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**IN THE MATTER OF** the Resource Management Act 1991  
**AND**

**IN THE MATTER OF** an application by Steve Tapp to Kaipara District Council under section 88 of the Resource Management Act 1991 for a Four lot subdivision under Rule 12.9.4 of the Kaipara District plan as a non-complying consent application for a property situated at Baldock Road, Hakaru being Lot 4 DP 402662 (RT 408739)

**DECISION following the hearing of an application by Steve Tapp to Kaipara District Council for a non-complying activity for a subdivision and land use components for a resource consent under the Resource Management Act 1991**

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**Proposal**

Subdivision consent is sought to for a 4-lot subdivision requiring consent under Rule 12.9.4 as a non-complying activity as it does not meet the site size requirement of 5ha under 12.13.3 'Small Lot Subdivision' or the lot size requirement of 12ha under 12.12.1 'General Rural Subdivision'. The application also includes no provision for reticulated telecommunications under Rule 12.15.8. The application is supported by amenity planting including wetland planting and boundary planting.

The resource consent sought is **GRANTED**. The reasons and the conditions are set out below.

<b>Hearing Commissioner:</b>	Mr Michael Lester
<b>Application numbers:</b>	RM210170
<b>Applicant:</b>	<i>Steve Tapp</i>
<b>Site addresses:</b>	Baldrock Road, Hakaru.
<b>Legal descriptions:</b>	Lot 4 DP 402662
<b>Site area:</b>	2.2503ha
<b>Zoning:</b>	Rural zone
<b>Lodgement:</b>	June 2021

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<b>s92 Request:</b>	18 June 2021
<b>Public notification:</b>	16 November 2021
<b>Submissions closed:</b>	13 December 2021
<b>Hearing commenced:</b>	25 February 2022
<b>Hearing Adjourned</b>	25 February 2022
<b>Hearing closed:</b>	7 March 2022
<b>Appearances:</b>	<u>For The Applicant:</u> Mr Maualaivao Ueligitone Sasagi (Planner) Ms Kylie McLaughlin-Brown (Landscape) Mr Adam Booth  For the Council Katrina Roos (Consultant - Reporting Planner) Dwayne Daly Team Leader Jalal Irfani Engineer Prasad Sapper Engineer Jodi Tollemache (Tech Support and Committee Secretary)

## 1. Summary Decision

1. Pursuant to section 104 and 104D of the Resource Management Act 1991, the non-complying activity subdivision consent application is **Granted**.

## 2. Introduction

2. This decision is made on behalf of the Kaipara District Council (Council) by Independent Hearing Commissioner Mr Michael Lester appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (the RMA).
3. This decision contains the findings from my deliberation on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
4. The application was publicly notified on 16 November 2021, with submissions closing on 13 December 2021.
5. No submissions were received before the closing date set out in 3 above.
6. RMA written approvals to the application were received from the following parties being the registered proprietors of: Lot 102 DP450020 / UNK Brown Road, Hakaru – Hokonui Farms Limited and Lot 4 DP 194359 / 509 Kaiwaka – Mangawhai Road, Hakaru – Gillian Dunn, Patrick Silveira and Philip Sheat.

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7. The s42A RMA hearing report was prepared for Council by Ms Katrina Roos, consultant planner from Cato Bolam Consultants, and made available to the parties. Ms Roos's overall recommendation was to Decline the subdivision consent sought, as she considered (in summary), that in her opinion the effects of the subdivision and associated works would be more than minor and the application did not pass either of the tests in Section 104 (1)(a) or Section 104 (1)(b) of the RMA and does not achieve the purpose of the Act under Sections 5 and 7 of the Act
8. The matter was heard by remote communication on 25<sup>th</sup> February 2022, and was then adjourned for the Commissioner to consider whether in his judgement any further questions needed to be clarified. The Applicant's Planner was given five working days to provide a right of reply. Having received the Right of Reply within the time provided the hearing was closed on 7<sup>th</sup> March 2022.

### **Site Visit**

9. I was unable to conduct a physical site visit of the applicant property as I did not travel to Mangawhai for the hearing. I did however receive numerous photos of the site from the Council which provided me with a clear appreciation of both the site and the surrounding countryside.

### **3. Site subdivision history and description**

10. The site is held in record of title 408739, created in 2008. There is a consent notice on the title requiring specific design by an engineer for building foundations, wastewater and earthworks. The consent notice will draw down to the new titles should consent be granted. There is a high-pressure gas pipeline shown on the title plan as Easement C. However, Easement C runs through adjacent sites and does not fall within the boundary of the application site.
11. The application site measures 5.2503ha and is currently free of development. The site is maintained in pasture with limited indigenous wetland vegetation within a creek and wetland area which bisects the site. The site slopes downwards north-east from road level and there is an informal crossing to Baldrock Road providing access. Baldrock Road is a sealed collector road with a posted speed limit of 100km/hr. The site is located close to the intersection with Kaiwaka-Mangawhai Road. The nearest settlement is Hakaru approximately 1km to the east. Kaiwaka is located approximately 7km to the south-west.
12. The site is not subject to natural hazards in the Northland Regional Council Hazard Maps and is not noted as flood susceptible in the District Plan maps. A review of the open-source website Archsite found no recorded archaeological sites on the property, which was confirmed by Te Uri O Hau in their cultural assessment supplied with the application.

### **4. SUMMARY OF THE PROPOSAL**

13. The proposal is for a 4-lot subdivision requiring consent under Rule 12.9.4 as a non-complying activity as it does not meet the site size requirement of 5ha under 12.13.3

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'Small Lot Subdivision' or the lot size requirement of 12ha under 12.12.1 'General Rural Subdivision'. The application also includes no provision for reticulated telecommunications under Rule 12.15.8. The application is supported by amenity planting including wetland planting and boundary planting. The lot sizes are proposed as follows:

- Lot 1 – 4156m<sup>2</sup>
- Lot 2 – 5523m<sup>2</sup>
- Lot 3 – 1.3963ha
- Lot 4 – 2.8863ha

## **5. ACTIVITY STATUS**

14. One of the major points of contention in the application is whether the activity sought should be considered as a non-complying activity or as a Discretionary activity. Mr Sasagi in his evidence on behalf of the applicant, provides significant arguments in support of the application being considered as a Discretionary activity, and in so doing makes reference to a recent decision of Commissioner David Hill in his decision issued on 20 March 2020 reference RM180388.
15. In his evidence Mr Sasagi submits that this application should be considered under Rule 12.9.3 Discretionary Activities.
16. Ms Roos at para 20 of her s42A report outlines that this application should be assessed as a non-complying activity under rules 12.12.1 General Rural Subdivision, Rule 12.13.3 Small Lot Subdivision and Rule 12.45.8 Telecommunications and that the application should be considered under Rule 12.9.4 as a non-complying activity.
17. The matters relating to the activity status are set out in detail in both the s42A report and the evidence of Mr Sasagi.

### **Finding**

18. Having considered in detail the matters raised by both Mr Sasagi and Ms Roos I find that this application should be considered as a whole as a non-complying activity.

## **6. The Hearing**

19. As outlined earlier in this decision the hearing was conducted remotely at 10am on the 25<sup>th</sup> February 2022.
20. The s42A Hearing report and the Notification Assessment Report by the Council's reporting planner, Ms Katrina Roos, Senior Planner, Cato Bolam Consultants, the evidence of Mr Sasagi and Ms Mclaughlan-Brown having been submitted prior to the hearing was taken as read.

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21. **Mr Sasagi** appeared on behalf of the applicant. He first apologised for the applicant not being present at the hearing. He also apologised for the absence of Ms McLaughlan-Brown, Landscape Architect, who had provided her evidence which had been circulated prior to the hearing. With evidence of both parties having been taken as read Mr Sasagi reiterated his opinion that the application should be considered as a Discretionary Activity and not a Controlled activity.
22. He also referred to the existing subdivisions that have been granted consent in the neighbouring environment and referred to the evidence of Ms McLaughlan-Brown whose expert opinion was that the surrounding landscape was predominantly rural residential and not rural lifestyle.
23. **Ms Roos:** As the author of the s42A report Ms Roos confirmed that she stood by her recommendation to Decline the application, and that having heard the evidence provided by Mr Sasagi, she confirmed that in her opinion the application should be considered as a non-Complying activity and not as a Discretionary activity, as submitted by Mr Sasagi. When asked whether the neighbouring subdivision to the North of the subject site had a current Resource Consent for subdivision, she stated that a consent had been granted but to the best of her knowledge it had now lapsed as being past the five-year period. She stated she was not aware of any application to extend the time on the Resource Consent.

#### **Right of Reply**

24. In his right of reply Mr Sasagi took great pains to expand on his initial evidence. As this did not provide a chance for the Council planner to reply to this extra evidence, I will only comment on the matters raised at the hearing. Referring to the development to the North of the site Mr Sasagi provided a copy of the s223 certificate which was issued on 28 November 2019 for RM 140209. In his reply he stated that the decision on the application for subdivision under RM 140209 was issued on 11 December 2017 and with the Certificates being approved on 28 November 2019 the proposal will lapse on 28 November 2022 if not given effect to.
25. Turning to the Objectives and Policies of the District Plan, Mr Sasagi comments that the Reporting Officer noted in her summing up that this proposal is inconsistent with the Objectives and Policies of the District Plan and granting consent would challenge the integrity of the plan. In his opinion this was a complete turnaround from the assessment made by Ms Roos in her s42A report.
26. Mr Sasagi submitted an amended set of conditions should this proposal be granted. The amendments were:
  - a) to delete the condition for insurance confirmation as he stated this was not an RMA matter
  - b) to delete the fencing provision as there would be no grazing on the site and

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c) the applicant has volunteered amenity landscape planting as consent conditions to ensure improves amenity of the areas.

## 7. Statutory Acknowledgements

27. Relevant to this application, any statutory acknowledgement within the meaning of the Act specified in Schedule 11 would be contained within the Te Uri o Hau Claims Settlement Act 2002 Environs Holdings Limited is a subsidiary of Te Uri o Hau Settlement Trust (caretaker of Te Uri o Hau Claims Settlement Act2002) authorised to participate in the Resource Management Act 1991 proceedings.
28. Pursuant to the Te Uri o Hau Claims Settlement Act 2002, the subject site does not fall within a site of significance or nohanga site. Under s58(1)(a) of that Act, Council has the responsibility to forward summaries of resource consent applications to Te Uri o Hau. Te Uri O Hau have reviewed the application and provided a cultural effects assessment in support, subject to application of the Accidental Discovery Protocol for archaeological material.

## 8. Statutory Provisions

*Section 104(1) of the Act requires that, subject to Part 2 of the Act, regard should be had to the following*

*matters:*

- (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.*

*As a non-complying activity, section 104B and 104D of the Act apply.*

*Section 104B states:*

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*After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—*

*(a) may grant or refuse the application; and*

*(b) if it grants the application, may impose conditions under section 108.*

*Section 104D states:*

*104D Particular*

*consent authority may grant a resource consent for a non-complying activity only if it is satisfied that*

*either—*

*(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*

*(b) the application is for an activity that will not be contrary to the objectives and policies of—*

*(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*

*(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the*

*activity; or*

*(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

*(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.*

## **9. Section 104D Non-Complying Activity**

29. Pursuant to Section D of the RMA if a proposal is a non-complying activity as in this application, then it must pass at least one of the tests of either Section 104D (1)(a) or Section 104 D (1)(b) before an application can be assessed to make a decision under Section 104B of the Act. If the application fails both of the tests, then the application must be declined

### **Section 104(1)(a)**

30. In her s42a report Ms Roos provides a comprehensive assessment of the Actual and Potential Effects on the Environment of this application. In summary she finds that there will be no adverse effects or the effects would be minor or less than minor for matters relating to:
31. Trade Competition, Future Environment as identified in the Plan, Access and Traffic, Geotechnical, stormwater and Wastewater, Water Supply, Utilities, Landscape and

visual effects, Ecological effects, Cultural and Archaeological effects, Reverse sensitivity, Hazards, loss of productive land, Dust Noise and vibration.

32. Ms Roos in assessing the Character and Amenity Values of the proposal, refers to the rural aspect of the site and that there are only rural residential developments to the East and South East of the subject site. As stated above there is also a consented development to the North of the site which effectively encloses the site on three sides with rural residential development.
33. Ms Roos then considers that this is ad hoc development and has the potential to adversely affect the rural character and amenity of the district. She considers that there will be no Environmental Benefit from this application. I note that the applicant has agreed to plant out the wetland in native species and in the right of reply has offered a landscaping condition to improve the character and amenity of the site.
34. In summary Ms Roos states in the s42A report that  
*“the proposal constitutes ad hoc subdivision that contributes to a sprawling, uncoordinated patterns of rural-lifestyle development along Baldrock Road, that reduces the diversity of lot sizes in the area, and reduces the dominance of rural production, open space, natural landforms, and indigenous bush, while increasing the intensity of development and built form, particularly residential development, in a manner that is not anticipated by the District Plan. Consequently, adverse effects on rural amenity and character, including cumulative effects, are considered to be more than minor. “*
35. In paras 69 to 72 Ms Roos assesses the cumulative effects of the subdivision. She agrees that, as concluded in the Landscape report, the subdivision will not contribute to cumulative adverse effects on landscape in the medium to long term subject to offered mitigation but that there may be some short-term effect from the development of the lots fronting Baldrock Road until the planting is established.

## **Finding**

36. Having considered all the matters addressed by Ms Roos as to the Actual and potential effects on the environment I find that the effects will be minor or less than minor and therefore they pass the test in Section 140(1)(a) of the RMA

## **Section 140(1)(b) of the RMA**

### **National Environmental Standards for Contaminated soils.**

37. As outlined in the s42A report no contaminants are identified on the site and therefore no consent is required.

### **National Environmental Standards for Fresh Water**

38. The planner received confirmation from the Northland Regional Council that no consent is required under Regulation 54 of the NESFW.

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### **National Policy Statement for fresh water**

39. The proposal is consistent with the National Policy Statement on Water as it will involve restoration of natural wetlands.

### **Northland Regional Policy Statement**

40. The planner considers that the proposal is consistent with the RPS except for the density of the subdivision being inconsistent with the sense of place within the surrounding rural environment which would contribute to cumulative adverse effects on rural character. I do not agree with this conclusion by the planner as the proposed site is surrounded on three sides by consented rural residential subdivisions which have changed the place and character of the environment to be one of rural residential character

### **Kaipara District Plan**

41. Having considered the matters raised in the planning report relating to the Operative District Plan I agree with the conclusion reached. That the proposal is inconsistent with the plan but is not contrary to the Objectives and Policies of the District

### **Finding**

42. I have considered above the gateway tests set out in s104(1)(a) and section 104(1)(b) of the RMA and find that the proposal passes both of the tests.

### **Precedent**

43. I do not consider that there would be a precedent set by granting this subdivision in this locality. As noted earlier in this decision the subject site is surrounded on three sides by consented rural residential subdivisions at the present time.

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

44. **Section 5 (1) of Part II of the RMA** relates to the Sustainable Management Purpose of the Act. These matters have been considered in this decision and I find that the application will not be detrimental to character and amenity values and will not add to the cumulative adverse effects on the environment. I do not consider this to be ad-hoc development in the rural residential zone. As outlined in the evidence, the land involved is no longer rurally productive and the planting of the wetlands, protected by a covenant, will enhance the environment in the future. This will be further enhanced by the landscaping condition offered by the applicant as a condition of consent.

### **Section 6 Matters of National Importance**

45. There are no matters of National Importance which are relevant to this application.

### **Section 7 Other Matters**

46. The reporting planner states that this subdivision is inconsistent with the character and amenity values and receiving environment of the area. As stated above I do not agree with this conclusion, as outlined above, and find that the application IS consistent with the character and amenity values and the receiving environment.

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### **Section 8 Treaty of Waitangi**

47. This site is not known to be of significance to Maori and the relevant Iwi have been consulted.

### **10. Decision**

48. In exercising the delegated authority under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104B and Part 2 of the RMA, the subdivision application by Steve Tapp, for a 4 lot subdivision on the 5.2503ha site at Baldrock Road, Hakaru being Lot 4 DP 402662 (RT 408739) is granted with the conditions following for the reasons discussed in this decision and as summarised below.

#### **Summary reasons for the Decision**

49. After having had regard to the actual and potential effects of this subdivision application on the environment in which the proposed site is situated and having taken into account the relevant planning documents outlined in the decision, I find that the application for consent to the subdivision at Baldrock Road should be GRANTED for the reasons outlined and discussed in the decision and in summary because:

### **11. REASONS**

1. The adverse effects of the proposed subdivision activity will be minor or less than minor when considered against the relevant rural provisions of the operative District Plan and the Northland Regional Policy Statement.

2. The additional planting offered by the applicant by way of a landscaping condition will provide an enhancement to the environment, when combined with the planting of the wetland area which is to be preserved by way of a covenant.

3. Granting consent is consistent with the sustainable management purpose and principles of Part 23 of the RMA.

**Overall, I find that granting consent for the subdivision application is appropriate in the circumstance with the conditions attached.**



**Michael Lester**

**Independent Hearings Commissioner**

**Date: 24 March 2022**

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