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## ***Open Meeting***

<b>To</b>	Ian Munro - Commissioner
<b>Prepared By</b>	<b>Michelle Carmine – Consultant Planner, Element Planning</b>
<b>Date</b>	<b>9<sup>th</sup> April 2024</b>
<b>Approved By</b>	<b>Ella Makin – Principal Planner</b>
<b>Applications</b>	<b>Tamahere Country Club Southern and Eastern Extensions LUC0188/24 (Eastern), LUC0189/24 (Southern), LUC0597/21.04 (s127 Variation) and VAR0002/24 (s221 Cancel Consent Notice)</b>
<b>Applicant</b>	Sanderson Group Limited

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## **Executive Summary**

This report has been prepared pursuant to s.42A of the Resource Management Act 1991 (RMA) with the purpose of assisting the Commissioner in their decision making. The report provides an assessment of the applicant's proposal and submissions. The report focuses on matters where there is a difference of opinion between parties. Where there is agreement the applicants' proposal is adopted and generally noted.

### Proposal

Consent is required under both the Proposed District Plan Appeals Version (PDP) 2022 and the Operative District Plan (Waikato Section) 2013 (ODP) to extend the existing Tamahere Country Club Retirement Village to the east and south through the provision of additional residential units.

The eastern extension and southern extension have been applied for under two separate

consents. Accompanying these applications is an application to vary the existing consent under section 127 and an application to cancel a consent notice under section 221. Consent is also required within both extension areas under the NES Contaminated Land (NESCS).

The Eastern Extension seeks consent for 25 new residential units and a small arts and craft building across two existing sites. Infrastructure and Roding will be integrated with the existing village that operates under LUC0597/21.03. A Landscaping Master Plan is provided. Cancellation of the Consent Notice is associated with a historic no build covenant within a portion of one of the sites and is required if Land Use is granted for the Eastern Extension.

The Southern Extension seeks consent to establish 42 new residential units across two existing sites and a 750m<sup>2</sup> health spa. Infrastructure and Roding will be integrated with the existing village that operates under LUC0597/21.03. A Landscaping Master Plan is also provided.

The accompanying section 127 application seeks to establish two additional residential units mostly in the footprint of the existing land use consent site. If the Southern extension is granted the two additional villas will seek to fill a gap that was previously an open space setback on the Southern edge of the Village. This application goes hand and hand with the Southern extension.

#### Notification and Submissions

The application was publicly notified at the applicant's request. One submission was received in opposition to both extension areas, from Mr Mark Smith on behalf of Debby and Mark Smith. Mr Mark Smith wishes to be heard. In summary the submission raises matters relating to Traffic and Transportation effects, (in particular, increased traffic movements, reliance on private vehicles and walkability to the shops); The number of dwellings and Building Coverage; The appropriateness of the activity within the General Rural Zone; Effects on high class soils and productive uses; and effects associated with construction. The submitter seeks that all applications are declined.

### Weighting of the Plans

I am in agreement with Ms Drew that weighting shall be afforded to the Proposed District Plan. Therefore, I have in my reporting focussed on the proposal in the context of the PDP for the Commissioner. Acknowledging consents are still necessary under the Operative Plan, as under section 86F specific appeals on the PDP have not been resolved.

### Section 104(1)(a) Actual and Potential Effects

#### Rural Character and Settlement Patterns

The Applicant's planner Ms Drew and myself Planner for the Council, have a difference of opinion in relation to Rural Character and Settlement Pattern matters, Ms Drew considers that adverse effects in relation to rural character and settlement patterns can be appropriately mitigated within both the Eastern and Southern Sections and adverse effects are no more than minor in relation to Rural Character. This is due to the context of the existing surrounding environment, the fact that proposal is an extension and not a new village and in reliance of the LVA assessment provided by Ms Soanes that concludes Landscape Character and Visual effects to be low within both extension areas.

Whilst I, on the other hand have concluded that within the context of the PDP provisions, the effects on rural character and settlement patterns to have adverse effects that are minor in relation to the Eastern Extension and more than minor, within the Southern Extension area.

#### Soil Resource

I anticipate there may be some difference of opinion in relation to soil resource effects between myself and the applicant's team as I have concluded effects on soil resource are minor within the Southern Extension. I agree with the applicant's team regarding the Eastern Extension on this matter.

#### Other Effects

Ms Drew and I are in general agreement that the adverse effects in relation to all applications are less than minor in relation to effects on productive potential of the land,

servicing (Wastewater, Stormwater and Water Supply), cultural effects, archaeological effects, road network matters, construction effects including earthworks, and contaminated land matters.

#### Section 104(1)b – Relevant Provisions

##### Proposed District Plan Objectives and Policies

Ms Drew acknowledges some inconsistencies with both proposals in relation to the Objectives and Policies of the GRUZ (General Rural Zone). However, considers that the specific Policy GRUZ P15 is to be applied, and applied with more weighting than policies in which the proposal is inconsistent with. This policy provides for alterations and additions to Retirement Villages already existing in the rural zone.

My view is that due to the definitions in the Plan for alterations and additions, the activity status and the context of other policies, this application is not captured as an alteration or addition to an existing village, and therefore the policy is not relevant to this application and cannot be used to outweigh the other policies of the rural zone that seek to limit non rural activities from establishing within the zone.

I have found both the Eastern and Southern Extensions to be contrary with the Objectives and Policies of the PDP.

##### Waikato Regional Policy Statement

Decisions to Change 1 of the Waikato Regional Policy Statement recently (Nov 2023) updated the urban and rural enablement areas for growth throughout the Region. This change was undertaken to give effect to the NPSUD that seeks compact urban form and well functioning urban environments, as well as embed the 30 year regional Growth Strategy (Future Proof 2022) into Statutory Documents.

Ms Drew acknowledges the proposals to be inconsistent in some respect to these Policies as the Tamahere area and the sites are outside an identified urban or rural enhancement area where growth is to be directed. Ms Drew considers that minimal regard should be applied to the RPS as the effects of the proposals are acceptable, the proposals are an

extension to an existing village, and the environment in which the site is located is already compromised in terms of its rural nature.

My view is that the growth policies are established to address the long term consequential cumulative adverse effects of growth and settlement patterns. Whilst the existing environment is somewhat compromised already, to weigh heavily in favour of this, over the policies that are newly introduced to give effect to compact urban form relies on “planning creep” arguments and incrementally proliferates the change in character and use of the environment from rural use to urban use whilst undermining directive settlement patterns determined under a statutory framework. The proposal therefore undermines the Objectives and Policies of the RPS and NPSUD in relation to well-functioning urban environments and compact urban form.

#### NPSHPL

There appears to be general agreement in relation to the NPSHPL between experts that the land within both extension areas has little value for primary production and that there are long term constraints on the land meeting 3.10 Long terms Constraints. Although in terms of the third test, (Mr Ford review for Council) considers that further evaluation is required.

My view is that this has been undertaken by Ms Drew in conjunction with Ag First as the test leans on Planning matters in this space. I am generally in agreement with Ms Drew’s identification of the costs of the subdivision however include two additional cost matters that did not alter the overall conclusions that the third test under section 3.10 is satisfied.

#### Precedent and District Plan Integrity

The agent and I are in agreement in relation to the Eastern Extension area.

However, we are not in agreement in relation to the Southern Extension area. The agent considers the proposal is unique and will not set a precedent or undermine integrity of the District Plan. I, in contrast consider the application would not be materially indistinguishable from other applications, and other applications are likely.

## Section 104D

In my view and counter to the view of Ms Drew for the applicant, I am not satisfied that the Southern Extension can meet either sections (a) or (b) of section 104D(1). I am satisfied that the Eastern Extension can meet Section 104D as effects for this application have been found to be minor therefore passing section 104D(1)(a).

## Recommendations

My Recommendation to the Commissioner is that the Eastern Extensions suite of consents should be **GRANTED** and the Southern Extension Suite of consents should be **DECLINED**.

Full Recommendations are found in [section 6.8](#) of this report.

## Procedural Matters

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- Bundling matters and splitting of decisions as described in the recommendations.

## Qualifications and Experience of Reporting Officer

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I have been engaged by the Waikato District Council to provide an evaluation report under s42A on this application by Sanderson Group Limited to establish an extension to an existing retirement village on a number of sites within the Rural Zone under the Operative District Plan 2013 and General Rural Zone under the Proposed District Plan Appeals Version 2022.

I hold a Bachelor of Science in Earth Sciences from The University of Waikato.

I am a Director and Principal Planner at Element Planning Ltd based in Waihi Beach. I have 18 years' experience as a Resource Management Planner with a specific focus on Resource Consent Processing within Local Government. I have worked with the Waikato District Plan for the last 12 years and am familiar with the area.

Previous roles held include: Senior Planner at Rodney District Council, Principal Planner at Auckland Council and Consents Team Leader at Waikato District Council. I am a qualified Hearing Commissioner.

**The conclusions reached and recommendations made in this report are not binding on the Commissioner and it should not be assumed that the Commissioner will reach the same conclusions or decision after having considered all of the evidence.**

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## 1.0 INTRODUCTION

Pursuant to s88 of the Resource Management Act 1991 (the Act), Sanderson Group Limited (the Applicant) has applied for land use resource consent to extend the Tamahere Country Club Retirement Village. The applications are set out below:

### Eastern Extension Applications:

Part A: is a land use consent application, under both district plans to extend the retirement village across 56 and 70 Tamahere Drive to the east of the existing retirement village, to provide for a further 25 villas and an arts and crafts facility in the Rural/General Rural Zone. The application number is LUC0188/24.

Part B: is an application for a s221(3) cancellation of consent notice (B513181.3) registered on the title for 70 Tamahere Drive. This application goes hand in hand with Part A. The application number is VAR0002/24.

### Southern Extension Applications:

Part C: is a land use consent application, under both district plans to extend the retirement village across 82 and 92 Tamahere Drive to the south of the existing retirement village, to provide for a further 42 villas and a new health spa in the Rural/General Rural Zone. The application number is LUC0189/24.

Part D: is a s127 application to change the conditions (Condition 1 of LUC0597/21.03) and approved plans of an existing retirement village consent at 70 Tamahere Drive, to provide for two additional villas. These villas are proposed to be located on the existing southern boundary, within the current 25m setback in the Rural/General Rural Zone. This application goes hand in hand with Part C. The application number is LUC0597/21.04.

Part E: is a land use consent, under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ('NESCS'), for land within 92 Tamahere Drive. This application goes hand in hand with Part C. The application number is LUC0189/24.

## 1.1 Summary of Site and Planning Information

<p><b>Location, Legal Descriptions areas and Records of Title</b></p>	<p><u>Eastern Extension Applications listed above:</u></p> <p>56 Tamahere Drive - Lot 1 DPS 59441 Comprised in Record of Title SA51C/860 - 1.1ha</p> <p>70 Tamahere Drive - Lot 1 DPS80372 Comprised in Record of Title SA64C/250 - 8000m<sup>2</sup></p> <p><u>Southern Extension Applications listed above:</u></p> <p>92 Tamahere Drive - PT LOT 11 DP 9747 Comprised in Record of Title SA1443/27 - 3.54ha</p> <p>82 Tamahere Drive - Lot 1 DP535970 Comprised in Record of Title 565970 - 1.71ha</p> <p>70 Tamahere Drive - Lot 2 DP565970 and Part Lot 2 DPA7512 Comprised in Record of Title 1011954 – 16.5ha (This site location relates only to the Section 127 Variation to add two residential units to the existing village).</p>
<p><b>Areas:</b></p>	<p>New extension area: 7.95ha across four Record of Titles</p>
<p><b>District Plan:</b></p>	<p>Operative Waikato District Plan (Waikato Section) 2013</p> <p>Proposed Waikato District Plan – Appeals Version 2022</p>
<p><b>Activity Status:</b></p>	<p>Operative District Plan: Discretionary</p> <p>Proposed District Plan - Appeals Version: Non-Complying</p>
<p><b>Zoning:</b></p>	<p>Operative District Plan: Rural Zone (Inoperative)</p> <p>Proposed District Plan - Appeals Version: General Rural Zone (GRUZ) (Operative Zoning under s86F)</p>
<p><b>Policy Area/Overlays:</b></p>	<p>Operative District Plan:</p> <ul style="list-style-type: none"> <li>• All Sites: Airport Obstacle Limitation Surface Designation N1,</li> <li>• All Sites: Waikato River Catchment.</li> <li>• 92 Tamahere Drive, Record of Title SA1443/27: Notable Tree 99</li> </ul>

	<p>Proposed District Plan - Appeals Version:</p> <ul style="list-style-type: none"><li>• All Sites: Waikato River Catchment</li><li>• All Sites: Airport Obstacle Limitation Surface</li><li>• All Sites: Designation WRAL - 1</li></ul>
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## 1.2 Proposal

The Application is set out in **APPENDIX A** and all further information submitted after notification is set out in **APPENDIX B**.

### **Part A - Eastern Extension – LUC0188/24**

The eastern extension is proposed to consist of:

- 25 stand-alone villas;
- An arts and crafts building;
- Pedestrian paths and an informal walkway throughout the site connecting to the existing Tamahere Country Club (TCC) development, Tamahere Drive; and
- The site will be fully landscaped including street trees, park like trees or native planting along boundaries, and specific mitigation treatment such as a planted bund or fencing where requested by adjacent neighbour(s).

From a density perspective the building coverage and site coverage has been calculated to be as follows:

- Total building area, including 25 villas and the arts and crafts building, is 5,575m<sup>2</sup> or 29.2%.
- Impermeable surfaces make up 2,687m<sup>2</sup> or 14.11% of the extension.
- Total coverage (coverage and impermeable) is 43% of the site.

The site layout has been specifically designed to comply with the 12m setback from the road boundary.



**Figure 1: Proposed Eastern Mata Extension**

Eastern Extension - Site Layout and Dwellings

The standalone villas will include a mix of sizes and layouts, generally ranging between 180m<sup>2</sup> and 330m<sup>2</sup> in area and includes 10 different typologies, with two and three bedroom options, left and right options, as well as single and double car garage options.

The architectural drawings in Appendix C of the application documents include floor plans and elevations of the three types of villas proposed and generally provide for the following:

- Typology A: Three-bedroom single storey villa comprising approximately 254m<sup>2</sup>;
- Typology B: Three-bedroom single storey villa comprising approximately 192m<sup>2</sup>; and
- Typology C: Two-bedroom single storey villa of comprising approximately 212m<sup>2</sup>.



The materials utilised in development of the standalone villas, have been chosen for their aesthetic appeal, longevity and appropriateness for the site's climate and weather conditions. Materials consist of rusticated brick, vertical shiplap timber, half euro tray roofing and accent cladding board and batten or colour steel.

#### Eastern Extension - The Art and Crafts Building

A 75m<sup>2</sup> arts and craft building is proposed. The building is to be located in the north-eastern most corner of the eastern extension. This building will be used for arts and crafts and is secondary to the hobby shed that is already provided for on the wider TCC site. Access to this building is via the pedestrian network.

#### Eastern Extension - Transportation and Three Waters Provisions

Access to the villas within the eastern extension is via extensions of three existing secondary roads (Nikau Crescent, Titoki Crescent, Matipo Street). These roads connect with the central spine Road (Pohutukawa Boulevard or Kowhai Avenue) and then to Tamahere Drive. Water, wastewater and stormwater reticulation will be extended along the internal roading network to connect with the existing infrastructure with the TCC village. Plans 1011.04.40.SW.401, 1011.04.50.WW.501, 1011.04.60.PW.601 & 1011.04.60.PW.602 within the Infrastructure Report (updated via further information and found in **APPENDIX B** of this report) provide the preliminary design for this reticulation.

#### Eastern Extension - Earthworks

Earthworks across the eastern extension consist of 3,000m<sup>3</sup> of cut and 10,000m<sup>3</sup> of fill. Depths of this cut and fill and its location is shown on Plan 1011.04.10.EA.111 within the Infrastructure Report (updated via further information and found in **APPENDIX B** of this report). As per the engineering plans, some recontouring work is also proposed within the existing TCC site to tie the two sites together.

#### **Part B - Consent Notice Cancellation VAR0002/24**

The title for 70 Tamahere Drive, is subject to a consent notice that is a building restriction covenant. That consent notice (B513181.3) states that there shall be no building(s), as

defined by the Building Act 1991, erected on the part of the title identified as "A" on DPS 80372. There is already a substantial building within Area A.

The retention of this consent notice has the potential to unreasonably frustrate future buildings consent applications for TCC, as such it is sought that the consent notice is cancelled under s221(3) of the RMA.

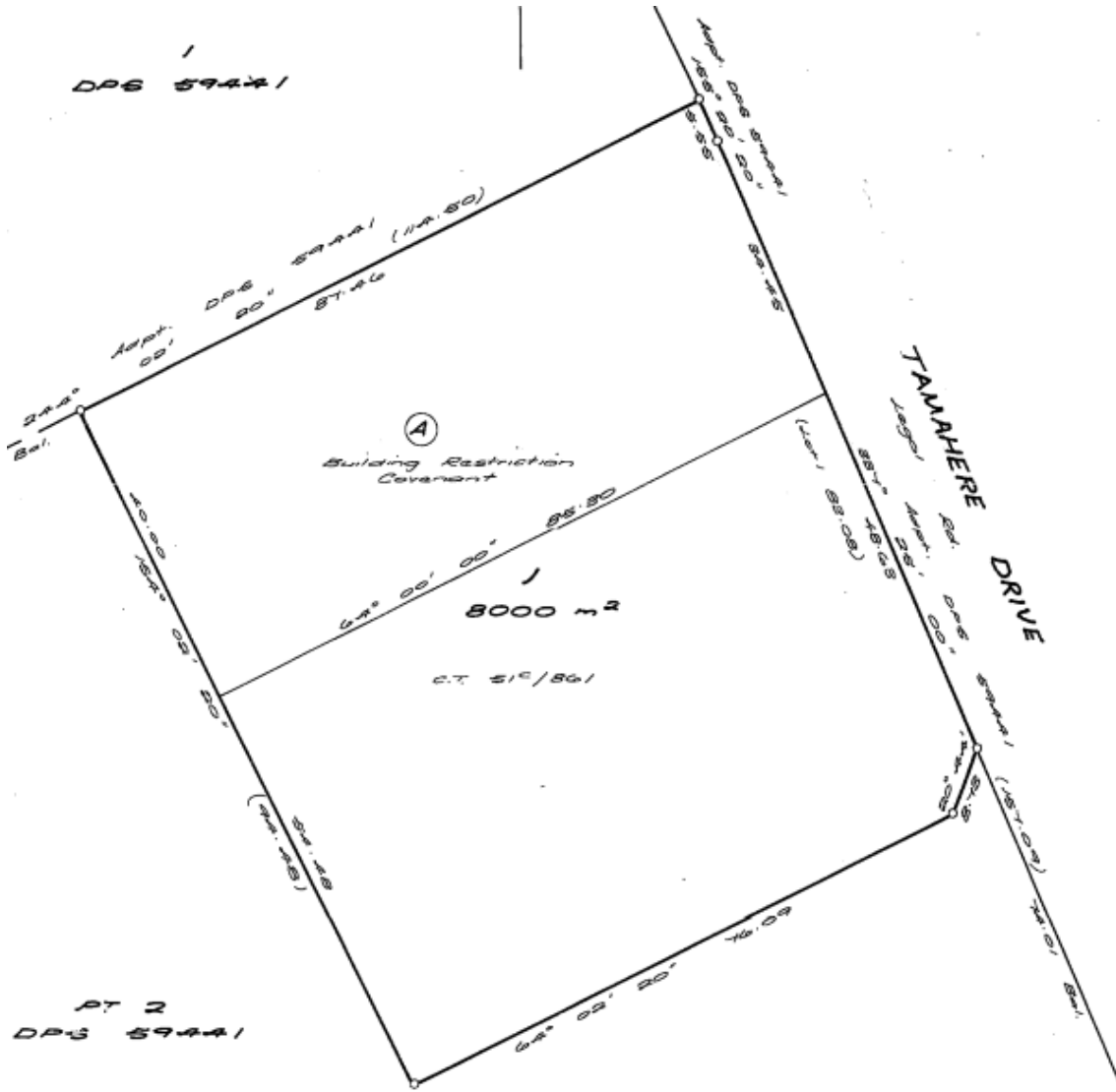


Figure 2: Plan from Consent Notice of area "A" Building Restriction Covenant.



**Figure 3:** Extent of area A as it relates to current built form. (Ref: BBO)

### **Part C - Southern Extension LUC0189/24**

Part C is a land use consent, under both district plans, to establish and operate an extension of the Tamahere Country Club (TCC) retirement village on the properties located at 82 and 92 Tamahere Drive to the south. The proposed extension is on the land directly adjoining the existing TCC development.



**Figure 4: Proposed Southern Extension**

The southern extension is proposed to consist of:

- 42 stand-alone villas
- A health spa and associated car parking;
- Pedestrian paths and an informal walkway throughout the site connecting to the existing TCC development, Tamahere Drive; and
- The site will be fully landscaped including street trees, park like trees or native planting along boundaries, and specific mitigation treatment such as a planted bund or fencing where requested by adjacent neighbour(s).

From a density perspective the building coverage and site coverage has been calculated to be as follows:

- Total building area, including 42 villas and the health spa, is 9,990m<sup>2</sup> or 19%.
- Impermeable surfaces make up 8,730m<sup>2</sup> or 16.6% of the extension.
- Total coverage (coverage and impermeable) is 35.6% of the site.

The site layout has been specifically designed to comply with the 25m building setback from external property boundaries (in both district plans) to establish and provide for open space and mitigation planting between the adjoining rural/rural residential

properties and the proposed built form on the site. The setback from the road boundary is also compliant at 12m.

#### Southern Extension - Site Layout and Dwellings

As with the eastern extension the standalone villas will include a mix of sizes and layouts, generally ranging between 180m<sup>2</sup> and 330m<sup>2</sup> in area and includes 10 different typologies, with two and three bedroom options, left and right options, as well as single and double car garage options. See the commentary above for further information.

#### Southern Extension - The Health Spa

A secondary health spa is proposed in the southern extension area and will be available for use by residents of the retirement village. It is not proposed to open this to public. This building is an approximately 750m<sup>2</sup> triangular shaped building, located adjacent to Tamahere Drive. The building is proposed to incorporate an indoor pool, spa, sauna, studio rooms for classes, treatment rooms and changing rooms. Parking adjacent to the health spa is proposed, sitting directly between the building and Tamahere Drive. This parking connects to the internal roading network. Refer to the Architectural Package in Appendix C of the application for the design of the health spa.

#### Southern Extension - Transportation and Three Waters Provisions

Access to the villas within the southern extension is via an extension of the central spine Road (Pohutukawa Boulevard) and one of the secondary roads (Kauri Lane). Water and wastewater will be extended along the internal roading network to connect with the existing infrastructure with the TCC village. For stormwater a new swale is also proposed along the southern boundary, along with a new stormwater soakage system adjacent to Tamahere Drive. The stormwater from the southern extension will either be directed to this reticulation, or to the existing network. Plans 1011.03.40.SW.401, 1011.03.50.WW.501, 1011.03.60.PW.601 within the Infrastructure Report (updated via further information and found in **APPENDIX B** of this report) provide the preliminary design for this reticulation.

#### Southern Extension - Earthworks

Earthworks across the southern extension consist of 600m<sup>3</sup> of cut and 39,900m<sup>3</sup> of fill.

Depths of this cut and fill and its location is shown on Plan 1011.03.10.EA.111 within the Infrastructure Report (updated via further information and found in **APPENDIX B** of this report). The filling includes the provision for a bund along the western boundary of the site which has already been constructed and therefore this is a retrospective component to the consent application.

**Part D: Section 127 Application LUC0597/21.04**

Two additional villas are proposed in the southern corner of the existing Tamahere Country Club (TCC) site. The s127 seeks to authorise these new villas.

These villas were not proposed within the plans lodged in the original resource consent application, or subsequent s127 applications, and therefore are not in accordance with Condition 1 of LUC0597/21.03.

Both of these villas are located within the 25m setback to the existing southern boundary. One of the Villas will in fact cross the boundary into the southern extension area slightly. This application seeks to alter Condition 1 of LUC0597/21.03 to take account of the two additional villas within the activity and specifically reflect the fact that the 25m setback would no longer be required if the southern extension is approved.



**Figure 5:** Additional two villas sought via Variation.

This s127 application seeks a change to Condition 1. To give effect to the above, the following changes to the consent conditions are proposed. New wording underlined and old wording ~~strikethrough~~.

1 The development shall be undertaken in general accordance with the information and plans submitted by the Consent Holder in support of application number LUC0597/21 and officially received by Council on June 2021 and the further s127 applications officially received by Council on the 31st March 2022, 12th September 2022, ~~and the 22nd December 2022,~~ and the 22 November 2023 except as amended by the conditions below. Copies of the approved plans are attached. In the case of inconsistency between the application and the conditions of this consent, the conditions of consent shall prevail.

There is sufficient capacity within the existing 3 water networks to cater for the two additional dwellings and no upgrades to onsite systems are required as a result of the two additional villas. No other conditions appear to require amendments.

## **PART E: NESCS – Land Use Consent Included in LUC0188/24 and LUC0189/24**

The DSI undertaken by HD Geo has confirmed that the majority of 92 Tamahere Drive is a 'piece of land' and the NESCS is applicable for consideration. Where soil disturbance or a land use change is proposed on a piece of land, the regulations of the NESCS apply to the site. The regulations of NESCS provide for soil disturbance as a permitted activity on a piece of land if the volume of the disturbance does not exceed 25m<sup>3</sup> per 500m<sup>2</sup> of site area, pursuant to Regulation 8(3) of the NESCS.

92 Tamahere Drive is a 3.5ha title, and therefore the permitted volume of soil disturbance on this site is 2516m<sup>2</sup>. The actual portion of the site that is a 'piece of land' is less than the 3.5ha size, so technically the volume will be lower. Either way, the proposed earthworks will exceed the permitted volume. The proposal is therefore unable to be undertaken as a permitted activity under the NESCS.

Soil disturbance is a controlled activity on a piece of land if a detailed site investigation (DSI) of the piece of land exists and the DSI states that the soil contamination does not exceed the applicable standard in regulation 7. The HD Geo DSI has confirmed that the contamination is above background levels but is below human health guidelines. As such, the earthworks and change of use on 92 Tamahere Drive (within the southern extension area) require a consent as a controlled activity under the NESCS.

It is noted that on review from the Councils Contaminated Land Specialist consent is also required as a controlled activity under the NESCS within the eastern extension area for 70 Tamahere Drive (the Red Bins Lid site).

### **Matters Pertaining to all Applications**

#### **Transportation and Roding network**

An ITA has been prepared for the proposed overall development:

The trip generation for the combined extensions has been calculated by Stantec as being 179 vpd per day, of which 21 will occur within the peak hour. This translates to 65vpd for



the eastern extension, 109vpd for the southern extension and a further 5vpd for the s127 application.

When combined with the existing TCC village movements, the trip generation across the whole TCC village will be in the order of 896 vpd or 114 in the peak hour. The ITA also looks at the distribution of trips from the village extension in relation to the two main access points to Tamahere Drive. That assessment identifies that the main access is expected to accommodate an additional 69 vpd, whereas the southern access will increase by 111 vpd based on its proximity to the extensions. Both entrances have already been designed as high-volume driveways, so no additional mitigation is proposed to facilitate the increased movements.

Internally within the village, a central boulevard or spine road runs north to south through the middle of the existing site. This road is proposed to be extended south into the southern extension to provide the main road corridor. This road contains two 3m wide lanes, separated by a central planted median.

The site design and layout provide a comprehensive network of internal walking and cycling paths, as an extension of and tying into the existing walking and cycling paths in the TCC land to the north. A series of pedestrian pathways will be provided on site to allow connections between the standalone villas and communal facilities on the site. In summary, pedestrian and cycling access is provided around the perimeter of the site, within the internal road network, on the footpaths and shared paths which provide connections to the communal facilities on the site and along Tamahere Drive.

### Parking

Parking is provided across the site adjacent to the proposed communal facilities (i.e. health spa) and within garages or driveway areas for each standalone retirement villa. A total 33 additional parking spaces are provided for in the vicinity of the health spa. Additionally, at least two parking spaces are provided for each villa on the site.

### Servicing

### *Wastewater*

Wastewater will be conveyed within a gravity reticulation network to the existing wastewater pump station, via connections that were future proofed in the previous civil works. The dedicated privately owned wastewater treatment plant has the capacity and contingency in both the design and WRC consents, for the additional flows generated from the extension sites. However, should additional capacity be required the pump station is a modular design and can be upgraded to cater for this additional capacity. Following treatment, the wastewater will be dispersed to the primary wastewater disposal field located in the south-west of the existing TCC site.

### *Stormwater*

The overall stormwater strategy for the extension sites is for the reticulation network to channel stormwater runoff from the road, access network, buildings and hardstand areas to the existing attenuation systems (lake/swale etc) for treatment and soakage. Roadside swales will also convey secondary overland stormwater flows to the reticulation network.

Localised attenuation and soakage will also be implemented, as required, either for individual units or larger catchments areas inclusive of roading where required to increase stormwater capacity. For example, the parking area adjacent to the health spa is proposed to incorporate a soakage system.

### *Water*

Water supply will be drawn from the seven bores on the wider site. Water will be pumped from the bore(s) to the dedicated privately owned water treatment plant and fed into a dual reticulation network. There is contingency in the water treatment plant and consented water take volumes to cater for the increased demand arising. The water concept thereafter utilises interconnected networks of water, principal, and rider mains to ensure suitable supply, pressure, and resilience, and valves will be located to ensure convenience of isolation and maintenance.

A separate irrigation and firefighting network will draw water from a lake feature, within the existing TCC site, that captures stormwater and has a backup supply from the bore where required.

### *Landscaping*

Boffa Miskell have prepared a masterplan and landscape design for the proposed extensions. The landscape design generally includes treatment of the proposed internal road corridors, boundary treatment and treatment of the entry to the site. Additionally, common spaces have been designed at a high level and a street tree and planting strategy has been developed for the site.

### Earthworks and Construction Timeframes

Earthworks will be required on both extension sites to reshape the site contour, construct the road network, infrastructure and buildings platforms. Total earthworks volumes for the southern and eastern extensions, as a collective, includes approximately 3,600m<sup>3</sup> of cut and 50,000m<sup>3</sup> of fill. The fill ranges from 0.1m to 1.6m apart from the southern boundary where the filling will provide for the construction of a 3m high bund.

It is likely that earthworks and development will occur in the southern extension first (Stage 6), with the eastern extension been the last stage. A full build out of both sites is expected to take 5-7 years to complete.

### **1.3 Existing Activities and History of Consenting**

The applications before us were originally lodged in September 2023 as one application LUC0060/24 for both the Southern and Eastern Extensions without a request for public notification. As part of the processing of that application, and in accordance with the policies of the RPS that seek collaboration between Councils, both Hamilton City Council and Waikato Regional Council were approached for comments. After receiving and considering comments from these parties and on discussions with the applicant, it was recommended to the applicant that they request public notification of the applications. The applicant considered it would be appropriate to relodge the applications under separate application numbers to allow for separated decision making on the two extension areas and agreed to request public notification of all related applications. The relodgement was subsequently done so in November 2023 to create LUC0188/24 (Eastern) and LUC0189/24 (Southern). The initial comments from Hamilton City Council

and Waikato Regional Council were sought on the previous combined application (LUC0060/24) and have not been included within this section 42A Report. Noting that neither Council made a submission on the relodged new applications. If the Commissioner considers the comments of interest as way of background, these can be provided.

The history of the consenting for the Retirement Village is set out in Section 3.0 of the application and has been described below:

#### LUC0023/19

The first consent was granted November 2018 to establish 108 Stand Alone Villas and a 61 bed care facility offering a range of apartment units, care suites and dementia care units across 10.49ha. This Village was located within an existing commercial overlay and on sites being utilised for non-rural activities.



**Figure 6:** Master Plan - First Consent Granted in 2018

LUC0156/20

One year later in November 2019 a replacement consent was granted to extend the retirement village by including three additional rural residential sized lots in the proposal, as well as undertaking some design changes. Rather than seek a variation or an additional consent the applicant sought to re-consent the entire proposal for simpler administration of the consent.

This application added an additional 16 units to the application and an additional 8000m<sup>2</sup> of land area.

In summary, the site was then consented for the following development outcomes:

- 124 villas (including 12 townhouses);
- A care facility containing 61 rooms;
- A club house; and

- A health spa.



**Figure 7:** Site Plan showing the first extension consenting an additional 8000m<sup>2</sup>

Since the granting of consent for the replacement application LUC0156/20 under the ODP, two variations have been applied for in relation to this consent.

LUC0156/20.01 was withdrawn before it was determined.

LUC0156/20.02 granted on 10 November 2022 removed 6 townhouses south of the care facility giving a total of 118 units and increased the number of rooms in the care facility from 61 to 80. The design and built form of the care facility was also amended.



**Figure 8:** Approved Plan LUC0156/20.02 removing townhouses and redesigning the care facility.

### LUC0597/21

In 2021 the applicant sought a further resource consent to extend the TCC onto a property directly south of their existing village, being 70 Tamahere Drive. The southern extension covered 12.58ha of Rural Zoned land and was granted under the Operative District Plan (Waikato Section) on 6 October 2021 (prior to the PDP having legal effect), it provided for:

- An additional 81 stand-alone villas;
- A club house (including café) and visitor car parking;
- A lake (with a dual purpose of amenity/recreation and stormwater treatment);
- An adjoining lake house and wellness pavilion overlooking the proposed lake and adjacent outdoor seating/garden party area;

Three variations have since occurred the latest of which LUC0597/21.03 granted on the 26 May 2022 and included an additional three villas within the current footprint.



**Figure 9:** Extent of the extension consented and currently under construction via LUC0597/21, three additional dwellings were added via variation within the southern corner of the site that are not shown on this figure.



In summary the existing retirement village operates under two existing consents LUC0156/20.02 and LUC0597/21.03. The village is consented under these two consents for 202 units and a care home to house 80 residents with various supporting activities throughout the village.

Much of the existing village has been constructed, with residents occupying dwellings and using the facilities. When I visited the site the café within the club house had recently been completed and the lake was under construction along with a number of dwellings within the southern extension.

#### LUC0303/18

Lot 1 DPS80372 Comprised in Record of Title SA64C/250 - 8000m<sup>2</sup>

This is a resource consent that was granted retrospectively to operate a transport depot (Red Lid Bins) from an existing building within this site in the proposed eastern extension area. Along with the transport depot the site also has consent for a Dependent Persons Dwelling that infringed site coverage (LUC0204/12). Both these consents are actively being given effect to at present.

### **1.4 Description of Subject Sites and Surrounding Area**

For a full description of the sites please refer to section 4 of the application AEE (Page 9). After visiting the sites, I generally agree with the descriptions of the subject sites which I have copied below for ease of reference, however I have made additional comments in relation to the construction depot within 82 Tamahere Drive and the surrounding sites and environment.

#### **1.4.1 Subject Sites**

##### Eastern Extension

*The eastern extension is a 1.9ha pocket of land encapsulated by the TCC village on three sides.*

56 Tamahere Drive contains a single dwelling located to the northern edge of the site with a number of established tree species surrounding it. Approximately 50% of the site is lawns and gardens with the balance in paddocks where a small number of Alpacas are currently grazed.

70 Tamahere Drive is known as 'The Compound' and the northern portion of the site currently operates as the depot (i.e. a building and a gravel parking area) for Red Lid Bins & Bags. The site operates under a resource consent for this activity. The site also features two access points to Tamahere Drive, two single storey residential dwellings to the south and a paddock in the north western corner. There is no primary production currently occurring on this property.

The ground levels for the site grade westwards towards the existing TCC boundary, with a change of level of approximately 1.5m from Tamahere Drive to the western boundary (i.e. from RL49.2 to RPL 47.7).

#### Southern Extension

The southern extension is a 5.25ha pocket of land directly adjacent to the TCC's existing southern boundary comprising 82 and 92 Tamahere Drive.

82 Tamahere Drive is a 1.71ha title that is currently being used as the construction office and site yard for Sanderson's construction activities. The site is highly modified with the majority of it disturbed and either used for relocatable site offices, parking or the storage of equipment for civil infrastructure works. There are no primary production activities on this property. No Resource consents have been obtained.

In addition to the applicants planner's description: on visiting the site it was found that the bunds sought as part of the southern extension consent application have been formed and constructed. The establishment of a construction depot on this site was not included within the existing applications and is unconsented. Within the applications before us the applicant seeks to consent the bunds as part of the earthworks associated with the activity and these are now sought retrospectively.

*92 Tamahere Drive is a 3.54ha title that is a former Christmas Tree farm, with a single dwelling and associated sheds centrally located. Approximately 1ha of the site was utilised for the Christmas Tree farm, a further 1.5ha being unimproved non-utilised pasture and the balance (1ha) occupied by the existing dwelling and gardens. There is no evidence of primary production on this property.*

*The ground levels for the site grade northwards with a 0.6m elevation change (i.e. from RL48.2 to RL47.6). The eastern most boundary of 82 Tamahere Drive contains a drain that flows northwards into the TCC site.*

#### **1.4.2 Immediate Surrounding Environment**

I generally agree with the agent's descriptions of the site however have added additional descriptions below where we differ in agreement. On completing my site visit I considered there were some surrounding rural characteristics that have not been described.

The site is located to the south of the Tamahere interchange and offramp from SH1, generally between SH21 (Airport Road) and Tamahere Drive. Tamahere Drive forms the site's eastern boundary. Directly adjoining the site are the following landholdings:

North: Existing TCC village (currently under construction).

The eastern side of Tamahere Drive (across the road from the village) is made up of a number of Lifestyle properties at 63, 67, 85 and 101 Tamahere Drive. Most well vegetated and screened from Tamahere Road with a backdrop of mature trees backing onto a gully system typical of the Tamahere area. Some of these sites have small pasture paddocks for limited farm animals. Beyond the Gully is a more typical rural look and feel adjoining the Waikato Expressway which is not visible from the site or Tamahere Road.

The southern boundary of the southern extension adjoins three properties. 25 and 47B Pencarrow Road are both larger lifestyle blocks (being 4.6 – 9.5ha in size) containing dwellings and various other accessory buildings that form a low ratio of built form to open

space. 98 Tamahere Drive is a smaller lifestyle block (being 1.7ha) that contains an existing dwelling. On my site visit, I found the look and feel to the south of the site to be dominated by rural characteristics. The sites are generally divided into paddocks with greater stocking rates and low built form to open space ratios.

West: Three rural residential sized properties of approximately 1.5ha, 2.4ha and 1.9ha in area, all containing existing dwellings and associated residential accessory buildings and all obtaining access directly off SH21/Airport Road. Whilst of a size that could accommodate small scale lifestyle/rural activities the sites are a mix of fully mown landscaped residential use and rural/residential use with paddocks and a limited number of farm animals.

My view is that the rural character of the area is understated in the AEE descriptors particularly when recognising GRUZ-P3 (PDP), and the Zoning. In my view the Planner and Landscape Architect descriptions both focus on describing the character and form to the north and to the west of Airport Road where the zone changes to Rural Lifestyle. Those areas I agree are more urbanised and eroded in terms of rural character traits.



**Figure 10:** Photo Taken looking beyond the Proposed new Southern Boundary to the South.



**Figure 11:** Photo Looking East towards Tamahere Drive from the boundary of the 82 and 92 Tamahere Road showing the edge of the proposed new Southern Boundary.

### **1.4.3 Proposed District Plan Appeals Version (PDPAV) Zoning and Background**

The PDPAV Zoning adopts the National Planning Standards, which has set the Zone Characteristics as follows:

*General Rural Zone - Areas used predominantly for primary production activities, including intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.*

As part of the recent Proposed District Plan a number of submissions sought to reclassify the Rural Lifestyle Zone that is within the vicinity of the site (to the west) to Low Density Residential or Large Lot Residential.

*Large lot residential zone: Areas used predominantly for residential activities and buildings such as detached houses on lots larger than those of the Low density residential and General residential zones, and where there are particular landscape characteristics, physical limitations or other constraints to more intensive development.*

*Low density residential zone: Areas used predominantly for residential activities and buildings consistent with a suburban scale and subdivision pattern, such as one to two storey houses with yards and landscaping, and other compatible activities.*

A number of submitters within the vicinity of the subject site also sought to reclassify their zoning from the proposed General Rural Zoning to Rural Lifestyle Zone.

*Rural lifestyle zone - Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur.*

The Commissioners concluded through the PDP Hearings process that Rural Lifestyle Zone was appropriate for the Tamahere area to the west of this site and denied the rezoning to residential sought by submitters.

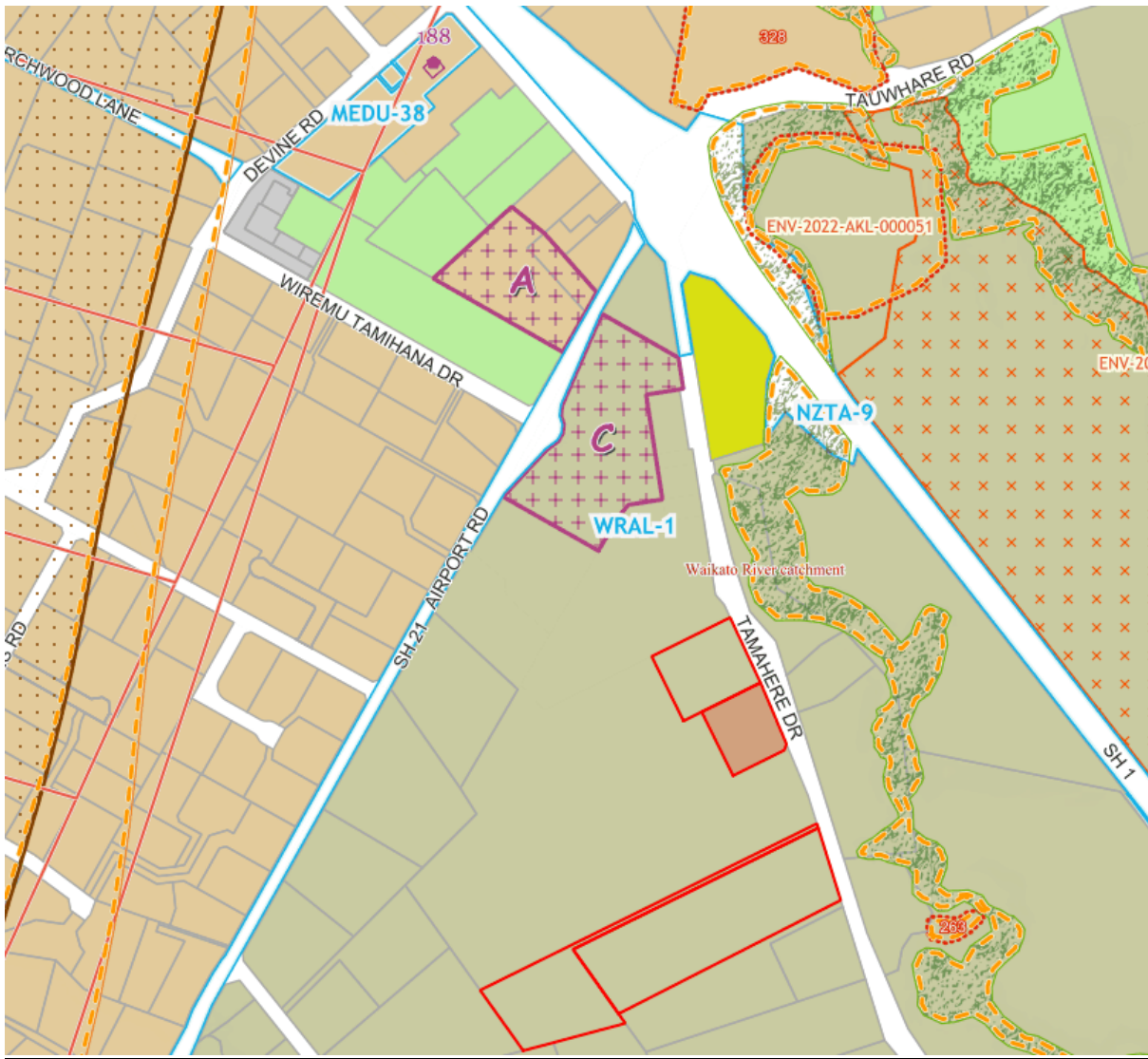
The Panel also found that it was most appropriate for the Pencarrow Road sites to remain as General Rural Zoning and that no further expansion of the Rural Lifestyle Zoning was necessary.

The Decision reports cite compliance with the Waikato Regional Policy Statement in relation to these matters and that to rezone the land would not meet the Growth Strategy.

The determination has been made through that District Plan process that the area is most appropriately kept as a rural environment.

One appeal was received on the zoning decisions in this area and the site to which the appeals relates is not located in the vicinity of this site.

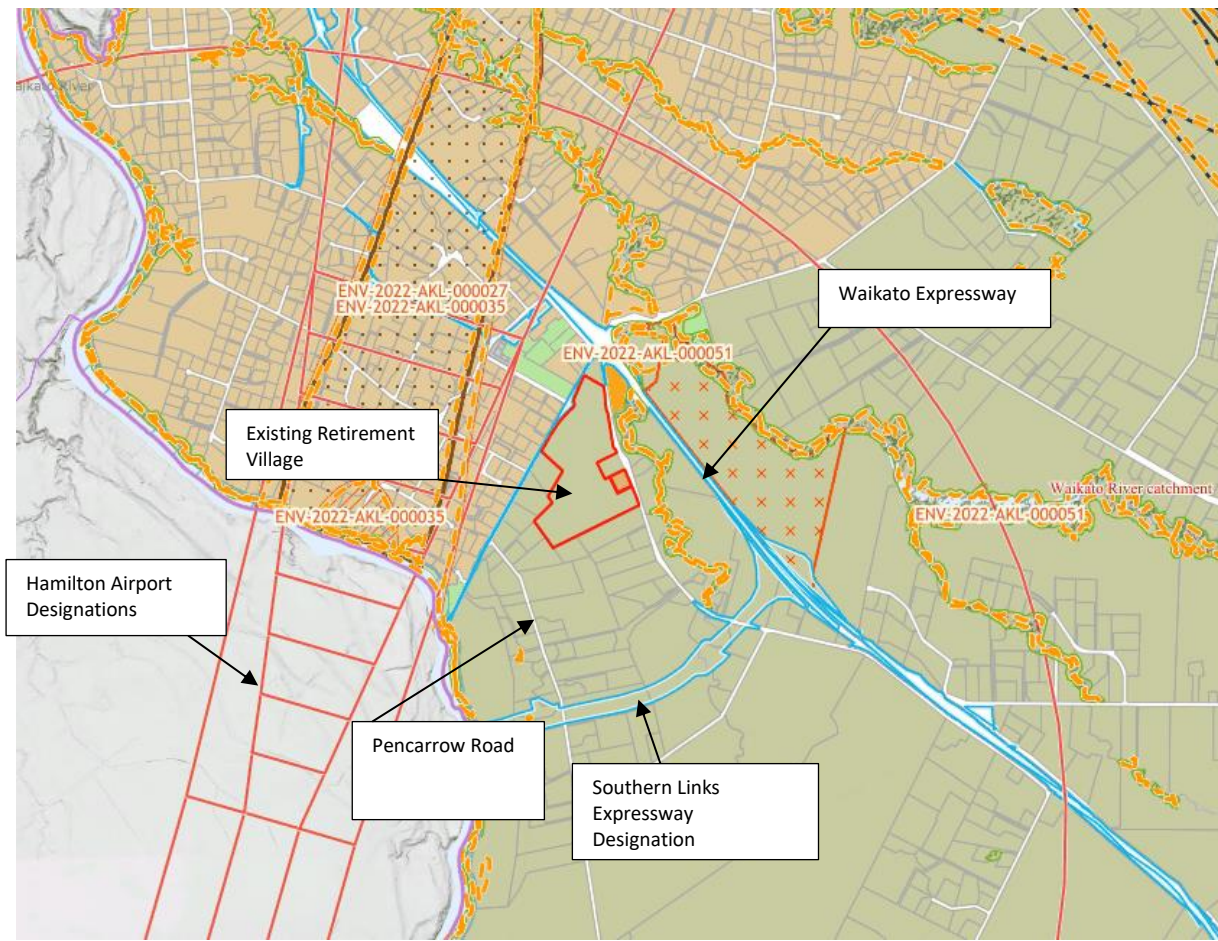
The figure below shows the subject sites in the context of the determined zoning:



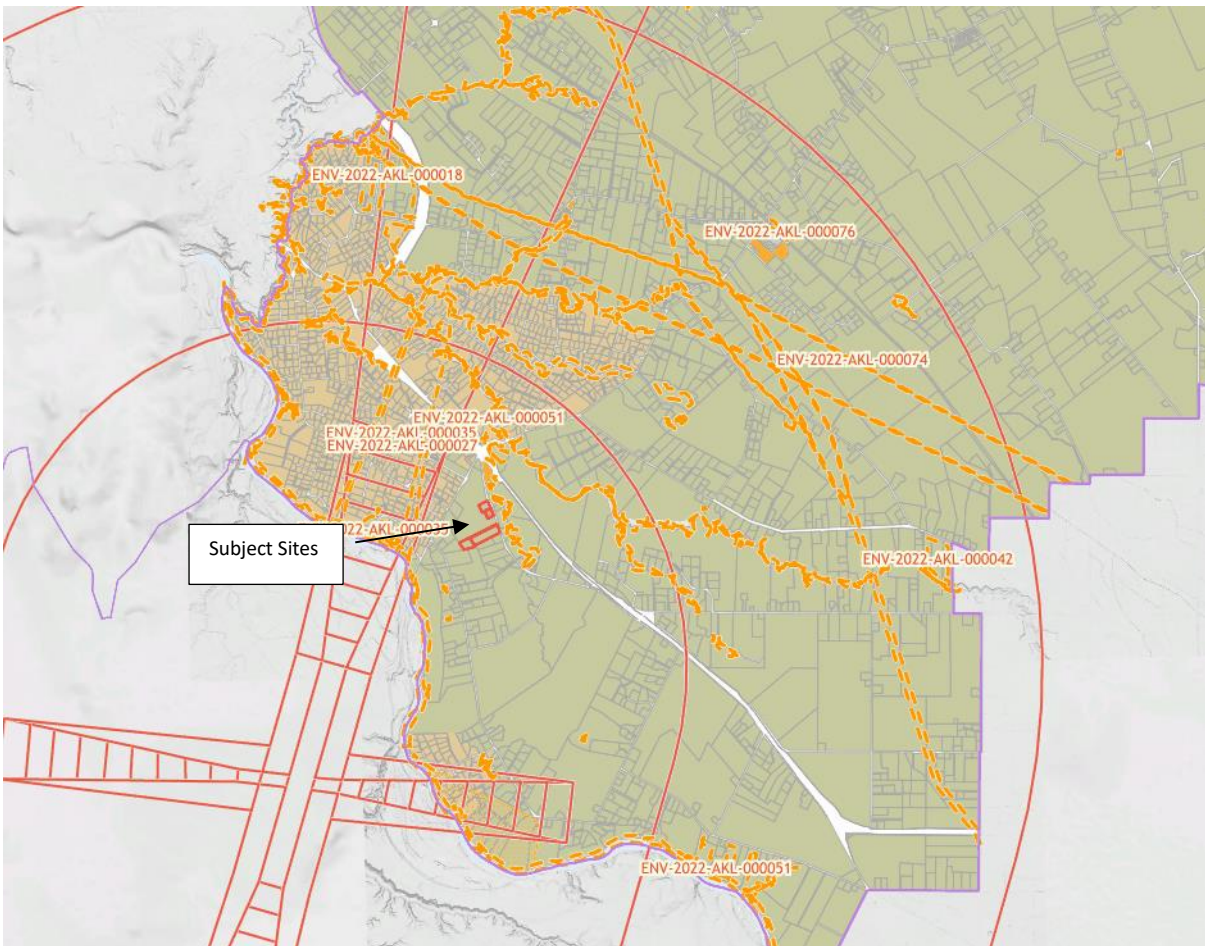
**Figure 12:** Immediate Surrounding Zoning: Rural Lifestyle Zone (Peach), General Rural Zone (Sage Green), Open Space Zone (Light Green), Settlement Zone (Yellowy Green), BTZ Business Tamahere Zone (Grey), Tamahere Commercial Overlays (Areas A and C).

Commercial Overlay A contains Regal Haulage Trucking Firm and Commercial Overlay C contains the existing Retirement Village.





**Figure 13:** Surrounding Context. Rural Lifestyle Zone (Peach), General Rural Zone (Sage Green), Grey areas are the District Boarder with Waipa District and Hamilton City.



**Figure 14:** Wider context and patterns of land fragmentation.

## 1.5 Legal Interests on the Records of Title

The following relevant interests are registered on the Record of Title which can be found within the application documents (Appendix A) and are summarised on Page 10 of the Applicant AEE Table 4.1.

Of note are the following:

Lot 1 DPS80372 comprised in Record of Title SA64C/250

Consent Notice B513181.3 dated 22/5/1998

This requires that no buildings are to be erected within area A identified on the LT plan and was established as part of a subdivision to create a rural residential site in 1998.

This consent notice would restrict the proposal from proceeding and the applicant has included an application to cancel this consent notice as part of the proposal. It is noted that there is an existing building constructed within area A. However, this building pre dates the Consent Notice and is shown on the 1995 ariels as follows:



**Figure 15:** Historical Aerial of Existing Shed

When consent was sought retrospectively for the transport depot on this site the application noted the following:

*“Copies of the consent notice and building line restriction are provided in Attachment B and C to this application. Both documents impose legal restrictions on the construction of building on the property.*

*The restrictions relate to Tamahere Drive’s former designation as a State Highway Number 1 and prevention of any buildings being constructed within the designation area. The only building within the restricted areas is the existing shed on the site which houses the RLBG office. It is understood (per comms with the applicant) that this shed was*

*constructed in the 1970s, well before the imposition of the restrictions and therefore it is exempt from the consent notices” (Application to Establish a Transport Depot, LUC0303/18.)*

Lot 1 DP535970 comprised in Record of Title 565970 - 1.71ha

Consent Notice 12223856.3

This Consent Notice requires any building consent application to adhere to specific reporting unless an approved alternative is provided. The applicant has provided alternative reporting and can therefore comply with this consent notice.

The Building Restriction Lines are historical restrictions from when the road operated as State Highway 1. Removal of these can be undertaken if necessary, via application via Councils Legal processes. However, it is unlikely that will be required as the applicant proposes to comply with the front yard setbacks in a General Rural Zone which are further back than the Building Line Restriction.

## **2.0 NOTIFICATION AND SUBMISSIONS RECEIVED**

### **2.1 Notification Decision**

The application was publicly notified on the 22<sup>nd</sup> January 2024 at the applicants request. The Notification Decision can be found in **APPENDIX C**.

### **2.2 Submissions Received**

One Submission has been received and can be found in **APPENDIX D**.

<b>Submission Number</b>	<b>Name</b>	<b>Address</b>	<b>For/Against</b>	<b>To Be Heard</b>
1	Mark and Debby Smith	28 Summerfield Lane Tamahere	Against	Yes

The submitters property address is located within the wider Tamahere area and is not within the immediate surroundings of the subject site.

### **2.3 Summary of Submission**

- Traffic and Transportation Matters
- Queuing at entrances
- Extension of the Building Coverage and number of dwellings are inappropriate for the Rural Zone.
- The proposal conflicts with the Rural Zone and policies of the plan.
- The proposal is on high quality soils and productive uses are possible on the sites, which historically operated as orchards.
- The ongoing construction effects and the need for additional measures to manage construction effects, if consent is granted.

### **2.4 Relief Sought**

- The submitters ask to decline all four applications in full.

The submitter confirmed via the Consents Administrator – Jessica Thomas, that their submission relates to both the eastern and southern extension and therefore is in relation to all applications.

### **2.5 Late Submissions**

No Late Submissions were received.

### **2.6 Trade Competition Matters**

There are no submissions that raise trade competition matters relevant to this proposal.

### **3.0 TECHNICAL REPORTS AND EXPERT EVIDENCE**

As part of my evaluation, I have engaged various technical experts to review the applicant's application and advise me on aspects of the proposal in relation to Contaminated Land, Land Development Engineering, Traffic Engineering and Highly Productive Land matters under the NPSHPL. The Technical Reports from each expert can be found in **Appendix E** and can be taken as briefs of evidence.

#### **3.1 Traffic**

Isa Ravenscroft – Senior Transportation Engineer and Mr Vinish Prakash Transportation Engineer from Grey Matter were engaged by Waikato District Council to review the Integrated Transportation Assessment submitted with the Application and prepared by Stantec.

There is general agreement between experts in relation to the findings on traffic and transportation engineering matters with a small number of additional minor recommendations made by Grey Matter of which I consider appropriate to include by way of consent condition (should consent be granted). Ms Ravenscroft and Mr Prakash also provided an additional memo having regard to the transportation matters raised in submission.

#### **3.2 Productive Capacity/High Class Soil**

Mr Stuart Ford a Director at AgriBusiness Group has undertaken, at Councils request, a review of the Ag First Assessment submitted within the application to address the NPSHPL matters.

As part of this review Mr Ford requested clarification on one matter within the Ag First assessment. An email clarification on these matters was provided by Mr Jeremy Hunt of Ag First on the 12 February 2024 contained as Further Information in **Appendix B**.

Mr Fords review finds that he is generally in agreement with Mr Hunts assessment of the NPSHPL 3.10 tests. However, in summary he makes the following conclusions:

*"I think that the report could benefit from the following points in order for the Waikato District Council to accept its conclusions:*

- 1. A tidying up of its presentation so that the factors to be considered are all in the appropriate section.*
- 2. A concentration on the highest and best land use rather than the current land use.*
- 3. A more detailed analysis and description of the benefits of the subdivision and the costs of the loss of HPL and a conclusion as to the result of that exercise”*

Mr Ford is based in the South Island therefore will be available for the hearing via video conference should the commissioner wish to discuss matters relating to the findings relating to the NPSHPL.

### **3.3 Land Development Engineering**

Mr James Templeton – Senior Land Development Engineer for Waikato District Council has reviewed the proposal and engineering reports. Mr Templeton sought clarification of a number of technical matters resulting in the updating of the Infrastructure Report provided by the applicant.

There is agreement between the applicant’s experts and Mr Templeton in relation to Earthworks, Construction Matters, Geotechnical, Stormwater, Wastewater and Water Supply. Mr Templeton also supports the findings in relation to Traffic Engineering.

### **3.4 Contaminated Land**

Mr Alan Parkes Councils inhouse Contaminated Land Specialist has reviewed the matters relating to the NESCS application. Mr Parkes has raised a number of points of clarification with the applicant's Contaminated land expert and there is now agreement that consents are necessary for both the eastern and southern extensions under the NESCS as 70 Tamahere Drive was also previously used as an Orchard like 92 Tamahere Drive was.

There appears to be agreement between experts in this space.

## **4.0 OPERATIVE AND PROPOSED DISTRICT PLAN STATUS**

The Proposed District Plan Decisions Version was released in January 2022 with the Appeals Version released in April 2022 once the appeal period was closed. Both the Operative District Plan April 2012 and the Proposed District Plan Appeals Version 2022 have legal effect. A section 86F analysis has been undertaken against the rule triggers for this proposal to determine whether any of the PDP rules can be treated as Operative and this can be found in **Appendix F**.

### **4.1 Rules**

In this case the PDP rules relevant to this proposal all have outstanding appeals against them and therefore none of the rules of the PDP can be treated as Operative under Section 86F.

As per the RMA provisions and *Bayley vs Manakau City Council* Court of Appeal Decision, consent is required for both the eastern and southern extensions under both the ODP and the PDP.

### **4.2 Zoning**

Zoning within the PDP is to be treated as a rule. The PDP Zoning of all four sites is General Rural has no appeals and therefore the General Rural Zoning for the sites under the PDP is beyond challenge and can be treated as an operative zone.

I consider it worth noting for the Commissioner, that there are no other outstanding appeals on the zoning in the area and therefore the PDP Rural Lifestyle Zone to the west of the site and the General Rural Zoning beyond the site will remain as is set out in the PDP Appeals version maps on resolution of appeals.

### **4.3 Weighting when Two Plans have Legal Effect**

*Hanton v Auckland City Council* [1994] NZRMA 289, sets out that the weight given to the Proposed Plan depends upon what stage it has reached in the First Schedule process. The



general premise is that the further along the First Schedule process the greater weight is given to the PDP.

The leading court authority *Keystone Ridge Ltd v Auckland City Council* (HC Auckland, AP24/01, 3 April 2001) sets out further considerations to this: including that greater weight may be given to a PDP which represents a significant shift in council policy provided the new provisions better given effect to Part 2 of the Act, whether there is a possible injustice.

In recent years *Mapara Preservation Society Inc. v Taupo District Council* (A083-07) further refines the principles of consideration to weighting, in that case those principles are more relevant to when a PDP is the early stages of Schedule 1 and are defined as follows:

- Represents a significant shift in Council policy (clear and deliberate change); or
- Introduces policy provisions to fill a vacuum or absence of policy in the District Plan; and
- Is more likely to accord with Part 2.

It is noted however that in *Todd v QLDC* [2020] NZEnvC 205 the courts were guided by both the *Keystone* and *Mapara* principles even though the Decisions had been made on the PDP for QLDC approximately two years prior (similar to the circumstances in this case). The matters considered in weighting were:

1. *The extent of the intended policy shift and its implications.*
2. *The extent to which that policy shift is at large in appeals.*
3. *The rights and interests of parties.*

Taking the above caselaw into account there is an array of factors considered when weighting, and it is not merely the length of time that passes from decisions of the PDP that determines weighing of the ODP vs the PDP as described in the early dates of *Hanton*. Taking all of the above case considerations into account I make the following assessments on weighting that I hope will be of assistance to the Commissioner.

#### **4.3.1 Timing of PDP Decisions**

In this case the Proposed District Plan Decisions were released over 2 years ago in January 2022 and have had legal effect for over two years. Consent Orders from resolution of appeals are now regularly being released. The applications in this instance were first lodged in September 2023, and relodged in two separate consent applications for the southern and eastern in November 2023.

#### **4.3.2 Policy Shifts in the PDP**

The Proposed District Plan Decisions seek to significantly restrict urban and rural residential growth within the General Rural Zones and direct growth to urban areas, in order to develop a compact urban form, as required by the NPSUD, Strategic Directives and to protect high quality soils.

This is reflected in the more directive policy framework, and more restrictive rules and activity status' for non-rural activities introduced into the PDP than those which exist within the ODP. Minimum lot sizes for the ability to subdivide off rural lifestyle lots have been doubled in size from 20ha to 40ha.

The size of lots needed to establish additional dwellings on a site has also been doubled from 20ha to 40ha. The activity status for additional dwellings moving from Discretionary for additional dwellings on 20ha, to Non-Complying for additional dwellings on 40ha. The PDP introduces a new separate definition for retirement villages, and does not list this as an activity within the rural zone, where as previously Retirement Villages fell under the general definition of Residential Activities in the ODP. The ODP Policies have very limited number of directive Objectives and Policies within the Plan, with most growth strategy policies being non directive, and no specific Rural Zone Objectives and Policies. Whereas the PDP introduces a specific policy framework for the General Rural Zone that are directive in wording, and Non-Complying activity status' for Non Rural Land Use.

The Policy framework to manage urban and rural residential growth currently exist in the ODP within Chapter 1A, and therefore whilst the policy framework managing growth under the PDP is not new, the significant tightening of the framework and the introduction of General Rural Zone specific Policies represents the filling of a vacuum to better give effect to Part 2 and the NPSUD. On the basis of the above I do consider that

the intent and extent of the policy changes is significant enough to be considered a shift in policy.

It is worth noting that there has also been a shift in policy within the Urban Zones for Retirement Villages in particular. Under the ODP, Discretionary Consent is needed for a Retirement Village in the Living Zone, however under the PDP, Retirement Villages are Permitted in both the GRZ and the MRZ. Policy directives provide for and enable Retirement Villages in the General Residential Zone, although the same policies have not been transferred over to the MRZ or MRZ 2.

I also consider that the general premise of the PDP seeking a relaxation of rules and densities in urban zones and restricting rural residential and urban growth in Rural Zone better gives effect to the national policy shift within the NPSUD. The PDP was issued only a short time after the NPSUD came into effect, some of the decision making on the PDP takes into account the NPSUD, with further variations required to give full effect to the NPSUD (eg Variation 3), and now that the RPS Change 1 has been changed, more variations to the PDP to give full effect may be necessary.

From a wider perspective this tightening of the policy framework, in my view, is more in accordance with Part 2 than the ODP provisions.

#### **4.3.3 Appeals against the Provisions of the PDP**

I have reviewed the appeals in relation to rules relevant to this proposal and find that the appeals are either generally against the entire General Rural Zone Chapter and specify nothing in particular that is relevant to this application. Or the specifics of the appeals relate to other parts of the rule not relevant to this proposal.

There are two rules that trigger the non-complying activity status' for these applications that I have focussed on here:

*GRUZ- S1; Number of Residential Units within a Lot* – The general appeals against this standard are against the chapter as a whole with no specific mentions on this rule or topic. Specific appeals relate to the lot size allowed for additional dwellings to establish, with an appeal by Federated Farmers 00051 seeking to reduce the required 40ha lot size for an

additional dwelling to 20ha (in line with the ODP), and one specific appeal from Horticulture NZ seeking changes to the seasonal farm worker provisions, which is not relevant to this proposals circumstance.

*GRUZ-R61; Any activity not specifically listed is a Non-Complying Activity* is the Rule that captures Retirement Villages in the GRUZ: This rule has two blanket wide appeals against it with no specific mention within these appeals of scope that would seek to include Retirement Villages into an anticipated activity within the General Rural Zone. One more specific appeal against the rule relates to certain mining areas in the GRUZ and seeks an overlay in relation to mining areas. This, I find, is not particularly relevant for the subject sites.

Appeals in relation to the Earthworks rules are from the Department of Conservation and these relate to Kauri Dieback matters which are not relevant for the proposals before us.

Appeals on the Objectives and Policies of the Plan are made up of mostly Chapter wide blanket appeals.

The blanket appeals generally relate to the tightening of the frameworks undertaken by Council to further restrict the amount of non-rural growth occurring within the General Rural Zone and protect high class soils.

With the NPS now in effect for both the NPSUD, and the NPS HPL, and also taking into account New Change 1 of the RPS. (The status and appeals of which can be found in [Section 6.5.3](#)). I consider that realistically tightening of the rural zone framework or the introduction of zone specific policies are unlikely to be significantly rolled back to the more lenient ODP framework.

#### **4.3.4 Rights and Interests of Parties**

In terms of the rights and interests of the Parties I can see no such matters for injustice that would warrant favouring the ODP for weighting in the Commissioners decision making. This application was not lodged prior to the decisions on the PDP or caught between a changing framework with little warning to no warning - as can sometimes be the case. The applicant's Planner has acknowledged in their application that weighting

towards the PDP is more appropriate than weighting towards the ODP and comes to the same conclusions that I have done above.

#### 4.3.5 Conclusion on Weighting

On the basis of all of the above matters and considerations, I recommend to the Commissioner that it is appropriate to weight in favour of the PDP. In the interests of efficiency and following the weighting first approach in *Todd*. I have undertaken only a full s104 analysis of the PDP for these applications. Whilst recognising via the *Bayley* Court of Appeal case and 86F of the RMA that consent is necessary and required under both the ODP and the PDP.

### 5.0 REASONS FOR CONSENT

An assessment of this proposal against all relevant rules and legislation has been undertaken.

#### 5.1 Proposed District Plan Appeals Version

##### LUC0188/24 – Eastern

Rule #	Rule Name	Status of Activity	Treated Operative (Y/N)	Comment
GRUZ – S1	Number of Residential Units within a lot	NC	N  Appeals 000049 000043 000078 000086 000047 000055	The extension sites will have 25 residential units when 1 is permitted on a lot up to 40ha.  The proposal does not comply with GRUZ-S1(1)(a).

			000051	
GRUZ – S9	Building Coverage	RDIS	N  Appeals 000049 000043 000078 000086 000047 000055	29.2% for the eastern extension when 2% is required.
GRUZ – R61	Any activity not specifically listed	NC	N  Appeals 000049 000078 000086 000047	A retirement village is not specifically listed.
TRPT-R4	Traffic Generation	PER	N  Appeals 000086 and 000087	The trip generation is 358 movements in total across the two extension areas when the rule allows 200 vehicle movements.  The eastern extension produces a total of 130 daily movements and therefore complies in isolation.
EW - R21	Earthworks General	RDIS	N  Appeal 000078	The proposal exceeds the standards for earthworks in relation to the area, location, volume.

				<p>Earthworks proposed for the eastern extension area are 600m<sup>3</sup> of cut and 39,900m<sup>3</sup> of fill, no bunds are proposed in the eastern section and therefore there is no infringement of depth of fill standard.</p> <p>Earthworks are proposed within 1.5m of the property boundaries.</p>
EW-R22	Earthworks General Cleanfilling	RDIS	N Appeal 000078	The amount of cleanfill proposed to be brought to site exceeds the permitted volume of 500m <sup>3</sup> . The material is proposed to be located within 1.5m from the boundary. Infringing the rule.

As outlined in the assessment above, the Eastern Extension application is a **Non-Complying** Activity under the Proposed District Plan – Appeals Version, being the highest status indicated by the above rules and Council’s discretion is not restricted to any matters.

**LUC0189/24- Southern**

Rule #	Rule Name	Status of Activity	Deemed Operative (Y/N)	Comment
GRUZ – S1	Number of Residential Units within	NC	N Appeals -	The extension sites will have more than one residential unit on a Record of Title less than 40ha. The

	a lot		000049 000043 000078 000086 000047 000055 000051	proposal will have 42 residential units in the Southern area.  The proposal does not comply with GRUZ-S1(1)(a).
GRUZ – S9	Building Coverage	RDIS	N  000049 000043 000078 000086 000047 000055	Southern Extension is 19% when 2% is required
GRUZ – R61	Any activity not specifically listed	NC	N  Appeals 000049 000078 000086 000047	A retirement village is not specifically listed.
TRPT-R4	Traffic Generation	RDIS	N  Appeals 000086 and 000087	The trip generation is 358 movements in total across the two extension areas when the rule allows 200 vehicle movements.  The existing southern extension produces a total of 218 daily movements and therefore does not



				comply on its own.
EW - R21	Earthworks General	RDIS	N Appeal 000078	<p>The proposal exceeds the standards for earthworks in relation to the area, location, volume and depth of fill.</p> <p>Earthworks proposed are 3600m<sup>3</sup> of cut and 50,000m<sup>3</sup> of fill with a bund shown at 3.2m in height.</p> <p>Earthworks are proposed up to the property boundaries and are therefore within the 1.5m setback required by the rules.</p> <p>Works have already been undertaken within 82 Tamahere Drive including construction of the 3.2m high bund, retrospective consent is, therefore, sought for this work.</p>
EW- R22	Earthworks General Cleanfilling	RDIS	N Appeal 000078	<p>The rule allows cleanfill to have a maximum volume of 500m<sup>3</sup> and 1m in height and cannot be located with 1.5 from the boundary as a permitted activity. The proposal infringes the volume, height and location standards for cleanfill.</p>

In relation to boundary setbacks, I have not included infringements of any internal setbacks between the record of titles held separately by the applicant. This is because the titles will meet the definition of one site under the PDP being:

*(b) An area of land which comprises two or more adjoining legally defined allotments in such a way that the allotments cannot be dealt with separately without the prior consent of the Council;*

Whilst not currently held together, dwellings are located across the boundaries of the lots which will require the titles to be held together via the building consent process. Conditions of consent (should consent be granted) can also require the extensions to be operated in conjunction with the other existing consents, meaning to be dealt with separately would require a variation to the consents (and therefore prior consent of the Council).

Overall, the Proposed Southern Extension is a Non-Complying activity under the PDP.

## **5.2 Operative Waikato District Plan**

The Waikato District Plan: Waikato Section was made operative on 5<sup>th</sup> April 2013.

An assessment of the proposal's compliance with the relevant rules of the Operative District Plan has been completed by the Agent and submitted as part of the Application (refer to section 6.1 of the application). I generally concur with this assessment and note the differences below:

The applicant considers in section 6.1 of the application that the Residential Activity is a permitted activity under 21.10 and that the health spa and arts and craft facility are ancillary to the retirement village. Ms Drew notes:

*"This approach is consistent with how the club house and other communal facilities have been assessed in the previous TCC consenting."*

However, it is noted that there was a difference of interpretation taken in the processing of past consents with the Reporting Planner for Council considering that under the ODP, the lake house and club house were best defined as Commercial Activities (which include

Community Activities), as they were not providing “necessary” support for the retirement village they were not considered by the Planner to meet the definition of ancillary activity.

The supporting activities were processed in the previous extension consent LUC0597/21 as separate Commercial Activities to the Residential Activities proposed. In this case I agree with the previous Council processing officer and my view is that the health spa and art and craft facility are Commercial Activities under the ODP definition. It is also noted that whilst the rule provides for Residential Activities as a permitted activity this is caveated that they must comply with the effects and building rules. In this case as more than 1 dwelling is permitted on the site the ODP does not provide for this type of Residential Activity as a permitted activity.

In summary, the proposal triggers consent (unless no longer deemed operative) under the following rules:

**Eastern Extension LUC0188/24**

<b>Rule #</b>	<b>Rule Name</b>	<b>Status of Activity</b>	<b>Still Operative* (Y/N)</b>	<b>Comment</b>
25.10	Type of Activity	Discretionary	Y	<p>Whilst the Retirement Village is a Residential Activity, it is not provided for as all effects and building rules cannot be met (e.g. number of dwellings).</p> <p>The arts and crafts facility is a Commercial Activity as discussed above and is therefore Discretionary.</p>
25.15	Access, vehicle	Restricted	Y	The proposal does not

	entrance, parking loading and maneuvering	Discretionary		comply with the rules for additional vehicle movements under A14.A
25.25	Earthworks	Discretionary	Y	The volumes and area of earthworks do not comply.
25.46	Number of Dwellings	Discretionary	Y	There are 25 dwellings in the eastern area one dwelling is allowed as a permitted activity for sites under 40ha.
25.51	Building Coverage	Discretionary	Y	Eastern Extension is proposed to be 29.2% building coverage when 2% is the permitted standard.

As outlined in the assessment above, the Eastern extension application is a **Discretionary Activity** under the Operative District Plan, being the highest status indicated by the above rules and Council's discretion is not restricted to any matters.

#### **Southern Extension LUC0189/24**

<b>Rule #</b>	<b>Rule Name</b>	<b>Status of Activity</b>	<b>Still Operative* (Y/N)</b>	<b>Comment</b>
25.10	Type of Activity	Discretionary	Y	Whilst the Retirement Village is a Residential Activity, it is not provided for, as all effects and building rules cannot be met (e.g. number of dwellings).

				The health spa facility is a Commercial Activity as discussed above and is therefore Discretionary.
25.15	Access, vehicle entrance, parking loading and maneuvering	Restricted Discretionary	Y	The proposal does not comply with the rules for additional vehicle movements under A14.A
25.16	Vehicle Movements	Discretionary	Y	The proposal will, as discussed in the PDP assessment (which has the same vehicle movement trigger) result in an infringement for the southern section
25.25	Earthworks	Discretionary	Y	The volumes and area of earthworks do not comply.
25.30	Contaminated Land	Controlled	Y there is no equivalent rule in the PDP as the NES now deals with this	The DSI identifies a controlled activity is necessary and therefore does not meet this rule
25.46	Number of Dwellings	Discretionary	Y	There are 42 in the southern extension (2 in the variation)
25.51	Building Coverage	Discretionary	Y	Southern Extension is proposed to be 19% building coverage when 2% is the permitted standard.
25.52	Non	Discretionary	Y	Only the southern extension

	Residential Building			(LUC0189/24) requires consent under this rule as the health spa is over 500m <sup>2</sup> .
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As outlined in the assessment above, the Southern extension application is a **Discretionary Activity** under the Operative District Plan, being the highest status indicated by the above rules and Council's discretion is not restricted to any matters.

### 5.3 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (NESCS)

*The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (NES) lists removing or replacing a fuel storage system, sampling soil, soil disturbance, subdivision, or changing use as activities to which the NES applies where an activity that can be found on the Ministry for the Environment Hazardous Activities and Industries List (HAIL) has occurred.*

The applicant has provided a Detailed Site Investigation (DSI) report prepared by HD Geo. The DSI reveals that 92 Tamahere Drive is identified as a A10 HAIL activity, (associated with the persistent use of pesticides across the historic orchards/market garden). The levels of contamination are such that the proposal is a **Controlled Activity** under the NESCS for southern extension works (LUC0189/24). The Contaminated Land Specialist for Council Mr Parkes also confirmed that a **Controlled Activity** consent was necessary within the Eastern extension area for the site at 70 Tamahere Drive, that was not originally identified in the application (LUC0188/24).

#### **5.4 Variation to Conditions – Section 127 of the RMA**

The variation (LUC0597/21.04) seeks to establish two additional dwellings and change condition 1 of the application as set out in the proposal section. This is a **Discretionary Activity**. I am comfortable that the proposal to include two additional villas is within the scope of consideration as a variation and not a new consent. The villas are located within the existing footprint of the consented retirement village and the proposal does not change the nature of the activities or increase the scale of the activities on site significantly beyond what has already been provided for within the existing consent.

#### **5.5 Cancellation of Consent Notice – Section 221 of the RMA**

The cancellation of the consent notice VAR0002/24 is only necessary provided the eastern extension is successful. As an innominate activity a **Discretionary Activity** status is adopted.

#### **5.6 Bundling of the Applications**

For administration purposes and to ensure holistic consideration of the proposal in line with best practice resource management, all applications will be processed, reported on and heard together, however at decision stage the eastern and southern Land Use Consents can be unbundled and decided on differently if considered necessary by the commissioner. This is because the two extension areas (southern and eastern) are not inextricably linked to each other and have been applied for under separate Land Use Consent applications. Where I consider the applications share the same assessments, I have noted this.

My view is that the section 127 Variation to Conditions is inextricably linked to the Southern extension, the villas cross the existing property boundary into the southern extension, if the southern extension is granted the variation “to fill the gap” makes practical sense as this space becomes internalised, however if the southern extension is not granted then the granting of an application over the boundary of the lot and within

such close proximity of the boundary would not, from my understanding of the application, be pursued by the applicant, who would instead seek to retain the existing buffer of landscaping and open space between the existing village and 82 Tamahere Drive.

The Cancellation of consent notice under section 221 is inextricably linked to the Eastern extension and is only sought to allow for the eastern extension to progress. If the Eastern extension is not granted, then the necessity for the cancellation also falls away.

The consents under the NESCS are for Controlled activities is necessary for both the Eastern and Southern Extension areas (for change of use and soil disturbance). Typically, Controlled Activities are not bundled with other applications. In this case the NES consents have been bundled and are within the same consenting numbers as each extension area as Waikato District Council tend to bundle these with the Land Use Consent applications under the Plan. Given the necessity of these consents will fall away if the consents are not granted for the eastern and/or southern extension, I consider in this case bundling can occur and the consent can adopt the more restrictive non complying activity status' associated with the Land Use Consent.

## **5.7 Overall Activity Status'**

In summary the following consent applications and Activity Status' apply to each of the areas:

Eastern Extension LUC0188/24

ODP – Discretionary

PDP – Non-Complying

Bundled with:

Cancellation of Consent Notice s221 – Discretionary

NES Contaminated Land – Controlled

Overall, on bundling of the applications: **Non-Complying**



Southern Extension LUC0189/24

ODP – Discretionary

PDP – Non-Complying

Bundled with:

Change or Cancellation of Consent Condition s127 – Discretionary

NES Contaminated Land – Controlled

Overall on Bundling of the Applications: **Non-Complying.**

## **6.0 SECTION 104 ASSESSMENT – PROPOSED DISTRICT PLAN APPEALS VERSION**

### **6.1 Interpretations/Definitions**

The following Definitions under the PDP may be relevant to the Commissioner in considering the application and are referred to here for ease of reference:

Under the PDP the plan states: *Where the defined word is an activity, unless otherwise stated in the rules, the activity includes the building the activity occurs within and any ancillary activities that are integral to the day-to-day operation of the defined term.*

**Additions:** *Means an extension to a structure or building which increases its size, height and volume, including the construction of new floors, walls, ceilings and roofs.*

**Alterations:** *Means any change to the fabric or characteristics of a building and includes the removal and replacement of external walls, windows, ceilings, floors or roofs. It does not include maintenance and repair as defined.*

**Functional need** *Means the need for a proposal or activity to traverse, locate or operate*

*in a particular environment because the activity can only occur in that environment.*

**High class soils** *Means those soils in Land Use Capability Classes I and II (excluding peat soils) and soils in Land Use Capability Class IIIe1 and IIIe5, classified as Allophanic Soils, using the New Zealand Soil Classification.*

**Primary production** *Means:*

*(a) Any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and*

*(b) Includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a);*

*(c) Includes any land and buildings used for the production of the commodities from a) and used for the initial processing of the commodities in b); but*

*(d) Excludes further processing of those commodities into a different product.*

**Farming** *Means:*

*(a) Any agricultural, pastoral, horticultural, aquacultural, or apicultural activity having as its primary purpose the production of any livestock, fish, poultry, or crop using the in-situ soil, water and air as the medium for production;.....*

*(b) Processing, as an ancillary activity of farm produce grown on the same site, such as cutting, cleaning, grading, chilling, freezing, packaging and storage;*

*(c) Any land and buildings used for the production of commodities from (a) and used for the initial processing of commodities in (b) and includes greenhouses, indoor hydroponics, pack houses and coolstores;*

*(d) Loading areas for helicopters and airstrips for top dressing and spraying the same site; and*

*(e) On-farm agricultural and horticultural research activities;*

*It excludes:*

*(f) Intensive farming; or*

*(g) Further processing of those commodities from (a) into a different product.*

**Residential activity** *Means the use of land and building(s) for people's living accommodation.*

**Residential unit** Means a building(s) or part of a building that is used for a residential activity exclusively by one household, and must include sleeping, cooking, bathing and toilet facilities.

**Retirement village** Means a managed comprehensive residential complex or facilities used to provide residential accommodation for people who are retired and any spouses or partners of such people. It may also include any of the following for residents within the complex: recreation, leisure, supported residential care, welfare and medical facilities (inclusive of hospital care) and other non-residential activities.

**Ancillary activity:** Means an activity that supports and is subsidiary to a primary activity.

## **6.2 RULES PERMITTED BY THE PROPOSED DISTRICT PLAN**

Pursuant to s104(2), when forming an opinion for the purposes of s104(1)(a) a council may disregard an adverse effect of the activity on the environment if the plan or a NES permits an activity with that effect (i.e. a council may consider the “permitted baseline”).

Section 104(2) states that “*When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*”

Application of the permitted baseline is a matter of discretion for the consent authority. If it is applied, permitted effects cannot then be taken into account when assessing the effects of a particular resource consent application on a person. The baseline has been defined by case law as being non-fanciful (credible) activities that could be permitted as of right by the District Plan.

As the focus of the permitted baseline test is on the *effects* of permitted activities, it is necessary to first identify credible permitted activities in the Rural Zone and then assess whether any of the permitted effects are comparable to the effects of the proposal.

In this case I do not consider that it is appropriate to apply the permitted baseline in relation to the retirement village activities sought. The application seeks to establish a residential activity in the form a retirement village which is not comparable in terms of effects to any permitted activity under the GRUZ.

In terms of the earthworks proposed it is noted that under rule EW-21, 2000m<sup>2</sup> of earthworks can be undertaken on a site within a 12 month period and further to this EW-R19 allows a permitted activity earthworks to form a building platform without an area limitation.

#### Eastern Extension

When considering the size of the northern most subject site. My view is that there is potential that permitted earthworks could be undertaken as a means to relevel the site for ancillary residential curtilage on this site. (Such as for the establishment of a tennis court, pool and releveling to allow for mowing and garden.) Such earthworks on this site whilst not likely to equate to the same areas and volumes as the proposal, are in my view comparable in terms of effects - particularly regarding loss of soil resource.

#### Southern Extension

I do not consider that the proposals earthworks in terms of area and volume are comparable with non-fanciful permitted earthworks activities that are likely to occur within the southern extension sites. The works in the southern extension area are of a much larger scale. This matter becomes relevant when considering effects on soil resource latter in my reporting.

Pursuant to s104(3)(a), when forming an opinion for the purposes of s104(1)(a) under the Proposed District Plan, a council must not have regard to any effect on a person who has given written approval to the proposal, nor any trade competition or effects of trade competition. There are no matters of trade competition that appear relevant.

The following persons have provided written approval and all effects on these persons disregarded:



**Figure 16:** Written Persons approval received from properties 1 to 7 and property 9.

**Table 1:** Written Approvals Received.

Map ref	Owner	Address	Legal Description	Owner and Occupier
1	Karin and Lyndon McFetridge	63 Tamahere Drive	Lot 1 DP 390217	Yes
2	Katherine Jones & Bryce Kendrick	67 Tamahere Drive	Lot 2 DP 390217	Yes

3	Peter Stockley & Stephen Williams	85 Tamahere Drive	Lot 3 DP 390217	Yes
4	Liu Wenjing	101 Tamahere Drive	Lot 1 DPS 88069	Owner, no dwelling
5	Brendon & Helen Russo	104 Tamahere Drive	Lot 2 DP 407103	Yes
6	Simon Henshaw	98 Tamahere Drive	Lot 1 DP 407103	Yes
7	Pacific Tiger Ltd	47B Pencarrow Road	Lot 2 DP 347835	Yes
9	Paul and Donna White	21 Pencarrow Road	Lot 3 DP 330380	Yes

All effects in relation to the above persons have been disregarded.

### 6.3 EXISTING ENVIRONMENT

The Court of Appeal in *Hawthorn* has held that the 'environment' upon which the effects are to be assessed is the existing and the reasonably foreseeable future environment (that is, the future state of the environment as it might be modified by permitted activities under the District Plan and unimplemented resource consents, where it appears likely that these consents will be implemented).

#### 6.3.1 Receiving Environment

The existing retirement village activities have been described in the site description and this accurately sets out the existing environment. The sites and surrounds are zoned General Rural, and the zoning is beyond challenge in the PDP. The surrounding area is not identified in any growth strategy or within the RPS as being a future urban growth area. As discussed previously, the PDP has been subject to a policy shift to restrict the amount of non-residential activities and rural residential growth that is provided for in the General Rural Zone. Therefore, in my opinion there is unlikely to be significant

changes to the existing environment character as modified by both permitted activities or by further fragmentation by subdivision.

### **6.3.2 Unimplemented Consents**

I have reviewed the Council IntraMap system (GIS) and I am unaware of any unimplemented consents on the subject site or in the surrounding environment. It is noted that the Designation for “Southern Links” is located south of the site and construction of this road has been recently named as a road of national significance. This will have the effect of creating somewhat of a spatial triangle of land within the boundaries of the Expressway, Southern Links and the Waikato River and includes the site. This can be seen in [Figure 13](#) above.

## **6.4 ASSESSMENT OF EFFECTS ON THE ENVIRONMENT– S104(1)(a)**

The effects have been assessed in the context of the rule infringements identified under the PDP and take account of the existing environment.

### **6.4.1 Positive Effects**

Section 3 of the RMA defines the meaning of effects to include positive effects and it is entirely appropriate to consider whether a proposal creates positive effects on the environment (which includes people and communities). Positive effects that result from a proposal can be balanced against any adverse effects and may outweigh such adverse effects and enable a conclusion to be made for a proposal to be approved.

Ms Drew sets out her assessment of Positive effects in section 7.10 page 55 of her AEE. These apply to both the eastern and southern extension. I have copied here for ease of reference.

- *Employment and servicing opportunities during the construction and operation phase of the retirement village. At present, there are over 200 people engaged in*

*construction activities on the site. This will include using Sanderson's Waikato based construction team, local contractors and suppliers, and future opportunities for local contractors with maintenance and villa refurbishment in the future.*

- *The transition of elderly from general housing to the TCC village that will open up further housing supply for the balance of the population to help with fulfilling housing supply shortages.*
- *The expansion of the retirement village will result in a positive social contribution to the Tamahere community that the TCC village has already established. The extension will also tap into the existing amenities that the existing TCC village provides.*
- *Five conflict points with the Te Awa cycleway will be closed, therefore improving the safety of the users of that infrastructure.*
- *The proposed planting, particularly the native screen planting, will improve the biodiversity and habitat characteristics of the site through the addition of new planting.*
- *The extensions will not require connections to Council's reticulation, being independently serviced and managed, which means there are no additional infrastructure costs to Council.*

I accept and agree with the positive effects noted by the applicant.

#### **6.4.2 Visual Effects and Landscape Character**

The applicant has provided a Landscape and Visual Effects Assessment (LVA) by Julia Wick from Boffa Miskell issued 11 August 2023. This has been completed as an addendum to the previous LVA undertaken by Jo Soanes under the previously consented retirement village and covers both extension areas. I have included the original LVA in Appendix B.

The LVA Addendum concludes:

*The proposal consists of two extensions to the existing TCC encompassing four sites along the existing TCC boundary: 82 and 92 Tamahere Road to the south, and 56 and 70 Tamahere Road to the east. This comprises a total area of approximately 7.15ha. The*



*proposed retirement village extensions have been carefully designed in response to their context and provide internal amenity, an appropriate outlook for the surrounding rural interfaces, and a suitable design response fronting Tamahere Drive. Overall, there will be very low / low adverse effects resulting from the proposed extensions.*

*The proposed extensions will have low (adverse) effects on the physical aspects of the landscape. With some positive effects due to the proposed planting. In considering the change in landscape character, although the proposed extensions will represent a change from a more open rural context to a more intensive built form, the spatial layout of the development, together with the proposed high amenity landscape and design of the buildings ensure that both extensions will appear as a natural continuation of the TCC. The proposed extensions are well connected to the wider TCC development and tie into the existing pattern of development in the area.*

*In visual terms, from the public perspective of adjacent roads, the proposed extensions will have minimal impact. Any visual effects on identified private viewing audiences have been assessed as up to low (adverse), likely reducing to very low.*

*In summary, the proposed extensions will read as a logical addition to the TCC development at Tamahere and propose a similar landscape character to what is currently existing. The design has responded well to the aspects of the site that contribute to the amenity and character of the area, including architectural form and rural interfaces.*

The Landscape Architect adopts the methodologies of Te Tangi a Te Manu in coming to their conclusions. This is an accepted methodology in relation to assessment of landscape and visual effects.

In the context of the Proposed District Plan and the General Rural Zone, the Plan addresses Landscape Character in a number of chapters. Natural Character chapter NATC - focusses specifically on specifically on identified spatial overlays of High or Outstanding Natural Character. Whilst the NFL - Natural Features and Landscapes focusses on Outstanding Natural Features. None of these Landscape overlays apply to the site and therefore it is only the Rural Zone chapter and the way in which the PDP concerns itself

with Landscape Character in the rural zone that provides guidance for assessing and determining Landscape Character effects.

Within the Rural Zone Chapter, the Plan focusses Landscape Character specifically on Rural Character.

In relation to Visual Effects, these are one sensory input of how rural character and amenity is experienced. The addendum states in relation to Visual Effects:

*“Although the extension is of a greater density than what currently exists on site, the proposed design, architectural treatment and carefully considered landscape interface of trees, hedges and rural style fencing, the buildings will appear as a suitable residential scale.”*

I am concerned that the LVA conclusions, do not place sufficient regard to the context of the zoning provisions and the policies of the Rural Zone in coming to the conclusions reached. The District Plan seeks to maintain rural character and amenity, with open and spacious rural character achieved by a density of one dwelling per site up to 40ha in size. If one were to consider the Landscape and Visual Effects without the context of the District Plan provisions I can appreciate and accept the conclusions reached in the LVA, however when considering these effects through the lens of the District Plan Provisions in regard to both the zoning of the site and the policies, I find that is where there is a difference in opinion reached between myself and Ms Soanes and Ms Drew, particularly in relation to the Southern Extension area, where I also consider the rural characteristic of the southern surrounding environment understated in the assessments.

I have met with Ms Soanes and Ms Drew and we discussed the District Plan focus on Rural Character, I sought clarification to ensure that despite the difference of terminology that we were talking about the same things. Ms Soanes confirmed Landscape Character undertaken within the LVA includes within it the umbrella of Rural Character and Urban Character.

With the District Plan context focusing on the more specific Rural Character for this zone rather than the wider umbrella of Landscape Character I have for the purposes of this assessment focused on Rural Character.

### Eastern Extension

The application seeks to fill in two sections to the east which are currently surrounded by the consented retirement village. One of these sections has two dwellings and operates a commercial activity with a large shed on the site (Red Bins). The characteristics of the site are in my view more urban in nature than rural due to the activities legally established within the site. I do not consider that the occupation of this site by the proposal will have an adverse effect on Rural Character or Amenity given the low rural character values and high ratio of built form to natural form, existing on the site. The adverse effects on rural character and amenity (including visual effects) on this site will be no more than minor. The second site in the proposed eastern extension is occupied by one rural residential sized house and has defined fenced small scale paddocks mature trees with sheep occupying the paddocks. This site does contain rural characteristics in my view, however the site is surrounded to the north and west by the retirement village complex which is urban in characteristics and to the south by the Red Bins activity which is commercial/non rural in nature. The surrounding urban and commercial use isolate the rural character of this site, so that it is an anomaly within the immediate environment. A transition on this site from rural character to urban character will add to the cumulative loss of rural characteristics in the area. However, the loss is of a small nature, and due to the surrounding environment, the loss of rural character will be minor.

Overall, when taking into account: The existing site surrounds; the proposed densities within the site; the loss of rural character; and the context of the District Plan provisions. I consider that the eastern extension will have a minor effect on rural character and amenity effects but not more than minor.

### Southern Extension

In relation to Landscape Character, I consider that there are additional planning considerations in this space.

The LVA assesses the surrounding character as being made up of rural lifestyle and large lot residential. My view is that the large lot residential characteristics dominate the landscape further north and to the northwest within the rural lifestyle zoned areas. The

subject sites in the southern extension and the surrounding environment to the south are currently dominated by rural, and rural lifestyle character. Both of which make up rural character. This is recognised in GRUZ- P3 that states:

*Recognise that rural character and amenity values vary across the zone as a result of the natural and physical resources present and the scale and extent of land use activities.*

The adjoining rural land beyond the subject sites to the south, whilst in relatively small sized land holdings for the General Rural Zone, do in my view represent a rural environment with rural character and rural landscapes. The adjoining sites to the south of the proposal are characterised by low built form to open space ratio, pasture, rural wire fencing, and stock grazing. The subject site was, prior to the establishment of the unconsented depot a small rural residentially sized greenfield site and in my view would be categorised as rural in character rather than urban in character.

When a Landscape Architect assesses the landscape character and visual effects the methodology framework considers that a change in landscape is not in itself an effect, instead it is whether when a landscape changes, whether that change can be absorbed by the environment.

When assessing the proposal and its effects on character within the context of the Planning provisions, it is my view that a change in itself from one character to another can be an adverse effect in cases when the context of the plan sets out that a particular type of character eg (Rural Character) is to be maintained.

My view based on this, is that the subject sites cannot absorb the change because the character within the southern sites changes from Rural to Urban.

The materials, colour palette and high quality landscaping of the village represent in my view a high amenity urban environment and I agree that from a visual perspective the effects of extending the site will form a natural continuation of the existing village. However, the visual effects also need to consider the change from open spacious low built form to high built form in the context of what the District Plan seeks to achieve for the

site and zoning not just in reliance of the visual integration with the existing environment of consented village.

In the conclusions drawn above Ms Wicks in the addendum acknowledges the change in landscape character and change in visual effects from an open rural context to a more intensive built form. However, considers these changes to have low adverse effects on the physical aspects of character due to the mitigation proposed. Character however is made up of many more components to physical aspects and I am concerned cumulatively adding little by little as has been done through a series of applications to date, results in a cumulative incremental change from rural character to urban character.

The LV relies, in their conclusions, on the existing character of the previously consented activities to justify continuing to change the character of the area with each subsequent application.

*“In considering the change in landscape character, although the proposed extensions will represent a change from a more open rural context to a more intensive built form, the spatial layout of the development, together with the proposed high amenity landscape and design of the buildings ensure that both extensions will appear as a natural continuation of the TCC. The proposed extensions are well connected to the wider TCC development and tie into the existing pattern of development in the area.”*

By extending the urban character south into areas more dominated by rural characteristics, the proposal cumulatively expands on a transformation of character within the subject sites and surrounding area from rural to urban character. From a planning perspective this approach, in my view, is an example of planning creep and results in cumulative adverse effects to rural character.

With each expansion of the retirement village the ratio of a dominance of rural character reduces to alter the ratio of characteristics of the area to become more urban than rural. When you consider the existing village and combined filling in the gap along Tamahere Road via the Eastern extension, 750m approximately of Tamahere Road will have urbanised built form along the road frontage, acknowledging the buildings are set back to comply with the 12m rural zone road setback, the building coverage and number of

units urbanises the character. There is a strong signal from the PDP that cumulative effects of residential growth on rural character in the rural zone are at a tipping point when taking into consideration the change in activity status that has occurred in the PDP. The existing village was consented and assessed under the ODP as a Discretionary Activity whereas such activities are now Non-Complying in the PDP. (For both the Retirement Village Activity, and for Additional Dwellings in the General Rural Zone.)

I have considered whether the “horse has bolted” on Rural Character in relation to the Tamahere area and surrounding this site. I agree this concept could be reasonably applied in relation to the eastern proposal, however in my view there is sufficient rural character to the south and a well-defined edge between the two different characters that I do not agree that the Rural Characteristics in the South are so far eroded that it justifies adoption of further urbanisation to the South. Here, I also circle back to the findings of the Hearing Panel that considered the wider rezoning submissions for Tamahere wider area. The Panel concluded after hearing all the evidence that the Tamahere areas was appropriate as a rural environment and therefore rural zoning was found in favour of, both in terms of the Rural Lifestyle areas and the Rural Zoned areas around Pencarrow Road near the application sites, despite the sizes and characteristics of the lots and land uses existing. I agree the treatments, landscaping and buffers designed for the site will soften the development edges to integrate the development as much as possible into the environment, however this doesn’t mitigate the proliferation of urban character towards the south away from the more urbanised areas of Tamahere. The high-quality treatments cannot in themselves alter the character of the proposal back to a rural character rather than the urban character proposed.

In consideration of the above matters, I conclude that the effects of the southern extension on rural character are likely to be more than minor on the environment.

I have met with the applicants Planner and Landscape Architect to discuss my concerns in this space and acknowledge that my conclusions on this topic may alter on pre circulation of the applicant and landscape architecture evidence, or during the course of the hearing.

### **6.4.3 Settlement Patterns**

There is a strong signal from the PDP that cumulative adverse effects of residential growth in the rural zone are at a tipping point when taking into consideration the change in activity status that has occurred in the PDP. The zoning maps demonstrate the large amount of Land Fragmentation present between Hamilton and Cambridge.

#### Eastern Extension

The eastern extension represents a 12% increase in the number of residential units within the retirement village. In this case 25 additional residential units. To achieve the same amount of growth via the complying subdivision framework (that requires a 40ha minimum lot size to be able to create one additional lot from) would take some years to achieve, (due to the already fragmented land parcels in the area I would be surprised if there were enough 40ha sites that could achieve this at all). The proposal therefore is likely to contribute to a quickening of growth beyond that anticipated for the area. This in turn contributes to erosions of compact urban form that the plan seeks to achieve. I do consider the eastern extension borderline as a more than minor cumulative adverse effect on settlement patterns when considering how long and complex it would be to provide such growth to the area under the rules that anticipate and provide for additional residential growth in rural areas. However, I have concluded that the adverse effects on settlement patterns will be minor in relation to the eastern extension. In coming to this conclusion I have taken into account the scale of extension, combined with the specific sites that the application seeks to extend onto have merit for such an extension (due to already being surrounded by the existing activity), the fact that the extension will result in the removal of a commercial activity, two dwellings and a minor unit in exchange for the 25 units, and will integrate with the existing infrastructure for the village.

#### Southern Extension

The southern extension represents a 21% increase in the number of residential units within the retirement village in this case 42 additional units and introduces an additional health spa facility. I do not consider this increase to be inconsequential in terms of cumulative effects on planned settlement patterns and growth. Especially taking into account that to provide this same level of growth through the generally anticipated

framework would likely take years. Cumulative the two sections and the variation contribute 69 additional residential units with the combined total of the two sections representing a 33% increase to the existing villa numbers. There is a strong signal from the PDP that cumulative adverse effects of residential growth in the rural zone is at a tipping point when taking into consideration the change in activity status that has occurred in the PDP. The existing village was consented and assessed under the ODP as a Discretionary Activity whereas such activities are now Non-Complying in the PDP. (For both the Retirement Village Activity, and for Additional Dwellings in the Rural Zone.) The proposal in my view is an example of planning creep. It contributes to incremental erosion of compact urban form by directing unplanned additional growth into the rural fringes of the City.

#### **6.4.4 Soil Resource**

Class 1 and 2 land represent 5% of total NZ land areas. The district has a finite amount of high-class soils.

##### Extent of High Class Soils

The report confirms the following Land Use Capability for the sites (both eastern and southern):

*The site, according to the NZLRI LUC Map is on versatile soils and classified as LUC 1 and LUC 2 land. In theory this means that the site has potential for a range of agricultural and horticultural activities.*



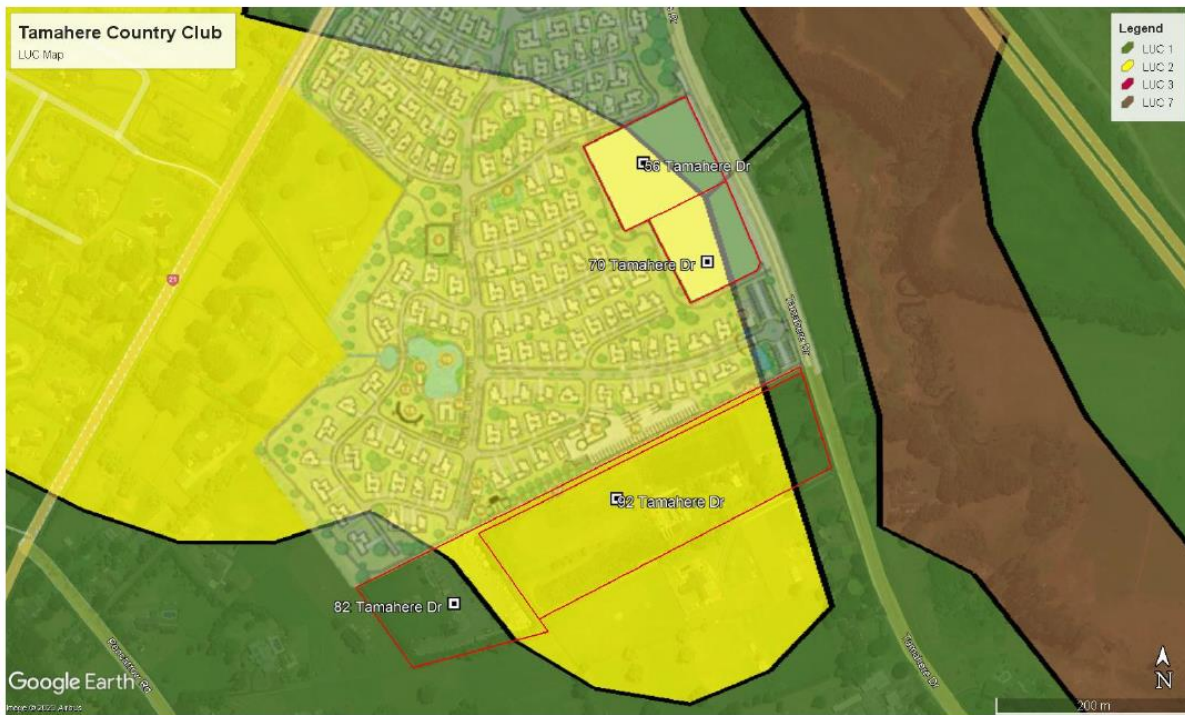
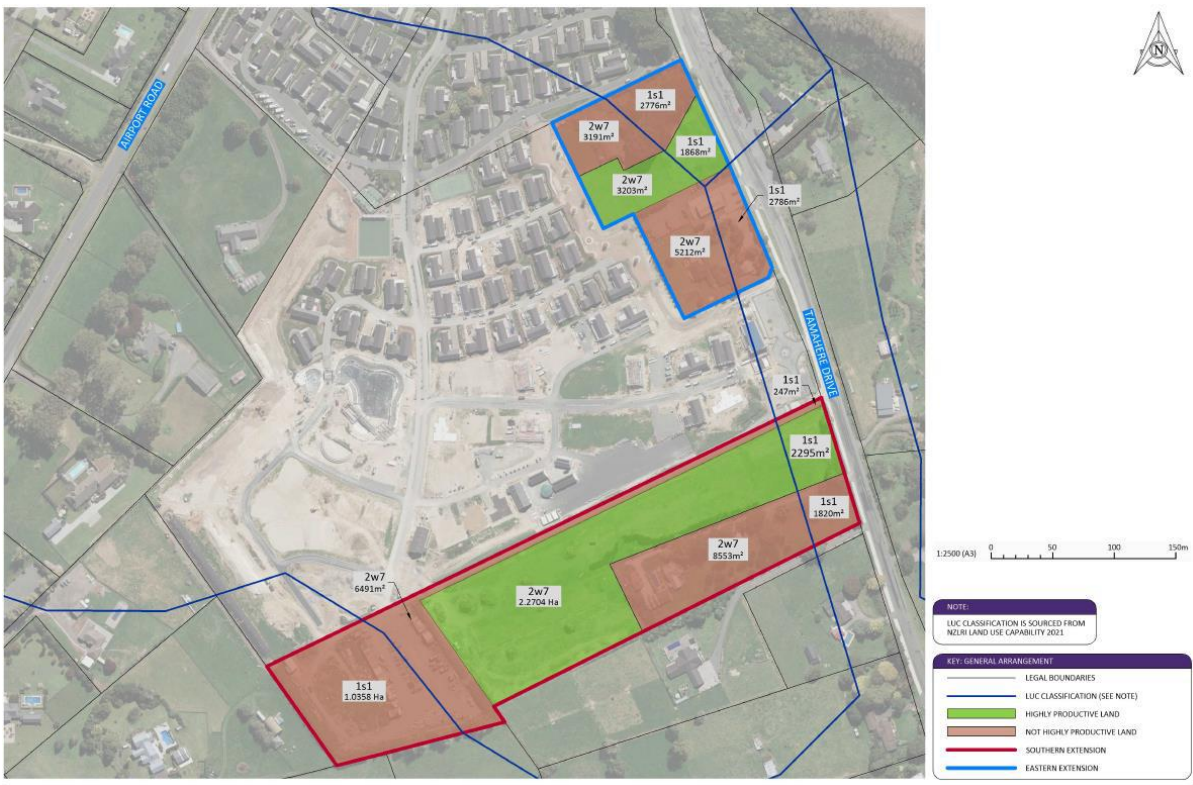


Figure 7: NZLRI land use classification for the Site

**Figure 17:** Map of location of High-Class soils relative to the site. (Source: AgFirst NPS-HPL Assessment, Nov 2023)

The areas in pink below are the areas of modification and/or curtilage associated with buildings, access and hard standings, with the green areas, those areas left for primary production.



**Figure 18:** Areas modified in Pink and those areas available for Production in Green.

Source: BBO

The Ag First report details the actual modification of the sites soils and notes that due to the existing land uses and extent of modification previously taken across the sites, only 3.01ha of the high-class soils would be available for primary production. (Shown in Green above).

This area excluded the 1ha site in southern extension proposal area in which formation of the unconsented depot has been constructed within.

Clarification was sought by Mr Ford in relation to the highly modified disturbance of land that forms the unconsented temporary construction depot and whether this soil could be remediated. Mr Hunt for the Applicant confirmed that remediation of the soil was possible however it would not be to a state that would enable primary productive activities.

*While there would be the opportunity to restore the soils back to a productive use, they have been modified and compacted to a state where this would be identified as a long-term constraint for land-based primary production.*

*To re-establish this area, it would require:*

- Deep ripping the areas to overcome the subsurface compaction caused by heavy machinery and office buildings*
- Reinstatement of soil profiles through the replacement of the subsoil and topsoil*
- Subsoils and topsoils are placed by truck and spread to the required thickness. The subsoil is left roughened prior to topsoil spreading.*
- Travel lanes are established on areas being rehabilitated to reduce the potential for soil compaction during placement*
- Lucerne or green manure crops are sown to increase organic matter levels in the topsoil and provide additional opportunities for weed control prior to sowing perennial pastures*
- Soil ameliorants and fertilisers will be applied as required*

*For a 1.7 ha property, such as 82 Tamahere Dr, with permitted entitlement for a house, ancillary buildings, ornamental gardens and curtilage, the above would not be considered likely nor within the definition of “reasonably practicable options to overcome the constraint on economic viability. This property is not a farm suitable for primary production, and is certainly not of a size that is economically viable, as detailed in my report.*

The purposes of these assessment and comments were for the NPSHPL evaluations, however, are useful for assistance in determining the effects of the proposal on soil resource and rural productive capacity. To clarify: both experts agree that there are long terms constraints on the land that mean establishing productive activities in relation to both the southern and eastern site are not economically viable.

I do wish to raise with the Commissioner, for their consideration, that in the context of the Objectives and Polices of PDP and the Regional Policy Statement as they are currently

written, Soil resource is also valued within these Plans *separate* to the productive potential of that soil.

Therefore, when assessing effects on soil resource in the context of the District Plan, I do not consider that the findings of the technical experts (that there is no economic viability for primary production on the land) is necessarily a justification for why it is acceptable to remove the soil resource across the areas of development sought in this case.

In this case the soil resource across the sites will be removed and replaced with a series of hard standings for infrastructure roads, car parks and residential units.

### Eastern Extension

It is recognised that in the eastern extension area the existing building and modification mean that it is approximately 5000m<sup>2</sup> of soil resource that will be lost and that some soil will be reestablished for landscaping of the curtilages surrounding the village residential units and its grounds. This I find, and when considering the permitted baseline discussed above around earthworks that can be undertaken as a permitted activity. I am of the opinion that effects on soil resource will be less than minor.

### Southern Extension

In relation to the Southern Extension the rural residential site of 1.7ha at 82 Tamahere Drive has been modified to remove the soils and establish the temporary construction depot for the current retirement village. This has been done so without the necessary earthworks consents or activity consent. As discussed above on questioning whether the soil on the site could be reestablished Mr Hunt confirmed it could.

These responses were focused on the assessments under the NPSHPL which has a strong focus on whether the soil on a site can be used for primary productive activities in an economically viable way. Both experts agree this to be the case, and I accept their opinions on both their findings.

However, when you take into consideration the additional context from the RPS and the PDP, that focus on protecting soil resource and its properties irrespective of productive potential and economic viability, I then come to a formed opinion that it is not appropriate to discount the entire loss of soil resource from 82 Tamahere Drive when it comes to assessing effects on soil resource.

The 1.7ha site could establish a permitted dwelling and curtilage etc that I consider would be reasonable to exclude from a soil resource loss calculation. The driveway being a long rear access leg can be reasonably excluded, giving the net site area of around 1.45ha.

Taking into account the characteristics of the area the building coverage standards and other similar examples of established permitted dwelling and curtilage on similar sized lots in the area, I am of the view that a permitted dwelling and curtilage on this site would taking up around 4000-6000m<sup>2</sup> of land area. I therefore consider it realistic that around 0.85ha to 1ha of soil resource should be included in the net figures for soil resource loss.

The other site at 92 Tamahere Drive in the southern extension area is 3.54ha. There is an existing dwelling and driveway on the site, and the Applicants Planner Kathryn Drew has in their calculations determined that 2.5ha of the site soils to be highly productive. With 1ha removed associated with the existing dwelling sheds driveway and curtilage. Whist I agree that as the driveway dissects the land to the south making it impractical to be used for productive purposes, the soil within this area has not been modified or disturbed by buildings or hard standings and is therefore unmodified class 1 and 2 soils.



**Figure 19:** The area of unmodified soil resource on the site.



**Figure 20:** Additional area containing soil resource that I consider unlikely to be modified.

Considering the 1.7ha site at 84 Tamahere Drive that has been modified without consent and the estimated 0.85 to 1ha of that site could have the soil resource reestablished. And the additional areas mentioned above at 92 Tamahere Drive, my view is that it is more accurate to suggest that unmodified Soil Resource lost within the Southern extension is in the order of 3.7-3.8ha.

The proposal by its nature, includes building coverage of 19% over the 2% allowed for by the zone. The density of the dwellings and associated infrastructure that supports the dwellings, eg paths, roading, carparks and water infrastructure means that the high-class soil resource will be destroyed across the sites.

I have, in transparency to the Commissioner, grappled with reaching a conclusion on whether (for the purposes of considering 104D) the loss of the extent of soil resource is a more than minor effect in regard to the Southern Section;

Firstly; because the value of soil is more often only discussed by linking it to its productive potential, rather than noting its intrinsic value separate from its productive potential. I

find with the introduction of the NPSHPL that focuses on production rather than and/or alongside intrinsic value has been fortified.

Secondly; I consider there to be some inconsistencies in the plan in relation to the rules and soil resource - There are a number of activities provided for within the General Rural Zone that as Restricted Discretionary Activities have no mention of soil class or the consideration of the value of soils. For example, Rural Industry activities, Intensive Farming, and Earthworks do not include soil resource in the matters for discretion. I find this to be somewhat contradictory to the policies in the PDP that seek protection of the soil resource irrespective of productive potential.

These policies being:

Strategic Directive SD-O8 states: *High quality soils are protected from urban development, except in areas identified for future growth in the District Plan.*

With GRUZ- O1 stating: Protect High class soils for farming activities.

And GRUZ – P1 stating: Ensure the adverse effects of activities do not compromise the physical, chemical and biological properties of high class soils.

In the context of the PDP, *farming activities* referenced do not have to be ones that are economically viable. They could merely be a hobby farm for the primary purposes of raising of a small number of animals and a garden for crops and trees that allows someone to be self-sufficient from the land. The reports for the NPSHPL assessments accept that such farming activities could be utilised on the sites and in light of the context of the plan. I have concluded that the adverse effects of removing approximately 3.7 to 3.8ha of high-class soil resource from the southern extension to be a minor effect on the environment but not more than minor when also taking into account the context of the rules for RDIS activities that do not mention soil resource in the matters for discretion.

#### **6.4.5 Productivity of Rural Land**

In terms of Primary Productive use, the Ag First reporting undertaken for the purposes of assessing the NPSHPL provides in my opinion sufficient information to draw conclusions in relation to the effects of productive potential of rural land. The assessment undertaken by Mr Hunt concludes that both the Eastern and Southern extensions have long term constraints that mean it will not be financially viable to establish any productive uses on the site that would be sustainable. The productive potential of the sites both eastern and southern are very limited. Mr Ford is in agreement with this conclusion.

I am satisfied overall that the proposal will not adversely affect the productive potential of rural land. The effects on loss of productive capacity of rural land are considered negligible and are therefore less than minor and acceptable.

#### **6.4.6 Construction and Earthworks**

These effects will generally be localised to the immediate environment, and it is noted that most parties have provided written approval to the proposal. These approvals have been provided after a number of years of construction works have already been underway. I therefore find it likely that neighbours are satisfied that construction effects are adequately managed in and around the site based on the large number of written approvals provided for the applications to extend the village. One directly adjoining neighbour has not provided approval or submitted and it is noted that this neighbour shares a small section of boundary with the southern proposal. I am satisfied that the construction effects can be managed via conditions of consent for a construction management plan.

The one matter I would raise in this space for the Commissioners attention is that it may be appropriate to explore within such a condition where the applicant intend to site their construction depot at the point in time that dwellings are necessary to be constructed within the existing depot at 82 Tamahere Drive. As we are aware, the establishment of the current construction depot on this site was done so outside of the land subject to the existing LUC and no consent has been obtained for this. Leading me to consider they perhaps had not considered this practicality at the time of obtaining the previous LUC. I



consider it would be helpful for the applicant to provide further thought and information prior to the hearing on how they intend to manage the construction depot going forward if consents are granted. If only the eastern extension is granted and the applicant wishes to keep the construction depot where it is located whilst construction within the existing village and eastern extension are completed, it may be necessary for a temporary land use consent to be obtained with requirement to rehabilitate the land and soil within 82 Tamahere Drive on completion of the village and disestablishment of the depot. At this stage no such application has been sought.

The submission received by Mr and Ms Smith raises concerns in relation to the construction activities on the road network. It is acknowledged that some disruption and long-term temporary effects associated with construction activities (5 to 7 years) will occur.

Mr Prakash has reviewed the proposal in terms of construction effects, and considers that when taking into account the existing network and traffic generation the construction traffic can be managed by way of a construction management plan condition. The Land Development Engineer Mr Templeton is in agreement with this.

Mr Templeton is satisfied that Earthworks can be appropriately managed through conditions of consent for a construction management plan.

*The current consents provide for 202 villas/townhouses and 80 care bed care facility. The consent currently being processed increases the villas by an additional 69 villas (25 for eastern/42 for southern and 2 within the existing footprint). Therefore, total of 271.*

*Terrain is generally flat in topography. No significant water courses are located within or proximity of the site. No slope stability concerns, or major retaining structures are proposed. Earthworks does not result in a change of overland paths or off-site effects.*

*Earthworks and dust management can be managed by way of a Construction Management Plan (CMP) as conditions of consent.*

In reliance of the comments provided by experts Mr Templeton and Mr Prakash in regard to construction earthworks and construction traffic, I am satisfied that conditions of

consent can manage these effects appropriately to ensure that earthworks and construction effects will be less than minor.

#### **6.4.7 Transportation and Traffic Safety**

The applicant has undertaken an ITA in support of the extension proposal and the additional traffic generation. Council Traffic Expert Mr Prakash from Grey Matter has reviewed the ITA and is in agreement with the findings of the ITA with the following additional recommendations:

*We agree that the additional traffic from the proposed expansion can be accommodated without changes to the vehicle crossings and transport network, and support the ITA's recommendations for consent conditions that require:*

- a) = A construction management plan (proposed contents detailed in ITA Section 10). We recommend at the consent condition be worded to require the CMP to be submitted to WDC for approval at least 20 working days prior to the start of construction.*
- b) = An additional seven cycle parking spaces. These should be located near the facilities provided.*
- c) In addition, we recommend minor amendments to the internal layout:*
- d) = Landscaping / planting near the intersections of footpaths and vehicle carriageways (see label D in Figure 3) be reviewed and amended to allow clear visibility.*
- e) = The intersection of footpaths and ROWs be as close to 90 degrees as practicable (not skewed).*
- f) = Kerb cutdowns be installed where the path crosses the ROW extensions.*

I consider the recommendations above would be appropriate to condition (should consent be granted by the Commissioner).

Further to the initial review, Mr Prakash has reviewed the Submitters concerns in relation to traffic matters and addressed each submission point in an additional addendum found in Appendix G. I accept the responses from Mr Prakash. In this case we have agreement from two traffic experts that the surrounding roading networks have capacity for the

additional traffic generation and there are no traffic safety matters of concern. On this basis and point in time, I am satisfied that the effects are less than minor and that findings are in favour of the technical experts in this space. Noting that my opinions may alter on hearing of submissions.

#### **6.4.8 Cultural Values**

A Cultural Values Assessment has been provided by Ngaati Hauaa whom hold mana whenua within the Tamahere area, it is noted that Waikato Tainui emailed on receipt of notice that they defer to Ngaati Hauaa who have status as mana whenua.

The Cultural Values Assessment undertaken by Ngaati Hauaa Iwi Trust provides the following recommendations:

##### *Hei Whakawhanake / Mitigation Considerations*

*It is important that this extension at Tamahere cannot be assessed separately from the past use of the whenua and future intended use of the land, and the cumulative effects of such activities on the infrastructure, landscape and whenua within the wider rohe (area).*

*Therefore, the focus is to create a pathway for restoring the mauri of the area via three key pou (posts) mitigation objectives in relation to the Tamahere area, namely:*

- I. Waahi Tāonga: the protection and enhancement of 'whakapapa' cultural connectivity and indigenous place-making, and sites of significance;*
- II. Ngā Koi Ora: the protection and enhancement of soil, biodiversity including freshwater, waterways, springs and wetlands;*
- III. Tūhonotanga: Partnerships*

**Recommendation 1:** *A cultural blessing is undertaken prior to earthworks or commencement of any remedial earthworks onsite.*

**Recommendation 2:** *Application of Accidental Discovery protocols where applicable.*

**Recommendation 3:** *Install interpretive signage throughout the extension of the Tamahere Country Club development that highlights the historical significance of the land, the cultural practices, traditions, and stories associated with the area.*

*Integrate public art installations and design elements that reflect the cultural heritage of the land. This could include sculptures, murals, or architectural features inspired by the cultural practices of the local community.*

*Incorporate green spaces and community gardens within the Tamahere Country Club extension. These areas can pay homage to the previous orchards and market gardens, allowing residents to engage in sustainable gardening practices while fostering a sense of community and connection to the land.*

**Recommendation 4:** *Kaitiaki monitors be called in where cultural hotspots are identified.*

**Recommendation 5:** *Use of local resources to achieve cut and fill balance on the land.*

**Recommendation 6:** *Incorporate native plant species in landscaping designs. Native plants that provide habitat and food sources for taonga species are preferred.*

**Recommendation 7:** *NHIT and Sandersons Ltd maintain a partnership approach towards cultural and environmental betterment within the project.*

*In conclusion, Ngāti Hauā Iwi Trust recognise that good faith discussion has taken place in response to extension of the Tamahere Country Club whilst we strengthen the bonds of unity, respect, and cultural enrichment within Tamahere.*

*This development should be a living testament to the profound impact that partnerships can have when they are rooted in shared values and a common goal of honouring our heritage within Tamahere area.*

In order to mitigate cultural effects as identified within the values assessment, the recommendations listed above 1-6 can be incorporated into conditions of consent should consent be granted. This will assist in achieving recommendation 7.

I am satisfied that cultural effects will be less than minor provided the recommendations are incorporated into conditions of consent. It is noted to the Commissioner that currently no commitment to adopt the recommendations above has been declared within the application. Currently the Landscaping Master Plan has not been updated to reflect the recommendations made above within the Southern and Eastern Extensions, although it is acknowledged that Recommendation 6 has been provided for within the Landscaping Plans dated July 2023 prepared by Boffa Miskell. I consider it would be appropriate for

conditions of consent to include updating of the landscaping plans to incorporate the recommendations.

## **6.4.9 Archaeological**

### Eastern Extension

I refer to the archaeological report submitted within Appendix J of the application documents.

This concludes the following:

*No archaeological deposits were found associated with Lot 1 DP 565970 (92 Tamahere Drive), Pt Lot 11 DP 9747 (82 Tamahere Drive), or Lot 1 DPS 80372 (70 Tamahere Drive), although in the last case this is subject to the caveat expressed above; that archaeological deposits may be present in the northern margins of the lot.*

*Archaeological deposits have been identified and recorded in the south-eastern part of Lot 1 DPS 59441 (56 Tamahere Drive) that are typical of the Waikato Horticultural Complex. As such these are protected by the provisions of the Heritage New Zealand Pouhere Taonga Act and may not be modified or destroyed without an authority from Heritage New Zealand.*

I accept the findings of the report and note the support for the proposal in relation to Cultural Values discussed above, provided recommendations are implemented.

Heritage New Zealand did not lodge a submission or comment on the application. No earthworks will be able to progress until such as time an archaeological authority has been obtained from Heritage New Zealand. I am satisfied that the effects on archaeological site can be managed by way of consent conditions should the application be granted by the Commissioner.

### Southern Extension

There are no archaeological sites identified within the southern section, however as recommended in the Cultural Values Assessment an accidental discovery protocol condition can be placed on the conditions.

#### **6.4.10 Wastewater**

Mr Templeton, Senior Land Development Engineer for Council comments as follows:

*Wastewater is reticulated and treated on-site as established in the original Tamahere Country Club stages. Wastewater discharge to ground (on-site) is by way of current Waikato Regional discharge consent.*

*The wastewater treatment plant has the potential to increase its capacity due to modular design and demand. The data in Table 1: "Wastewater Treatment Capacity Check" demonstrates that the actual demand at 45,000 l/day at current usage (155 units), can represent 50% of the anticipated total occupancy (271 units).*

*If the treatment plant has a design capacity of 130,000 l/day, then the treatment plant is currently underutilised to its actual design capacity. Modelling suggests the current treatment plant can accommodate the Southern and Eastern extensions with contingency.*

*Current arrangement has Primary treatment system indicated in **Green** and reserve area in **Orange**.*

*Kotare Consultants indicate that the extension to the south is possible. Spaces indicated in "Red and Blue" as possible areas of extension if required.*

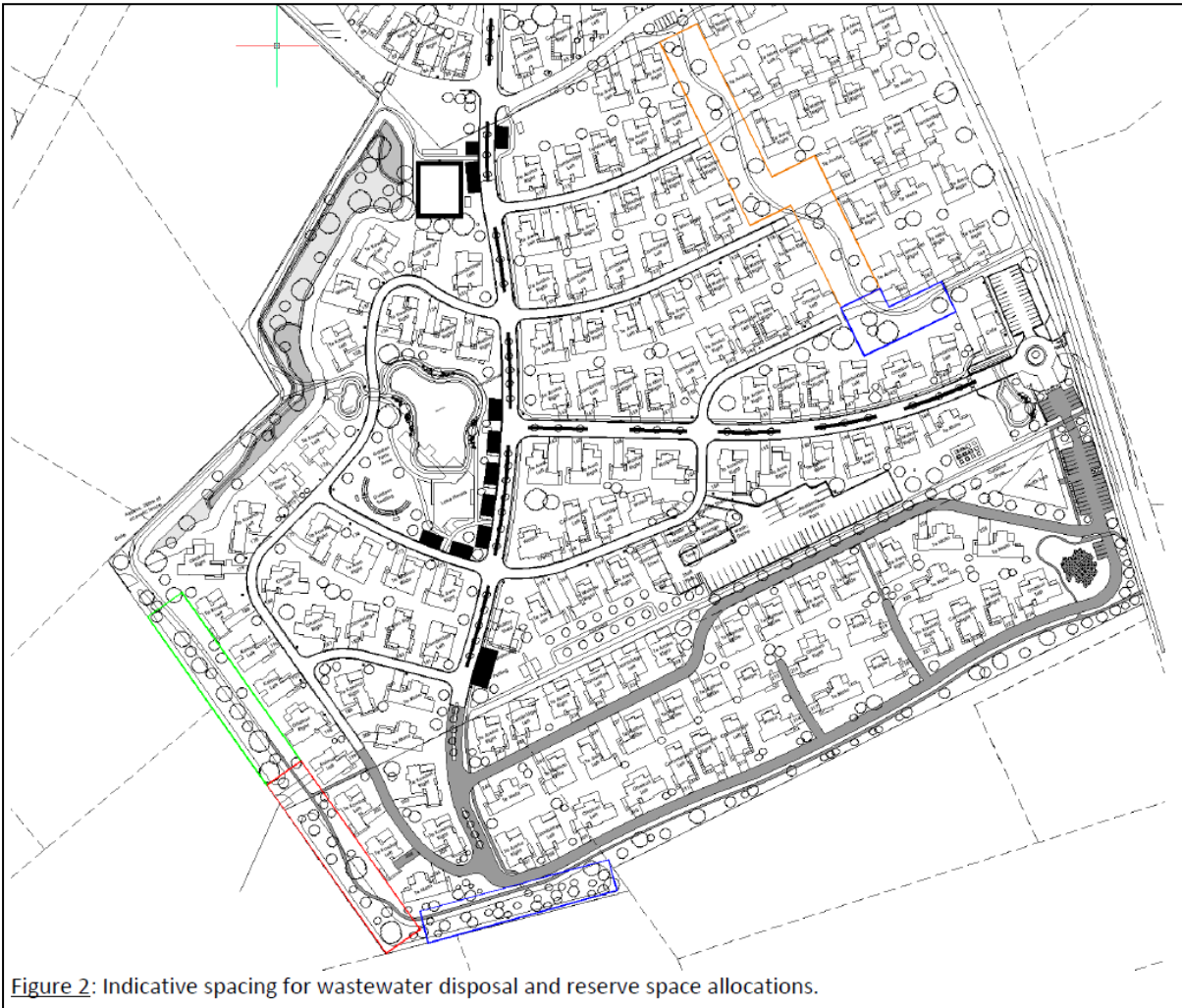


Figure 2: Indicative spacing for wastewater disposal and reserve space allocations.

**Figure 21:** Wastewater expansion areas.

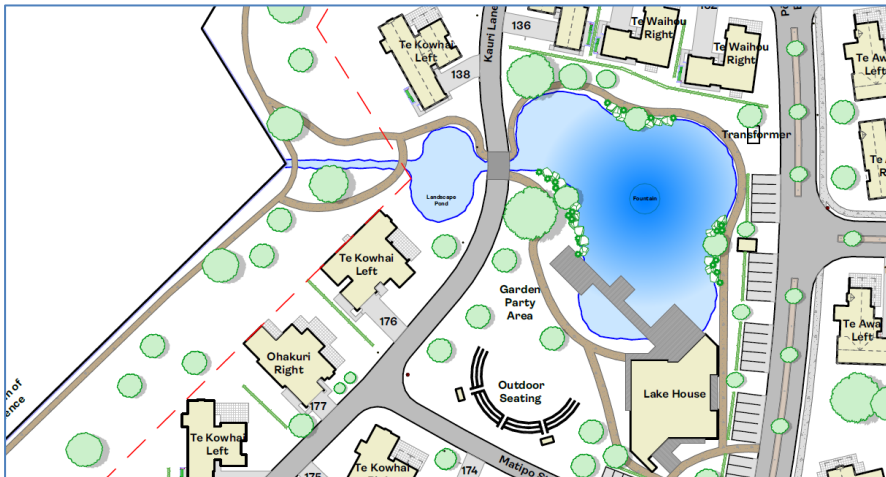
I note that the locations of the extension are located within a proposed bunded and landscaped area, the Land Development Engineer has confirmed there are no practicality conflicts between the wastewater disposal areas and the landscaping treatments proposed.

I accept the findings of Mr Templeton and conclude on that basis that the effects on wastewater will be less than minor.

**6.4.11 Stormwater**

Mr Templeton for Council makes the following comments in relation to Stormwater:  
*Stormwater collected on site (from internal road runoff, buildings, and hardstand areas) is drained to the soakage basin (attenuation pond) for treatment and soakage. Events*

larger than the 100 year will discharge via the western boundary farm drain (natural overland flow path).



**Figure 22:** Stormwater pond and flowpaths

*The Eastern and Southern areas will be attenuated to the 10 year rain event via underground modular soakage system. For rain events above the 10 year event, discharge will be conveyed to the soakage basin within the pipe network. Pipe grades and velocities have been checked to ensure minimum flow velocities are achieved.*

*Stormwater has been designed appropriately as per Waikato District Operational District Plan Engineering Standards Part 3, Appendix B5 “Stormwater” and Waikato Proposed District Plan Part 2, WWS-R1 “Stormwater systems for new development or Subdivision” for a suitable on-site solution. It is anticipated to have no offsite effects due to Stormwater design. Conditions for consent are applicable for Engineering Detailed Design approval, construction, and certification.*

On the basis of the above assessments and reliance on the comments from the Land Development Engineer, I am satisfied that the effects on Stormwater from both extension areas will be less than minor.

#### **6.4.12 Water Supply**

Mr Templeton concludes:

*“Water Supply has been designed appropriately as per Waikato District Operational District Plan Engineering Standards Part 3, Appendix B4, “Water” and Waikato Proposed District Plan Part 2, WWS-R10 “Water supply servicing for new development or*



*subdivision". Conditions for consent are applicable for Engineering Detailed Design approval, construction, and certification."*

On the basis of the above assessments and reliance on the comments from the Land Development Engineer, I am satisfied that the effects on water supply will be less than minor for both extension areas.

#### **6.4.13 Contaminated Land**

A DSI was provided with the application that identified 92 Tamahere Drive as a HAIL site and as such the NESCS does apply to the Southern Extension proposal (LUC0189/24). Since this time, it has also been identified that consent is likely necessary for 70 Tamahere Drive in the Eastern Extension. Both consents required are a Controlled Activity under the NESCS. In this case whilst Controlled Activities are typically processed separately, I have bundled this application with the Land Use Consent as the nature of the activities is inextricably linked. Without approval of the Land Use Consent there is no need for the NESCS consent. For practicality purposes, integrated management and monitoring I find it is appropriate, that if consent is granted the recommended conditions in relation to the NESCS matters are included into the land use consent conditions that manage earthworks.

Mr Parkes – Contaminated Land Specialist for Council has assessed the NES matters, and his report and recommended conditions is included in Appendix G.

Mr Parkes concludes:

*"Pieces of land are identified at 70 Tamahere Drive and 92 Tamahere Drive. Contaminant levels are above background levels but below the applicable standard determined under regulation 7 of the NESCS. The change of land use and soil disturbance activities proposed in these locations are therefore controlled activities under regulation 9 of the NESCS. No conditions are considered necessary for the change of use activity under regulation 9(3) as contaminant levels are below the adopted standard and the soils are suitable for reuse on the site. A site management plan is recommended under regulation 9(2) to appropriately manage the soil disturbance activity and any off-site disposal of soil."*

Conditions of consent are recommended for both applications and are found within Mr Parkes report. I accept and agree with Mr Parkes conclusions and his recommended conditions for each extension area which for ease of reference are included here as they relate to the Eastern Section, noting that only the reference to the site will change for the Southern:

1. *Prior to any soil disturbance works commencing at 70 Tamahere Drive (Lot 1 DPS 80372) the consent holder shall submit a site management plan (SMP) prepared by a suitably qualified and experienced practitioner in accordance with the current edition of the Ministry for Environment Contaminated Land Management Guidelines No.1 – Reporting on Contaminated Sites in New Zealand. The plan shall detail the procedures, controls and contingency measures that must be implemented for the duration of the works in order to protect human health from identified soil contaminants by ensuring exposure pathways are minimized for the duration of the soil disturbance works and shall include, but not be limited to:*
  - (a) *Erosion and sediment controls*
  - (b) *Unexpected contamination discovery protocols*
  - (c) *Transport and disposal of any material transported off-site.*
2. *Soil disturbance works shall be undertaken in accordance with the approved SMP. The procedures, controls and contingency measures outlined in the Plan must be implemented for the duration of the soil disturbance works to ensure minimal adverse effects on human health and the environment.*
3. *All material removed from the site in the course of the soil disturbance works shall be disposed to a suitably licensed facility authorised for receipt of material of that kind.*
4. *Within two months of soil disturbance works being completed the consent holder shall provide a works completion report to confirm that the methods outlined in the Site Management Plan were enforced for the period required, and that the measures were successful in ensuring the potential risks were adequately managed. The works completion report shall include, but not be limited to:*
  - (a) *Confirmation that the methods described in the SMP were followed;*
  - (b) *A summary of the works undertaken including:*
    - (i) *summary of the earthworks methodology followed;*
    - (ii) *volume of soil removed (if any) from the site;*
  - (c) *Details of any unexpected contamination encountered during the works and actions taken in respect of this;*
  - (d) *Copies of disposal receipts for any material removed from the site.*

I am satisfied that effects can be managed by way of the above consent conditions within both the Eastern and Southern Extension areas and that the effects on human health as

a result of the contaminated land within the sites will be less than minor provided conditions of consent are adhered to.

#### **6.4.14 Effects of Cancellation of Consent Notice under Section 221 of the RMA**

The establishment of the consent notice was via subdivision, there is no information available on the reason the no build area was created. Making an educated assumption that it could possibly have been to manage ribbon development of built form along what was the State Highway at the time. (Tamahere Road). Given the significant changes in character to the surrounding environment since the consent notice was established, including the revocation of Tamahere Road as State Highway and establishment of the retirement village built form, my opinion is that cancellation of the consent notice will have less than minor effects on rural character and ribbon development. The built form on the site can be appropriately managed via the District Plan standards for building coverage and setbacks. On this basis the effects of cancellation of the consent notice will be less than minor.

#### **6.4.15 Effects of Change of Conditions under Section 127 of the RMA**

Establishment of these two additional retirement units under the existing consent are reliant on the granting of the southern extension as they cross the boundary with the southern rural residential lot. If the southern extension is granted the additional two villas will fill a logical internalised space that was previously appropriately used to form the landscaped buffer and open spatial edge treatment between the urban character of the retirement village and rural character of the southern sites. The two villas can be serviced appropriately by the internalised road network and there is capacity in the onsite three water systems to service the additional dwellings. This has been reviewed by the Land Development Engineer Mr Templeton and confirmed.

If the southern extension is not granted by the commissioner, I consider that granting the additions of the two additional villas will undermine the integrity of the consented landscaped and spatial treatments to the southern edge of the village. Granting the additional villas within the setbacks would have potential to give rise to reverse sensitivity

effects with future permitted activities within 82 Tamahere Drive. As one of the dwellings crosses the boundary slightly into 82 Tamahere Drive Southern extension site, I do not consider that the section 127 could be granted if the Southern Extension is not granted as such a variation would need to add 82 Tamahere Drive to the application and the two sites be tied together. This would undermine the use of 82 Tamahere Drive as rural lifestyle lot.

I am satisfied that if the commissioner is satisfied that the Southern Extension can be granted, then the effects of granting the variation for the two additional dwellings will be less than minor.

#### **6.4.16 Particular Restrictions for Non-Complying Activities (Section 104D)**

##### Eastern Extension

My view is that the eastern extension application meets Section 104D in relation to adverse effects, I agree with the agent that the effects will be no more than minor. Therefore, there is a pathway for considering the eastern extension under section 104B.

##### Southern Extension

In relation to the Southern Extension, the effects on rural character and settlement patterns, are such that I consider the effects to be more than minor and therefore the Southern Extension does not meet the first limb of the 104D. I have met with the applicant to discuss the matters of rural character and expect that further evidence in this space will be provided by Ms Soanes and Ms Drew to address my concerns in relation to rural character. Below is additional considering of effects under section 104B if the application is able to meet the section 104D tests.

#### **6.4.17 Conclusion on Actual and Potential Effects under Section 104(1)(a)**

##### Eastern Extension

I consider there will be minor effects on rural character and minor cumulative effects on settlement patterns, in coming to this conclusion I have taken into account the scale of the activities, the existing built form and consented activities on the eastern sites and the way in which the existing village already encompasses the sites around all boundaries, the

land use proposed forms a logical extension within the two eastern sites. Adverse effects can be appropriately managed by condition of consent and I consider that the effects are acceptable at a minor level when considering the application under section 104B and addition of the positive effects of the proposal.

### Southern Extension

By extending the urban character south into areas more dominated by rural characteristics, the proposal cumulatively expands on a transformation of character within the subject sites and surrounding area from rural to urban character. From a planning perspective this approach in my view, is an example of planning creep and results in cumulative adverse effects to rural character that cannot be mitigated by conditions of consent. I agree the treatments, landscaping and buffers designed for the site will soften the development edges to integrate the development as much as possible into the environment, however this doesn't mitigate the proliferation of urban character towards the south away from the more urbanised areas of Tamahere. The high-quality treatments cannot in themselves alter the character of the proposal back to a rural character rather than the urban character proposed.

I have identified that effects on the intrinsic value of soils is minor as the high-class soils in situ will be removed as a result of the proposal and replaced with buildings and structures for non-rural use. This conclusion is reached in the context of the plan giving no mention in the earthworks rules or rules for large scale rural activities to soil value, which I consider weakens the ability to consider the effects on soil resource of this proposal.

The southern extension represents a 21% increase in the number of residential units within the retirement village and introduces an additional health spa facility. I do not consider that this increase to be inconsequential in terms of cumulative effects on planned settlement patterns. There is a strong signal from the PDP that cumulative effects of residential growth in the rural zone are at a tipping point when taking into consideration the change in activity status that has occurred in the formation of the PDP as a result of a resource to planning issues. The existing village was consented and assessed under the ODP as a Discretionary Activity whereas such activities are now Non-Complying in the PDP. (For both the Retirement Village Activity, and for Additional Dwellings in the Rural Zone.) On the basis of the above I find the adverse effects of the

Southern Extension to be more than minor and I do not consider the positive effects identified outweigh the adverse effects to tip the balance in favour of considering the effects acceptable under section 104 (if the application gets through the 104D tests).

## **6.5 SECTION 104(1)(b) – RELEVANT PLAN PROVISIONS**

### **6.5.1 National Policy Statements**

#### **6.5.1.1 Highly Productive Land (NPSHPL) 2022**

The NPSHPL was released in September 2022 and commenced on 20<sup>th</sup> October 2022.

The NPSHPL states that Regional Council is to map Highly Productive Land but until such time as they have done so the NPSHPL applies if the following criteria is met:

The land is zoned General Rural or Rural Production and

- Is LUC 1, 2, and 3 but is not;
- Identified as future urban development or subject to a plan change to change it to urban or rural lifestyle at the commencement of the NPS.

In this case the NPSHPL applies to the site and the land meets the definition of Highly Productive Land. The sites both eastern and southern are currently identified within the NZLRU national database as LUC2 and are zoned General Rural.

Part 2 of the NPSHPL sets out the objective and policies:

There is one Objective to the NPSHPL which is as follows:

*Objective: Highly productive land is protected for use in land-based primary production, both now and for future generations.*

Policies relevant this proposal are:

*Policy 1: Highly productive land is recognised as a resource with finite characteristics and longterm values for land-based primary production.*

*Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.*

*Policy 8: Highly productive land is protected from inappropriate use and development.*

Part 3 of the Policy Statement sets out the Implementation of the Policy Statement and what Local Authorities must do to give effect the above objective and policies. Noting, that nothing within Part 3 limits the general obligation under the Act to give effect to that Objective and those Policies.

Clause 3.10 of the Implementation Methods sets out exemptions for activities on highly productive land subject to permanent or long-term constraints.

Clause 3.10 is only used when there are no other pathways under clauses 3.7,.3.8 and 3.9. All experts (Agricultural and Planning) agree that there are no pathways within the abovementioned sections and therefore Clause 3.10 is the pathway relevant for assessment.

Clause 3.10 states:

*(1) Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if satisfied that:*

*(a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; AND*

*(b) the subdivision, use, or development:*

- (i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; AND*
  - (ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; AND*
  - (iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; AND*
- (c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

*(2) In order to satisfy a territorial authority as required by subclause (1)(a), an applicant must demonstrate that the permanent or long-term constraints on economic viability cannot be addressed through any reasonably practicable options that would retain the productive capacity of the highly productive land, by evaluating options such as (without limitation):*

- a) alternate forms of land-based primary production:*
- b) improved land-management strategies:*
- c) alternative production strategies:*
- d) water efficiency or storage methods:*
- e) reallocation or transfer of water and nutrient allocations:*
- f) boundary adjustments (including amalgamations):*
- g) lease arrangements.*

I draw to the Commissioners attention that in order to demonstrate an exemption under 3.10 is satisfied, the applicant is required to demonstrate they meet all three tests, noting that subclause (1)(b) includes a further three tests within the one.

### Southern and Eastern Extensions

The Assessments undertaken by the applicant has concluded that 3.10 can be satisfied as there are permanent long-term constraints on economic viability which cannot be addressed through reasonably practicable options.



The assessments provided by Ag First have been reviewed by Mr Stuart Ford of AgriBusiness Group.

In conclusion, Mr Stuart Ford generally agrees with the findings of Ag First in relation to the first two tests of section 3.10, he does however consider that before accepting the report that it would benefit from two changes his findings are set out in Appendix G of which I will not repeat here.

In relation to the 3<sup>rd</sup> test Mr Ford notes the following:

*“The evaluation carried out in this section is somewhat cursory and less detailed than we would expect and does not seem to weigh up the benefits of the subdivision against the cost of the loss of HPL land as is required and nowhere does it report that conclusion.*

*The report would benefit from a more expansive assessment of the benefits of the subdivision and the costs of the loss of HPL land and then a reasoned conclusion as to why one outweighs the other.”*

Whilst I note that Mr Ford refers to the application as a “subdivision” I have taken this to mean Land Use Consent.

I note that a further assessment has been provided by Ms Drew in relation to the third test on page 60 to 63 of the AEE.

On receipt of the review, Mr Ford was asked to confirm whether he has taken this assessment into account as it formed part of the suite of information sent to him, however Mr Ford has not responded either way at the time of writing this report.

I have reviewed Ms Drew’s assessment and am generally in agreement with the benefits assessments, however I consider additional costs are as follows:

- Environmental cost: Loss of the soil ecosystem/soil biodiversity, loss of carbon sink.
- Social cost: Expanding on bullet point 1 of Ms Drew’s assessment: The loss of the sites for potential lifestyle/hobby farming eg self-sustainable living practices within the site.

In terms of these additional matters I have reported on, I do not consider from a planning perspective, these to tip the balance of conclusions found in relation to this test.

In reliance of the Assessments provided, I am satisfied that the applicant has demonstrated sufficiently that the proposals within both the Eastern and Southern extension areas meet the tests of clause 3.10. The proposal is therefore not inappropriate development in the context of Policy 8. The assessments undertaken by the two experts recognise and take into account Policies 1 and 4. Whilst Highly Productive Land will not be protected for Primary production as required by Objective 1. The assessments demonstrate the effect of this will be minor due to application meeting 3.10 exemptions and therefore some discretion is allowed for within the applying of this policy as per the *Port Otago* and *King Salmon* cases. I therefore conclude that both the southern and eastern extension areas are consistent with the Objective and Policies of NPSHPL.

#### **6.5.1.2 Urban Development (NPSUD) 2022**

The proposals are not located within an urban environment however section 1.3 of the NPSUD states that the NPS applies to:

- a) all local authorities that have all or part of an urban environment within their district or region (ie, tier 1, 2 and 3 local authorities);*

*and*

- b) planning decisions by any local authority that affect an urban environment.*

It is my view that given the proximity of the sites to the urban edge of Hamilton City the decisions on this application have the potential to affect that urban environment via cumulative effects on planned settlement patterns that identify indicative urban rural boundaries through map 43 of the RPS.

*Policy 6 When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

- (a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement*

Due to Change 1 to the RPS giving effect to the NPSUD I consider the conclusions I have reached on how the proposal aligns with Change 1 (as set out further on in this report) can be equally applied to the NPSUD Policies.

### **6.4.1.3 Freshwater (NPS F) 2020**

The National Policy Statement for Freshwater Management came into force on the 3<sup>rd</sup> of September 2020. The NPS seeks to maintain or improve the overall quality of freshwater; safeguard freshwater's life-supporting capacity, ecosystem processes, and indigenous species and to protect the significant values of wetlands and outstanding freshwater bodies.

#### *Part 2.1 – Objective*

*(1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*

- (a) first, the health and well-being of water bodies and freshwater ecosystems*
- (b) second, the health needs of people (such as drinking water)*
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

#### *Part 2.2 – Policies*

*Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*

#### Southern and Eastern Extensions

There are no freshwater bodies that will be adversely affected by the proposal in terms of the management of freshwater. The Stormwater on the site will be treated via raingardens and Wastewater will be managed on site. The Council Land Development Engineer has confirmed capacity in the system. The sites are within the Waikato River

Catchment which require betterment of the Waikato River for any discharges. No additional discharge consents are necessary as the existing stormwater discharge consent from the Regional Council has capacity to cater for the discharges. The proposals are consistent with the NPS F 2020.

## **6.5.2 National Environmental Standards**

### **6.5.2.1 Managing Contaminants in Soil to Protect Human Health (NESCS)**

I consider the provisions of the NESCS have been adequately addressed within the assessment of effects and refer to that section of reporting for more detail.

#### **6.5.2.1 Other NES**

The NES for Fresh water and the NES for Air Quality have not been assessed as both of these are under the jurisdiction of the Regional Authority rather than the Territorial Authority.

## **6.5.3 Waikato Regional Policy Statement**

The Waikato Regional Policy Statement (WRPS) provides an overview of the significant resource management issues of the region and puts in place objectives, policies and methods to achieve integrated management of the natural and physical resources of the region.

The Waikato Regional Policy Statement became operative on 20 May 2016.

More recently, Change 1 Decisions to the WRPS were adopted by the Regional Council on the 26<sup>th</sup> October 2023 and publicly notified on the 15<sup>th</sup> November 2023. The scope of the WRPS Change 1 is limited to changes to implement the NPS-UD and to update the Future Proof components in the WRPS. Future Proof Strategy 2022 is the most recent Regional Growth Strategy developed in collaboration between the Territorial Authorities in the Region. Previously Future Proof Strategy 2011 was implemented into the Regional Policy Statement providing statutory weight to the findings of the Document.

Three appeals have been received to Change 1 of the WRPS.

- Fonterra Appeal relates to matters concerning strategic industrial nodes.
- Titanium Park Ltd and Rukuhia Properties Ltd Appeal relates to including specific land within the Waipa District (near Hamilton Airport) into the Growth Area.
- Hamilton City Council that seeks changes in relation to Inclusionary Zoning.

There were no submissions or appeals in relation to the extent of the Urban Growth areas relating to the Tamahere Area not being identified as an Urban or Village Enablement Area (area in which urban growth is planned and enabled).

### **Change 1 to the WRPS**

Map 43 which is set out in Change 1, identifies at a generally indicative level (not by a property-by-property level) where the planned urban growth for the Waikato Region is to be enabled.

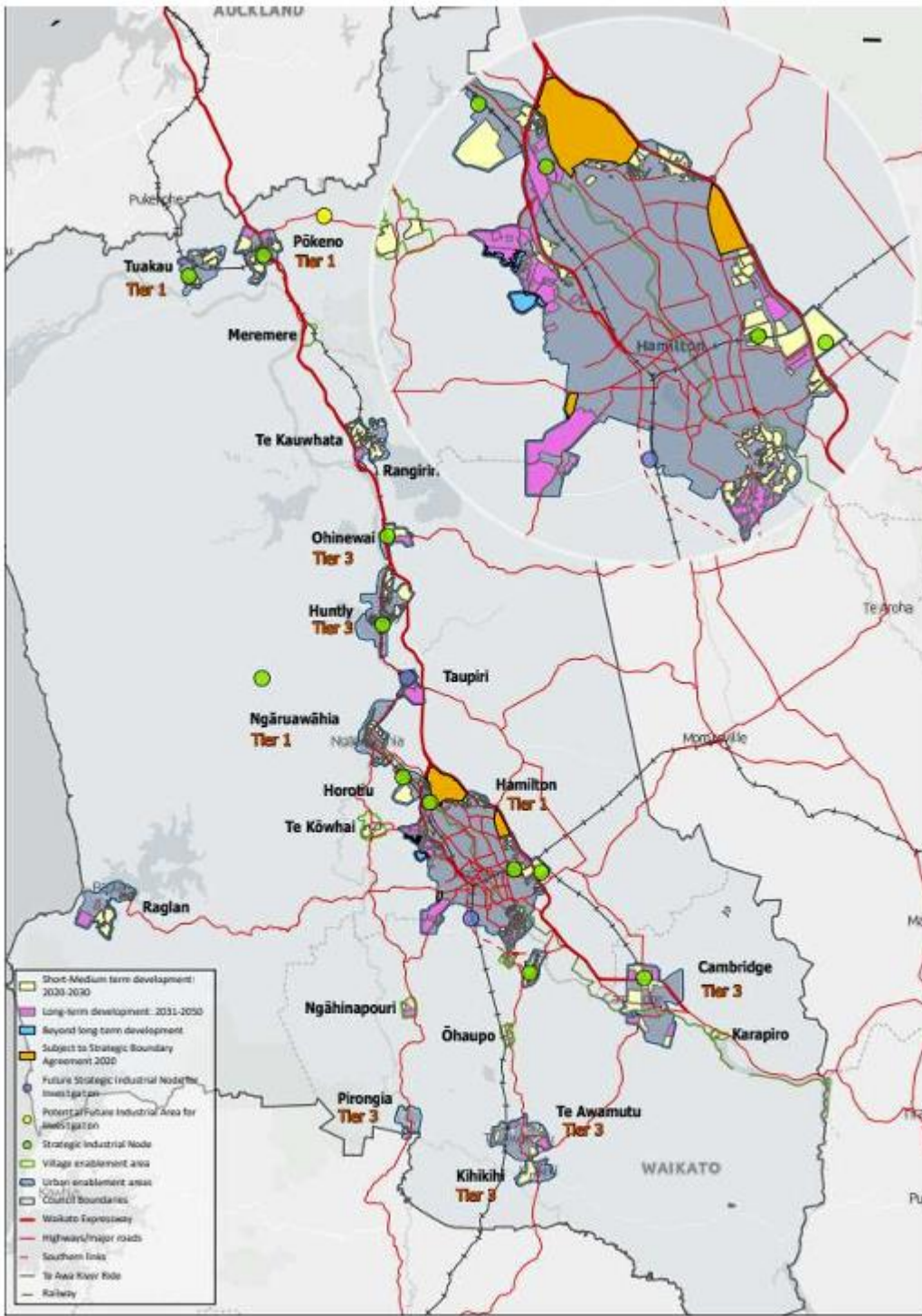
Urban Enablement areas are made up of Hamilton City urban areas and surrounding towns within the Waipa and Waikato Districts, such as Cambridge, Ngaaruawaahia, Huntly, Pookeno etc.

Village Enablement areas are identified rural based areas where additional urban growth will be targeted. These Village Enablement areas are identified in the Change 1 and listed as follows:

- Te Kōwhai,
- Meremere,
- Rukuhia
- Ōhaupō,
- Ngāhinapōuri,
- Karāpiro.

Tamahere Village and the subject site is not identified as an Urban and Village Enablement areas for future urban growth. Whilst the maps are indicative, this is in relation to the property level and have not been developed on a property-by-property basis with the explanation provided by Change 1 provided below:

*Map 43 provides an overview of urban and village enablement areas in order to guide implementation of the settlement pattern at a district level. It is expected that district level planning mechanisms such as development area planning, and district plan zoning will establish the urban and village enablement areas at a property scale. The timing shown on Map 43 may be updated by a Future Development Strategy where adopted in accordance with the National Policy Statement on Urban Development 2020. This will provide for alignment of land use and infrastructure staging to meet the development capacity required under the National Policy Statement on Urban Development 2020, within the urban and village enablement areas.*



**Map 43: Future Proof indicative urban and village enablement areas**

**Figure 23: Urban and Village Enablement Areas.**

The following Objectives and Policies from Change 1 are relevant, and the changes to these Objectives and Policies are yet to be given effect to via the Proposed District Plan:

*UFD- O1 – Built Environment*

*Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:*

- 1. promoting positive indigenous biodiversity outcomes;*
- 2. preserving and protecting natural character, and protecting outstanding natural features and landscapes from inappropriate subdivision, use, and development;*
- 3. integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors;*
- 4. integrating land use and water planning, including to ensure that sufficient water is available to support future planned growth;*
- 5& 6 N/A*
- 7. minimising land use conflicts, including minimising potential for reverse sensitivity;*
- 8& 9 N/A*
- 10. promoting a viable and vibrant central business district in Hamilton city, with a supporting network of sub-regional and town centres;*
- 11. N/A*
- 12. strategically planning for growth and development to create responsive and well functioning urban environments, that:*
  - a. support reductions in greenhouse gas emissions and are resilient to the current and future effects of climate change;*
  - b. improve housing choice, quality, and affordability;*
  - c. enable a variety of homes that enable Māori to express their cultural traditions and norms;*
  - d. ensure sufficient development capacity, supported by integrated infrastructure provision, including additional infrastructure, for community, and identified housing and business needs in the short, medium and long term;*



- e. improves connectivity within urban areas, particularly by active transport and public transport;*
- f. take into account the values and aspirations of hapū and iwi for urban development.*

#### *UFD-P1 – Planned and co-ordinated subdivision, use and development*

*Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:*

- 1. has regard to the principles in APP11;*
- 2. recognises and addresses potential cumulative effects of subdivision, use and development;*
- 3. is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and*
- 4. has regard to the existing and planned built environment.*

#### *APP11 – Development principles*

*The general development principles for new development are:*

- a) support existing urban areas in preference to creating new ones;*
- b) occur in a manner that provides clear delineation between urban areas and rural areas;*
- c) make use of opportunities for urban intensification and redevelopment, particularly within urban centres and along future rapid transit routes, to minimise the need for urban development in greenfield areas;*
- d) not compromise the safe, efficient and effective operation and use of existing and planned infrastructure, including transport infrastructure, and should allow for future*

*infrastructure needs, including maintenance and upgrading, where these can be anticipated;*

*e) connect well with existing and planned development and infrastructure;*

*f) identify water requirements necessary to support development and ensure the availability of the volumes required;*

*g) be planned and designed to achieve the efficient use of water;*

*h) be directed away from identified significant mineral resources and their access routes, natural hazard areas, energy and transmission corridors, locations identified as likely renewable energy generation sites and their associated energy resources, regionally significant industry, highly productive land, and primary production activities on highly productive land except in accordance with the NPS HPL 2022.*

*i) promote compact urban form, design and location to:*

*i) minimise energy and carbon use;*

*ii) minimise the need for private motor vehicle use;*

*iii) maximise opportunities to support and take advantage of public transport in particular by encouraging employment activities in locations that are or can in the future be served efficiently by public transport;*

*iv) encourage walking, cycling and multi-modal transport connections; and*

*v) maximise opportunities for people to live, work and play within their local area;*

*j to m) N/A*

*n) adopt sustainable design technologies, such as the incorporation of energy-efficient (including passive solar) design, low-energy street lighting, rain gardens, renewable energy technologies, rainwater harvesting and grey water recycling techniques where appropriate;*

*o) not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure;*

*p) be appropriate with respect to current and projected future effects of climate change and be designed to allow adaptation to these changes and to support reductions in greenhouse gas emissions within urban environments;*

*q) consider effects on the unique tangata whenua relationships, values, aspirations, roles and responsibilities with respect to an area. Where appropriate, opportunities to visually recognise tangata whenua connections within an area should be considered;*

*r) support the Vision and Strategy for the Waikato River in the Waikato River catchment;*

- s) encourage waste minimisation and efficient use of resources (such as through resource efficient design and construction methods); and
- t) recognise and maintain or enhance ecosystem services.

#### APP 11 - Principles specific to rural-residential development

As well as being subject to the general development principles, principles for new rural residential development are:

- a) be more strongly controlled where demand is high;
- b) not conflict with foreseeable long-term needs for expansion of existing urban centres;
- c) avoid open landscapes largely free of urban and rural-residential development;
- d) avoid ribbon development and, where practicable, the need for additional access points and upgrades, along significant transport corridors and other arterial routes;
- e) recognise the advantages of reducing fuel consumption by locating near employment centres or near current or likely future public transport routes;
- f) minimise visual effects and effects on rural character such as through locating development within appropriate topography and through landscaping;
- g) be capable of being serviced by onsite water and wastewater services unless services are to be reticulated; and
- h) be recognised as a potential method for protecting sensitive areas such as small water bodies, gully-systems and areas of indigenous biodiversity.

#### Principal Reasons: UFD -PR1 Planned and coordinated subdivision use and development

To effectively address SRMR-I4 and to achieve UFD-O1 it is very important that there is a planned and co-ordinated approach to developing the built environment which anticipates and addresses cumulative effects over the long term.

APP11 includes a set of principles to guide future development of the built environment within the Waikato region. These principles are not absolutes, and it is recognised that some developments will be able to support certain principles more than others. In some cases, certain principles may need to be traded off against others. It is important,

however, that all principles are appropriately considered when councils are managing the built environment. The principles are supported by UFD-M1, UFD-M2, UFD-M3 and UFD-M4.

UFD-P11 – Adopting Future Proof land use pattern Within the Future Proof area:

1. new urban development shall occur within the Urban and Village Enablement Areas indicated on Map 43 (5.2.10 Future Proof map (indicative only)); (emphasis added)
2. new residential (including rural-residential) development shall be managed in accordance with the timing indicated on Map 43 (5.2.10 Future Proof map (indicative only)) or in accordance with the timing provided for within an operative Future Development Strategy for the Future Proof sub-region in accordance with the National Policy Statement on Urban Development 2020;
3. N/A
4. N/A
5. N/A
6. N/A
7. where alternative urban land release patterns are promoted, either out-of-sequence or unanticipated on Map 43 or in Table 35, including proposals outside of the urban or village enablement areas indicated on Map 43, through district plan and development area processes, justification shall be provided to demonstrate consistency with the principles of the Future Proof land use pattern and particular regard shall be had to the proposed development capacity only where the local authority determines that the urban development proposal is significant, by assessing the proposal for consistency with the operative Future Development Strategy for the Future Proof sub-region and responsive planning criteria in APP13; and
8. N/A

### Principal Reasons: UFD-PR11 – Adopting Future Proof land use pattern

*UFD-P11 enables urban development consistent with the land use pattern and sequencing that has been established through the Future Proof process.*

*UFD-M47 recognises that although the Strategy has determined a settlement pattern for the Future Proof area, the detail of urban and village enablement areas and future commercial and industrial development locations down to property level need to be determined through district plan processes.*

*The method also recognises that district plan provisions, such as rules, need to ensure development is managed in accordance with UFD-P11.*

### UFD-P14 – Rural-residential development in Future Proof area

*Management of rural-residential development in the Future Proof area will recognise the particular pressure from, and address the adverse effects of, rural-residential development in parts of the sub-region, and particularly in areas within easy commuting distance of Hamilton and:*

- 1. avoid rezoning or developing highly productive land for rural lifestyle except as provided for in the National Policy Statement for Highly Productive Land 2022;*
- 2. the potential adverse effects (including cumulative effects) from the high demand for rural residential development;*
- 3. the high potential for conflicts between rural-residential development and existing and planned infrastructure, including additional infrastructure, and land use activities;*
- 4. the additional demand for community facilities, servicing and infrastructure created by rural-residential development;*
- 5. the potential for cross-territorial boundary effects with respect to rural-residential development; and*
- 6. has regard to the principles in APP11.*

### Principal Reasons -UFD- PR14 – Rural Residential Development in Future Proof Area

*UFD-P14 establishes a policy framework for managing development in the Waikato region, including the Future Proof area. UFD-P14 recognises that there are particular pressures for rural-residential development in parts of the Future Proof area, particularly near Hamilton City.*

*UFD-M55 and UFD-M57 recognise that these pressures need to be managed through district plan provisions.*

*UFD-M56 recognises that an individual agency's decisions about rural residential development and infrastructure can impact on the interests of other agencies, and that a collaborative approach is needed to minimise conflicts. Not managing rural-residential development would undermine the objectives of Future Proof.*

#### **6.5.3.1 Assessment of Change 1 of the Regional Policy Statement**

Ms Drew on Page 67 of her Assessment of Effects identifies that the proposal is not entirely consistent with the Policies of Change 1, due to the proposal being in an area outside of the identified areas for urban growth. However, Ms Drew concludes that:

*“Based on the effects assessment in section 7 of this application, it is considered that the applications are appropriate and will in their own manner enable expansion of existing facility, can be undertaken in a manner that recognises and addresses potentially cumulative effects, has regard to receiving environment by being directly adjoining an existing retirement village, does not place unreasonable burdens on Council funded or provided infrastructure and results in a negligible loss of highly productive land. “*

### **6.5.3.2 Council Response**

I am in agreement that proposal will not place unreasonable burdens on Council funded or provided infrastructure in relation to three waters, and that the site will not impact productive capacity of the highly productive land.

Demand in the Tamahere area is high that is evident from the pattern of development and land fragmentation demonstrated on the cadastral maps showing land tenure. Despite these factors, Tamahere has not been identified as an area for growth within the future proof mapping either within the Operative RPS or Change 1.

Change 1 which gives effect to the NPSUD, signals that allowing unplanned growth into rural zones and areas particularly close to the edges of Hamilton City slowly erodes away at ability to create well functioning urban environments through compact urban form.

One of the ways the policies above seek to achieve well functioning urban environments is through minimising private car usage and creating densities that can support public transportation networks and multimodal transportation. This is in order to give effect to reduction of greenhouse gas emissions policies. The effects of climate change as a matter of consideration in resource consent and policy planning decision making took effect on 30 November 2022.

The Traffic Engineering assessments identify that car use will be the dominant use of transportation for both extension areas and there are limited public transport networks within the vicinity of the site that could be utilised to access Hamilton City or Cambridge. It is identified that the Te Awa Cycleway network is located adjoining the site and this provides cycleway links between Cambridge and Hamilton. I asked Mr Prakash – Traffic engineer for Grey Matter whether there was specific data in relation to Retirement Villages as to whether car use changes between urban and rural locations.

Mr Prakash confirmed to me that he could find no research data on this matter specially comparing Retirement Villages he noted the following in an email to me dated 28<sup>th</sup> March 2024:

*“There is no research on rural vs urban retirement village trip generation that I am aware of. I think that given the Tamahere Country Club has stand alone dwellings with garages it means that residents are more likely to own a car and drive to various locations whereas a retirement village with no provision for parking of private vehicles within the units is unlikely to generate a high number of private vehicle trips. I think the dependency on private vehicles is more related to the type of retirement village rather than the location itself.”*

I note that on discussions with the applicant when undertaking my site visit, we spoke about the demographic of the persons residing in this type of village. What was noted by the applicant the village was generally occupied by “active aged persons” some of which are still working full or part time. Given its rural nature, and that the job market in Tamahere is fairly limited, I consider it most likely that residents within the existing village and the proposed extension would commute beyond the local area, to Hamilton or Cambridge.

The Tamahere Shopping Precinct contains a small number of local service shops, as the area is rurally zoned, multi modal transportation links to these shops are limited, with most persons within the proposed village expansion requiring to drive to either Hamilton or Cambridge to access a full range of services and facilities.

The concern in relation to the heavy reliance on private vehicle use is raised in the submission by Mr Smith and I consider this a reasonable consideration, when taking account of the directives of the RPS to limit growth to defined areas, one of the key reasons to do so is to minimise private vehicle use to address the effects of climate change.

In saying all that Commissioner, it has come to my attention that a trial public bus service that seats 12 persons has recently been established in February 2024 to run for 2-3 years into the City. The route runs seven times a day from Tamahere and Matangi, terminating at the University. The trial nature and scale of the service highlights that growth in these areas creates somewhat of a need for public transport links but due to lower densities



and large geographically spread areas at this stage it is tentative as to whether the density of population for such a service will be economically viable in the longer term.

The Policy framework developed in Change 1 including Map 43 seek to limit the cumulative effects of ad hoc unplanned growth. Whilst the proposal is an application to extend an existing village rather than a whole new village, and I agree this is a more desirable situation than establishment of an entirely new village outside the growth strategy. I do not consider that the policies provide for the continued addition of unplanned growth on the basis of existing activities that have already been established with the urban fringes of the city. If that was the case, I would have expected to see Tamahere identified as a growth area, given its existing environment. Instead Change 1 seeks to strengthen provisions to limit additional urban sprawl and reiterates through up to date and recent mapping where growth is to be enabled for the region.

In this case I consider both the Southern and Eastern Extensions to be of scale that will contribute to undermining the directives of Change 1 by cumulatively adding urban activities to rural zoned land not anticipated for urban growth. The southern more so than the Eastern. The proposals, in my view, are an example of planning creep. They contribute to the incremental erosion of compact urban form and undermine settlement patterns on the urban fringes of the city in the long term.

It is on basis of the above assessment that I find both the Eastern and Southern Extensions to be contrary and therefore inconsistent to the Objectives and Policies of Change 1 of the RPS. In particular UFD O1, P1, P11, P12, P14.

Relevant Objectives and Policies from the WRPS that were not amended by Change 1 are as follows:

*LF – Land and Freshwater*

*LF-O4 – Values of soil*

*The soil resource is managed to safeguard its life supporting capacity, for the existing and foreseeable range of uses.*

LF-P8 – Maintain or enhance the life supporting capacity of the soil resource

Manage the soil resource to:

1. *minimise sedimentation and erosion;*
2. *maintain or enhance biological, chemical and physical soil properties; and*
3. *retain soil versatility to protect the existing and foreseeable range of uses of the soil resource.*

This Objective and Policy focuses on the life supporting capacity soil resource itself rather than whether the use of that soil resource can be used for primary productive or in an economically viable way.

As discussed in the effects section of my reporting this set of policies removes the 'economics' from the equation and focuses on the whether or not any form of life supporting capacity could be utilised on the soils whether economically viable or not. These policies from the RPS are reflected in the PDP although somewhat muddled in wording and not, in my view, particularly well supported by the PDP rule framework.

Eastern Extension

The proposed built form and infrastructure will reduce the soil resource available across the sites, as the sites will for the most part change from rural lifestyle with large open spaces and soil resource to urban form and function. The current built form within the eastern section sites means, there is little soil resource within this extension area and I have concluded the loss of these soils in my effects assessment to be less than minor. On this basis I conclude the proposal will be consistent and not contrary to the above objective and policy.

Southern Extension

Within the Southern Extension area, the change is more pronounced as discussed within my effects assessment on soil resource. Whilst these policies are directive, I consider that as the adverse effects have been determined to be a minor loss of soil resource the proposal is not contrary to the Objective and Policy above. However, given the amount of

loss and the activity not being one that will utilise the soils. I consider it inconsistent with these policies.

LF-O5 – High class soils

*The value of high class soils for primary production is recognised and high class soils are protected from inappropriate subdivision, use or development.*

LF-P11 – High class soils

*Avoid a decline in the availability of high class soils for primary production due to inappropriate subdivision, use or development.*

Eastern and Southern Extension

The reports provided on the productive potential of both the Eastern and Southern Extension areas conclude that there are long term limitations to the site that mean the soil resource is unlikely to be utilised for primary production. (for the purposes of the RPS Hobby Farming is excluded from the definition of Primary Production). I therefore consider the proposal consistent with LF-O5 and LF-P11.

It is noted for the Commissioner that these Policies within the RPS have not been updated yet to reflect the National Directive of the NPS HPL.

## **6.5.4 Waikato-Tainui Raupatu (Waikato River) Settlement Claims Act 2010**

### **Vision and Strategy**

The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 was endorsed with the purpose of implementing co-management of the Waikato River. The overarching purpose of the Act is to restore and protect the health and wellbeing of the Waikato River for future generations. This Act has the same statutory standing as a Regional Policy Statement.

The subject site is located within the Waikato River Catchment.

Conditions of Consent will manage construction and the earthworks proposed on the site in order to ensure sediment does not enter any waterway catchments. The applicant has provided a Stormwater Management Assessment that concludes the stormwater quality treatments proposed are considered suitable. The Stormwater System provides treatment of the water to be discharged via the Regional Consent AUTH143639.02.01 – stormwater diversion and discharge. The Stormwater Assessment Reports conclude that no amendments to the discharge consent is necessary and that with the provision of some additional storage areas both the eastern and southern extension will be within the consented discharge limits. The Regional Discharge Consents for Wastewater and Stormwater manage the treatment of water to ensure the betterment of the health of the Waikato River. It is identified by the applicant that an additional consent may be necessary from Regional Council in relation to the wastewater treatment. The applicant has requested to reduce their risk of exposure by applying for any regional consenting requirements after the decision making on the District Land Use applications. Any additional requirements for treatment to ensure betterment of the water discharges will be undertaken and managed via the regional consents for wastewater discharge. I am satisfied that neither the Southern or Eastern extensions will offend the Vision or Strategy of the Raupatu Settlement Claims Act 2010.

### **6.5.5 Proposed Waikato District Plan (Appeals Version) 2022**

In considering the objectives and policies below I have considered the *Port Otago* Supreme Court decision and the *King Salmon* approach to directive policies. *King Salmon* noted as recognised in *Port Otago* the following:

*It is clear from this Court's decision in King Salmon that the NZCPS avoidance policies have a directive character. This Court said that the term "avoid", as used in the NZCPS, has its ordinary meaning of "not allow" or "prevent the occurrence of", meaning that the policies at issue in that appeal provided "something in the nature of a bottom line".*

*The Court noted, however, that what was to be avoided with regard to those policies was, in that case, the adverse effects on natural character and that prohibition of minor or transitory effects would not likely be necessary to preserve the natural character of coastal*

*environments.*

Where I consider the objectives and policies of the PDP relate to a directive policy relating to adverse effects I have applied this consideration. However, for many of the Policies within the PDP I consider their primary purpose is not directly related to tangible adverse effects and therefore my view is that consistency with the Policies is not impacted by whether the adverse effects of the proposal have been found to be minor.

### **6.5.5.1 Objectives and Policies**

The Objectives and Policies of the Proposed District Plan are relevant to the assessment under section 104(1)(b).

#### **6.5.5.1.1 Part 2 SD – Strategic Directions**

*This Chapter*

*(a) Provides the overarching direction for the District Plan, including for developing the other chapters within the Plan, and its subsequent implementation and interpretation; and*

*(b) Has primacy over the objectives and policies in the other chapters of the Plan, which must be consistent with the strategic objectives in this chapter. The strategic objectives in this chapter are provided in no order of priority.*

The Objectives relevant to this proposal are as follows:

*SD -01 Socio-economic advancement*

*The District has a thriving economy*

It is difficult to apply a wide-reaching district wide policy such as this specifically to a resource consent application. No economic reporting has been provided with the application to indicate that the granting or decline of the application would have an impact on whether the District has a thriving economy. The applicant may be able to

quantify further via corporate evidence the economic benefits to the District in relation to the two extension areas. What we can take from the NPSHPL assessments is that change of use to a retirement village activity will not have an effect on productive capacity of the land due to the long-term constraints associated with the site in terms of productive use.

#### *SD- O2 Tangata Whenua*

*Tangata whenua's relationships, interests, including commercial interests, and associations with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes, and other taonga are recognised and provided for.*

The applicant has provided a Cultural Values Assessment from Ngaati Haaua whom hold mana whenua for the area and these matters have been discussed in the Cultural Effects section of this report. No submissions were received from Tangata Whenua. I am satisfied that both the Eastern and Southern Extensions are consistent with SD-O2.

#### *SD- O4 Housing Variety*

*A variety of housing types are available to meet the community's housing needs.*

The housing types to be established is proposed as follows:

*"The standalone villas will include a mix of sizes and layouts, generally ranging between 180m<sup>2</sup> and 330m<sup>2</sup> in area and includes 10 different typologies, with two and three bedroom options, left and right options, as well as single and double car garage options. The architectural drawings in **Appendix C** of this report include floor plans and elevations of the three types of villas proposed and generally provide for the following:*

- *Typology A: Three-bedroom single storey villa comprising approximately 254m<sup>2</sup>;*
- *Typology B: Three-bedroom single storey villa comprising approximately 192m<sup>2</sup>;*  
*and*
- *Typology C: Two-bedroom single storey villa comprising approximately 212m<sup>2</sup>."*

The housing proposed is specifically for high end retirement living managed under the Retirement Villages Act. Meaning that only persons over 50 are able to reside within the village. The applicant has noted that demand for the product is high within the

community and has exceeded their expectations, hence the applications for expansion.

My view is that both the Eastern and Southern Extensions meets the Strategic Directive by offering what is fairly unique in the space of retirement living, both the support of the onsite services and facilities for the aged, and spacious housing designs to allow for facilitating greater and more regular social interactions from the occupiers home with their family and friends from outside the village.

*SD- O5 Integration of infrastructure and land use.*

*New development is integrated with the provision of infrastructure.*

The definition of Infrastructure within the District Plan includes both private and public infrastructure. In this case the development will be serviced by private onsite systems for water, wastewater and stormwater.

The Land Development Engineer has confirmed both extension areas can be adequately serviced by the proposed onsite systems with capacity extended to cater for the additional dwellings. The Transport Engineer has confirmed the roading network is sufficient to accommodate the additional traffic movements both externally to the two extension areas and internally. Both the Southern and Eastern extension areas are consistent with this Objective.

*SD-O8 Highly productive soils.*

*High quality soils are protected from urban development, except in areas identified for future growth in the District Plan*

This Policy refers to High Quality soils whereas the Rural Zone Policy provisions and Rules and Definition consistently refer to High Class Soils. I consider it likely that the reference to High *Quality* Soils is a drafting error, and I have, based on the consistency within the rest of the plan taken the term in this policy to mean High Class Soils. The Strategic Directive here for protecting High Class soils, does not quantify (as the NPSHPL does) that these soils need *only* be protected if they are found to have productive potential or economic viability for their use. The policy simply requires the protection of the soils. This aligns with the Regional Policy Statement higher order policies referenced above. As

discussed, neither of the extension areas are identified in future growth areas. The High class soil will not be protected from urban development within either the Eastern or Southern Extension areas. In the case of the Eastern extension area 5000m<sup>2</sup> will be lost. In the case of the Southern Extension area 3.7ha will be lost. However applying the approach taken in *King Salmon*, I conclude that as I have determined the loss of soil resource to be minor in relation to Southern Extension and less than minor in Relation to the Eastern Extension. Both Extension areas will not offend SD-O8.

Despite this application being located in a rural zone. I consider that the Strategic Directive UFD-O1 is relevant to this application.

*UFD- O1 A compact urban form that provides for connected, liveable communities.*

Internally within the village the size and detached nature of the dwellings do not in my view create a compact urban form. This is due to the tensions of the application with the rural zoning and surrounding rural character that seek more open space low density form. The end result in this case is a proposal that does not achieve either the maintenance of rural character or a compact urban form. However, the extensions will be well connected and integrated with the existing retirement village community and internally within the village a liveable community is created. Multimodal links within the village are provided for with cycleways and pedestrian friendly network infrastructure. Externally to the site I have considered how the village activity interacts as an activity within the urban fringes of Hamilton. The extension adds additional villas to an existing retirement village complex that is located outside of a growth area. The cumulative effects of eroding the rural urban fringes of identified growth areas by directing growth into rurally zoned areas on the fringes of growth areas contributes to the erosion of compact urban form sought by this directive objective. Both the Eastern and Southern Extensions are contrary to UFD-O1.



### **6.5.5.1.2 GRUZ – General Rural Zone**

The General Rural Zone Chapter sets out a series of Objectives and Policies specific to the General Rural Zone below:

#### GRUZ- O1 Purpose of the zone.

- (1) Enable farming activities;*
- (2) Protect high class soils for farming activities;*
- (3) Provide for rural industry, infrastructure, rural commercial, conservation activities, community facilities, and extractive activities;*
- (4) Maintain rural character and amenity;*
- (5) Limit development to activities that have a functional need to locate in the zone.*

I will address each subclause in turn below:

#### *(1) Enable farming activities;*

This subclause does not require the farming activities to be productive farming activities or economically viable farming activities. The definition of Farming within the PDP does not exclude hobby/lifestyle farming.

#### Eastern Extension

The eastern section does not propose the enablement of any farming activities. This is not as accentuated as the Southern extension, as one the sites that contains the red lid bins activities doesn't currently enable any farming activities on the site due to the consented baseline. However, the rural residential site to the north of this located within the eastern extension currently does undertake some hobby farming and is shown in the Agricultural assessments to have the ability to undertake small scale farming activities on the site.

In the case of the eastern extension whilst the proposal does not enable farming activities, the extent to enable farming activities in the eastern extension is limited to such a small area that the proposal is not contrary or inconsistent with this policy.

### Southern Extension

The areas of the site that could be utilised for farming activities across the two southern sites are significantly larger than the eastern sites. I have excluded the unconsented depot from the existing environment and noted the site could be rehabilitated. The site at 82 Tamahere Drive (containing the construction depot) is of a size that could have farming activities enabled within it even when removing a generous area for a dwelling and residential curtilage. Examples of this can be seen in the aerials surrounding the site with similar sized properties. The site at 92 Tamahere Drive is also of a size in which farming activities could be enabled on the site. The size of the loss is more significant than the eastern section and in my view this loss both stand alone and when you add this loss cumulatively with the loss within the eastern extension. The proposal will not enable farming activities and is contrary to this subclause.

### *(2) Protect high class soils for farming activities;*

As mentioned above the definition of Farming is not limited to Productive Farming Activities. Therefore, hobby and lifestyle farming activities are included into this policy.

### Eastern Extension

In the case of the Eastern Extension application. The existing land uses and curtilage leave approximately 5071m<sup>2</sup> of High Class Soil in which farming activities could be undertaken within the eastern extension area. The proposal is to remove all of this high class soil and not utilise it for farming activities. Taking the *King Salmon* approach the loss of soil has been concluded as a minor adverse effect and there is limited area available for farming activities on the eastern sites, due to the existing environment.

### Southern Extension

In my effects assessment I determined that the loss of high class soil within the southern extension would have a minor effect. On this basis and again taking the King Salmon approach to directive policy application. The proposal is not contrary or inconsistent with subclause 2 of GRUZ O1. As mentioned in the assessment of effects, I find the objectives on this topic to be somewhat unsupported by the rules of the Plan in relation to earthworks. Which allows destruction of high class soils as a permitted activity, over an

area of 2000m<sup>2</sup> in a single 12 month period. It is also noted that restricted discretionary activities for earthworks for greater volumes and areas does not include soil quality within the matters for discretion.

I consider that it is appropriate to give little weight to the objective of protecting high class soils for farming activities in the rural zone given the permitted earthworks standards of the plan allow destruction of the high class soils within the rural zone.

*(3) Provide for rural industry, infrastructure, rural commercial, conservation activities, community facilities, and extractive activities;*

The proposal does not provide any of the above activities.

*(4) Maintain rural character and amenity;*

#### Eastern Extension

The eastern extension sites have limited rural character attributes currently due to the existing red lids transport depot established on one of the sites and the encompassing of the sites on all sites by the existing village. For these reasons whilst the sites will result in additional urban form this will be inconsequential to the existing character of the area and therefore, I am satisfied the proposed eastern section is consistent with subclause (4).

#### Southern Extension

This site, although adjoining the existing village to north is located across a more extensive land area to the south where rural character is less eroded than around the eastern extension. I consider the addition of the southern extension will contribute cumulatively to erosion of the rural character and amenity of the block and that due to the mere density and nature of the proposal, rural character and amenity will not be maintained. The ratio of built form will dominate over open spaces within the sites, and whilst I agree that the applicant offers quality treatments and extensive landscaping to soften the development into the landscape as much as reasonably possible, this does not alter the fundamental change in character that is occurring on the sites from rural to urban. The

proposal encroaches the rural urban edge further into an environment that is more distinctive in rural character attributes. The Southern Extension is contrary to subclause 4.

*(5) Limit development to activities that have a functional need to locate in the zone.*

Functional need is defined within the Proposed District Plan – Part 1 Interpretation Chapter to have the following meaning:

*Means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment. (emphasis added)*

There is no demonstrated functional need for the activity to locate in the zone. As discussed, retirement villages are permitted within the urban zones of GRZ and MRZ.

I consider that both the Eastern and Southern sections are overall contrary to GRUZ-O1.

GRUZ- O2 - Productive capacity of soils.

*The primary productive value of soils, in particular high class soils, is retained.*

The applicant has provided an assessment from AgFirst on the productive capacity of the land for the proposes of the NPSHPL and provided a site specific Land Use Capability Study (LUC) Ag First has noted that there is little primary productive value of the soils on site therefore removal of the soil will not affect the primary productive value of the soils despite being high class soils. Both the eastern and southern extension areas have been found to have no primary productive value. The proposal is neutral to this Objective.

GRUZ – O3 Rural character and amenity.

*(1) Maintain rural character and amenity.*

*(2) The attributes of areas and features valued for their contribution to landscape values and visual amenity are maintained or enhanced*

The assessment of subclause (4) within GRUZ – O1 equally applies here in regard to (2) the area is not specifically identified as an area of value. As described in my description of the site to the south rural character attributes such as low ratio of built form to open spaces, rural features such as wire fencing, pasture, stock grazing are all prevalent. The proposal will not change these features beyond the site, however, will proliferate the urban edge further south cumulatively with filling in a gap to the east. This creates a higher dominance of urban features, form and density that does not contribute to open space low density form that the area is generally associated with.

In conclusion, I am satisfied the proposed Eastern Section is consistent with GRUZ -O3 and that the Southern Section is Contrary to GRUZ – O3.

#### GRUZ – P1 High class soils

*Ensure the adverse effects of activities do not compromise the physical, chemical and biological properties of high class soils.*

I find the drafting of this policy unusually worded and asked Waikato District Council Staff to confirm whether the wording was a drafting error. This wording was included in the notified version of the plan and followed through to the decisions version.

This policy notes it is only the adverse effects that are not to compromise the properties of high class soils. The plan appears to be silent on policy directive of positive effects of the activity that compromise the properties of the high class soil.

The policy implies that the adverse effects of the activity are a separate *cause* of compromising the properties of the soil. However, compromising the properties of soil is in my view an adverse effect in itself.

Taking guidance from the corresponding RPS policies of LF-O4 and LF-P8, the policy is best interpreted as: *“Ensure activities do not compromise the physical, chemical and biological properties of high class soils.”*

This Policy focuses on the life supporting capacity of the soil resource itself rather than whether the use of that soil resource can be used for primary productive or in an economically viable way.

As discussed in the effects section of my reporting this removes the 'economics' from the equation and focuses on the whether or not any form of life supporting capacity could be utilised on the soils whether economically viable or not.

The proposed built form and infrastructure will reduce the soil resource available across the sites, as the sites will for the most part change from rural lifestyle with large open spaces and soil resource to urban form and function.

The current built form and activities within the eastern section sites means, there is less loss of high class soil resource within this extension area than the Southern. I consider that due to the small scale of loss the proposal is consistent and therefore not contrary with this policy in relation to the Eastern Extension.

Within the Southern Extension area the change is more pronounced as discussed within my effects assessment on Soil Resource. When applying the *King Salmon* approach to considering directive policies in the context of when adverse effects are found to be minor. I concluded that the southern section to be inconsistent with the policy but not contrary to P1. This is because in my assessment of effects I have found the adverse effects on the soil to be minor but not more than minor for the Southern area.

*GRUZ – P2 Effects of subdivision and development on soils.*

*Subdivision, use and development minimises the fragmentation of productive rural land, particularly where high class soils are located.*

The reporting by the agricultural experts demonstrates that the sites are not productive despite the high class soils. On this basis both extension areas are consistent with GRUZ-P2 as the application does not seek to establish on land that has productive potential.

*GRUZ- P3 - Contributing elements to rural character and amenity values.*

*Recognise that rural character and amenity values vary across the zone as a result of the natural and physical resources present and the scale and extent of land use activities.*

As previously discussed the rural character and amenity values of the Tamahere area does not reflect a pure productive rural environment and instead reflects a rural character and amenity dominated by rural lifestyle environments and hobby farming activities and with the recent establishment of the existing retirement village newly introduced urban character.

I consider that I have given recognition to this in my assessments when considering effects on rural character.

#### Eastern Extension

The Eastern Extension character has been eroded and engulfed by urbanised character to such an extent that rural character has little to no value within this area. The proposal is consistent and therefore not contrary with GRUZ-P3.

#### Southern Extension

I consider there is still value to the rural character within the subject site and surrounding sites and that the existing village due to the existing setbacks and landscape treatments consented along the southern boundary of LUC0597/21 does not erode the value of rural character and amenity within the southern extension area to a point that justifies the introduction of urbanised character. For these reasons I find the southern extension proposal is inconsistent with GRUZ- P3.

#### GRUZ – P13 Reverse sensitivity and separation of incompatible activities.

*(1) Contain, as far as practicable, adverse effects within the site where the effect is generated. (2) Provide adequate separation of the activity from the site boundaries.*

*(3) Ensure that new or extended sensitive land uses achieve adequate separation distances from and/or adopt appropriate measures to avoid, remedy or mitigate potential reverse sensitivity effects on productive rural activities, intensive farming, rural industry, infrastructure, extractive activities, or Extraction Resource Areas.*

#### Eastern Extension

The surrounding activities are compatible with the proposed eastern extension activities as they are similar activities. The proposal is consistent and therefore not contrary with

GRUZ – P 13.

### Southern Extension

The treatments, bunding, landscaping and buffers provided between the site and the boundaries do provide separation of rural activities and urban activities to a sufficient degree. Particularly when taking into account the written approvals provided by most adjoining landowners would indicate that activities are not seen to be incompatible with the adjoining land uses by these persons. The land tenure in the area is such that the area is not dominated by a pure rural productive environment, in which conflicts are more likely to occur with sensitive land uses. I am satisfied the proposal is consistent and therefore not contrary with GRUZ – P13.

### GRUZ- P14 Density of residential units and seasonal worker accommodation.

*(1) Maintain an open and spacious rural character by:*

*(a) Limiting residential units and seasonal worker accommodation to those associated with farming and productive rural activities;*

*(b) Limiting residential units to no more than one per Record of Title, except for particularly large titles where a minimum of 40ha is provided for each residential unit;*

*(c) Limiting the size, location, and number of minor residential units and requiring such units to be ancillary to an existing residential unit; and*

*(d) Limiting seasonal worker accommodation to no more than one facility per Record of Title that is at least 20ha in area*

GRUZ – P14 quantifies the maintenance of open and spacious rural character through controls on residential units. The residential units proposed in this case are not limited to one per 40ha and the units proposed are not associated with farming and productive rural activities. The subject sites currently comply with this policy as each site has only one dwelling.

### Eastern Extension

I would not describe the existing character of the Eastern Extension as being open and spacious, despite only one primary dwelling being located on each of the sites. That is



because one the sites also has a commercial activity that dominates the site and in addition to this has a minor dwelling that infringes building coverage. The subject sites are already surrounded by the retirement village on all side and rear boundaries. This creates a dominance of urban character over rural character that in my view encroaches heavily into the two eastern sites. Therefore, I consider that the policy is not particularly relevant to the eastern extension area as there isn't an open and spacious rural character to be maintained here.

### Southern Extension

The Southern extension at a larger scale and with only its northern boundary adjoining the existing village (with an existing buffer between the site done so under the previous consent to soften the urban edge where it meets the rural) does currently retain its open and spacious rural character, as do the sites beyond the southern extension. The additional residential units will alter the character to urban in nature. And proliferates the boundaries of the urban edge of the village further into the open space rural areas. In my view the southern extension is contrary to GRUZ-P14.

Ms Drew has made no comment on GRUZ - P14 in her assessments and I consider it would be helpful if this is addressed in evidence.

### Retirement Villages

*GRUZ P15 - Provide for alterations and additions to retirement villages existing or subject to a resource consent at 17 January 2022.*

The applicant's Planner Ms Drew and I share a difference of opinion on interpretation of this policy. Ms Drew considers as set out on Page 43 and 44 of the Applicants AEE that an extension such as the proposed is an addition to the village and therefore this specific provision seeks to trump GRUZ-P14 and other policies that seek to limit non rural activities within the zone.

My view is that the terms alterations and additions are defined by the PDP and these relate specifically back to extending the footprint on an existing building or structure, or

changing the layout of an existing building with extending its footprint, rather than extending the activity by including more units.

The definitions of these terms are referenced below:

***Additions:*** Means an extension to a structure or building which increases its size, height and volume, including the construction of new floors, walls, ceilings and roofs.

***Alterations:*** Means any change to the fabric or characteristics of a building and includes the removal and replacement of external walls, windows, ceilings, floors or roofs. It does not include maintenance and repair as defined.

GRUZ-P15 was introduced in the Decisions Version of the Plan as a result of submissions from several other retirement village complexes. I have reviewed the Hearing Panel Decision on this matter which does not in my opinion indicate that the intention was to allow for expansions of existing villages to be included in this policy. In my view to do so would clash with the other policies of the set out in the rural zone that seek to limit and restrict growth in the rural zone and the higher order documents that mapped growth areas (even prior to Change 1).

Interpretation of the Policy to include extensions of existing retirement villages within the rural zone activity also clashes with the allocated non-complying activity status, and I would have expected to see that if extensions of existing Retirement Village Activities were included in the policy provision that an associated rule with a RDIS activity status would have also been established.

For the Commissioners reference the Decision Report for the General Rural Zone States the following:

*“The hearing Regarding the evidence from Dilworth School, Meremere Dragway, and several existing retirement villages in the Tamahere area, we accept that these existing facilities all constitute a significant level of investment and provide valued services to the wider community.*”

*5.70 All of these submitters sought as part of their original submissions that they be rezoned to either a Residential or Country Living Zone (in the case of the Tamahere retirement villages), or some form of special purpose zone or scheduled activity in the case of Dilworth and Meremere Dragway.*

*5.71 We have addressed the rezoning of the Tamahere Eventide Retirement Village in our separate rezoning decision (Decision Report 28): Zoning – Rest of District). We have decided that the Tamahere Eventide Retirement Village should have a Country Living Zone, and therefore the provisions providing for its ongoing use and development are incorporated into the Country Living Zone provisions. We have retained the Tamahere Hospital and Healing Centre at 104A Duncan Road as Rural Zone, but have included rules and policies in the Rural Zone which provide a framework for community facilities (the definition of community facilities includes health facilities). “*

From my reading of the Decisions it seems unusual for the policy to be introduced at all in to the Rural Zone on the basis of the above, because the two retirement village facilities that submitted on this matter, one was already proposed for Rural Lifestyle Zoning and the Zoning decision accepted that the other be rezoned from Rural to Rural Lifestyle, with specific rules over the site to allow for alterations and additions.

For additional context from the Plan, I have also reviewed the rules of the Rural Lifestyle Zone in the Tamahere area and note that provision has been made for a specific village within the rule framework as a permitted activity for additions and alterations by creating a rule that references the Legal Description of the village site. The rules specifically state that additions and alterations that do not extend the footprint are permitted, and any additions and alterations that do extend the footprint of a building are an RDIS activity. These rule provisions relate only to the Record of Title in which the existing village is currently established within, therefore, any expansion of that village into new sites would trigger back to the non-complying activity status. Which I would note for the Commissioner also applies for Retirement Villages within the Rural Lifestyle Zone.

It is with this difference of interpretation of this policy that from here Ms Drew and I do depart somewhat in our evaluation of the objectives and policies of the Proposed Plan in relation to the GRUZ. From my perspective the other objectives and policies that seek to

limit and restrict non rural growth are not subordinate to GRUZ- P15 in this instance because GRUZ-P15 is not relevant to consider for either extension area.

It is noted that Ms Drew acknowledges that her assessment of GRUZ- P1- P5 (excluding P4) and GRUZ P16 and the consistency of the applications with these policies relies on her interpretation and if my interpretation is found to be accepted by the commissioner Ms Drew would not consider the proposal to be entirely consistent with the other policies.

*Building scale and location.*

*GRUZ- P 16*

*(1) Provide for buildings and structures where they are necessary components of farming and rural-related activities including rural industry, rural commercial, and extractive activities.*

*(2) Manage the size and location of buildings and structures to:*

*(a) Maintain adequate levels of outlook, daylight, and privacy for adjoining sensitive land uses and public reserves; and*

*(b) Maintain rural character, amenity, and landscape values, in particular where located in areas with high landscape values, the coastal environment, and adjacent to waterbodies.*

### Eastern Extension

In this case the buildings and structures are not necessary components of farming and rural related activities, the proposal seeks to infringe Building Coverage by 29.2% when 2% is allowable with 25 residential units and an arts and craft building on the site when two dwellings and two minor units are allowable. The buildings and structures do not relate to farming or rural related activities. My view is that the proposal is contrary to subclause 1 of the policy. However, I consider the proposal is consistent with subclause 2 as existing rural character within the eastern area is minimal and effects have been concluded as minor on rural character.

The proposal clashes in conclusions on each subclause, so I have taken directive from higher order documents of the RPS. Within this the policies on restricting and directing

development within the edges of the City send a stronger signal of policy than issues of rural character and therefore overall I find the eastern extension to be contrary to GRUZ-P16.

### Southern Extension

The proposal is contrary to GRUZ-P16 for the same reasons as the eastern section. Specifically with reference to Subclause 1 the proposal is for 42 Residential Units and a Health Spa along with associated roadways and parking structures. The open space buffers have been proposed along the edges of the village with substantial landscaping treatments to soften the units into the site. The units have been positioned so as to meet (2)(a). The proposal is partially contrary to subclause 2(b) as I have found that rural character will not be maintained as instead an urban character is proposed. Amenity will evolve from rural amenity values to urban amenity values due to the proposed change in character. The policy above makes no distinction that the proposal is required to maintain rural amenity as opposed to urban amenity. Based on the finishings of the existing village and proposed landscaping master plan I am satisfied that amenity will be maintained on the site with a shift to a high amenity urban environment.

### **6.5.5.1.3 Other Chapters**

The relevant infrastructure (AINF) and earthworks (EW) objectives and policies have been identified by Ms Drew as below:

- AINF-O7
- AINF-P25 - AINF-P28
- AINF-O8
- AINF-P29 – AINF-P32
- EW-O1
- EW-P2

I agree with Ms Drew's assessments on these matters and conclude that the Proposals are consistent with these policies.

The only additional policy I would add is as follows:

*AINF-P35 Land transport network infrastructure*

*(1) Ensure that land transport network infrastructure is developed so that:*

- a) The design, location, alignment and dimensions of new land transport networks provide safe vehicle, pedestrian and cycling access and manoeuvring to every site;*
- b) The land transport network provides good connectivity to the site and integrates with adjacent developments and identified as future growth areas including walking and cycling networks and facilities and public transport;*
- c) There is adequate provision of on-site parking and manoeuvring for land use activities;*
- d) Contaminants generated during construction are appropriately mitigated; and*
- e) Design, alignment and dimension of new roads will accommodate the installation of network infrastructure in accordance with technical and safety specifications.*

On the basis of the traffic engineering reports provided and on review of the active transportation infrastructure proposed around the sites I consider that the proposal will align with this policy.

#### **6.5.5.2 Particular Restrictions for Non-Complying Activities (Section 104D)**

##### Eastern Extension

The proposal is contrary to the objectives and policies of some of the more directive Objectives and Policies and overall, I consider the proposal contrary to the objectives and policies of the District Plan. The proposal does not meet Section 104D(1)(b). However as earlier discussed the proposal does meet 104(1)(a) and can therefore be considered for granting under section 104B. A recommendation on this section follows below.

### Southern Extension

I have found above that neither clause of section 104D have been satisfied.

The proposal has cumulative adverse effects in relation to settlement patterns leading to consequential effects of erosion of well-functioning urban environments and compact urban form. Rural Character will not be maintained and cumulatively the proposal erodes the rural character of the area by adding additional urban character that I consider when combined with filling in the gap along Tamahere Road via the Eastern section results in a dominance of urban character over rural character.

The proposal is contrary to directive objectives and policies of the GRUZ within the Proposed District Plan Appeals Version and the strategic directive policy UFD-O1. I do not consider the proposal to have minor adverse tangible effects that would allow for the *King Salmon* approach of concluding directive policies relating to adverse effects only really need to be given effect to when the effects are more than minor. Further to this, I note that the directive policies GRUZ O1 and UFD- O1 are not established to manage tangible adverse effects that can be mitigated at the consenting level, but to uphold the integrity of wider spatial planning concepts of creating compact urban form and well-functioning environments directed by the RPS and NPSUD.

### **6.5.5.3 Overall Conclusion - All Relevant Provisions under Section 104(1)(b)**

#### Eastern Section

I conclude the following in relation to the Relevant Provisions:

1. The proposal is consistent with the NPSHPL and NPSF but inconsistent with the NPSUD.

2. I find the Eastern Extensions to be contrary and therefore inconsistent to the Objectives and Policies of Change 1 of the RPS. In particular UFD O1, P1, P11, P12, P14 but consistent with LFO4 and LFP8 relating to soil resource.
  
3. The proposal is consistent with Strategic Directives of the Plan O2, O5 O8 but contrary to UFD O1. Within the GRUZ Chapter the proposal is consistent with GRUZ O2, O3, P1, P2, P13 P16, Earthworks and Infrastructure Policies. However, is contrary to GRUZ O1. The Objectives and Policies of the PDP were developed with regard to the Operative RPS and the NPSUD had only recently been released at the time of Decisions. Due to timing and scope of submissions the NPSUD was not fully implemented into the PDP Decisions. Since that time the release of Change 1 of the RPS only six months ago to give effect to the NPSUD and Future Proof Growth Strategy 2022, reiterates through its decisions that Tamahere is not a growth area where urban development is to be directed despite the existing rural character being eroded in places. When I take into account this context, which further supports and tightens policies around developing compact urban form and well-functioning urban environments. I consider that these matters should be weighted more so than those objectives and policies relating to rural character and Infrastructure. Overall, the eastern extension, is overall contrary to the objectives and policies of the Proposed District Plan.
  
4. On the basis of the above the proposal will not impact on productive land and accords with all cascading Policies in this space, the proposal is contrary and therefore inconsistent with a suite of provisions within both the District Plan and Higher Order Documents in relation to directing growth particularly in the high pressure areas at the urban fringes of Hamilton City. The proposal has consequential effects on the NPS UD directives of creating well-functioning urban environments and compact urban form by urbanising and providing for the expansion of the existing village as the District Plan signals that additional residential growth in rural zoned areas is at a cumulative tipping point with the shift from Discretionary activity Status in the ODP for such activities to Non-Complying in the PDP. All things considered; it is my view the proposal is generally contrary to the relevant provisions under Section 104(1)(b).



## Southern Extension

1. The proposal is consistent with the NPSHPL and NPSF.
2. Like the Eastern Extension I find the proposal to be contrary and therefore inconsistent to the Objectives and Policies of Change 1 of the RPS. In particular UFD O1, P1, P11, P12, P14. On that basis I find the proposal to also be inconsistent with the NPSUD which is given effect to by Change 1.
3. The proposal is consistent with Strategic Directives of the Plan O2, O5 O8 but contrary to UFD O1. Within the GRUZ Chapter the proposal is consistent with GRUZ O2, P2, P13, along with the Earthworks and Infrastructure Policies. I have found the proposal is Contrary to GRUZ O1, O3, P14 and P16 and inconsistent with P1. The Objectives and Policies of the PDP were developed with regard to the Operative RPS and the NPSUD had only recently been released at the time of Decisions. Due to timing and scope of submissions the NPSUD was not fully implemented into the PDP Decisions. Since that time the release of Change 1 of the RPS only six months ago to give effect to the NPSUD and Future Proof Growth Strategy 2022, reiterates through its decisions, that Tamahere is not a growth area where urban development is to be directed despite the existing rural character being eroded in places. When I take into account this context, which further supports and tightens policies around developing compact urban form and well-functioning urban environments and the conclusions I have reached on rural character not being maintained due to the change to urban character. I find the proposal is contrary overall to the relevant provisions under section 104(1)b.

### **6.5.5.4 Section 127 - Assessment of Relevant Plan Provisions**

In the context of providing for these villas only if the southern extension is granted. I find that the proposal for the two additional villas to be located within the existing footprint of the village will be consistent with the objectives and policies of the plan. This is because

the addition of two additional units is of such a small scale that will result in less than minor adverse effects and cumulatively would not contribute to undermining the growth strategies for establishing urban growth outside of existing identified areas for growth. The two villas connect into existing services and infrastructure and the effects of rural character will be less than minor if the southern extension is granted as the villas will be located internally within the site and are for the most part located within the existing footprint of the consented activities. For these reasons I find the proposal is consistent with the objectives and policies of the PDP and all other policies when considered in the context of granting the Southern extension given the scale of the application.

If the southern extension is not granted, I consider that as the proposal to establish the villas will cross the boundary into the southern extension area and is partially located on a different site to that consented within the existing village, that the proposal would potentially fall outside the scope of a section 127 application and would not be able to be progressed to decision stage.

#### **6.5.5.5 Cancellation of Consent Notice - Assessment of Relevant Plan Provisions**

The proposal to cancel the consent notice will not in itself have any effect on objectives and policies of the plan. The site has already reached its limit for building coverage so therefore the establishment of any building within the no build area would be subject to further resource consent consideration. As is being undertaken via the eastern extension. The cancellation of the Consent Notice is consistent with the objectives and policies of the PDP and all other higher order documents.

#### **6.6 SECTION 104(1)(c) – OTHER MATTERS**

When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any other matter the consent

authority considers relevant and reasonably necessary to determine the application. These matters are discussed below.

#### **6.6.1 Waikato Tainui Environment Plan**

Page 72 of the Assessment of Environmental effect addresses this matter and I concur with Ms Drews assessment in relation to all applications and adopt the findings.

#### **6.6.2 Ngati Haua Environmental Management Plan**

Page 72 and 73 of the Assessment of Environmental effect addresses this matter and I concur with Ms Drews assessment in relation to all applications and adopt the findings.

#### **6.6.3 Precedent and District Plan Integrity**

A precedent reflects the concern that a grant may have on the fate of future applications for consent. In other words, how a decision may influence the way in which future applications are dealt with.

The proposals in this case are non-complying activities and both the eastern and southern applications have been found to be contrary to policies of the District Plan and the RPS Change 1. Each application is required to be assessed on its merits and every site is different. That is evident from my conclusions reached on the different extension areas.

##### Eastern Extension

In regard the Eastern Section I do not consider the granting of that application will set a precedent for the granting of other applications to extend the village. This is because of the site-specific merits of the eastern area cannot be easily replicated through either future extension applications for this particular village or at other sites in the district that seek to urbanise outside growth strategy areas. These site specific merits are:

- The sites surrounding the proposal having changed use from rural to urban on all boundaries of the subject sites, isolating the existing sites uses and completely disconnecting them from the rural environment despite the rural zoning of the site.
- There is an existing consented commercial activity operating across a portion of the site.

- The extend of the extension is comparatively small representing a 12.3% increase in the village size. There is an efficiency of resource use to undertake an extension to an existing village, in order to meet housing demands rather than establishment of an entire new village elsewhere.

For these reasons and despite the conflict of the eastern application with the Policies of the Plan and Change 1. I do not consider that District Plan integrity will be compromised for the Eastern Extension area.

### Southern Extension

The southern extension, however, does concern me in relation to precedent. The application is larger and as discussed within my reporting relocates the urban edge of the village further south into areas more dominantly rural and away from the more urbanised parts of Tamahere.

As set out in section 1.3 of this report the pattern of expansion to neighbouring properties has occurred regularly since the establishment of the first village in 2019. Based on this history and the demand identified by the applicant for this typology of retirement living in this location, I do not consider it fanciful that future applications for expansion are likely.

In the case of these applications the applicant relies on the existing environment and the built form and character of the existing village to the north to justify why adverse effects on character are acceptable to continue the village into the south. I accept this has merit for the eastern extension due to it being much smaller scale, surrounded on all sites by the existing village and having an existing commercial activity in place on this site. However, to rely on the existing environment argument for the southern extension would, in my view, set a precedent for further expansion of the village within other sites bordered on only one boundary by the village. This does, in my opinion, give cause for concern, given the signals from the PDP framework that cumulative effects in relation to urban growth in the rural zone have reached a tipping point.

District Plan integrity reflects the public confidence in the plan. The Environment Court (EC) in the case *Berry v Gisborne District Council* (2010) considered precedent and plan integrity and cautioned the use of such factors. The EC advised an application will only be

declined on the basis of plan integrity where:

- The proposal clearly clashes with important plan provisions; and
- It is likely that further applications will follow which are equally incompatible with the District Plan and materially indistinguishable.

The applications are the first applications for extension beyond the existing footprint, to be made for this village under the new PDP framework released in January 2022. The Proposed Plan has introduced significant policy shifts to the Rural Zone to reduce non rural growth in Rural Zone areas.

Ms Drew considers that both applications can be set apart from other likely applications because it is for the extension of an existing retirement village complex and therefore replication of these circumstances is unlikely to be repeated elsewhere.

Ms Drew mentions in her assessment on Page 54 that there are two other retirement villages within the vicinity which were both subject to rezoning to Rural lifestyle. As a point of clarification, the Eventide Village at Bollard Road was located in a Country Living Zone under the ODP and has not been subject to rezoning (Country Living Zone was renamed Rural Lifestyle Zone to align with National Planning Standards).

The village located at 158 Matangi Road was proposed in the notified version to be rurally zoned, and this was changed in the Decision Version to Rural Lifestyle Zone.

It is noted however that within the Rural Lifestyle Zone Retirement Villages are also Non-Complying activities where as previously in the Country Living Zone equivalent in the ODP these were Discretionary Activities. RLZ-S1 restricts Residential Unit numbers to 1 unit per Record of Title. However, any additional units in this zone are Discretionary.

In terms of retirement villages located within the Rural Zone there are none within the vicinity of the site.

The dwellings proposed in this village have a substantial floor area as two or three bedroom homes with single or double garages typical of what you would find in any housing development. I find it difficult to distinguish a difference in the set of effects that would result from a retirement village and a typical urban housing development. Both of which would be non-complying. I therefore am not convinced that the nature of the activity in this case makes the proposal materially indistinguishable from other settlement areas where there are clusters of non-rural uses but for which are rurally zoned or adjoin rural zoned land.

I consider that the granting of the southern section has the potential to undermine the integrity of the District Plan in relation to the Policy shift to reduce the proliferation of rural residential activities within the Rural Zone. The growth pressure in this area is significant and based on the historic establishment of activities within close proximity to the urban fringes of the City, I consider it likely that further applications will follow which are equally incompatible with the District Plan and materially indistinguishable from the southern extension.

#### **6.6.4 Future Proof Growth Strategy 2022**

The Future Proof Growth Strategy is non statutory 30-year growth management and implementation plan specific to the Hamilton, Waipa and Waikato Sub-Region, it is set in the context of the broader Hamilton- Auckland Corridor and Hamilton- Waikato Metropolitan areas.

Pag 36 of the Overview to Growth Management sets out the following:

*The settlement pattern for the Future Proof sub-region needs to increasingly take a compact and concentrated approach. This means that future development should be focused in (through infill and intensification) and around (through new growth areas) the key growth areas shown on the Future Proof settlement pattern map (map 1).*

*The benefits of a compact and concentrated approach to growth and development include greater productivity and economic growth, better use of existing infrastructure, improved transport outcomes, enhanced environmental outcomes, greater social and cultural*

*vitality, more opportunities for place-making and community connectedness, regeneration of existing urban areas, and preservation of the natural environment and enablement of sustainable rural resource.*

*Through a more compact urban form, we are also aiming to work towards a sub-region of 30-minute communities, where people can meet most of their needs within a 30-minute walk, cycle or public transport trip.*

*The partnership's plan for supporting urban growth over the next 30 years is strongly influenced by the guiding principles and vision for the sub-region. It focuses on responding to the key challenges and seeks to provide greater certainty over the short and medium term than the long term. This will allow the partnership to further consider the most appropriate planning directions and responses to our longer-term issues.*

*Future Proof is about how the area should develop into the future. Underlying this are fundamental principles which apply in respect of the strategy and its implementation. The ongoing application of these principles is key to effective implementation and should be used in assessing and measuring proposals against the strategy and any subsequent changes that are made to it. The principles recognise the four wellbeings, environment, social, cultural, economic, across six interest areas.*

The relevant Principles for this proposal are as follows:

2. *Vibrant city centre connected to thriving towns, villages and rural communities*

*2.6 Shape and guide development towards existing urban settlements and nodes, and ensure that rural-residential development occurs in a sustainable way to avoid unnecessary sprawl.*

*2.9 Improve access to housing, employment, education, health care services, other services and amenities*

*2.10 Enable well-functioning and quality urban environments based around transitoriented development, active travel infrastructure and connected centres.*

4. *Affordable and Sustainable Resource Use*

4.2 Encourage development in established settlements to support the efficient use of existing infrastructure and resources, including active travel modes.

#### 6. Sustainable Resource Use and Climate Resilience

6.3 Ensure that planning addresses the need to reduce emissions and build climate resilience.

The key settlement pattern matters in the Future Proof Strategy has been incorporated into legislation via Change 1 to the RPS. I therefore do not consider that additional assessment of the strategy would add value to the decision making on this application. I note that Draft Future Proof Growth Strategy 2024 is now out for consultation.

### **6.7 PART 2 MATTERS: PROPOSED DISTRICT PLAN**

The Court of Appeal's decision in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 was released on 21 August 2018. The Court of Appeal held that the Supreme Court's rejection in *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 ("*King Salmon*") of the "overall broad judgment" approach in the context of plan provisions applied in the particular factual and statutory context of the NZCPS which, the Supreme Court confirmed, already reflects Part 2 and complies with the requirements of the RMA. The Court of Appeal did not consider that the Supreme Court in *King Salmon* "intended to prohibit consideration of Part 2 by a consent authority in the context of resource consent applications (paragraph [66])".

In the context of resource consents, the Court of Appeal determined that:

- (a) RMA decision makers should usually consider Part 2 when making decisions on resource consents (this is the implication of the words "subject to Part 2" in section 104); and
- (b) However, if doing so is unlikely to advance matters where the relevant plan provisions have clearly given effect to Part 2, or where it is clear that the plan is



“competently prepared” with “a coherent set of policies” such that there is no need to refer to Part 2.

The Proposed District Plan was prepared after release of the *King Salmon* and *Davidson* caselaw and therefore written and decided with this context in mind. The decisions on the PDP were considered by a Panel of qualified and experienced hearing commissioners in a comprehensive manner and released in January 2022, I am therefore satisfied that the plan has been competently prepared with a coherent set of policies. Whilst there are extensive appeals in relation to the Plan, the presence of appeals against the provisions is not one of the caveats set out in *Davidson* and changes to the provisions through the appeal process do not in my view necessarily guarantee a more coherent set of competently prepared policies due to the piecemeal way in which appeals are settled. Therefore, my view is that the Plan as it stands is competently prepared with a coherent set of policies.

It is noted that since the release of the PDP Decisions, the National Policy Statement for Highly Productive Land has been released and the Plan provisions are yet to be updated with this national direction. Change 1 to the RPS has since been released to give effect to the NPSUD a variation has not yet been undertaken to the PDP to give effect to any changes required by the RPS Change 1. These may be areas which the Commissioner may wish to refer back to Part 2 if he finds there are conflicts and lack of clarity.

## **6.8 RECOMMENDATIONS**

### **6.8.1 EASTERN EXTENSION LUC0188/24 (including NESCS):**

1. I am in agreement with the applicant’s team that the effects in relation to matters including effects on rural character, soil resource, productive potential and NESCS will be acceptable.
2. I consider there is potential for cumulative effects on settlement patterns by granting this consent, as the proposal adds to the previously granted consents

already established in the rural zone. The proposal represents a 12% increase in the size of the village with 25 additional units proposed. I have determined that when taking into account this scale of the extension and the site specific location, that the cumulative effects on settlement patterns of the extension will be minor.

3. The proposal has been found to meet the first limb of the gateway test under section 104D and therefore can be considered under section 104B.
4. Despite the contradictions the proposal has with the Policies of the Proposed District Plan and RPS Change 1, in the case of the eastern extension my view is the following attributes weigh in favour of the proposal:
  - a) The sites surrounding the proposal having changed use from rural to urban on all boundaries of the subject sites isolating the existing sites uses and completely disconnecting them from the rural environment.
  - b) There is an existing commercial activity occupying part of the site.
  - c) The extend of the extension is comparatively small representing a 12.3% increase in the village size. There is an efficiency of resource use to undertake an extension to an existing village in order to meet housing demands rather than establishment of an entire new village elsewhere.
  - d) I have also taken into account the Positive effects of the proposal to provide additional housing for an aging population.
5. I have concluded that many of these factors set the application apart and therefore I am satisfied that the integrity of the district plan will remain intact if granting the consent.

I recommended to the Commissioner that subject to conditions, the Eastern Extension be **GRANTED** consent under the Waikato Operative District Plan, Proposed District Plan Appeals Version and the NESCS. Recommended Conditions can be found in **APPENDIX G**

of this report.

### **6.8.2 CANCELLATION OF CONSENT NOTICE s221 VAR0002/24:**

I conclude that the effects will be less than minor in relation to cancellation of the consent notice and the proposal to cancel the notice does not offend the objectives and policies of the plan or any other relevant provision. I recommend that the cancellation of consent notice be **GRANTED** under section 221 of the RMA.

### **6.8.3 SOUTHERN EXTENSION LUC0189/24:**

1. In regard to actual and potential effects under section 104(1)(a):

- a) I have found that by extending the urban character south into areas more dominated by rural characteristics, the proposal cumulatively expands on a transformation of character within the subject sites and surrounding area from rural to urban character. From a planning perspective this approach in my view, is an example of planning creep and results in cumulative effects on rural character.
- b) I agree the treatments, landscaping and buffers designed for the site will soften the development edges to integrate the development as much as possible into the environment, however this doesn't mitigate the proliferation of urban character towards the south away from the more urbanised areas of Tamahere. The high-quality treatments cannot in themselves alter the character of the proposal back to a rural character rather than the urban character proposed.
- c) The southern extension represents a 21% increase in the number of residential units within the retirement village and introduces an additional health spa facility. I do not consider that this increase to be inconsequential in terms of cumulative effects on planned settlement

pattens. There is a strong signal from the PDP that cumulative effects of residential growth in the rural zone are at a tipping point when taking into consideration the change in activity status that has occurred in the PDP. The existing village was consented and assessed under the ODP as a Discretionary Activity whereas such activities are now Non-Complying in the PDP. (For both the Retirement Village Activity, and for Additional Dwellings in the Rural Zone.) The cumulative adverse effects will be more than minor on the planned settlement patterns.

- d) I have identified the effects on the intrinsic value of soils as minor due to the removal of the high class soils and replacement with buildings and structures for non-rural use. This conclusion on the level of effect is reached in the context of the plan giving no mention in the earthworks rules or rules for large scale rural activities to the intrinsic value of soil, which I consider is a weakness in the plan rules that limits the ability to consider the effects on soil resource of this proposal despite these matters forming strong directive policies in the RPS and Objectives and Policies of the PDP.

2. In regard to Relevant Plan Provisions under section 104(1)(b):

- a) I find the proposal to be contrary and therefore inconsistent to the Objectives and Policies of Change 1 of the RPS. In particular UFD 01, P1, P11, P12, P14. On that basis I find the proposal to also be inconsistent with the NPSUD which is given effect to by Change 1.
- b) The proposal is consistent with Strategic Directives of the Plan O2, O5 O8 but contrary to UFD 01. Within the GRUZ Chapter the proposal is consistent with GRUZ 02, P2, P13, along with the Earthworks and Infrastructure Policies. I have found the proposal is Contrary to GRUZ O1, O3, P1, P14 and P16. The Objectives and Policies of the PDP were developed with regard to the Operative RPS and the NPSUD had only recently been released at the time of Decisions. Due to timing and scope

of submissions the NPSUD was not fully implemented into the PDP Decisions. Since that time the release of Change 1 of the RPS only six months ago to give effect to the NPSUD and Future Proof Growth Strategy 2022, reiterates through its decisions, that Tamahere is not a growth area where urban development is to be directed despite the existing rural character being eroded in places. When I consider this context, and the conclusions I have reached on rural character not being maintained due to the change to urban character. I find the proposal is contrary overall to the relevant provisions under section 104(1)b.

3. In Regard to 104(1)(C) other matters I have found that:

- a) The proposal aligns with Iwi and Hapuu management plans, however the granting of the southern section has the potential to undermine the integrity of the District Plan in relation to the Policy shift to reduce the proliferation of residential activities within the Rural Zone. The growth pressure in this area is significant and based on the historic establishment of residential growth activities within close proximity to the urban fringes of Hamilton City, I consider it likely that future applications will follow which are equally incompatible with the District Plan and materially indistinguishable from the proposed southern extension.

4. Section 104D considerations

- a) On the basis of the above findings, the Southern Section does not meet the requirements for granting under section 104D of the RMA as the adverse effects are more than minor and the proposal is contrary to the Objectives and Policies of the PDPAV. The Southern Extension therefore must be **DECLINED** under section 104D.

#### **6.8.4 SECTION 127 CHANGE OF CONSENT CONDITION - LUC0597/21.04**

If granting the southern extension, I consider that the 127 can also be granted as the two

additional villas increase the size of the retirement village by 1% and are for the most part contained within the existing footprint and internalised within the sites. Given the small-scale nature of the proposal the effects are less than minor and the proposal will not overall undermine the objectives and policies of the ODP and PDP when considered in the context of section 127.

My recommendation is to approve the change of consent condition to allow for the two additional villas only if the application for the southern extension progresses. This is because part of one of the villas is located over the boundary into 82 Tamahere Drive and is not fully contained within the existing footprint of the land subject to the existing consent. Therefore, any decisions must be considered together.

#### **6.8.5 NESCS SOUTHERN EXTENSION**

The consent under the NESCS at 92 Tamahere Drive is only really necessary if the southern section progresses to a grant, the consent has been bundled with the Land Use Consent to take on the more restrictive activity status of Non-Complying. This allows for a decision to be made on this application with the LUC application. On the basis of the bundling approach I consider that this application under the NESCS should also be declined. If the Commissioner decides to grant the Southern Extension then the NESCS should also be granted subject to conditions recommended by Mr Parkes.

If the Commissioner is concerned about the bundling of this activity as a controlled activity with the Land Use Consent, there is the option for the Commissioner to unbundle this NESCS consent and grant as a controlled activity as required by the Act. Council would need to allocate and set up a separate reference number for the application if the Commissioner wishes to unbundle the consent decision. If treating like for like, the same may be necessary for the Eastern Extension also as this also requires a consent under the NESCS for a controlled activity.

If the application for the Southern Extension Land Use is declined and the Controlled Activity NESCS is approved, such a decision would not be able to be given effect to and

further land use consents for earthworks would be required under the Plans to undertake any remedial works.

Another option for the Commissioner, (if bundling of the NESCS with the LUC's doesn't appeal), may be to seek confirmation from the applicant in the hearing that if a decline of the Southern Section Land Use is decided upon, the applicant agrees to the withdrawal of the NESCS controlled activity. The applicant may not wish to do this as it will leave them without consent if they seek appeal and any such appeal overturns a decision to decline.

## **7.0 DRAFT CONDITIONS**

Appendix G of the Hearing Report provides a draft set of conditions for the Eastern Extension. These conditions have been adapted from the existing consent for the Village LUC0597/21.03, with specific inclusion of the recommendations from the various experts (including tangata whenua). The landscaping conditions has been adapted from the existing consent conditions in LUC0597/21.03, relative to Eastern proposal landscaping matters. My preferred approach is to present in the section 42A report for consideration to the Commissioner, a set of conditions already reviewed by the applicant, with only points of contention remaining. However, in this case timing constraints has meant that the applicant has not sighted these conditions.

Unfortunately, the timeframes have not allowed me to undertake a set for the Southern Extension and the Section 127. It is anticipated that conditions for the Southern Extension would be similar in nature to the Eastern with amendments to cater for the health spa facilities and specific recommendations of the experts. I hope to table a set for the Commissioner at the beginning of the Hearing.