They advised that in their view this was appropriate in this situation and public access to the coastal environment was maintained even if this was via a public road (Carters Road) across land actually used as a farm.
59. I would like to acknowledge at this stage, that this is the weakest part of the application, being the connections to the esplanade reserve and ideally a new connection to the esplanade reserve should have been provided between proposed lots 14 and 15 to lot 100 (road) and along the 'side' boundary of lot 31 to the esplanade reserve. However, this was not at a level that would warrant refusal as access can be achieved as proposed.

## **Submitters**

60. In essence there was two groups of submitters, those who formed part of TAL and those appearing as individuals, noting that some were in both groups. TAL was represented by Ms Carruthers (Legal Counsel), Ms O'Conner (Planning) and Mr Brown (Traffic Engineering). However, as noted above by the time of the hearing Mr Brown was not called, but his evidence (15 March 2022) was taken and read. I will address the TAL first and then return to the individual submitters after that, acknowledging I have read all the submissions and considered the issues raised.
61. **Ms Carruthers**, Legal Counsel, provided detailed legal submissions and a number of the issues raised in this have been covered above in the procedural section and addressing the relevant s.104(c) matters. However, it was her fundamental premise that the application should be refused consent.
62. She raised issues surrounding the 'integration' of the existing with the 'new' and the impacts this would have on the amenity values of the existing Lake View Estates residents, including the impact on their existing assets and infrastructure. This included access to the communal areas, walkways and the existing Lake View Estate (LVE) roading network. As part of this she highlighted a number of technical issues surrounding the easements etc.
63. She also raised significant concerns about the adverse effects the proposal would have on the environment, including landscape character, and amenity values. However, she did not call any evidence, save planning, to support her submissions, especially in the area of landscape.
64. Ms Carruthers considered the relevant planning provisions including the Mangawhai Structure Plan and Spatial Plan and the relevance of each. She also covered the proposed conditions of consent and highlighted a number of concerns including surrounding cats, dogs and stock.
65. **Ms O'Conner**, Planner, spoke to her evidence in chief (which was taken as read). However, in saying this, by this time in the hearing a number of the issues in her evidence were either resolved or no longer relevant, including the activity status and traffic issues and to her credit she acknowledged this as I would expect from a senior and experienced member of the planning profession such as herself.
66. However, she maintained her concerns over landscape, rural amenity and the adverse impacts the development would have on the existing LVE residents. She was also of the view that the application was contrary to the objectives and policies, especially of Rural Chapter (12) of the District Plan, including Rule 12.14.2.
67. She also was of the view that the Mangawhai Spatial Plan was more relevant than the Mangawhai Structure Plan. Finally she also raised the issue of the cumulative impact this development could have on rural character.
68. **Ms Tania Brooker-Bailey**, LVE resident, raised issues regarding the impact the development would have on the existing amenities, including the communal facilities and how the extra children could impact the use of these facilities. While not opposed to development, she raised the impact the proposal would have on the existing lifestyles currently enjoyed by the existing LVE residents
69. She also raised the impact the extra a number people the use of the existing roads with the LVE and how road speeds could be controlled to ensure the safe use of the LVE. Finally, she raised a number of issues related to the management of the resident's society.

70. **Ms Tania Ngavaevae**, LVE resident raised a number of issues including the impact the development would have on her family's lifestyle and did not support potential rules banning cats and dogs. She also raised the issue of roading and the increased level of traffic, including the extension of Cotton Lane and 'linking of' Cotton Lane to the overall development.
71. Finally, she also raised a number of issues related to the management of the resident's society.
72. **Mr Greg Cramond**, LVE resident raised a number of issues about the management of the resident's society which as considered above are not really relevant to my consideration of the resource management merits of the proposal. I note, again for completeness these issues have received very little weight in my consideration of the application.
73. He did raise relevant issues associated with infrastructure provision, access to the communal amenities, walkways and the impact on the existing roading network, just as Ms Tania Brooker-Bailey and Ms Tania Ngavaevae had.
74. **Mr Ben Hall**, individual submitter on behalf of his parents Ken and Jo Hall at 1573 Mangawhai Road, whose farm borders the application site (south and east). He outlined their concerns about the access to the paper road (Carters Road) and the link to the esplanade reserve through and how this could have an impact on functioning of their farm. At this point I did ask Mr Bangma the Council's view on this matter, to which as I understand it, was the Council, like most councils in New Zealand, took the view that farms could use this area for their farming activities as long as it did not prevent public access.
75. I asked Mr Hall if what was proposed would impact on his (and his parents as I understood he was also involved in the farm management as well) on their operations, to which he said was not ideal but could be managed. On this point Mr Badham has suggested that signage be placed on the boundary between the end of lot 100 (new road) and the paper road advising of the potential issues of farm safety on the public road when accessing the esplanade reserve.
76. Finally, on this point Mr Hall was concerned about the potential for the roading connection (lot 100) to the paper road, as this could set up the proposition for a future roading access to Carter Road. With this, he was concerned about the costs that could flow from this process. On this point, I think it's appropriate for me to address this issue now, as while I understand Mr Hall's issue, the cost of roading development is a normal cost associated with the subdivision process and would be borne (or part of) by the subdivider through this process. Also, I think it would have been bad planning and resource management practice if the applicant had not provided a physical access to a public road like this as this provides public access to the site, especially as the areas around the site develop in the future.
77. **Ms Maryjane Francis**, 61 Lawrence Road raised concerns about dust and the unsealed nature of parts of the local roading network and how this development would only add to these concerns. She highlighted the signage the 'locals' have placed advising drivers to slow down and reduce the dust issues on their homes and properties. A point I acknowledged seeing these signs myself in two site visits. Finally, she also raised the issue of the one lane bridge on Devich Road and whether the proposed construction management plan would be able to address the issues raised in her submission.
78. **Ms Tania Brooker-Bailey and Mr Richard Bailey**, LVE residents, raised issues on the impact the development would have on the existing amenities, including the communal

facilities and how the extra children could impact the use of these facilities. Ms Brooker-Bailey also raised the issues that this would have on the local community generally.

79. **Mr Paul Wightman**, local resident provided me with a detailed understanding of the local roading conditions, the issues with the local roads and reinforced Ms Francis's view about dust and that large vehicles (including milk tankers) do not use the one lane bridge on Devich Road for safety issues. Finally, he raised a number of local road funding issues which (as I advised) were better addressed to the Council. I thank Mr Wightman for detailed insights to the local roading conditions.
80. I would like to thank all the submitters for their answers to my questions and their involvement in the hearing process, their views were very helpful.

### **Council**

81. **Mr Warren Bangma**, Legal Counsel, as considered above, provided legal advice on the procedural issues considered and was available during the hearing to provide legal advice from the Council's point of view. I would like to thank him for this advice both before and during the Hearing.
82. **Mr Harstone**, Consultant Planner, as considered above he provided an update to his report and addressed a number of issues. I asked him if he maintained the view expressed in his s.42 report, which he confirmed. However, he raised issues around the proposed conditions of consent, and he suggested they needed some 'panel beating'. An issue I will return to below.
83. Then we discussed the Mangawhai Spatial Plan and the Structure Plan and he advised this would be a s.104(1)(c) issue at best and the District Plan would take precedent. As considered above, I agree with this approach and have given these little weight.
84. **Mr Simon Cocker**, Landscape Architect's report (8 July 2021) and updated report (24 Feb 2022) were taken as read and I asked Mr Cocker a similar range of questions I had asked Ms McLaughlin, save he had the benefit of Ms McLaughlin answers, to which he agreed with most. In essence, he was of the view that the application, while (as Ms McLaughlin) would have short run effects (3 to 5 years) these would be addressed through the landscaping proposed and that it would not be unacceptable in landscape terms.
85. I asked him if the changes with the management of the landscaping and revegetation covenant areas would adversely effect its implementation, to which he advised he was supportive of the proposal as it now stood.
86. **Mr David Wright**, Ecologist, provided a very short memo (23 Feb 2022) on the ecological issues and raised a number of questions of Dr Davison's assessment. I asked Mr Wright if these issues have now been addressed, to which he confirmed and that he and Dr Davison were now in agreement to a point where he supported the proposal in ecological terms. I asked the same questions of him as I did Dr Davison, especially around the successful implementation of the ecological restoration within the amended proposed, to which he confirmed he agreed with Dr Davison and believed this would be appropriate and the intended ecological outcomes would be achieved.

## **Directions**

87. At the end of the hearing I directed that the applicant and the council had 10 working days to develop an agreed set of conditions which could form part of the applicant's right of reply. In doing so, I agreed to provide the submitters 5 working days to comment on these conditions, but I did not invite any further evidence to be produced.

## **Right of Reply**

88. The applicant's right of reply (from Mr Berry) was received on 11 April 2022 following a slight delay to finalise the proposed conditions of consent and addressed a range of matters, including:
- a. A set of new conditions developed in consultation with the Mr Hartstone;
  - b. Addressing a range of the 'procedural' matters considered in that section above, including the legal issues arising;
  - c. A final scheme and landscaping plan, which included the new building design guidelines as requested from Ms McLaughlin;
  - d. Addressed some outstanding traffic and transportation issues, including addressing the issue of construction traffic; As a result I find that the proposal will have an acceptable level of landscape effects on the environment;
  - e. Addressing the ecological benefit of the proposal; and
  - f. Confirmed the applicant's principal submission on the application, confirming the appropriateness of the application in effects and planning terms.
89. I then received comments on these proposed conditions from Mr Hall, Ms Francis, Mr Wrightman, Ms Tania Brooker-Bailey and Ms Carruthers on behalf of TAL. Ms Carruthers raised a number of technical matters over access and maintained her client's view that the proposal represented a poor outcome. However, in terms of the technical matters raised by Ms Carruthers I believe issues have been addressed in the conditions proposed.
90. Ms Tania Brooker-Bailey, with Mr Hall, Ms Francis and Mr Wrightman raised a number of issue surrounding traffic and roading conditions, including constructure traffic and limiting their access to the site via the seal sections of Devich Road, and also raised issues surrounding the management of the Resident's Society and the actions of the applicant.
91. These issues will be considered as part of consideration of the principal issues in contention below.

## **Principal issues in contention**

92. After analysis of the application, the evidence presented (including proposed mitigation measures), undertaking the site visits, reviewing the Council planning officer's recommendation report, reviewing the submissions and concluding the hearing process, the proposed activity raises a number of issues for consideration. The principal issues in contention are:

- Landscape and rural character;
- Ecological issues;
- Traffic and transportation issues;
- Residential amenity; and
- Planning and District Plan policy issues.

93. I note for completeness that I find that the other matters raised by the application can be appropriately addressed through the use of conditions of consent, including cultural, site works and provision of services. While I acknowledge that a number of submitters did comment on these issues, this was not, as I read their submissions the main issues of concern for them and I am guided by the professional evidence of Mr Blackburn in this regard. Finally, on this issue I acknowledge that a number of these issues are also addressed in the Northland Regional Council's consent dated 19 Nov 2021 as well.
94. Finally, no party raised issues over the potential loss of the productive land, a point I agree with and based on the evidence on Mr Hartstone's at points 118 and 119 of his s.42A report.

#### **Main findings on the principal issues in contention (s.104(1) (a) and (b) matters)**

95. My main findings on the principal issues that were in contention are set out as follows. I note that I will be considering the relevant District Plan policy frameworks (objectives and policies and relevant rules) as part of the consideration for each area in contention.

##### *Landscape and rural character*

96. As discussed in the evidence section above, by the end of the hearing the Landscape Architects (Ms McLaughlin and Mr Cocker) were in general agreement over the impact of the proposal on the environment in landscape terms. While there appeared to be a slight disagreement over the time the adverse effects would be reduced to less than minor, either 3 or 5 years, they both agreed the impacts were acceptable. In saying this, I would like to say that the test for me is not minor adverse effects, but the scale and significance of the actual and potential effects on the environment, as minor adverse effects are a s.104D consideration.
97. It is clear to me, that both landscape architects saw real value and benefit in both the landscaping and revegetation planting proposed, including by the coastal environment. I agree with this and find that the landscaping and revegetation planting will be a positive outcome from the application and help enhance the degraded nature of the site and should be supported. Finally, on this matter the applicant shall be required to provide a suitable bond to ensure these works are undertaken.
98. I also note for completeness that while the issue of staging was not really raised during the hearing, the conditions of consent require the completion of landscape and ecological planting before the issuing of the s.224 certificates for the new titles. This would require the planting to have been undertaken before any new building sites are established, mitigating the adverse (minor) effects to the short period suggested by the landscape architects. This is supported by ongoing maintenance requirements for the future lot owners.

99. The issue surrounding the location of all building platform and future design guidance has now been addressed and now included in the conditions of consent. As a result, I find that the location of the building platforms (with landscaping) are appropriate and will reinforce the design approach sought by the application.
100. While not a landscape architect, Ms O’Conner raises the issues associated with the changes in the rural landscape and rural amenity generally by this application, through a planning lens, which is appropriate. While I have the greatest respect for Ms O’Conner, as I will consider in the planning policy section below, I favour the evidence of Mr Hartstone, Ms Hosted and Mr Badham on this matter and find that the application will not have an unacceptable effects on rural amenity and landscape character. Also, as I have considered above, I found that landscape and ecological restoration will have a significant positive effect on the environment.
101. I also note that from my own observations on my site visits, that significant sections of the local environment (just as the existing LVE has) have been ‘turned’ in to large lifestyle blocks and was not used for traditional farming. The area was in transition and I do believe that the current proposal would not be out of character with this transition and large sections of the local environment. On this issue I did ask Ms O’Conner the question, as she had implied in response to my questions that it could lead to further fragmentation of the rural land on the Auckland Council side of the boundary, as from my observations there is a clear distinction in the level of built form as you cross the ‘boundary’ in this local area. On this she acknowledged the different policy approaches applied in Auckland Council area, which accord with my own experiences.
102. Finally, as considered above I find the level of connectivity is a weakness in the application and on that point I agree with Ms Carruthers that there is limited opportunity for the existing LVE residents to access the esplanade reserve.<sup>15</sup> However, this does not lead me to a position where I would warrant refusal of consent. As a result I find that the proposal will have acceptable levels of landscape effects on the environment, including with the use of conditions imposed.

#### Ecological issues

103. Again, as with the Landscape Architects, the ecologists (Dr Davison and Mr Wright) had reached agreement by the end of the hearing over the likely ecological effects and outcomes. As I have considered above, they were of the view that the proposed restorative planting (revegetation) would provide positive benefits to the ecological values of the site. I agree with this and find that this, as with the enhanced landscape values should be seen as positive and significant benefit of the application, especially given the significant level of revegetation planting proposed, including coastal planting.
104. However, as discussed above the issues associated with the effective implementation of this restoration planting was at the forefront of my mind when considering this matter, to which both experts were clear that conditions could be imposed to ensure these positive benefits are achieved in practice. These issues have now been effectively addressed by the conditions of consent, including the on-going maintenance and monitoring requirements on the relevant covenanted areas to ensure these outcomes are protected through time.
105. Finally on the issue surrounding the restriction over cats, dogs and stock, these issue were clarified in Mr Berry’s reply of right that only the new lots would have a restriction on cats, not

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<sup>15</sup>In her comments on the proposed conditions of consent dated 20 April 2022.

dogs, and stock would only be excluded from the ecological restoration planting areas (covenanted areas).<sup>16</sup> While, as I cat owner myself, I can see from an ecological point of view, as expressed by Dr Davison and Mr Wright the clear ecological benefits of restricting cats from sites adjacent ecological restoration planting, I am also satisfied that the proposed conditions of consent address the issue associated with the LVE existing resident's cats should they be caught up in the ongoing maintenance of these ecological areas.

106. As a result, I find that the proposal will have an acceptable level of ecological (actually positive) effects on the environment. In reaching this view I have also considered the provisions of District Plan Rule 12.1.4.2 for subdivision under this rule, which, based on the evidence of both Dr Davison and Mr Wright I find has been met to an acceptable level.

#### Traffic and transportation issues

107. This was a major issue raised by a number of the submitters, including the submitters in the local environment, especially around dust effects and the use of the one lane bridge on Devich Road. There were also concerns raised by the use of the existing roads within LVE, including the on-going maintenance costs. Mr Berry in his right of reply addressed the issue of maintenance costs, and that these costs are to be shared by all the residents and this is reflected in the conditions of consent, and cost of the new roads are at the developers (consent holder) costs.
108. In terms of the professional traffic engineering evidence I believe agreement was reached between the traffic engineers that the effects could be addressed through the appropriate use of the management plan conditions and the effects were acceptable in traffic engineering terms. While I understand the concerns raised by some of the LVE residents in terms of the traffic effects 'inside' the LVE and may result from this proposal, I am guided by the expert traffic engineering evidence and find these effects are acceptable in resource management terms.
109. Turning to the issue of construction traffic and the impact on the local roading network, including the use of the one lane bridge, again based on Mr Edwards evidence I find that these effects can be effectively managed through the construction management plan. In saying this, I agree with and understand the concerns raised by Ms Francis and Mr Wrightman in terms of the dust generated from all the traffic using these roads and the potential need to seal these sections of the local roading network as the area develops. While the effects of this proposal can be managed, I suggest this is an area they (Ms Francis and Mr Wrightman) explore further with the Council.
110. As a result, I find that the proposal will have an acceptable level of traffic and movement effects on the environment including with the use of conditions imposed surrounding traffic and construction effects (management plans).

#### Residential amenity

111. This issue in one form or another was raised by most of the submitters, including the impact the proposal could have on the communal facilities in the LVE. It appears to me in many ways the application seeks to mirror the existing form of residential development in the LVE at similar, and in some cases lower densities than currently exists, without the level of landscaping and ecological restoration now proposed. This is not to undermine the significant

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<sup>16</sup> Section 4.5, dated 11 April 2022

level of open space, walkways and the creation of the existing lake, which I understand was a dam used by an previous kiwifruit orchard in the existing LVE.

112. In this regard I agree with the evidence of Mr Hartstone and do not believe that the densities proposed, with the landscaping will have an unacceptable impact on the residential amenity of the existing LVE residents.<sup>17</sup> This form of development is consistent with the development within the existing LVE and large parts of the local environment which has been 'converted' over time from traditional pastoral farming to a life-style type of residential developments. While I acknowledge, as considered in the procedural section above, there may be issues surrounding the relationship and how the future Resident's Society is managed, these issues should be addressed in other forums. Should I be incorrect in this approach I note for completeness that I would not have found that these effects would warrant the refusal of consent and again I refer to and agree with Mr Hartstone in this regard.
113. As a result, I find that the proposal will have an acceptable level of amenity effects on the environment and the existing LVE residents.

*Planning and District Plan policy issues*

114. The evidence of Mr Hartstone, Ms Hosted and Mr Badham supported the proposal in land use (District Plan) policy terms. I agree with their assessment of the application in planning policy (objective and policy assessment) terms, noting that the potential and actual effects of the proposal have been considered above and found to be acceptable and/or could be appropriately addressed through the conditions of consent. In order to save time I do not propose a 'line by line' assessment of the relevant objectives and policies as this is not necessary and I have adopted Mr Hartstone's assessment in this regard and find that the proposal is not inconsistent with the relevant objectives and policies stated in the District Plan, including sections 3 and 4 and primarily section 12.
115. However, for completeness, as considered above Ms O'Conner was of a very different view which I shall briefly explore now. Her view was partly based on her effects assessment on rural amenity, landscape character and the failure of the application to provide significant ecological benefit in accordance with Rule 12.1.4.2 for an integrated subdivision application of this nature. As a result she was of the view the application was contrary to the relevant District Plan's objectives and policies. In doing so, she referred me in particular to sections 12.5.1, 12.5.2, 15.5.5, 12.5.8, and 12.5 10 of the District Plan.<sup>18</sup>
116. In considering the issues she raises, in light of the evidence heard and the issues considered above, I agree that the application is marginal in terms of its ability to enhance public access to the coast, but this is provided in a general sense, and this connectivity weakness would not warrant refusal of consent. I also do not agree (and why I favour Mr Hartstone's evidence in this regard) with her assessment of 12.5.2, 15.5.5, 12.5.8, and 12.5 10 of the District Plan, as I have found above the application does provide positive ecological benefits and will not compromise the existing rural amenity or character. Nor would it have adverse effects to any degree which I find to be unacceptable in terms of residential amenity. This should not be seen as a criticism of her evidence, just why I favour Mr Hartstone, Ms Hosted and Mr Badham's evidence over hers.

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<sup>17</sup> Section 110 to 115 of his s.42A report.

<sup>18</sup> Section 50 of her evidence in chief.

## S.104 Assessment

117. My assessment under sections 104(1)(a) and (b) requires me to consider any actual and potential effects on the environment of allowing the activity and the relevant provisions of the regional and planning instruments. I have addressed these issues above, where I have found that the potential and actual effects on the environment are appropriate and acceptable for an activity of this nature. I also note the positive benefits (effects) this will provide in terms of ecological restoration and enhancement of the site.
118. In terms of planning policy, I have found that the proposal is consistent with the objectives and policies of the District Plan. I note for completeness, while the Northland Regional Statement was not really raised in evidence, I find that the proposal is not inconsistent with that document either.
119. Finally, I note for completeness that a number of s.104(1)(c) matters were brought to my attention for this application, including the Mangawhai Spatial Plan and Mangawhai Structure Plan, to which I have given very little weight as the issues relevant to the application have been addressed through my effects and District Plan policy assessment. In reaching this view I also note the age of the Mangawhai Structure Plan in terms of its relevance to this application and the existing environment, and I also agree Mr Harstone's view on the weighting that should be accorded the Spatial Plan document.
120. The other s.104(c) issues raised by Ms Carruthers I have addressed above and I do not propose to repeat them here.
121. Finally, I agree with Mr Berry and Mr Hartstone that there is no need to seek recourse to Part 2 of the RMA as the issues relevant to this application are covered within the District Plan provisions. A point no party disagreed with.

## Decision

122. In exercising my delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104B, 106 and Part 2 of the RMA, I determine that resource consents to subdivide to create 67 rural residential allotments and a balance lot by way of an Integrated Development Subdivision on a 135.5ha site, inclusive of additional private accessways, on-site servicing, earthworks, public pedestrian access, and revegetation programme is **GRANTED** consent, subject to the conditions set out below.
123. The reasons for this decision have been set out in the sections above.
124. Under section 108, 108AA, 220 and Part 2 of the RMA, this consent is subject to the conditions attached as Appendix One which are based on the agreed set of conditions between the applicant and the Council, which I find are appropriate as they relate to this resource consent application.

A handwritten signature in purple ink, appearing to read 'L Beattie', is located at the top left of the page.

Dr Lee Beattie

Independent Commissioner for Kaipara District Council

Date: 8 June 2022