

## Attachment 9 – Nau Mai Business Park



**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of an application by **TASMAN LANDS LTD** for one land use consent and one subdivision consent associated with the establishment and operation of a light industrial and rural-residential development at 4005A State Highway 23, Okete, Raglan.

**DECISION OF THE INDEPENDENT HEARINGS COMMISSIONER APPOINTED BY  
WAIKATO DISTRICT COUNCIL**

**1. INTRODUCTION**

I was appointed by the Waikato District Council ("**WDC**" or "**the Council**") pursuant to section 34A of the Resource Management Act 1991 ("**RMA**") to act as an independent hearings commissioner to hear and decide resource consent applications by Tasman Lands Ltd ("**the applicant**").

**2. THE HEARING**

A hearing was held at the Waikato District Council offices, Ngaruawahia on Wednesday 21 July 2010, Thursday 22 July 2010 and Friday 23 July 2010, at which time it was adjourned to enable me to carry out a site inspection and then determine if any further information was required. No further information was required and the hearing was closed on Monday 26 July 2010.

**3. THE APPLICATIONS**

The applicant lodged resource consent applications with WDC for a land use consent (LUC 0071/10) to allow the establishment and operation of a light industrial business park and a rural-residential development, Nau Mai Business Park & Lifestyle Subdivision ("**Nau Mai**"); and a subdivision consent (SUB 0048/10) to create six residential allotments (Lots 5 to 9 and Lot 11), three allotments intended for light industrial development (Lots 12, 16 and 23) and a balance lot (Lot 10) at 4005A State Highway 23 ("**SH 23**"), Okete, Raglan.

The site currently holds a number of consents including land use consents for the establishment of a concrete batching plant on Lot 23, earthworks and the existing shed on the site; and a subdivision consent enabling the creation of two

additional lots (Lots 3 and 4). The applicant also holds a water permit from Environment Waikato for water abstraction.

#### **4. SUBMISSIONS**

The Council received 157 submissions within the prescribed timeframe. Of these, 143 were in support, two were neutral and 12 were in opposition.

One late submission was received from Mr Thorpe and Ms Stanway. This submission was accepted, noting the concurrence of the applicant.

#### **5. APPEARANCES**

The following organisations and individuals presented evidence / submissions during the hearing.

##### **5.1 Applicant**

Mr Phil Lang	Legal Counsel
Mr Robert Carter	Director, Tasman Lands Ltd
Mr Gary Warner	Consultant Planner, McCracken Surveys Ltd
Mr Bernard Brown	Landscape Architect, Bernard Brown Associates
Mr Norman Robins	Roading and Traffic Engineer, AECOM
Mr Graham Warren	Acoustical Consultant, Marshall Day Acoustics
Mr Charles Mitchell	Aquatic Ecologist, Charles Mitchell & Associates
Mr Colin Jacobson	Geotechnical Engineer, AECOM

##### **5.2 Submitters**

Raglan Community Board	Mr P Story
Mr W Dansey	
Mrs L Pointon (also on behalf of Mr W Pointon)	
Mr G Bellamy	
Hourua Trust	Mr J Tonga
Mr M Grant (also on behalf of Mrs A Grant)	
New Zealand Transport Agency	Mr A Wilson
	Mr R Swears
Whaingaroa Environmental Defence Inc	Mr M Hamilton
	Mr J Lawson

##### **5.3 Waikato District Council**

The Officers' Report, prepared by Mr Craig Sharman on behalf of WDC, and which included reports from a number of specialist consultants retained to review the applications, was pre-circulated and "taken as read".

Mr Sharman summarised his report and the following technical specialists spoke briefly to their reviews and highlighted matters raised during the course of the hearing:

Mr L McKinlay	Landscape architect
Mr B Quilter	Consulting engineer

Mr N Hegley                      Acoustic consultant  
Mr A Gray                        Traffic consultant

Mr M Brown, a council manager, was also present to address matters in relation to Variation 15 to the Proposed Waikato District Plan.

## 6. DESCRIPTION OF PROPOSAL

The applicant seeks to establish and operate a business park and rural-residential development on a 36.4 ha property at 4005A SH 23, Okete. The site is approximately 3.5 km east of Raglan and 1 km from Raglan Harbour.

The site is in the Rural Zone of the Waikato District under the Operative Waikato District Plan ("**operative plan**") and the Proposed Waikato District Plan ("**proposed plan**"). The property is located on a rolling rural landscape, with Ohiapopoko Hill to the south of the site. A stream runs through the middle of the site and connects to Bridal Creek at the western edge of the property. Surrounding land uses are mainly farming, with some rural-residential development particularly in the vicinity of Okete Road.

The site contains two rural-residential allotments as a result of a previous subdivision consent (SUB 0098/08). Also, a concrete batching plant (LUC 0177/07) and a large shed near the SH 23 frontage (LUC 406/06) were authorised by two previously obtained land use consents.

A light industrial business park is proposed at the northern end of the site while a rural-residential development consisting of six additional house sites is proposed for the southern end. The necessary subdivision and land use consents have been sought, and these were the subject of the hearing.

In addition to the creation of new allotments to facilitate the development, five bush covenant areas are proposed, totalling 2.41 ha in area.

Four precincts are proposed for the business park, as follows (noting that only a portion of each precinct, referred to as the "effective area", is proposed to be developed):

- Precinct 12                      effective area of 0.75 ha with two distinct areas; total land area of 1.95 ha;
- Precinct 14                      effective area of 1.22 ha with two distinct areas (including the existing concrete batching plant with an effective area of 0.42 ha); total land area of 2 ha;
- Precinct 15                      effective area of 1.37 ha with three distinct areas; total land area of 2.82 ha; and
- Precinct 16                      effective area of 2.1 ha in a single area; total land area of 3.46ha.

The proposal includes substantial earthworks associated with re-contouring of the light industrial area and the construction of building platforms and access ways. Preparatory earthworks are proposed to be carried out in order to achieve the desired contours for each precinct. In total, approximately 44,100 m<sup>3</sup> of earthworks is required.

The applicant intends to service the area on site as there is no public water supply, stormwater or wastewater infrastructure in the vicinity of the property.

Ecological initiatives, in the form of native planting and riparian enhancements, are an integral part of the development.

## **7. SUBMISSIONS/EVIDENCE PRESENTED**

### **7.1 Applicant**

#### **7.1.1 Mr P Lang: Opening Submission**

Mr Lang outlined the applicant's proposal and the recent history of the site. He highlighted the lack of available sites for light industrial development within, and in close proximity to, Raglan. Mr Lang noted that at the commencement of the application preparation process, Variation 15 to the proposed plan was advancing slowly. Therefore, the applicant decided that the resource consent applications needed to be progressed.

Mr Lang then outlined the consents being sought by the applicant and explained how activities on the site would be controlled, including resource consent conditions, associated performance standards and covenants and/or consent notices. Mr Lang advised that the applicant intends to stage the development of the business park, with Stage 1 being confined to Precinct 16.

Mr Lang stated that the applications were to be treated as non-complying activities and, because the applications were lodged prior to 1 October 2009, the RMA as it was prior to the 2009 amendment applied.

He then addressed the statutory tests to be applied. In terms of section 104D, Mr Lang submitted that the objective contained in Variation 15 forms part of the proposed plan but the rules do not, given the provisions of section 86B.

Mr Lang concluded that the proposal had adverse effects that were no more than minor and that it was not contrary to the objectives and policies of the operative and proposed plans. As such, both the section 104D gateway tests were satisfied.

#### **7.1.2 Mr R Carter**

Mr Carter is a director and shareholder of Tasman Lands Ltd, which has owned the Nau Mai site since 2006. He provided background information about his business and highlighted the lack of suitable sites for industrial activities in the Raglan area.

Mr Carter stated that the process involved in obtaining resource consent for the existing concrete batching plant on the site was long and onerous. He then explained how he had been approached by various individuals seeking a site for their businesses but that the long consent process resulted in potential occupiers moving to sites in places like Hamilton, where there are sites which allow industrial development to occur.

Mr Carter explained that the development will be low impact and designed in accordance with natural contours where possible. He also noted that at the time of the hearing, 6,500 new plants had already been planted on the site for mitigation and environmental enhancement purposes.

Mr Carter stated that he had received enquiries from a diverse range of “dry” industries that had shown an interest in utilising the proposed site. While Mr Carter originally anticipated that Stage 1 could have been tenanted immediately, the current economic climate meant that it would take some time to do so - perhaps between 3 to 10 years. He also confirmed that the entire light industrial development would likely accommodate 20 to 25 businesses.

Mr Carter confirmed that some consents would be required from Environment Waikato, who had confirmed that they could be lodged at a later date.

### **7.1.3 Mr G Warner**

Mr Warner coordinated the resource consent applications and associated Assessment of Environmental Effects (“AEE”) for the proposal and had previously prepared the applications for the concrete batching plant and the nearby Wallis subdivision.

He summarised the applicant’s proposal and commented on the Variation 15 process. He also outlined the potential constraints and environmental effects of the proposal.

Mr Warner noted that the applicant has maintained dialogue with Nga Uri a Mahanga and that the iwi support the use of the name “Nau Mai”. He also noted that the owners of the site directly opposite the subject site on SH 23 support the proposal. Mr Warner also stated that the applicant’s negotiations with the New Zealand Transport Agency (“NZTA”) to realign the western boundary of the site as part of SH 23 were almost completed.

Mr Warner stated that both the light industrial and rural-residential parts of the proposal were non-complying activities under both the proposed and operative plans.

He then noted the absence of rules within the proposed plan that dealt with light industrial areas located within the Rural Zone. He compared the permitted activity rules for the Industrial and Rural Zones to draft “performance standards” that he proposed for the Nau Mai development and that they would be registered against the land by way of consent notices.

Mr Warner stated that he disagreed with the analysis in the Officers’ Report where it concluded that the proposal was contrary to the objectives and policies of the operative and proposed plans.

Mr Warner’s concurred with the Officers’ Report that the application had adverse effects that were “no more than minor” and hence passed the section 104D (1)(a) gateway test.

Mr Warner confirmed that the applicant is seeking a 10 year consent term.

#### **7.1.4 Mr B Brown**

Mr Brown, a very experienced landscape architect, provided evidence on the landscape and visual effects of the proposal. Mr Brown noted that a landscape enhancement programme has been implemented on the Tasman Lands site since 2006. He prepared the Landscape and Visual Effects Assessment and Proposed Landscape Mitigation Concept (May 2009) for this application.

Mr Brown outlined the landscape character of the site and its surroundings and summarised the Landscape and Visual Effects Assessment by discussing one key public viewpoint and one key private viewpoint in his evidence.

Mr Brown then summarised the proposed visual mitigation measures for the development as a whole and confirmed that it will be five to six years before landscape and visual mitigation plantings were fully effective. He also confirmed that both of the selected viewpoints could have adverse visual effects if the mitigation measures are not implemented.

Mr Brown supported Mr McKinlay's views on amenity values. However, Mr Brown considered that the comments on amenity values in the Officers' Report were 'harsh' as the development will be staged, plantings will follow earthworks and the adverse effects on visual amenity will be temporary.

Overall, Mr Brown considered that, given full implementation of the Proposed Landscape Mitigation Concept, the visual effects of the proposal will be no more than minor.

#### **7.1.5 Mr N Robins**

Mr Robins, a roading and traffic engineer employed by AECOM, presented evidence on the traffic impacts of the proposal.

Mr Robins acknowledged the uncertainties that inevitably exist when assessing traffic impacts and explained how his figures were derived. He considered the proposed maximum site coverage of 50% gross floor area to be high and thus based his assessment on the typical average site coverage for industrial developments of 25-40%. Based on available New Zealand data, Mr Robins concluded the daily average traffic generation rates would be between 1,110 and 2,300 vehicle movements per day, compared with WDC's peer reviewer of 3,673 vehicles per day which he believed was "improbably high and unrealistic".

Mr Robins considered three elements to the mitigation of traffic effects, namely: the provision of a turn bay for the right turn into Nau Mai, the lengthening of the existing widening for left-turning traffic into Nau Mai and a 194-metre shoulder widening for vehicles turning right from Nau Mai onto SH 23.

Mr Robins noted that the applicant and NZTA have been meeting on a 'without prejudice' basis to attempt to resolve traffic mitigation proposals. He highlighted the concerns of NZTA, particularly regarding the loss of overtaking opportunity along that part of SH 23. Mr Robins was of the view that the stretch of SH 23 between Okete Road and the bend east of Nau Mai was not long enough for overtaking and that the proposed shoulder widening by the applicant could act as a de facto slow vehicle bay at times, so the opportunity to overtake along that stretch would not be completely lost.

Mr Robins considered that WDC's peer review had overstated the traffic impacts but he generally agreed with the suggested land use consent conditions, with the exception of the timing of the review of conditions which he believed should be conducted after completion of Precinct 16, and not at 75% as proposed by the Council.

Mr Robins agreed that if traffic effects were higher than he had assessed, the plans referred to in his evidence could potentially change.

#### **7.1.6 Mr G Warren**

Mr Warren, a very experienced acoustics consultant from Marshall Day Acoustics, presented evidence on the noise-related effects of the proposal. He undertook a survey of the Nau Mai site on 18 December 2009 and measured noise levels at five locations. He noted that the existing concrete batching plant was inaudible at the southern end of the residential access road on the site.

In terms of traffic noise impacts on rural-residential sites, Mr Warren stated that there would be no significant adverse effects. Mr Warren also considered that the proposed noise limits would be appropriate in addressing the concerns that several submitters had expressed about noise.

Mr Warren stated that while he agreed with Mr Hegley's conclusions, there were some differences between them as to what conditions should be imposed on the consents.

Mr Warren considered that noise limits in residential lots should apply at the "**existing** notional boundary" of dwellings, rather than the "notional boundary". He also considered that 45 dBA  $L_{10}$  and 75 dBA  $L_{max}$  night time limits have a "more normal relationship to the 55 dBA daytime limit" than the limits suggested by Mr Hegley which are 5 dBA lower.

Mr Warren considered that noise effects would be no more than minor.

#### **7.1.7 Mr C Mitchell**

Mr Mitchell, an aquatic ecologist, did not provide written evidence. Instead, he spoke to his report that was included as part of the application and read out the executive summary.

Mr Mitchell stated that the ecological status of the site's waterways would be superior to those of farming operations, even if they were to include high quality riparian management and planting. He also considered improvements from mitigation would occur rapidly.

#### **7.1.8 Mr C Jacobson**

Mr Jacobson, an Associate Director of AECOM, presented geotechnical and engineering evidence. He referred to the assessments that have been undertaken by AECOM for onsite effluent disposal, stormwater management and geotechnical issues for the site.

While the final configuration of the earthworks and associated cut and fill depths have not been finalised, Mr Jacobson stated that any earthworks

undertaken will be designed and supervised by professional engineers. He also noted that AECOM have already provided the Council with a Draft Earthworks Management Plan and a Draft Groundwater Management Plan.

Mr Jacobson made recommendations for wastewater treatment and stormwater management for the site. He suggested an advanced onsite wastewater treatment system for effluent from the six lifestyle blocks. He also recommended that the disposal of treated wastewater from the light industrial area be to the landscape area, with minimum separation distances from waterways and stormwater ponds being proposed. Rain water tanks were recommended by Mr Jacobson to provide water storage onsite for water supply purposes.

Mr Jacobson noted that stormwater management had been the most complex issue as the quality of runoff entering the stream must be acceptable. He submitted that the best solution is to create three storage ponds which will manage stormwater flows for a 50-year rainfall event. He also recommended that the lifestyle blocks include roof rain water tanks on each lot to collect roof runoff for the design 10-year event.

## **7.2 Submitters**

### **7.2.1 Raglan Community Board**

Mr Story expressed the Community Board's support for the application. He stated that employment is a major issue in Raglan and that the area needs industrial land to retain people in the community. He felt it was appropriate to locate the development on the Hamilton side of Raglan but had not really considered specific site location. He noted that there are businesses set up in backyards in Raglan because there is currently nowhere else to put them.

Mr Story stated that there would be neighbours with any chosen site and that he had not given particular consideration to amenity and urbanisation issues. He felt that near neighbours would have objections to these types of developments and that this one was generally remote from people.

### **7.2.2 Mr W Dansey**

Mr Dansey has known and worked with the applicant for over 7 years and stated that he supported the proposal. He believed that the development would benefit Raglan and be an asset to the area. Mr Dansey also noted that the site is outside of the Raglan township but can be easily accessed while reducing traffic within the township.

### **7.2.3 Mrs L Pointon**

Mrs Pointon represented herself and her husband, Mr W Pointon. They have been living next to the subject site for 13 years and oppose the application.

The Pointons expressed concern over the lack of previous compliance by Mr Carter as he did not have resource consents for the previous works he had undertaken on the site. They also considered that Variation 15 indicated that the Council had pre-determined these applications.

The Pointons did not consider the site to be suitable for industrial development as it is 5km away from the township and believed there are other industrial sites identified within the district plan that are more suitable. They also expressed concern that the potential groundwater take for the site would affect their water supply.

The Pointons submitted that there would be more than minor traffic, particularly at the Okete Road intersection. Their driveway is located on a sweeping bend with limited site clearance and they believed that the development would impact their personal safety.

The Pointons were also concerned about noise and rural amenity issues. Mrs Pointon stated that noise on the subject site is currently audible from their property and believed that noise produced from the development would be at unacceptable levels. They were also concerned that noise levels had not been measured on their site boundary.

In terms of rural amenity, the Pointons considered the visual effects from the development to be substantial and the plantings proposed by the applicant to be unsatisfactory. They considered that the Yorke property will be most affected in visual effects terms.

The Pointons concluded that the development is "totally out of character" for the area. While they requested the application to be declined, Mrs Pointon noted that she would probably support the rural-residential development of the proposal.

#### **7.2.4 Mr G Bellamy**

Mr Bellamy, a resident of Raglan, opposed the applications. In addition to the general concerns in his written submission, he presented a detailed statement about his concerns regarding fire safety on the site. He described a recent fire at the wharf in Raglan to demonstrate the importance of having an adequate water supply for fire fighting purposes.

Mr Bellamy considered that the NZFS Fire Water Supplies Code of Practice (SNZ PAS 4509:2008) contains minimum fire fighting water provisions which must be considered in addition to Building Code requirements. Mr Bellamy stated that while this code sets out the water requirements mainly for urban areas, there are also guidelines for rural areas.

Mr Bellamy analysed the report prepared for the applicant by PCD Fire Designs Ltd in some detail and concluded that it was misleading, contained miscalculations, understated the volume of water required for fire-fighting purposes and did not ensure that water available for fire-fighting purposes fully met the requirements of NZFS SNZ PAS 4509:2008.

In terms of the WDC engineering peer review assessment prepared by Tonkin and Taylor Ltd, Mr Bellamy observed that fire fighting infrastructure will not be vested in the Council. Mr Bellamy expressed concern over the Council's lack of responsibility over fire safety issues.

Mr Bellamy submitted that he fully supported the letter from the New Zealand Fire Service dated 7 July 2010 although it does not specifically state what particular measures are required.

#### **7.2.5 Hourua Trust**

Mr Tonga is the chairman of the Hourua Trust and represented the Trust at the hearing. The written evidence provided by Mr Tonga opposes the light industrial part of the development, concluding that it will have adverse visual effects and adverse effects on waterways, traffic and noise.

It is noted that Mr Tonga's written submission differed from both the original submission from Hourua Trust, which stated that they were neutral about the proposal, and from a subsequent letter from the Trust to the Council, where they advised that they had no wish to oppose the proposal.

#### **7.2.6 Mr M Grant**

Mr Grant presented evidence on behalf of himself and Mrs A Grant. The Grants are the owners of Lot 13 of the nearby Wallis subdivision and oppose the light industrial aspects of the application. Mr Grant expressed concerns regarding traffic hazards and pollution of the Raglan Harbour and considered that the application appeared to have been predetermined by the Council as evidenced by the timing of the release of Variation 15.

Mr Grant believed that there will be increased traffic volumes to and from Hamilton and Raglan resulting from the development. Mr Grant agreed with the Gray Matter review regarding the extensive works required if a safe roading layout is to be achieved. He noted that he had personally experienced increased danger when turning into and out of Okete Road.

Mr Grant stated that he supported the residential aspects of the proposed development.

#### **7.2.7 New Zealand Transport Agency**

##### **Mr A Wilson**

Mr Wilson, a resource planner at NZTA, presented evidence on behalf of the agency. He was accompanied by Mr Tobias from NZTA (who did not give evidence).

Mr Wilson outlined the functions, powers and responsibilities of NZTA and the role of state highways in the roading hierarchy. He considered that NZTA has a duty to ensure that the state highway system is not adversely affected by the proposal. He acknowledged that areas available for light industrial activities are limited within Raglan and that the proposal could reduce traffic movements between Raglan and Hamilton.

Mr Wilson stated that, based on the mitigation measures proposed by the applicant, NZTA was not satisfied that the proposal will have less than minor adverse effects on the safety and efficiency of SH 23. However, he stated that NZTA was generally satisfied with the roading conditions proposed within the Officers' Report.

Mr Wilson recommended that the application be declined or granted subject to the conditions proposed by NZTA.

#### **Mr R Swears**

Mr Swears is a principal transportation engineer at Opus International Consultants and presented traffic effects evidence on behalf of NZTA. He considered that the reports provided with the application had not addressed all of the potentially adverse effects on SH 23 and that some information was not consistent with observations and measurements from site visits conducted by him and other Opus staff.

Mr Swears considered that the proposed site is in an inappropriate location and that the traffic expected to be generated is likely to have more than minor adverse effects on the safety and efficiency of SH 23.

Mr Swears outlined the roading hierarchy, with specific emphasis on SH 23 and its function as a sub-regional arterial route. He considered that direct access from an industrial development to an arterial road is contrary to the basic principles of roading hierarchy. Mr Swears also stated that the proposed access to the site from SH 23 does not comply with Austroads standards.

Two videos were referred to in support of his evidence, showing vehicles turning from the subject site and vehicles overtaking on SH 23.

Mr Swears considered that the trip generation described by AECOM in the applicant's AEE is on the lower end of rates typical for light industrial activities and therefore the potential adverse effects had been underestimated.

Mr Swears also commented on the lack of passing opportunities between Hamilton and Raglan, with the Nau Mai stretch of SH 23 being one of the key passing opportunities. He also commented on the slow acceleration rates of trucks and noted that eastward truck movements from the proposed development will adversely affect the efficiency of SH 23, even with the provision of a widened shoulder. Mr Swears considered the 260-metre distance between the site access and Okete Road to be inadequate.

Mr Swears discussed what he called a "compromise solution" (essentially the conditions proposed by Mr Gray) and recommended that the Council only grant consent for Stage 1 of the development, so that adverse traffic effects can be fully understood and reassessed before any work can begin on subsequent stages.

In summary, Mr Swears considered that the proposal is out of context at this rural site and the traffic effects predicted by AECOM may have been underestimated. He proposed a number of consent conditions that he recommended be imposed.

#### **7.2.8 Whaingaroa Environmental Defence Inc**

Mr Hamilton and Mr Lawson represented Whaingaroa Environmental Defence Inc ("**WED**"), which opposes the applications. Mr Hamilton presented the group's concerns related to the rural-residential development, the light industrial

development, stormwater, wastewater and noise while Mr Lawson addressed concerns related to traffic.

In terms of rural amenity, WED is concerned with the visual and landscape effects associated with the rural-residential subdivision, particularly in respect of the Yorke property. Mr Hamilton submitted that the mitigation planting proposed could impede sea view from their property.

Mr Hamilton questioned the accuracy of the Officers' Report, which did not consider the light industrial subdivision activity as being prohibited, because of the high quality soils within Lots 5 and 10 and Precincts 12 and 15. He considered the proposal to be well beyond the provisions within the proposed plan. Mr Hamilton considered Variation 15 to be an indicator of Council support for the proposal.

WED considered that there would be adverse effects from traffic generation, lack of sight distance to Okete Road junction, lack of an overtaking lane for eastbound traffic and inadequate width and length of acceleration and deceleration lanes.

### **7.3 Waikato District Council**

WDC prepared a comprehensive Officers' Report pursuant to section 42A of the RMA. It is a substantial document, comprising 3 volumes.

The Officers' Report was "taken as read" and the Council representatives summarised their key conclusions and addressed matters that arose during the hearing, as follows.

#### **7.3.1 Mr C Sharman**

Mr Sharman, a consultant planner employed by Environmental Management Services, prepared the Officers' Report.

Mr Sharman noted that a request for further information was made on 26 November 2009 to clarify planning and landscape issues, the extent of the acoustic assessment and stormwater management, water supply and geotechnical issues.

Mr Sharman discussed the non-complying activity status of the applications and assessed them under sections 104, 104B and 104D of the RMA.

Mr Sharman generally agreed with the applicant's comment that agricultural/pastoral land uses can have greater impacts than some industrial uses but was concerned more about the 'urban' scale of the proposed business park. However, he concluded that the visual and rural amenity effects will be no more than minor provided that mitigation measures are put in place.

Mr Sharman considered that "the extent of adverse effects relating to traffic safety issues is a finely balanced judgement" and noted the disagreement between the applicant and NZTA in the extent of roading upgrade required.

Mr Sharman assessed the proposal against the relevant objectives and policies of the proposed and operative plans. He considered that, overall, the proposal

was contrary to the objectives and policies of the proposed and operative plans but considered the adverse effects to be no more than minor. Mr Sharman also considered Variation 15 as a key "other matter" under section 104(1)(c). He considered the proposal to be consistent with Part 2 of the RMA.

#### **7.3.2 Mr L McKinlay**

Mr McKinlay, a landscape architect at Mansergh Graham Ltd, reviewed the visual and landscape report provided by the applicant. Mr McKinlay did not consider the proposal to be contrary to the landscape and amenity objectives and the Proposed District Plan.

Mr McKinlay confirmed that his view with respect to temporary visual effects concurs with Mr Brown's view. He generally agreed with the mitigation measures suggested by Mr Brown and concluded that the landscape and visual effects of the proposal will be no more than minor, subject to full implementation of those measures.

In response to my question, Mr McKinlay accepted that there will be more than minor effects for 5 to 6 years but that those effects will mostly be limited to the Yorke property. He confirmed that the effects will be moderate to high in this period from that location.

Mr McKinlay agreed that conditions should be amended to ensure plantings are carried out as soon as possible.

#### **7.3.3 Mr B Quilter**

Mr Quilter from Tonkin and Taylor Ltd was retained by the Council to review the wastewater, water supply, stormwater and geotechnical aspects of the application.

Overall, Mr Quilter was satisfied with the suitability of the applicant's options for wastewater treatment, water supply and stormwater disposal.

Mr Quilter confirmed that the proposed fire fighting infrastructure, easements and stormwater infrastructure will not be vested in the Council, although the roads will be.

In response to my question regarding the fire safety concerns raised by Mr Bellamy, Mr Quilter considered that all buildings need to be built in accordance with the Building Code which has fire safety and water supply provisions.

Mr Quilter suggested further amendments to the consent conditions.

#### **7.3.4 Mr N Hegley**

Mr Hegley, from Hegley Acoustic Consultants, was retained by the Council to review the noise aspects of the proposal.

Mr Hegley noted that the noise provisions of the proposed plan currently use the site boundary as the noise assessment position. He stated that there was no apparent justification for Mr Warren's recommendation to use "existing

notional boundaries", although he supported the use of "notional boundaries" in this case.

Mr Hegley also questioned the 75dBA L<sub>10</sub> daytime limit proposed for the light industrial development.

In terms of the 45dBA night time limit proposed by Mr Warren (cf the 40dBA limit in the proposed plan) Mr Hegley noted that a 5dBA increase in noise limit would be clearly noticeable and he did not support it, based on the evidence provided.

#### **7.3.5 Mr A Gray**

Mr Gray, a traffic consultant, was retained by the Council to review the applicant's traffic impact assessment. He considered that the adverse effects of the proposal on traffic safety and efficiency would be significant if mitigation measures were not adopted. However, the applicant's proposal to upgrade SH 23 and the access way to the site would reduce the effects to being no more than minor.

Mr Gray also noted the disagreement between the applicant and NZTA in relation to the extent of shoulder widening required. Mr Gray considered in his report that a review should be considered following the development of Stage 1 to identify if any further mitigation measures are needed. However, in the Council's reply, Mr Gray considered that a review should be carried out when Stage 1 is 75% completed and stated that the Council is willing to compromise with NZTA.

In response to my question, Mr Gray considered both Mr Swears' and Mr Robins' proposals to be "reasonable for the circumstances".

#### **7.3.6 Mr M Brown**

Mr Brown, a council manager, outlined the Variation 15 process and stated that the timing of the variation was set by the overall process followed and the dates were set some time ago.

He rejected the proposition that the Council had predetermined the outcome of this hearing by having notified Variation 15 while these applications were about to be heard.

#### **7.4 Applicant's Right of Reply**

In his closing, Mr Lang addressed the approach to the section 104D gateway tests. He stated that while the visual effects of the proposal will be more than minor for a limited duration, at isolated locations, the "minor effects" gateway can still be passed. Mr Lang submitted that the full range of effects has to be considered and not just those of a limited duration or from one viewpoint, as demonstrated by the Environment Court in *Just One Life Limited v Queenstown Lakes District Council* (C163/01). Mr Lang stated that the objectives and policies also needed to be considered in an overall sense for the purpose of section 104D.

The agreement between Mr Brown and Mr McKinlay that the visual effects of the proposal will be "minor in the overall sense" was stressed by Mr Lang. He also considered the limited viewpoints, the existing appearance of the site and the distant harbour view from the Yorke property to be relevant factors. Mr Lang found Mr Sharman's conclusion that the proposal was contrary to the objectives and policies of the operative and proposed plans to be in conflict with Mr McKinlay's conclusion that the proposal was not contrary to those objectives and policies.

Mr Lang discussed the traffic effects and responded to the proposals by Mr Swears, Mr Gray and Mr Robins. He confirmed the applicant's reliance on the evidence given by Mr Robins. Mr Lang submitted that Mr Swears' evidence was based on Austroads guidelines which are not rules or requirements. He observed that the approaches taken by Mr Robins and Mr Gray were more site-specific and reiterated that both these experts concluded that the traffic effects from the proposal will be no more than minor.

Mr Lang supported the double yellow markings as suggested by Mr Swears as a solution to the currently unsafe passing manoeuvres carried out by road users. He further stated that the adverse effects described by Mr Swears are primarily effects on the efficiency of through traffic movement.

Mr Lang questioned Mr Swears' recommendation to only grant consent for Precinct 16, as Mr Swears suggested that a full consent process after the development of Precinct 16 would provide a greater degree of certainty for traffic safety. Mr Lang submitted that this was inappropriate given the review process included in the proposed conditions.

He submitted that the types of works advocated by Mr Swears should be carried out only if a review found the additional measures to be necessary.

In terms of the adequacy of water supplies for fire fighting purposes, Mr Lang submitted that Mr Bellamy's claim of the pond being insufficient was unsupported and inaccurate. Mr Lang stated that each activity on the site will have its own water supply and that the stream is also a potential source of supply in an emergency. He also stated that the adequacy of the proposed system has been approved by the Fire Service.

Mr Lang stated that any suggestion that the application had been predetermined by the Council were unfounded. In response to Mrs Pointon's statements that neighbouring properties will be looking down at the site, Mr Lang stated that the only site oriented towards the light industrial area is the Yorke property.

Mr Lang reiterated that opportunities for industrial development in Raglan were limited and stated that the applicant's proposal combines industrial activity with ecological benefits. He further stated that there has been strong community support, particularly from iwi and the Raglan Community Board.

In summary, Mr Lang considered that the applications should be granted subject to conditions, which he tabled.

## **8. EVALUATION OF THE PROPOSAL**

### **8.1 Section 104D Matters**

#### **8.1.1 Introduction**

It was common ground at the hearing that the applications were “non-complying activities” under both the proposed plan and the operative plan. Accordingly, the applications need to satisfy at least one of the two “gateway tests” of section 104D.

If the applications satisfy the requirements of section 104D, they can then be assessed pursuant to sections 104(1) and 104B. Conversely, if section 104D is not satisfied, the applications must be declined.

The relevant provisions of section 104D state:

#### **104D Particular restrictions for non-complying activities**

- (1) Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
  - (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
  - (b) the application is for an activity that will not be contrary to the objectives and policies of—
    - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
    - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
    - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

I deal with each of the two gateway tests in turn, starting firstly with adverse effects and then the objectives and policies of the proposed and operative plans.

#### **8.1.2 Are the environmental effects more than minor?**

Based on the expert evidence and submissions received, the key potentially adverse environmental effects of the proposal are listed below (noting that positive, or beneficial, effects are not relevant to section 104D considerations):

- Visual and landscape effects
- Fire risk
- Traffic and road safety effects
- Noise effects
- Water quality and ecological effects
- Amenity effects

I deal with each of these in turn.

#### **Visual and Landscape Effects**

Mr Brown's evidence was that:

- The "worst case" viewpoint from private land is from the Yorke property, which adjoins the applicant's site from an elevated position at its southern edge.
- The visual effects on the Yorke property will be initially high, reducing to moderate once plantings have been fully developed.
- Rural character of the subject site can be maintained from public viewpoints (State Highway 23) given the combination of the setting of the industrial elements of the proposal (in a valley lowland) and the proposed bunding and native plantings.
- Provided the proposed mitigation works were fully implemented, the development would not, after some 5-6 years, be contrary to the landscape and amenity objectives and policies of the Proposed Waikato District Plan.
- The effects on landscape and visual amenity would be no more than minor.

In relation to the final of the above bullet points, I questioned Mr Brown carefully about how he would describe the effects of the development in the period from its commencement (if the proposal were to be approved and constructed) until the mitigation works were fully mature. He stated that although there would be adverse effects from several specific locations, most significantly from the Yorke property, he considered that overall the visual and landscape effects would be no more than minor.

Mr McKinlay's audit of Mr Brown's report concluded that "... the proposed development is not contrary to landscape and amenity objectives and policies contained in the [proposed plan ...]" and that "[s]ubject to the full implementation of the mitigation strategy .... effects of the Tasman Lands developments are considered to be minor and capable of passing the RMA's section 104D gateway test."

In answer to questions, he advised that visual effects would be more than minor, but not significant, until such time as the mitigation works were fully effective.

Mrs Pointon and her husband considered that the visual effects on the rural aspect of the locality will be substantial and that the proposal was totally at odds with what local landowners would have expected to occur in their vicinity. They expressed particular concern about the effects on the Yorke property.

I note from Mr Brown's report, and as confirmed by my site visit, that existing shelter belts fully screen the proposed industrial precincts from the Pointon property and that their visual amenity will not be adversely affected by the proposal.

Mr Tonga considered that the visual effects from lands owned by the Hourua Trust would be adverse, although this contention was at odds with the letter sent to the Council and the applicant advising that the Trust "don't wish to oppose the development".

Mr Hamilton, on behalf of WED, also concluded that there would be significant visual effects, especially for the Yorke property, and that granting the consents would set a precedent for future applications.

The owner(s) of the Yorke property did not attend the hearing, but did lodge a submission in opposition to the proposal (set out in the hearing agenda, commencing on page 159). The submission mentions concerns about the visual effects on immediate landowners, but provides no specific details on that point.

Based on the photographs in Mr Brown's report and evidence and from my site visit (I did not enter the Yorke property as the access gate was closed, but I did walk along the fenceline on the boundary of that site with the applicant's land), it is clear that there is no way to screen the industrial elements of the proposal from the Yorke residence. The proposed development will appear in the middle ground of the view from the Yorke property, and although potentially affecting the perception of the more distant coastal and harbour views, it will not screen those views.

In conclusion, I am satisfied that when considered *in toto* the adverse effects of the proposal on visual and landscape effects will be no more than minor, provided that the proposed mitigation works are fully implemented from the outset.

Landscape and visual matters also contribute to the wider appreciation of amenity, and I return to those aspects later.

### **Fire Risk**

In summary, Mr Bellamy contended that:

- The water storage proposed was inadequate to enable effective fire fighting.
- The proposal does not conform to the New Zealand Code of Practice for fire fighting.
- Because the Council does not wish to have fire fighting infrastructure vested with it, long term responsibility for fire fighting cannot be ensured.
- If granted, more robust conditions are needed on consents to properly mitigate fire risk.

I have carefully considered Mr Bellamy's evidence, together with that of Mr Quilter (including his answering of my questions). I have also reviewed the letter sent to the Council on behalf of the New Zealand Fire Service, as a follow up to their submission on the applications.

The views of both the independent parties is that fire fighting issues can properly be addressed by way of consent conditions (which they have recommended be included). Whilst mindful of Mr Bellamy's concerns, I prefer the evidence of the independent specialists in this field.

### **Traffic and Road Safety Effects**

The issues around traffic effects and road safety were the subject of extensive expert evidence and submitter concerns.

In that regard, Mr Robins, on behalf of the applicant, considered that the proposal could be developed such that road safety would not be compromised, provided that suitable conditions were included on any consents granted. Specifically, he recommended the inclusion of a right turn bay at the access to the site, the lengthening of the existing widening to enable traffic turning left into the site to move clear of following traffic, and an approximately 200 metre long shoulder widening, plus a 55 metre taper to accommodate vehicles turning right from the site onto the State Highway, particularly trucks.

Mr Robins was critical of many of the details contained in the Peer Review report prepared for the Council by Mr Gray. However, following questioning, it became clear that with the exception of when a review of the efficacy of traffic management initiatives should occur (discussed later), Mr Robins and Mr Gray were in agreement as to how traffic matters should be addressed.

Mr Gray stated that his analysis was deliberately cautious, and that this was necessary because the precise scale of traffic generation, and the associated effects, would only be known with certainty once the development had actually occurred. I accept that approach, noting that Mr Robin's analysis tended to focus on what I consider to be a "best estimate" of what could be expected, rather than what might be a "realistic worst case".

Mr Gray concluded that with the inclusion of appropriate conditions (which he proposed) the effects of the proposal on traffic safety and highway efficiency would be no more than minor. In addition to the proposed intersection upgrades noted above, Mr Gray considered that a review of traffic management / mitigation details should commence once development of Precinct 16 (the first stage of the industrial development) was 75% completed. This compared with Mr Robin's conclusion that that should occur at the completion of the development of Precinct 16.

The evidence on behalf of the NZTA by Mr Swears was lengthy, but was confusing in places. The evidence commenced by appearing to find every possible fault with the applicant's analysis, whether substantive, trivial or philosophical and initially concluded that the traffic related effects were so severe that consent should be declined. He then proceeded to essentially support Mr Gray's conclusions, on the basis that it was what he called a "compromise solution". Despite my questioning, Mr Swears was not able to explain the factual basis on which he concluded that this solution was acceptable. I think Mr Swears' evidence suffered in some instances by attempting to advance NZTA's stance, rather than taking an objective overall stance.

On balance, I prefer the evidence of Mr Gray to the other traffic witnesses. Whilst all specialist traffic witnesses essentially reached the same final conclusions, his analysis and recommended basis for review was, in my assessment, persuasive.

The most substantive technical issue concerned the safety associated with heavy vehicles turning right from the subject site onto SH23, where they would have to accelerate up a moderate incline from a "standing start". This is an area where overtaking manoeuvres can be undertaken, although the video footage presented by Mr Swears showed that this was already a traffic safety issue. Although making this section of road a "double yellow", no passing stretch of highway, as is proposed, would be an inconvenience, I accept Mr Lang's submission, that the problem is an existing one and that the current proposal is as much a catalyst for solving that existing problem as it is the cause of a loss of overtaking opportunity.

I asked Mr Lang if he accepted the proposition that a legitimate outcome of the traffic management review before the completion of the overall development might be that traffic safety concerns might potentially be such that further development of the site might not be able to proceed. As such, a condition of that sort might negate the exercising of consent for development of subsequent stage(s). Mr Lang accepted that this was a valid outcome (if the circumstances at the time justified that outcome).

I am also mindful of the evidence of Mr Wilson (and endorsed by Mr Gray) that the access arrangements at the intersection of SH 23 would require NZTA approval under the provisions of the Government Roadway Powers Act 1989. I simply observe that this is not an RMA matter and not one that I need consider further.

In summary, I conclude that with appropriate mitigation, and with the ability to undertake a wholesale review of traffic management before the conclusion of Stage 1 (which for example might require the lengthening of the shoulder widening), the effects of the proposal on traffic safety and efficiency will be no more than minor, a conclusion that was supported by Mr Gray when answering my questions.

### **Noise Effects**

Mr Warren's evidence, presented on behalf of the applicant, concluded that the noise related effects of the proposal would be no more than minor, provided certain noise control standards were imposed and complied with.

By the time of the hearing, Mr Hegley, on behalf of the Council, was satisfied with the explanations / additional information provided by the applicant and its advisors, save for two of the noise controls proposed by Mr Warren.

In that regard, Mr Hegley considered that:

- There was no rationale advanced by the applicant that would warrant the point of noise compliance being at the notional boundary of existing dwellings, rather than at the notional boundary of all dwellings.
- Likewise, there was no basis advanced for raising the night time noise limit from 40dBA, as stipulated in the proposed plan, to 45dBA.

In answer to my questions regarding the first bullet point, Mr Warren stated that the use of the notional boundary of "existing dwellings" was appropriate as it would prevent new buildings encroaching too close to the industrial activities. I do not consider that the existing rights of adjacent landowners should be

curtailed in this way, especially as the proposal is a non-complying activity. Hence I prefer the position of Mr Hegley, which is more protective of neighbouring landowners.

In respect of the second bullet point, I have reached the conclusion that it would not be appropriate to "relax" the night time noise limit from that in the proposed plan. As such, I prefer Mr Hegley's conclusions on that matter also.

Subject to the imposition of the noise conditions proposed by Mr Warren, but as amended in the above-mentioned two respects, as recommended by Mr Hegley, I have concluded that noise levels outside the subject site would be generally consistent with those in the proposed plan and would be no more than minor.

### **Water Quality and Ecological Effects**

Mr Mitchell's conclusions were straightforward and forthright, that being that the existing riparian planting initiatives undertaken by the applicant were having positive effects on stream health, whilst the overall enhancements proposed as part of the development would likewise be positive. Mr Mitchell considered that the overall result would be an enhancement compared to a pastoral farming land use, irrespective of how well managed the farming practices would be, and that ecological benefits would occur very quickly following completion of the enhancement works.

Mr Grant expressed the opinion that an industrial land use would cause pollution of local waterways and possibly the nearby coastal environment, arising from both the release of sediment and from the (controlled or uncontrolled) discharges of contaminants from industrial activities. In respect of sedimentation, Mr Mitchell was firm in his conclusion, that being that the proposed land use would be a net positive result, and I accept his opinion. In respect of the discharge of industrial contaminants, I simply observe that any discharges from industrial premises would require authorisation from Environment Waikato, via a resource consent process, while any uncontrolled discharge would not be authorised. I am also satisfied that the risks of any uncontrolled discharges can be managed effectively by standard site management practices.

I note, for the sake of completeness, that Mr Grant invited me to walk from the subject site to the coast, following the course of the natural watercourse. I did not do so, but instead drove to several locations whereby I was well able to understand the proximity of the site to the coast and the overall quality of the coastal environment.

I am satisfied that the effects of the proposal on water quality will be positive effects.

### **Amenity Effects**

Amenity values are defined in the RMA as:

those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

As the definition itself makes obvious, how an individual perceives "amenity values" in a particular location will vary from person to person, as too will what is perceived as being an adverse effect on those amenity values. Some aspects of amenity are able to be quantified, at least to some extent (for example noise standards are promulgated so as to protect noise amenity, although not everyone perceives noise effects similarly), while others such as "pleasantness" are almost entirely subjective.

The expert evidence from the hearing was clear that in terms of the quantifiable aspects of amenity, adverse effects would be no more than minor. That said, the mere presence of an industrial element in an otherwise generally rural setting will, to some, be adverse to varying degrees in amenity terms.

In forming my conclusions, I have placed considerable weight on what the proposed plan seeks to achieve in terms of rural amenity, and based on the analysis that follows in the next section and the evidence presented to me at the hearing, I am satisfied that the proposed development will, if carefully developed and operated, have effects on amenity values that are no more than minor.

#### **Conclusion Regarding Adverse Effects**

For the reasons set out above, I am satisfied that, subject to a comprehensive suite of conditions and development controls, the proposal can be undertaken such that the adverse effects on the environment will be no more than minor.

#### **8.1.3 Is the proposal contrary to the objectives and policies of the proposed and operative plans?**

It is well established (i.e. in various cases that stem from *NZ Rail Ltd v Marlborough DC* [1994] NZRMA 70 (HC)) that for a proposal to be "contrary to" the objectives and policies of a particular plan:

- The proposal and the relevant objectives and policies need to be considered in an overall sense; and
- It must be in conflict with or opposed to the relevant objectives and policies.

As such, s104D(1)(b) does not require that there be compliance with the relevant objectives and policies.

That said it has also been established that where a proposal might be "marginal" then decision makers should err on the side of caution (e.g. *Plastic & Leather Goods Co Ltd v Horowhenua DC* W026/94 (PT)).

#### **A. Proposed Plan**

I have carefully reviewed the information provided by Mr Sharman and Mr Warner, as well as the provisions of the proposed plan themselves. Having

done so, I consider the following to be the relevant objectives and policies of the proposed plan, which I reproduce in full below, noting that this list is more extensive than that of Mr Sharman, even when combined with Mr Warner's.

## **Chapter 2 – Indigenous Vegetation and Habitat**

- Objective 2.2.1 Indigenous biodiversity and the life-supporting capacity of indigenous ecosystems are maintained or enhanced.
- Policy 2.2.2 Areas of indigenous vegetation and habitats of indigenous fauna, and the life-supporting capacity of indigenous ecosystems should be maintained or enhanced through on-site works, and the creation of ecological buffers and linkages using eco-sourced plants.
- Policy 2.2.3 Priority should be given to protecting and restoring threatened habitats and habitats of threatened species such as coastal and lowland forest, riparian areas, wetlands, dunes and peatlands.
- .....
- Policy 2.2.6 Subdivision, use and development should be located and designed to avoid, remedy or mitigate adverse effects on indigenous biodiversity. This will include adverse effects on the ecological functioning and values of significant indigenous vegetation and significant habitats of indigenous fauna, in-stream values, riparian margins and gullies.
- Policy 2.2.7 When avoiding, remedying or mitigating adverse effects on indigenous biodiversity, regard should be had to:
- (a) the need for species to continue to have access to their required range of food sources and habitats during their life cycle
  - (b) the need for species to have access to refuges from predators and disturbances
  - (c) the maintenance of natural isolation
  - (d) the need to prevent invasion by exotic species
  - (e) the need to maintain vegetation structure, such as a continuous closed-forest canopy and under-storey, and the compactness of an area's shape to limit edge effects such as wind damage
  - (f) the need to replace or restore habitats
  - (g) retaining and restoring the natural character and landscape values of the area
  - (ga) maintenance and enhancement of ecological corridors and buffer areas.
- Policy 2.2.8 The features and values that characterise areas of indigenous vegetation and habitats of indigenous fauna and that contribute to biodiversity should be protected from inappropriate subdivision, use and development.

## **Chapter 3 - Natural Features and Landscape**

- Objective 3.4.1 Landscapes and visual amenity values, as viewed from public places, are retained and enhanced.
- Policy 3.4.2 Natural features and landscapes, including locally distinctive landforms and prominent ridgelines, and general visual amenity values should be protected from inappropriate subdivision, use and development, in particular by:

- (a) avoiding or mitigating adverse effects on natural features such as indigenous vegetation, lakes, rivers and mountains
  - (b) ensuring that the visual effects of buildings can be absorbed without significant adverse effects on the landscape
  - (c) locating buildings and development so as to integrate them with the surrounding landscape and backdrops, to avoid dominating the landscape
  - (d) designing subdivision so that potential development, including building platforms, fences and vehicle accesses, are located sympathetically in the landscape
  - (e) avoiding, remedying or mitigating as soon as practicable, the adverse visual effects of earthworks and vegetation clearance, by:
    - retaining vegetation, and
    - restoring natural contours and replanting with appropriate species, and
    - limiting the area of soil exposed by earthworks and the length of time it is exposed, and
    - locating and constructing roads, tracks and vehicle accesses to minimise their visual impacts.
  - (f) avoiding or mitigating the adverse effects on visual amenity from noxious, dangerous, offensive or objectionable materials.
  - (fa) considering the effects of activities on the relationship of Maori with their ancestral lands and waahi tapu.
- Objective 3.6.1 The natural character of the coastal environment, wetlands, and lakes and rivers and their margins is preserved.
- Policy 3.6.2 Subdivision, use and development should be of a density, scale, intensity and location that preserves the natural character of the coastal environment, wetlands, and lakes and rivers and their margins and should retain or enhance the relevant components of that character, including:
- (a) geology, landform, indigenous vegetation and wildlife, and
  - (b) natural processes, elements and patterns, and
  - (c) intrinsic values of ecosystems, and
  - (d) restoration potential, including potential vegetation cover, and
  - (e) aesthetic, visual, cultural and heritage values attached to places and features including the cultural and spiritual relationship of Maori with their ancestral lands, and
  - (f) unique or typical characteristics, and
  - (g) the scale and context of modifications, including:
    - the ratio of open space to areas covered by buildings and other development
    - land use
    - open space areas in pasture, trees, crops or indigenous vegetation
    - water quality and flows
    - views of natural features, the coast, indigenous vegetation and water bodies.

#### Chapter 4 – Natural Resources

- Objective 4.2.1 Physical, chemical and biological properties necessary for maintaining the life supporting capacity and productive use of the soil, especially high quality soil, are retained.
- Policy 4.2.2 The productive potential of soil, especially high quality soil, should not be compromised by activities that do not use or rehabilitate the productive capability of the soil or that adversely affect the physical, chemical and biological properties of the soil.
- Policy 4.2.3 Soil, especially high quality soil, should be available in its natural state and original location for future generations.
- Policy 4.2.4 Activities that do not utilise or rehabilitate the life supporting capacity and the productive capability of high quality soils should not locate on land containing high quality soils.
- Policy 4.2.5 Where high quality soil removal or disturbance cannot be avoided, the soil should be used to rehabilitate the land or enhance soils elsewhere to retain soil versatility and productive capacity.
- Policy 4.2.6 The physical, chemical and biological properties of soil should be reinstated at the conclusion of activities that have adversely affected those properties.
- Objective 4.6.1 Coastlines, wetlands, lakes and rivers are protected from the adverse effects of subdivision and land disturbance.
- Policy 4.6.2 Margins of water bodies (including river banks) and the coast, significant indigenous vegetation and habitats, and other sensitive areas should be: protected from the adverse effects of soil removal and disturbance, earthworks, vegetation clearance, and disposal of waste to land, or if disturbed, reinstated to an equivalent or better condition than prior to disturbance.
- Policy 4.6.2A Subdivision and land disturbance along the margins of water bodies and the coast should be managed to avoid, remedy or mitigate adverse effects, including sediment and nutrient runoff and the removal of soil.
- .....

## **Chapter 6 - Built Environment**

- Objective 6.2.1 Development that is connected or grouped around infrastructure.
- Policy 6.2.2 Subdivision or development should be located, and have a density, scale and intensity, to ensure efficient use of land, public facilities and utilities.
- Policy 6.2.3 Residential and business development should occur in current towns and villages in preference to isolated rural locations.
- Policy 6.2.4 Ribbon development should be avoided.
- Policy 6.2.5 Industry should be grouped:
- (a) in a suitably defined area within towns and villages, or
  - (b) near a national or regional arterial route, or
  - (c) near the North Island main trunk railway, or
  - (d) where it can link to existing infrastructure or associated industries, or manage its effects on site.

Policy 6.2.6	Business and industrial activities should be separated from residential activities.
Objective 6.6.1	Adverse effects of use and development are avoided by provision of wastewater and stormwater disposal, supply of water, energy and telecommunications.
Policy 6.6.2	Where land is subdivided or its use intensified, then adequate water supply, wastewater treatment, and land and stormwater drainage must be provided to each allotment, by connection to available reticulated services, or by on-site facilities where reticulated services are not available.
Policy 6.6.3	Every allotment in a subdivision should be connected to reticulated services for telecommunications and electricity supply where these are reasonably available.
Policy 6.6.4	The density and type of development should not exceed the capacity of the area to absorb the adverse effects of the development on amenity, water quality, stormwater runoff, ecological values, health or safety.

#### **Chapter 8 - Land Transport Network**

Objective 8.2.1	An integrated, safe, responsive and sustainable land transport network is maintained, improved and protected.
Policy 8.2.2	Design, construction and operation of roads should be consistent with their function in the road hierarchy.
Policy 8.2.2A	Subdivision, use and development should not compromise the road function as specified in the road hierarchy.
Policy 8.2.3	<p>The integrated, safe, responsive and sustainable operation of the land transport network should be promoted through:</p> <ul style="list-style-type: none"> <li>(a) carriageway, intersection and site design</li> <li>(b) appropriate siting of and access for traffic generating activities</li> <li>(c) traffic management, signage, road marking, lighting, and rest areas and parking as appropriate</li> <li>(d) provision for pedestrians, cyclists and the disabled, including off road routes and connections including pedestrian malls</li> <li>(e) provision of public transport</li> <li>(f) provision for network utilities</li> <li>(g) appropriate access for existing land uses</li> <li>(h) railway crossing design.</li> </ul>
Policy 8.2.4	Subdivision and development should not obstruct future road linkages including access to adjoining land and to Hamilton City where relevant.
Policy 8.2.5	Subdivision, use and development should be located and designed to connect safely to an existing road.
Policy 8.2.5A	Land use activities should provide adequate on-site parking.
Policy 8.2.6	Buildings, structures, night lighting, glare, advertising signs, aerial distractions and vegetation should not compromise the safe and efficient operation of the land transport network, or obscure RAPID numbers.

#### **Chapter 11 – Social, Cultural and Economic Wellbeing**

Objective 11.2.1	Towns, villages, neighbourhoods and localities have social coherence and a sense of place.
Policy 11.2.2	Town centres should have a primary role as shopping, service and social centres.
Policy 11.2.3	The boundary between towns, villages and rural areas should be defined by a clear difference in development density, by natural features and open space.
Policy 11.2.4	Focal points in towns and villages, including natural and built features, should be retained and enhanced.
Policy 11.2.5	Social infrastructure such as open space, halls, libraries, schools and shopping areas should be located so that a social focus, identity and identifiable gathering space is provided to the community.
Policy 11.2.6	Activities should avoid breaking up community and neighbourhood coherence, having particular regard to the cumulative effects of activities.
Objective 11.2.7	Valued social and cultural characteristics of communities are retained.
Policy 11.2.8	Activities should meet the needs of individuals and groups and be sensitive to the existing social and cultural characteristics of communities.
Policy 11.2.9	Activities in Raglan should contribute to and enhance the relaxed seaside village culture derived from the town's relationship with Raglan Harbour (Whaingaroa).
....	
Policy 11.2.13	Subdivision, use and development should enhance the existing social character of rural localities and communities, which is derived from interaction between individuals and groups, and their relationships with the productive use of the surrounding land or the efficient use of local infrastructure.
Policy 11.2.14	Activities in villages should enhance their social character and reflect their importance to the district.
Objective 11.6.1	People and communities are able to access resources so that they can provide for their economic wellbeing.
Policy 11.6.2	Community economic wellbeing should be enabled through activities that use and develop natural and physical resources without adverse effects on the local environment.
Policy 11.6.3	Activities in Raglan should utilise the natural and physical resources of the locality, including Raglan Wharf, and be of a character, scale and intensity consistent with serving local economic needs.
....	
Policy 11.6.7	Activities in villages should provide economic opportunities while retaining the characteristics of those communities.
Policy 11.6.8	Subdivision, use and development in rural areas should not compromise access to resources needed for economic activity, especially resources of a fixed or finite nature, including land (particularly that used for productive agricultural and farming activities), soil, water, minerals, and the open space that provides separation from sensitive activities.

## **Chapter 13 – Amenity Values**

- Objective 13.2.1 Adverse effects of activities on amenity values are contained within the site where they are generated.
- Policy 13.2.2 Adverse effects associated with lighting, litter, electromagnetic radiation, vermin, traffic, spray drift, and noise should be contained within the site where they are generated.
- Policy 13.2.3 Adverse effects associated with offensive or objectionable dust, smoke and odour should be contained within the site where they are generated.
- Policy 13.2.4 Adverse effects that cannot be contained on the site where they are generated should be remedied or mitigated.
- Policy 13.2.5 Amenity values, health and safety should be protected from adverse traffic effects including:
- (a) noise, vibration, dust, lighting and glare
  - (b) vehicle emissions
  - (c) accelerated or contaminated stormwater runoff
  - (d) visual effects of parking and load
- Objective 13.2.6 Amenity values of localities are maintained and enhanced.
- Policy 13.2.7 Scale, intensity, timing and duration of effects of activities should be managed to be compatible with the amenity and character of the locality.
- Policy 13.2.8 Activities with similar effects or a similar expectation of amenity should be located together.
- Policy 13.2.10 Activities with dissimilar effects or a dissimilar expectation of amenity should be separated where possible.
- Policy 13.2.11 The district should be divided into zones for the purposes of resource management.
- Objective 13.4.1 Amenity values of sites and localities maintained or enhanced by subdivision, building and development
- Policy 13.4.2 Subdivision, building and development should be located and designed to:
- (a) be sympathetic to and reflect the natural and physical qualities and characteristics of the area
  - (b) ensure buildings have bulk and location that is consistent with buildings in the neighbourhood and the locality
  - (c) avoid buildings and structures dominating adjoining land or public places, the coast, or water bodies
  - (d) retain private open space and access to public open space
  - (e) encourage retention and provision of trees, vegetation and landscaping
  - (f) arrange allotments and buildings in ways that allow for view sharing, where appropriate
  - (g) provide adequate vehicle manoeuvring and parking space on site
  - (h) provide vehicle, cycling and pedestrian connection to transport networks, including roads, cycleways and walkways, and facilitate public transport
  - (i) promote security and safety of public land and buildings, and places
  - (j) mitigate foreseeable effects (including reverse sensitivity effects) on, and from, nearby land use, particularly existing lawfully established activities

- (k) mitigate foreseeable effects on water bodies
  - (l) maintain adequate daylight and direct sunlight to buildings, outdoor living areas and public places
  - (m) maintain privacy
  - (n) avoid glare and light spill.
- Policy 13.4.3      Trees that have special amenity value should be protected.
- Objective 13.4.4   Signs visible from public places do not compromise visual amenity or road safety.
- Policy 13.4.5      The number, size, location and appearance of signs visible from public places should be compatible with the character and sensitivity of localities.
- Policy 13.4.6      Signs visible from public places should not create adverse effects from illumination, light spill, flashing or reflection.
- Policy 13.4.7      Messages or images on signs visible from roads should not confuse or distract road users.
- Objective 13.6.1   Rural character is preserved.
- Policy 13.6.2      Rural subdivision and development should be of a density, scale, intensity and location consistent with the existing rural character of the locality and should retain or enhance the relevant components of that character, including:
- (a) a very high ratio of open space in relation to areas covered by buildings
  - (b) open space areas in pasture, trees, crops or indigenous vegetation
  - (c) tracts of unmodified natural features, indigenous vegetation, streams, rivers, wetlands and ponds
  - (d) large numbers of farm animals and wildlife
  - (e) noises, smells and sights of farming, horticultural and forestry uses
  - (f) post and wire fences, purpose-built farm buildings, and scattered dwellings
  - (g) generally narrow carriageways within wide road reserves, often unsealed with open drains, low-speed geometry and low traffic volumes
  - (h) a general absence of urban-scale and urban-type infrastructure such as roads with kerb and channel, footpaths, mown berms, street lights, advertising signs, sealed and demarcated parking areas, decorative fences and gateways
  - (i) a diversity of lot sizes and shapes, related to the character and pattern of the landscape.

Unsurprisingly, there are certain provisions that support the proposal and others that do not.

There is a theme through the proposed plan of ensuring that town centres such as Raglan remain the focal point of urban activities (e.g. Policies 11.2.2 and 11.2.3). The proposed plan also generally seeks to avoid urbanisation of the rural environment (e.g. Objective 6.2.1 and Policy 6.2.3) and preserve the amenity values of the rural areas of the district (e.g. Objectives 13.2.6 and 13.4.1 and Policy 13.2.11).

Nevertheless I do not consider that this policy direction is absolute, and the proposed plan does not seek to prevent any development in the rural area *per se*. For example, the proposed plan directs, amongst other things, that

environmental effects are to be internalised (see Objective 13.2.1 and Policies 13.2.2 and 13.2.3). I also note that the development is separated from residential activities (Policy 6.2.6), is not ribbon development (Policy 6.2.4) and will serve to promote the “social coherence” (Objective 11.2.1) and “valued social and cultural characteristics of [the Raglan] communit[y]” (Objective 11.2.7) by being able to provide services and employment, all of which the proposed plan also seeks to promote.

Overall, Chapter 11 of the proposed plan seeks to ensure the social and economic viability of townships such as Raglan and recognises that the provision of services is necessary to achieve this.

Mr Sharman considered that on balance, the proposal was contrary to the objectives and policies of the proposed plan, primarily because it offended (my word) the “amenity” and “built environment” provisions of Chapters 13 and 6, respectively. I enquired of him whether he thought the matter was finely balanced, and he advised that he considered it was quite clear cut.

Whilst he has undertaken a thorough analysis, I consider that Mr Sharman has tended to highlight individual objectives and policies rather than the overall thrust of them cumulatively. I have also reached the view that his conclusions are not entirely logical, given the expert evidence of other witnesses appearing for the Council. In that regard, Mr McKinlay concluded that the amenity effects were no more than minor, and while Mr Sharman stated that he took a wider planning perspective of amenity matters (as he is entitled to), Mr Hegley and Mr Gray also concluded that the adverse effects they considered that impinge on amenity values (noise and traffic respectively) were no more than minor. As such, and while accepting that industrial developments are not provided for in the Rural Zone, it is difficult to conclude that the proposal “offends” the associated objectives and policies associated with amenity values.

Were the proposal of a “standard type” industrial subdivision, I doubt it would “not be contrary”. However, the industrial component of this proposal is not a conventional industrial development, incorporating, as it does, low intensity site coverage, retention of large areas of open space, and the inclusion of considerable indigenous vegetation and riparian planting initiatives, some of which have already been undertaken. That, in my assessment, is a critically important distinction, as it serves to integrate the development into its setting and to internalise its adverse effects, such that the values of the rural environment that the proposed plan seeks to protect are in fact protected.

I should also note that although Variation 15 is a matter that is relevant under section 104D, I do not consider it material to the above assessment. I say this for two reasons – firstly that its one objective is generic (although the associated rules are not, but which are irrelevant in terms of section 104D); and secondly that it is so statutorily immature (submissions not having closed as at the date of this hearing) that it would be unwise to place any reliance on its provisions.

I have listened carefully to the concerns of those submitters who considered that the Council's notification of the variation while the consent applications were still under consideration showed predetermination of this issue. I consider that those concerns are understandable in the circumstances, although I accept that the timing of the two processes, while unhelpful (and cannot serve to instil

confidence in the Council in the eyes of the submitters), is a reality of the process followed in preparing the variation. One can only hope that any future such initiatives are progressed in a more sophisticated and transparent manner.

Overall, I have concluded that with the mitigation proposed, and provided it is initiated promptly and fully, the proposal will not be in opposition to the environmental outcomes the proposed plan seeks to achieve, and when read in conjunction with the more enabling provisions of the proposed plan I consider it will not be contrary to the objectives and policies of the proposed plan.

Although quite finely balanced, I do not consider that this conclusion is "marginal", such that I should err on the side of caution and determine otherwise.

## **B. Operative Plan**

Mr Sharman identified a number of objectives that he considered particularly relevant to the consideration of this proposal, namely:

- |                  |  |
|------------------|--|
| Objective 9.1.1  | To maintain the versatility and safeguard the life-supporting capacity of the soil resource, while ensuring new lots are able to: <ul style="list-style-type: none"><li>• absorb or manage stormwater runoff,</li><li>• accommodate household effluent disposal,</li><li>• avoid location in proximity to mineral extraction,</li><li>• maintain road safety and promote transport efficiency,</li><li>• maintain the health and wellbeing of people,</li><li>• reflect rural amenity values,</li><li>• remedy or mitigate adverse effects from adjacent, established activities,</li><li>• retain community connections to their past,</li><li>• retain indigenous habitats, and</li><li>• retain sediment from disturbed land.</li></ul> |
| Objective 9.1.2  | To retain rural land, particularly land containing high quality soils, in large holdings that maintain versatility and efficient use of the land in terms of providing for the needs of future generations and safeguarding the life-supporting capacity of the soil.  |
| Objective 9.1.5  | To ensure intensive forms of farming, rural industries, and commercial services do not adversely affect the environment.   |
| Objective 9.1.6  | To ensure that the rural visual character and amenity values are maintained or enhanced.   |
| Objective 9.1.9  | To ensure that intensification of rural land use does not adversely affect public health and safety.   |
| Objective 9.1.10 | To ensure that intensification of land use does not increase the risk of land inundation.  |
| Objective 9.1.12 | To ensure that rural industries and commercial services do not adversely affect traffic safety and the convenient use of State Highways.   |
| Objective 9.1.15 | To ensure that all land and building development associated with the establishment of rural industries or commercial services is designed and constructed to address the adverse   |

effects of stormwater disposal, effluent disposal, and water supply or to offset the full costs of reticulated servicing.

Mr Sharman referred to, but did not list, the associated policies, which I set out below for the sake of completeness:

- |               |   |
|---------------|---|
| Policy 9.2.1  | To provide for subdivision of rural land into shapes and sizes that enable efficient use of the land while retaining opportunities to use the soil resource now and in the future.  |
| Policy 9.2.1A | To ensure new lots are located sufficiently far from existing activities causing noise, dust, traffic and odour effects that cannot be avoided, remedied or mitigated.  |
| Policy 9.2.2  | <p>To ensure all new lots contain sufficient appropriate area:</p> <ul style="list-style-type: none"><li>• for the treatment and disposal of household effluent and stormwater runoff,</li><li>• so that sediment resulting from building platforms, access formation and use, and landscaping does not contaminate surface water,</li><li>• so that noise, dust, traffic and odour from activities located in rural areas including mineral extraction, can be remedied or mitigated, and</li><li>• so that significant levels of noise, dust, agrichemicals and odour from onsite activities can be contained within the boundaries of the lot.</li></ul> |
| Policy 9.2.4  | To retain land containing high quality soils in appropriately shaped and sized lots that enable efficient use and development of the soil resource, now and in the future.  |
| Policy 9.2.4A | To retain large holdings on high quality soils by limiting the opportunity to subdivide land containing high quality soils.   |
| Policy 9.2.5  | To promote amalgamation of land presently in small lots and retain large holdings, especially on high quality soils.  |
| Policy 9.2.7  | To avoid potential adverse effects on State Highways from commercial services and rural industries.   |
| Policy 9.2.8  | To avoid or mitigate downstream effects of surface water runoff.  |
| Policy 9.2.9  | To avoid, remedy, or mitigate the visual and physical effects of tall or large buildings on the landscape and the overshadowing effect of trees on existing residences on adjacent properties in Rural Zones and on urban zoned land.   |
| Policy 9.2.10 | To avoid the effects of light spillage and glare on neighbouring properties.  |
| Policy 9.2.13 | <p>To avoid, remedy, or mitigate the increased risks to public health and safety from the intensification of rural land use through:</p> <ul style="list-style-type: none"><li>• significantly increased generation of road dust</li><li>• significantly increased traffic volumes on minor roads</li><li>• limitations on quality or availability of water supply.</li></ul>   |
| Policy 9.2.14 | To avoid, remedy, or mitigate the effects of increased stormwater runoff from any activity.   |
| Policy 9.2.15 | To avoid, remedy, or mitigate the effects of flooding on any activity where land is subject to inundation.  |

Mr Sharman concluded that the objectives and associated policies of the operative plan are very similar to those of the proposed plan and that "the applications are considered to be contrary to some degree" to them.

I consider that these objectives and policies are less restrictive than those of the proposed plan. Accordingly, based on my earlier analysis, I do not consider the proposal to be contrary to them.

#### **Conclusion Regarding Objectives and Policies**

In conclusion, I do not consider the proposal to be contrary to the objectives and policies of the proposed or operative plans.

#### **8.1.4 Overall Section 104D Evaluation**

For the reasons set out above, I am satisfied that the proposal, which includes the mitigation measures to be undertaken, will have adverse effects that are no more than minor and will not be contrary to the objectives and policies of the proposed and operative plans.

#### **8.2 Section 104 Matters**

Having passed the gateway test of section 104D, the applications can now be considered under the provisions of section 104, the key provisions of which state:

##### **104 Consideration of applications**

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
  - (a) any actual and potential effects on the environment of allowing the activity; and
  - (b) any relevant provisions of—
    - (i) a national environmental standard;
    - (ii) other regulations;
    - (iii) a national policy statement;
    - (iv) a New Zealand coastal policy statement;
    - (v) a regional policy statement or proposed regional policy statement;
    - (vi) a plan or proposed plan; and
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

##### **8.2.1 Environmental Effects**

I have considered the adverse effects of the proposal in some detail in Section 8.1 of this decision, and do not need to restate those here. Suffice it to say that I have determined that, with mitigation, the adverse effects of the activity will be no more than minor. The proposal also has a number of positive effects that are relevant to section 104(1). These relate to the benefits of ensuring that the Raglan township can achieve its social and economic well-being, and the

availability of light industrial services is a key aspect of that, as was made very clear from the submissions.

In terms of section 104(1)(a), I have concluded that the environmental effects of allowing the activity are such that there is no reason not to grant the consents sought, subject to the inclusion of appropriate conditions.

### **8.2.2 Relevant Provisions of Statutory Documents**

Of the matters listed in section 104(1)(b), there are no relevant national environmental standards, other regulations or national policy statements, while the location of the activity is such that the New Zealand Coastal Policy Statement need not be considered here. Whilst the Waikato Regional Policy Statement ("RPS") is technically relevant, it is general in nature and all the relevant aspects are more specifically addressed in the proposed and operative district plans. As such I do not address the RPS further.

I have addressed the operative and proposed plans in some detail in Section 8.2 and for the purposes of section 104(1)(b) have concluded that these plans pose no impediment to the granting of these consents, provided that appropriate conditions are included.

### **8.2.3 Other Matters**

Mr Lang submitted that although the proposed "rules" attached to Variation 15 have no interim status (see section 86B of the RMA), they are able to be considered under the provisions of section 104 (1)(c). I have declined to do so in the circumstances. Variation 15 is statutorily immature, and in any event, I do not consider that Variation 15 is "reasonably necessary to determining the applications".

### **8.2.4 Part II**

Section 104 matters are all "subject to Part II". In that regard, I am satisfied that the proposal:

- Sustains the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations;
- Enables people and communities, especially the wider Raglan community, to provide for their social, economic, and cultural wellbeing and for their health and safety;
- Safeguards the life-supporting capacity of air, water, soil, and ecosystems;
- Avoids, remedies, or mitigates any adverse effects of activities on the environment;
- Does not have any attributes that raise impediments in terms of sections 6 to 8.

Accordingly, I consider that the granting of the applications, subject to conditions, better promotes the purpose of the RMA than would declining the applications.

### 8.2.5 Consent Conditions

The proposed conditions of consent were addressed by both the applicant and Council personnel during the course of the hearing. Both parties presented “redlined” copies of the proposed conditions that addressed matters raised during the hearing.

In summary, I do not consider that either set of conditions is entirely appropriate, either individually, or merged. Attached, as Schedule A to this decision, are the conditions that I have imposed on the two consents.

It is not necessary for me to highlight each and every change I have made to conditions, a task made even more difficult given that each set of proposed conditions utilised a different base document. That said, the changes to conditions that I consider to warrant specific mention are as follows.

#### **Land Use Consent Conditions – Consent LUC 0071/10**

- I have not split this consent into two parts (one for the rural residential and one for the light industrial aspects) as suggested by the applicant. This is an integrated development proposal and I have drafted the conditions on that basis, as did the Council officers.
- I have changed the various references to “in general accordance with” to “in accordance with”, except in several isolated instances where this is not necessary or appropriate.
- I have made any “certification” conditions subject to “the Chief Executive of the Waikato District Council or delegate” for the sake of consistency.
- I have clarified the wording of Condition PC2, and split it into two parts, PC2A and PC2B, to reflect, in a simple way, the different performance standards applying to different elements of the proposal.
- I have made it explicit in Condition PC4 that views of the industrial activities are to be screened from SH 23 and that the bunding and associated planting are minimum requirements that are subservient to achieving that overall objective. Given the length of time needed for screening to become effective, the condition now requires the various works required by Conditions PC4A and 5 to be completed in the first construction season following the commencement of consent.
- Condition PC9 defines the specification for a free standing advertising sign, and is in accordance with staff recommendations.
- Condition PC10 requires prior notification to the Council of the commencement of construction activities.
- Condition RC1 has been redrafted to reflect the recommendations of Mr Gray regarding roading improvements, although I have made it explicit that these are minimum requirements and specific proposals need to be to the satisfaction of the Council, following consultation with the consent holder and NZTA.

- I have redrafted the provisions (Condition RC5) relating to the "review" of traffic related mitigation to make them clearer and more explicit. I have accepted Mr Gray's recommendation that the review should commence once Precinct 16 is 75% complete.
- I have reorganised many of the more specific conditions relating to earthworks, stormwater management, dust control, firefighting water supply requirements and the like to ensure consistency.
- More explicit dust management conditions (DM1 and DM2) have been included.
- I have also included a new general s128 "review condition" (Condition RV1).

#### **Subdivision Consent Conditions – Consent SUB 0048/10**

- I have made a number of changes to these conditions, that are largely grammatical or to ensure consistency with land use consent LUC 0071/10.
- Of note, I have made it explicit that the performance standards that relate to use of the rural residential lots and light industrial precincts are to also apply to internal roadways servicing those lots.
- I have deleted the proposed conditions relating to the "Earthworks Design Management Plan", as I consider these to be unnecessary duplication of the land use consent conditions, where such conditions are more appropriately located.

#### **Performance Standards**

- Other than wording enhancements recommended by either the applicant or Council personnel, the only substantive amendments to the performance standards relate to the two noise issues that were in contention between Mr Hegley and Mr Warren (relating to whether the "notional boundary" or "existing notional boundary" is to be used, and whether a 40 or 45dBA night time noise limit is to apply), where, as noted earlier, I have preferred the recommendations of Mr Hegley.

### **9. DECISION**

As indicated above, I conclude that:

- The adverse effects of the proposal on the environment can be avoided, remedied or mitigated through appropriate resource consent conditions;
- The effects of the proposal will be no more than minor;
- The proposal is not contrary to the objectives and policies of the Operative and Proposed District Plans; and

- The proposal is consistent with the purpose and principles of the Resource Management Act 1991.

For all the reasons set out above, the following resource consents for Nau Mai Business Park located at 4005A State Highway 23, Okete, are granted, subject to the conditions set out in Schedule A;

- A land use consent (LUC 0071/10) to allow the establishment and operation of a light industrial business park and a rural-residential development; and
- A subdivision consent (SUB 0048/10) to create six residential allotments, three allotments intended for light industrial development, and a balance lot (Lot 10).

**DATED** this 5<sup>th</sup> day of August 2010

**Dr P H Mitchell**

**Independent Hearings Commissioner**

# **SCHEDULE A**

## **CONDITIONS OF CONSENT**

### **LAND USE CONSENT LUC 0071/10**

#### **PLANNING CONDITIONS**

- PC1 The development shall be undertaken in accordance with the application received 28 September 2009 titled *Proposed Nau Mai Business Park and Lifestyle Subdivision* prepared by McCracken Surveys Ltd, and subsequent further information received 15 December 2009, 18 December 2009, 28 January 2010, 12 February 2010, 8 March 2010, 10 May 2010, 1 June 2010, 17 June 2010 and 29 June 2010, except as otherwise altered by the following conditions of consent.
- PC2A All activities, including construction, operation and maintenance, on Precincts 12, 14, 15, and 16 and Lots 18 and 19, as already existing or created by subdivision consent SUB0048/10, shall be undertaken in accordance with the Performance Standards attached as Appendix I. Any industrial development shall only occur within the 'effective areas' within each precinct, as shown on the plans prepared by McCracken Surveys Ltd reference 08157.
- PC2B All activities, including construction, operation and maintenance, on Lots 3, 4 5, 6, 7, 8, 9, 11 and 17, as already existing or created by subdivision consent SUB0048/10, shall be undertaken in accordance with the Performance Standards attached as Appendix II.
- PC3 There shall be no future expansion of the Nau Mai Business Park to Lot 10 beyond the approved boundary of Precinct 14, to ensure the remainder of Lot 10 is retained in rural land use.
- PC4 All buildings within Precinct 15 shall be shielded from adjacent locations on State Highway 23. As a minimum, a two-metre high earth bund shall be constructed on the State Highway 23 boundary of the precinct and planted with a mixture of species from the proposed plant schedule, both to occur within the first construction season following the commencement of this consent, and prior to any other construction or building taking place within any precinct, to the satisfaction of the Chief Executive of the Waikato District Council, or delegate (hereafter referred to as "the Chief Executive"). The grade and species of plants used on the bund shall be selected to ensure growth to a height of not less than 2m in 2 years. The bunding and planting shall be in general accordance with Detail 1, Appendix

3(c) of the Bernard Brown & Associates Landscape and Visual Effects Assessment and Proposed Landscape Mitigation Concept, May 2009.

- PC 4A The earth bund required by condition PC 4 shall be constructed to integrate with the existing landform to the satisfaction of the Chief Executive. A plan of the bund, showing indicative contours and an elevation, shall be submitted to the Council for approval prior to construction of the bund.
- PC5 The consent holder shall implement the Landscape Mitigation Concept contained within the application and particularly Appendix 3 of the report prepared by Bernard Brown Associates Ltd titled 'Landscape and Visual Effects Assessment and Proposed Landscape Mitigation Concept' and the additional report provided dated 3 December 2009. The species used shall be in general accordance with the above reports. All works pursuant to this condition shall be implemented in the first planting season following commencement of this consent, with the exception of areas, which the Chief Executive confirms are within future stages and where proposed earthworks makes this impractical. The planting shall be maintained thereafter with replacement planting being undertaken as required.
- PC6 The consent holder shall ensure that, should any human remains or archaeological items be exposed while undertaking works to give effect to conditions of this consent, works in that area will cease immediately. The Police, New Zealand Historic Places Trust and kaumatua representing the local tangata whenua shall be contacted and work shall not recommence in the affected area until any necessary statutory authorisations or consents have been obtained.
- PC7 The consent holder shall notify the Chief Executive in writing two weeks prior to the commencement of substantial activities associated with this consent.
- PC8 Pursuant to section 36 of the Resource Management Act 1991 the consent holder shall pay the actual and reasonable costs incurred by the Council when monitoring the conditions of this consent.
- PC9 One free-standing advertising sign may be sited adjacent to State Highway 23, and:
- (a) Must not exceed 6m in height; and
  - (b) Must not be located on or above the road reserve; and
  - (c) Must not exceed an area of 8m<sup>2</sup>; and
  - (d) Must be located in the eastern corner of Precinct 15; and
  - (e) If illuminated, the sign must not have a light source that flashes or moves; and
  - (f) Must not imitate the content, colour or appearance of traffic control signs; and
  - (g) Must be visible by drivers for at least 250m; and
  - (h) Must have lettering that is at least 120mm high; and

- (i) Must not obscure sight lines of drivers turning into or out of entrances on any site; and
- (j) Must only relate to goods or services available on the site, or is a property name sign.

PC10 The consent holder shall notify the Chief Executive in writing at least two weeks prior to the commencement of any construction activities authorised by this consent.

## **ROADING CONDITIONS**

RC1 The consent holder shall upgrade the existing access to the site generally as shown in McCracken Surveys drawing 08157 (Hearings Version – Intersection Proposal) and AECOM Drawing number 6004290-001 Rev 06, in accordance with NZTA standards and the following minimum dimensions:

Eastbound shoulder - 220m at 3.5m wide  
 - 60m taper  
 - run off area;

Westbound shoulder - 150m at 3.5m wide  
 - 50m taper;

Right Turn Bay - to Austroads and MOTSAM standards;

or as otherwise determined by the Chief Executive after consultation with the consent holder and NZTA Regional Manager, Highways and Network Operations.

RC2 Internal roading layout, design and construction, including parking, loading and manoeuvring areas, shall be in accordance with Waikato District Council standards and subject to the approval of the Chief Executive.

RC3 The design and construction of the measures required by Condition RC1 shall be subject to Stage 3 and 4 road safety audits at each stage to the satisfaction of the Chief Executive after consultation with the consent holder and NZTA. The consent holder shall implement the recommendations of the safety audits at its cost, unless otherwise agreed by the Chief Executive, after consultation with NZTA.

RC4 The consent holder shall prepare and comply with a Traffic Management Plan in accordance with Code of Practice for Temporary Traffic Management (COPTTM) and best practice for construction of the intersection.

RC5 Once Precinct 16 has been developed to 75% of its maximum authorised developable area, the consent holder shall prepare a review of the adequacy of the works required by Condition RC1 in rendering current and future traffic effects no more than minor; and any additional works required to ensure current and future traffic related effects will be no more than minor.

The review required by this condition shall be prepared by a suitably qualified traffic engineer, to the satisfaction of the Chief Executive, following consultation with NZTA and shall, as a minimum, consider crash records, site observations of traffic interactions, traffic surveys (including vehicle characteristics, turning movements,

and speeds), trip generation and the adequacy of the mitigation of the effects of traffic from the development.

Advice Note: The improvements may include but not be limited to work at the proposed intersection, extensions to shoulder widening or acceleration lanes, changes to road markings or signage, or improvements to visibility at Wrights Road or elsewhere.

- RC6 No industrial development outside Precinct 16 shall take place until the review required in Condition RC5 has been completed and any actions required have been fully implemented by the consent holder to the satisfaction of the Chief Executive.

## UTILITY CONDITIONS

### Stormwater

- UC1 Stormwater management within the development shall be conducted in general accordance with the following:

- *Proposed Business Park Development at 4005 SH23 Okete, Stormwater Management Assessment* dated 7 May 2010, prepared by AECOM New Zealand Ltd and as amended by the report *Nau Mai Business Park & Rural Residential Development, Response to WDC Requests for Information (letter dated 21 May 2010)* dated 11 June 2010, prepared by AECOM New Zealand Ltd; and
- *Lot 17: Pavement and Stormwater Design, Tasman Lands, 4005 SH23, Raglan* dated 7 May 2010, prepared by AECOM New Zealand Ltd and as amended by Section 2.5 of the report *Nau Mai Business Park and Rural Residential Development, Response to WDC Requests for Information (letter dated 21 May 2010)* dated 11 June 2010, prepared by AECOM New Zealand Ltd.

- UC2 A Stormwater Management Plan shall be prepared by a suitably qualified person to the satisfaction of the Chief Executive. This plan shall include as a minimum of the following details:

- (i) A site plan showing all existing and proposed drainage works in relation to each lot boundary and any overland flow path;
- (ii) Drainage works to allow land drainage from each lot and also from the proposed road and right of ways, to be collected and discharged at suitable outlets;
- (iii) Provide an easement plan for all proposed or existing drains, secondary flow paths, and ponds;
- (iv) A stormwater outlet for Business Park Precincts, 12, 14, 15 and 16 shall be provided from the low point of each precinct;
- (v) A stormwater route (pipe and/or overland flow path) through Business Park Precinct 16 be indicated and designed to the satisfaction of the Chief Executive;
- (vi) Proposed ponds shall be located on private land and be designed to minimise future maintenance and for ease of maintenance;

- (vii) An Operation and Maintenance Guideline shall be prepared for the stormwater system and submitted to Council to the satisfaction of the Chief Executive;
  - (viii) Design plans for these works need to include:
    - (a) Diameters, length and gradients of all pipes, culverts and structures;
    - (b) Long sections and typical cross sections of constructed open drains, swales and overland flow paths;
    - (c) Collection and disposal point details including erosion protection at all disposal outlets;
    - (d) Plans, sections and details of the proposed stormwater attenuation ponds and design calculations in accordance with Auckland Regional Council, Technical Publication 10 (TP10);
    - (e) Calculations to support the sizes selected. Calculations should be on the total catchment area, which may include areas outside the property boundaries of the entire site; and
    - (f) Consideration needs to be given to reasonable roof, paved and land drainage areas;
  - (ix) Design calculations that demonstrate that peak flows have been attenuated to pre-developed rates within the stream tributary at the sites downstream boundary, and that water levels at the upstream site boundaries are not increased from pre-development levels;
  - (x) Details of the legal mechanism to be put in place which will establish who is responsible for the future and on-going operation and maintenance of the private stormwater system in perpetuity; and
  - (xi) Development staging.
- UC3 All works required under the approved Stormwater Management Plan shall be constructed to the satisfaction of the Chief Executive and no works shall commence until the Chief Executive has approved the Stormwater Management Plan.
- UC4 As-built plans at a scale acceptable to Council showing the land drainage works, ponds and any secondary flow paths (including easements) for the relevant subdivision stage shall be submitted to the satisfaction of Council prior to the issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991.
- UC5 The proposed stormwater system shall be operated and maintained in accordance with the Stormwater Management Plan and Operation and Maintenance Guideline prepared for the site.

#### **Earthworks**

- UC 6 The consent holder shall prepare an Earthworks Design and Management Plan and submit to the Chief Executive, for approval no later than 1 month prior to the commencement of earthworks. The Plan shall include, but not be limited to:
- (i) The staging of works planned and the description of earthworks in each stage including site plans;
  - (ii) Outline the engineering controls, supervision and certification that will be applied to each stage;

- (iii) Outline the site specific design parameters and stability analysis design procedures that will be used for each stage considering static and seismic conditions, providing evidence that a minimum Factor of Safety of 1.5 will be achieved by all earthworks for static loads and 1.1 for seismic conditions.
- (iv) Detail engineering and management procedures for material, fill placement and treatment, stockpiling and disposal of unsuitable materials;
- (v) Detail measures for groundwater control, including details of sub-soil drainage;
- (vi) Detail measures for dealing with situations that do not conform at the time of construction with the design assumptions;
- (vii) Format of Producer Statements to be adopted for design, design review, construction and construction review; and
- (viii) A detailed Erosion and Sediment Control Plan with supporting documentation in accordance with Waikato Regional Council's *Erosion and Sediment Control, Guidelines for Soil Disturbing Activities*, January 2009.

UC7 The consent holder shall engage Chartered Professional Engineers with geotechnical and civil engineering experience to direct and supervise any additional investigations, undertake design, design peer review, construction supervision and to certify the construction of all works in accordance with the procedures set out in the Earthworks Design and Management Plan. The design peer review resources engaged by the consent holder shall be to the satisfaction of the Chief Executive.

UC8 No earthworks shall commence on site until:

- (i) All relevant engineering and roading plans have been approved by the Waikato District Council;
- (ii) Sediment and erosion control plans have been approved by Environment Waikato or a letter provided confirming permitted activity status has been supplied to the Waikato District Council; and
- (iii) After a pre-construction site meeting with all parties including representatives of the Waikato District Council and Environment Waikato.

UC9 No ground disturbance greater than 400mm depth below existing ground levels shall be undertaken within the 10m buffer zone within Precinct 15 as shown on *McCracken Surveys Ltd Plan 08157, Sheet 5b*.

#### **Dust Management**

DM1 Prior to exercising this consent, the consent holder shall prepare a Dust Management Plan for the approval of the Chief Executive, the purpose of which will be to ensure that there is no dust nuisance on any land not under the direct control of the consent holder.

DM2 All activities authorised by this consent shall be undertaken in accordance with the approved Dust Management Plan.

### **Fire Fighting Water Supply System**

FF1 The consent holder shall provide and implement a fire fighting water supply and associated infrastructure Management Plan generally in accordance with the recommendations of the *PCD Fire Designs Report* dated 11 June 2009 and the *McCracken Surveys Plan "Fire Fighting Utilities"*, to the satisfaction of the Chief Executive.

### **LEGAL CONDITION**

LC1 In accordance with section 108(2)(d) of the Resource Management Act 1991, a covenant is to be entered into, in favour of the Waikato District Council, in respect of the performance of Condition PC2. The Covenant is to be prepared by the applicant and registered over the land to the satisfaction of the Chief Executive prior to the use and occupation of any of Precincts 12, 14, 15 and 16 pursuant to this consent.

### **REVIEW CONDITION**

RVI Within 3 months following the first anniversary of the date of commencement of this consent, and every 5 years thereafter, the Waikato District Council may, following service of notice on the consent holder, commence a review of the conditions of this resource consent under section 128(1) of the Resource Management Act 1991 for the following purpose:

- (i) to review the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the environment from the exercise of this resource consent and if necessary to avoid, remedy or mitigate such effects by way of further or amended resource consent conditions.

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

## SUBDIVISION CONSENT SUB0048/10

### PLANNING CONDITIONS

- PC1 The Land Transfer Plan to give effect to this Resource Consent shall be consistent with the approved plans prepared by McCracken Surveys Ltd reference 08157, received with the further information dated 17 June 2010.

Advice Note: The Land Transfer Plan submitted to Council for section 223 approval shall not include Lots 13 and 20 as land to vest in Council.

- PC2 Except for bulk earthworks, landscaping, stormwater drainage and the provision of access, all of which are necessary to establish Precincts 12, 14, 15 and 16, industrial activities may only take place within said precincts, provided that all activities in those precincts and Lots 18 and 19 comply with the Performance Standards contained in Appendix I.
- PC3 The subdivision of Lots 5, 6, 7, 8, 9 and 11 shall not take place until legal access is provided from State Highway 23 to Lot 17, either by way of an access easement, or through the establishment of Lots 18 and 19 as legal road.
- PC4 Following completion of the work to create Lots 5, 6, 7, 8, 9, 11 and 17, all activities in these Lots and existing Lots 3 and 4 shall comply with the Performance Standards contained in Appendix II.
- PC5 Prior to the issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall have:
- (a) Completed all works required by Conditions PC4, PC4A and PC5 of land use consent LUC 0071/10, other than the ongoing maintenance works required by Condition PC5, all to the satisfaction of the Chief Executive; and
  - (b) Completed the boundary and screen planting within Lots 5 and 11, in accordance within Appendix 3(a) of the report prepared by Bernard Brown and Associates Ltd titled *Landscape and Visual Effects Assessment and Proposed Landscape Mitigation Concept* and the additional report provided dated 3 December 2009.
- PC6 The consent holder shall pay to the Waikato District Council all actual and reasonable costs and additional charges in respect of monitoring the conditions of this consent in accordance with section 36 of the Resource Management Act 1991.
- PC7 Pursuant to section 108(2)(a) of the Resource Management Act 1991, a Reserve Contribution of \$10,296 (Ten Thousand Two Hundred and Ninety Six Dollars) GST inclusive shall be paid to Council for the six additional rural-residential lots.
- This is based on a Reserves Fund Contribution of \$1,716 (One Thousand Seven Hundred Sixteen Dollars) for each additional lot. This shall be paid to Council prior to issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991 in lieu of vesting land.

Advice note: The amounts of the contributions payable at the time of commencement of a resource consent are those fees and charges prevailing at the time of payment, not at the time of issuing a resource consent.

## **LEGAL CONDITIONS**

- LC1 The easements shall be duly granted, reserved and shown on the Land Transfer Plan.
- LC2 Pursuant to section 221 of the Resource Management Act 1991, consent notices shall be prepared by Council's solicitors at the consent holder's expense for Precincts 12, 14, 15, and 16 and Lots 18 and 19 to ensure ongoing compliance with Condition PC2 of this consent.
- Upon the issue of a certificate pursuant to section 224(c) of the Resource Management Act 1991 or at such earlier time as may be required, the consent notices pursuant to section 221 of the Resource Management Act will be issued. A consent notice pursuant to this condition will not be required should a Covenant already have been entered into in respect of the subject land in accordance with Condition LC1 of land use consent LUC0071/10.
- LC3 Pursuant to section 221 of the Resource Management Act 1991, consent notices shall be prepared by Council's solicitors at the consent holder's expense for Lots 3, 4 5, 6, 7, 8, 9, 11 and 17 to ensure ongoing compliance with Conditions PC2 and PC4 of this consent.
- Upon the issue of a certificate pursuant to section 224(c) of the Resource Management Act 1991 or at such earlier time as may be required, the consent notices pursuant to section 221 of the Resource Management Act will be issued.
- LC4 Pursuant to section 221 of the Resource Management Act 1991, a consent notice shall be prepared by Council's solicitors at the consent holder's expense for Lot 10 stating that no further subdivision of Lot 10 is permitted, to ensure compliance on a continuing basis by the subdividing owner and subsequent owners of the provisions.
- Upon the issue of a certificate pursuant to section 224(c) of the Resource Management Act 1991 or at such earlier time as may be required, the consent notices pursuant to section 221 of the Resource Management Act will be issued.
- LC5 An amalgamation condition shall be included on the section 223 plan pursuant to section 220(1)(b)(iv) Lot 17 hereon (legal access) shall be held as to six undivided one-sixth shares by the owners of Lots 5-9 and 11 hereon as tenants in common in the said shares and that individual Computer Registers be issued in accordance therewith. See DLR Request 890739.
- LC6 An amalgamation condition shall be included on the section 223 plan pursuant to section 220(1)(b)(ii) Lots 10 and 25 hereon shall be held in the same Computer Register. See DLR Request 890739.
- LC7 Lots 18 and 19 shall be vested in Waikato District Council as road, and be shown on

the Land Transfer Plan.

- LC8 Covenants shall be created on the titles of Lots 6, 7, 8, 9 and 10 to protect the bush within these areas in perpetuity. The wording of the covenants shall be in general accordance with the proposed covenant wording in the application, and be to the satisfaction of Chief Executive.
- LC9 Legal access to firefighting water supplies and associated infrastructure shall be provided in general accordance with the McCracken Surveys Plan titled *Fire Fighting Utilities*, to the satisfaction of the Chief Executive.

## **ROADING CONDITIONS**

- RC1 The roadway within Lots 18 and 19 shall be designed and constructed in accordance with Waikato District Council standards and subject to the approval of the Chief Executive. The construction and vesting of roadway within Lots 18 and 19, and subsequent issue of a certificate pursuant to section 224(c) of the Resource Management Act 1991 shall be in general accordance with the staging information included in the application, and as shown on plan 6B of the application plans, provided that a sealed carriageway width of not less than 7 metres is provided.
- RC2 The proposed access allotment (Lot 17) and to Lots 7, 8 and 9 shall be designed and constructed in accordance with Appendix A, Table 4, of the District Plan and the minimum specifications set out in Waikato District Council's *Engineering Code of Practice - Part Two - Roading*. The accessway construction shall be to the satisfaction of the Chief Executive prior to issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991.
- RC3 Access to Precinct 16 is to be achieved via the existing access easement serving Lot 2 DP 404689.

## **POWER AND TELECOMMUNICATIONS CONDITIONS**

- PT1 Written confirmation shall be provided from network utility operators for telecommunication and energy supply confirming that the connections and reticulation has been placed to the boundaries of each lot and/or precinct prior to the issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991.

## **UTILITIES CONDITIONS**

### **Stormwater**

- UC1 Stormwater management within the development shall be conducted in general accordance with the following:
- *Proposed Business Park Development at 4005 SH23 Okete, Stormwater Management Assessment* dated 7 May 2010, prepared by AECOM New Zealand Ltd and as amended by the report *Nau Mai Business Park & Rural Residential Development, Response to WDC Requests for Information (letter dated 21 May 2010)* dated 11 June 2010, prepared by AECOM New Zealand Ltd; and

- *Lot 17: Pavement and Stormwater Design, Tasman Lands, 4005 SH23, Raglan* dated 7 May 2010, prepared by AECOM New Zealand Ltd and as amended by Section 2.5 of the report *Nau Mai Business Park & Rural Residential Development, Response to WDC Requests for Information (letter dated 21 May 2010)* dated 11 June 2010, prepared by AECOM New Zealand Ltd.

UC2 A Stormwater Management Plan shall be prepared by a suitably qualified person to the satisfaction of the Chief Executive. This plan shall include as a minimum of the following details:

- (i) A site plan showing all existing and proposed drainage works in relation to each lot boundary and any overland flow path;
- (ii) Drainage works to allow land drainage from each lot and also from the proposed road and right of ways, to be collected and discharged at suitable outlets;
- (iii) Provide an easement plan for all proposed or existing drains, secondary flow paths, and ponds;
- (iv) A stormwater outlet for Business Park Precincts, 12, 14, 15 and 16 shall be provided from the low point of each precinct;
- (v) A stormwater route (pipe and/or overland flow path) through Business Park Precinct 16 be indicated and designed to the satisfaction of Council;
- (vi) Proposed ponds shall be located on private land and be designed to minimise future maintenance and for ease of maintenance;
- (vii) An Operation and Maintenance Guideline shall be prepared for the stormwater system and submitted to Council to the satisfaction of the Chief Executive.
- (viii) Design plans for these works need to include:
  - a. Diameters, length and gradients of all pipes, culverts and structures;
  - b. Long sections and typical cross sections of constructed open drains, swales and overland flow paths;
  - c. Collection and disposal point details including erosion protection at all disposal outlets;
  - d. Plans, sections and details of the proposed stormwater attenuation ponds and design calculations in accordance with Auckland Regional Council, Technical Publication 10 (TP10);
  - e. Calculations to support the sizes selected. Calculations should be on the total catchment area, which may include areas outside the property boundaries of the entire site; and
  - f. Consideration needs to be given to reasonable roof, paved and land drainage areas;
- (ix) Design calculations that demonstrate that peak flows have been attenuated to pre-developed rates within the stream tributary at the sites downstream boundary, and that water levels at the upstream site boundaries are not increased from pre-development levels;
- (x) Details of the legal mechanism to be put in place which will establish who is

responsible for the future and on-going operation and maintenance of the private stormwater system in perpetuity; and

(xi) Development staging.

UC3 All works required under the approved Stormwater Management Plan shall be constructed to the satisfaction of Chief Executive, prior to the issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991. No works shall commence until the Stormwater Management Plan has been approved.

UC4 As-built plans at a scale acceptable to Council showing the land drainage works, ponds and any secondary flow paths (including easements) shall be submitted to the satisfaction of Council prior to the issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991.

#### **Fire Fighting Water Supply System**

UC5 The consent holder shall provide and implement a fire fighting water supply and associated Infrastructure Management Plan in accordance with the recommendations of the PCD Fire Designs Report dated 11 June 2009 and the McCracken Surveys Plan *Fire Fighting Utilities*, to the satisfaction of the Chief Executive, prior to the issuing of a certificate pursuant to section 244(c) of the Resource Management Act 1991.

#### **Earthworks**

UC6 A site plan, to a scale acceptable to the Chief Executive, shall be provided prior to the issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991, to the satisfaction of the Chief Executive which shall record the following details:

- (i) Location and extent of fill material in relation to the boundaries of all lots; and
- (ii) Include cross sections of the original ground profiles and fill profiles.

UC7 A geotechnical completion report and a statement of professional opinion shall be provided for earthworks to the satisfaction of the Chief Executive. This report shall include but not be limited to the following details:

- (i) A site plan in accordance with Condition UC6;
- (ii) All fill excavated or placed on the site shall be clearly indicated on a site plan to the satisfaction of Council. All fill shall either be certified as being suitable for development or otherwise identified as unsuitable by a chartered professional engineer;
- (iii) The depth of the fill and/or cut;
- (iv) The fill material used;
- (v) Show building platforms in relation to any earthworks; and
- (vi) Recommendations on future development foundations to buildings including any required testing.

#### **Minimum Floor Levels**

UC8 Finished site contours or spot heights shall be shown on the amended site plan for each site to the satisfaction of Council prior to the issuing of a certificate pursuant

to section 224(c) of the Resource Management Act 1991. The design flood level contours shall also be shown on the plan.

**Development Staging**

UC9 A Stage Layout Plan shall be submitted to Council prior to undertaking physical works for each Stage. The Site Layout Plan shall demonstrate which stages the Consent Holder is seeking approval for, which stages have been approved and constructed and which stages are to be addressed within future applications.

UC10 If the Consent Holder chooses to develop the site in stages, all documents required to be submitted to Council for approval, shall be submitted for each stage and include:

- (i) Detailed design information relevant to the application stage;
- (ii) Preliminary design information for future stages; and
- (iii) A review of critical assumptions used in previous stages.

## **APPENDIX I**

### **PROPOSED LAND USES AND PERFORMANCE STANDARDS - LIGHT INDUSTRIAL PRECINCTS**

The following land uses and performance standards are to be applied over the Nau Mai Business/Industrial Precincts 12, 14, 15 and 16 (and any subsequent subdivision of these precincts) as shown on McCracken Surveys Plan Numbered 08157 Sheets 1 – 12. Industrial development shall only occur within the 'effective areas' within each precinct.

**Meaning of Words:** Unless otherwise stated, the meaning of words in the following sections labelled 'A', 'B' and 'C' shall be the same as those in the *Proposed Waikato District Plan (Appeals Version)*. Reference to the "District Plan" shall mean the *Proposed Waikato District Plan (Appeals Version)*.

#### **A. Land Uses Permitted**

Provided the performance standards in 'C' below are met the following land uses/activities will be permitted activities within Precincts 12, 14, 15 and 16 (and any subsequent subdivision of these precincts) of the Nau Mai Business and Industrial Park. Light industries/businesses involving the processing, manufacturing, fabricating, packing or storage of goods and servicing and repair activities including:

1. Depots for rural, roading, building contractors and building sub-contractors;
2. Light engineering, manufacturing, and sheet metal fabrication;
3. Woodworking, including but not limited to; kitchen manufacturing, pre-nailing of timber trusses and frames, and furniture making including upholstery;
4. Panel beating and auto trimming;
5. Spray painting;
6. Vehicle disassembly (only within a building);
7. Transport depot – as defined in Appendix P District Plan;
8. Research and technology activities involved in the research, development, manufacture and commercial application of advanced technology including, but not limited to: agritechnology, energy technology, transportation technology, manufacturing technology, soils/water/air resources;
9. Dwelling for caretaker or security personnel (one dwelling per precinct – 70m<sup>2</sup> habitable floor area);
10. An educational institution involving no more than 10 students;
11. Office that is ancillary to any permitted industrial uses listed herein;
12. Retail activities that are ancillary to any permitted industrial uses (retail activities shall not exceed 20% of floor area of the associated industrial building and the goods sold must be manufactured or stored within the site/lot/precinct or associated industrial building) not including specific uses listed here that have a higher inherent retail component e.g. 15, 20, 21;
13. Food outlet less than 200m<sup>2</sup> gfa (one for all four precincts);

14. Intensive farming activity but limited to plant nurseries permanently contained in buildings or outdoor enclosures, boarding kennels or catteries;
15. Veterinary facilities;
16. Vehicle and machinery hire;
17. Plant and equipment hire;
18. Self storage facilities;
19. Vehicle and engine repair activities including but not limited to maintenance, testing and certification;
20. Timber and hardware merchant;
21. Farming supplies merchant;
22. Boat repair, building, servicing, storage and chandlery, including bait, ice, and tackle;
23. Refuelling depot (Diesel) – contractors only (not general public);
24. Produce storage;
25. Fertiliser storage;
26. Landscaping supplies;
27. Clothing manufacture;
28. Pump shed;
29. Part Precinct 14 – Uses authorised by Waikato District Council Consent LUC0177/07 – Mini-Mix Plant;
30. Salvaged vehicle compound (provided salvaged vehicles are not visible from SH23);
31. Manufacturing of concrete and clay products, surf boards and sails;
32. Pastoral farming and/or cropping on unused parts of precincts; and
33. Any combination of the above listed uses.

#### **B. Land Uses Not Permitted**

Despite meeting the performance standards in C. below the following land uses/activities will not be permitted within Precincts 12, 14, 15 and 16 (and any subsequent subdivision of these precincts) of the Nau Mai Business and Industrial Park.

1. Residential activities of any type as defined in Appendix P of the District Plan except for caretaker or security personnel (one dwelling per precinct - max. habitable floor area = 70m<sup>2</sup>) and the acoustic design criteria specified in C. below;
2. Sale of liquor;
3. Retail activities (except as provided for in A. above);
4. Abattoir;
5. Dairy Factory;
6. Asphalt manufacturing;
7. Oil refining; and
8. Pulp and paper manufacturing.

#### **C. Performance Standards**

1. Where required, land uses and buildings within each precinct (or subdivision thereof) are to be connected to stormwater and on-site wastewater disposal in a way that complies with Appendix B (Engineering Standards) of the District Plan,

and services within each precinct are to be placed underground.

2. Internal access (within a precinct), vehicle entrance crossing, and internal parking, loading, queuing, and manoeuvring space is provided in accordance with Appendix A (Traffic) of the District Plan and the recommendations contained within the AECOM NZ Ltd Integrated Transport Assessment dated 4<sup>th</sup> June 2009.
3. Landscape Planting and Mitigation in terms of the Bernard Brown Associates Ltd report labelled "Landscape and Visual Effects Assessment & Proposed Landscape Mitigation Concept" dated May 2009 and supplement dated 3<sup>rd</sup> Dec 2009, is to be implemented and maintained thereafter within each precinct (and any subsequent subdivision thereof).
4. Any activity is a permitted activity if it is designed and conducted so that noise from the activity measured within any other site:
  - (a) In Precincts 12, 14, 15 and 16 does not exceed:
    - (i) 65dBA (L<sub>10</sub>), at all times.
  - (b) Within any of the rural-residential properties in the Nau Mai Business and Lifestyle Subdivision (Lots 5-9 and 11) and within the notional boundary of any dwelling on Lot 10 and in the Rural Zone does not exceed:
    - (i) 55dBA (L<sub>10</sub>), 7am to 10pm;
    - (ii) 40dBA (L<sub>10</sub>), 10pm to 7am the following day; and
    - (iii) 70dBA (L<sub>max</sub>), 10pm to 7am the following day.Construction noise and emergency sirens are not subject to this rule.
  - (c) Any caretaker's flat permitted in Precincts 12, 14, 15 and 16 shall be designed and constructed so as to ensure that:
    - (i) An internal noise level of 35dBA (L<sub>10</sub>) is not exceeded in any bedroom and 40dBA (L<sub>10</sub>) in all other habitable spaces;
    - (ii) The internal criterion shall be achieved based on a level of 65dBA (L<sub>10</sub>) incident on the external walls of the caretaker's flat; and
    - (iii) At the same time as compliance with (i) above is achieved, ventilation in accordance with the requirements of Clause G4 of the New Zealand Building Code shall be achieved.

Advice Note: A habitable space is defined as: a space used for activities normally associated with domestic living, but excludes any bathroom, laundry, water-closet, pantry, walk-in wardrobe, corridor, hallway, lobby, clothes-drying room, or other space of a specialised nature occupied neither frequently nor for extended periods.

- (d) Noise levels shall be measured in accordance with the requirements of

New Zealand Standard NZS 6801:1991 "Measurement of Sound" and assessed in accordance with the requirements of New Zealand Standard NZS 6802:1991 "Assessment of Environmental Sound".

5. Noise from construction shall not exceed the limits recommended in, and shall be measured and assessed in accordance with New Zealand Standard NZS 6803:1999 "Acoustics – Construction Noise".
6. Any vibration arising from the activity must comply with Appendix I (Ground Vibration) of the District Plan.
7. Light spill from artificial lighting, other than a street light, navigation light or traffic signals must not exceed 10 lux measured vertically at any precinct or subdivision thereof and any adjoining site in the Rural Zone.
8. No objectionable or offensive dust, smoke, fumes or odour having adverse effects on any other precinct or subdivision thereof or any other site in the Rural Zone.
9. No incineration of any kind including rubbish, waste and recreational fires is to take place in any precinct or subdivision thereof.
10. Storage and use of fireworks is prohibited.
11. Stockpiles of loose material must be contained or maintained to prevent dispersal of the material into the air, stormwater system or waterways.
12. Any electromagnetic field generated by an activity must not exceed the maximum exposure level in New Zealand Standard NZS2772.1:1999 *Radiofrequency Fields Part 1: Maximum exposure levels 3kHz – 300GHz* when measured in accordance with New Zealand Standard NZS6609.2:1990.
13. Earthworks (additional to earthworks approved as part of a subdivision, land use or building consent) must comply with Appendix B (Engineering Standards) of the District Plan, and if within 5m of the precinct boundary, including cut and batter faces or filled areas, are revegetated to achieve 80% ground cover within 12 months of the earthworks being commenced, and:
  - (a) Does not involve the removal of material from the site (except topsoil); and
  - (b) Retains sediment on the site through implementation and maintenance of sediment controls; and
  - (c) Does not adversely affect other adjoining land through changes in natural

water flows or established drainage paths; and

- (d) Does not adversely affect any assumptions or design criteria of the subdivisional earthworks; and
  - (e) The area of earthworks does not exceed 1 ha.
14. Earthworks filling (additional to earthworks approved as part of a subdivision, land use or building consent) may be carried out provided:
- (a) All material for filling is clean fill;
  - (b) Filling:
    - (i) that is part of building work approved by a building consent is carried out in accordance with New Zealand Standard *NZS4431:1989 Code of Practice* for earth fill for residential development; or
    - (ii) that is not part of building work does not include a building platform; and
    - (iii) does not include placing fill into an area of significant indigenous vegetation or habitat; and
    - (iv) does not adversely affect any assumptions or design criteria of the subdivisional earthworks; and
    - (v) is above the 1% AEP flood contour.
15. Any storage or use of hazardous substances must comply with Appendix H (Hazardous Substances) of the District Plan, or be:
- (a) Domestic storage and use of consumer products for domestic purposes; or
  - (b) Consumer products, held for resale to the public and stored in the manufacturers' packaging; or
  - (c) Fuel or safety equipment in motor vehicles, aircraft, ships, boats or small engines; or
  - (d) Fire-fighting substances on emergency vehicles.
16. Any activity generating radioactivity must have radioactivity levels below that specified as an exempt activity in the Radiation Protection Regulations 1982, or be radioactive materials that are confined to domestic appliances.
17. When Building Consents are applied for, on site wastewater treatment is to be provided within each precinct (and if necessary, any subdivision thereof) in

accordance with:

- (a) Appendix B (Engineering Standards) of the District Plan; and
  - (b) The Waikato Regional Council's permitted activity standards (or alternatively a resource consent is obtained) for on-site wastewater treatment; and
  - (c) A wastewater land application field (primary or secondary level treatment) is to be designed by a suitably qualified person and submitted with the application. The site assessment and design documentation is to be in accordance with *AS/NZS 1547:2000* and refer to the requirements of the *Waikato Regional Plan*; and
  - (d) The requirements of the AECOM New Zealand Ltd report *Proposed Business Park Development at 4005 SH23 Okete, Wastewater Management Assessment* dated 10 September 2009.
18. When Building Consents are applied for, on-site stormwater disposal is to be provided within each precinct (and if necessary, any subdivision thereof) in accordance with:
- (a) Appendix B (Engineering Standards) of the District Plan; and
  - (b) The Regional Council's Permitted Activity standards for stormwater discharge; and
  - (c) The requirements of the Stormwater Management Plan approved by Council prior to the issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991; and
  - (d) A retention system shall be installed on each property for all stormwater from roof, paved and impermeable surface at time of building consent (or at any time that development alters site coverage or greenfields runoff characteristics). The design and sizing of the retention system shall be carried out by a suitably qualified person in accordance with *NZWERF On-site Stormwater Management Guideline*, October 2004 (or similar approved), to attenuate 10% AEP storm event to greenfield runoff to the satisfaction of Council. All stormwater discharges (overflows and surface runoff) shall be controlled in a manner that does not accelerate, worsen or result in erosion, scour or slope instability.
19. Any advertising sign (free standing or attached to a building) visible from a public place:

- (a) Must not exceed 4m in height; and
  - (b) Must not be located on or above the road reserve, other than a traffic sign or safety sign erected by a public authority; and
  - (c) Must not exceed an area of 3m<sup>2</sup> per sign, provided that the total amount of signage per precinct does not exceed 10m<sup>2</sup>; and
  - (d) Must be set back at least 5m from the boundary of the precinct with the Rural Zone; and
  - (e) If illuminated, the sign must not have a light source that flashes or moves; and
  - (f) Must not imitate the content, colour or appearance of traffic control signs; and
  - (g) Must not obscure sight lines of drivers turning into or out of entrances on any site; and
  - (h) Must relate to goods or services available on the site, or is a property name sign.
21. Outdoor stacks or stockpiles of goods or materials:
- (a) Must not exceed a height of 9m; and
  - (b) Must not exceed 30% site coverage; and
  - (c) Must be screened from view from State Highway 23.
22. Any shelter belt, landscape mitigation planting or hedge will not cast a shadow longer than 12m onto an adjoining rural site outside the precincts at midday on the shortest day of the year.
23. Construction or alteration of a building or structure must comply with the following:
- (a) Height does not exceed 10m; and
  - (b) Buildings near the SH23 boundary of Precinct 15 will have heights determined by constraints set out in the *Bernard Brown Associates Ltd Landscape Mitigation Concept Report*, Appendix 3(c) Detail 1; and

- (c) No bare galvanised iron is to be used for fencing.
24. Construction or alteration of a building or stockpiling of materials must comply with the following:
- (a) The building or stockpile does not protrude through a height control plane rising at an angle of:
    - (i) 45 degrees commencing at an elevation of 2.5m above ground level at every point of the Rural Zone boundary; or
    - (ii) 37 degrees commencing at an elevation of 2.5m above ground level at every point of the Rural Zone boundary between south-east or south-west of the building or stockpile.
25. Construction or alteration of a building must comply with the following:
- (a) Total building coverage does not exceed 50% of the effective precinct area (i.e. Effective precinct areas shown on McCracken Surveys Ltd Plan 08157 Sheet 5); and
  - (b) No single building to have a floor area greater than 800m<sup>2</sup>.
26. Construction or alteration of a building must comply with the following:
- (a) 7.5m from the Nau Mai Business Park internal road boundary and precinct boundaries; and
  - (b) 15m from the state highway boundary; and
  - (c) Buildings must be constructed within the areas shown as “effective areas” on McCracken Surveys Plan 08157 Sheet 5; and
  - (d) No specific building setbacks apply within each precinct. These are to be determined by access, parking and fire separation requirements.
27. Construction or alteration of a building in the flood risk area of the internal streams must comply with the following:
- (a) The floor level of any habitable room is at least 0.3m above the 1% design flood level; and
  - (b) The floor level of any non-habitable room is at or above the 1% design flood level; and
  - (c) Wastewater and stormwater disposal systems comply with Appendix B

(Engineering Standards).

28. Construction or alteration of an aerial and its support structures must comply with the following:
- (a) The height of the aerial or support structure does not exceed:
    - (i) 15m; or
    - (ii) 5m more than the height of a building the aerial is mounted on; and
  - (b) No dish antenna exceeds 5m diameter, and no panel antenna exceeds 2.5m in any dimension.
29. No ground disturbance greater than 400mm depth below existing ground levels shall be undertaken within the 10m buffer zone within Precinct 15 as shown on McCracken Surveys Ltd Plan 08157, Sheet 5b.
30. To promote the visual integration of buildings into the surrounding landscape, exterior colours (including roofing materials) that are visually recessive and/or do not contrast with surrounding natural colours shall be used. Non-painted natural cladding materials (including, but not limited to, bricks or timber) that are not likely to result in reflective glare, are acceptable. The use of highly reflective materials, such as unpainted metallic surfaces, mirrored glazing and metallic finishes (such as Silver Zinalume), shall be avoided.

Advice note: The following colours, from the BSS 5252 colour range, are considered to be acceptable and should be used for guidance when assessing the appropriateness of proposed colour schemes. Colours outside this range should only be considered where they are not visible from outside the property:

Group A

00A01 - A13 inclusive  
02A03, 02A07, 02A11  
06A03, 06A07, 06A11  
08A14  
10A03 - A11 inclusive  
16A03, 16A07, 16A11  
18A14

Group B

04B19 - B29 inclusive  
08B17 - B29 inclusive  
10B17 - B29 inclusive

12B17 - B29 inclusive  
18B17 - B29 inclusive  
22B27, 22B29

Group C

06C37 - C40 inclusive  
08C37 - C40 inclusive  
10C37, 10C39  
12 C37 - C40 inclusive  
14 C37 - C40 inclusive  
16 C37 - C40 inclusive  
18 C37 - C40 inclusive

- 31 The foundations for any building shall be constructed in accordance with the Geotechnical Completion Report provided at the time of issuing a certificate pursuant to section 224(c) of the Resource Management Act 1991 for each stage, and that report may require site specific testing and/or foundation design.
- 32 At the time of building consent application, an earthworks management plan shall be provided to the satisfaction of Council's Engineers showing how sediment shall be prevented from leaving the construction site. The management plan shall be in accordance with *Environment Waikato Erosion and Sediment Control Guidelines for Soil Disturbing Activities*, January 2009.
- 33 Erosion and sediment control works approved at the time of building consent application, shall be constructed and maintained at all times until 80% grass cover has been achieved, and hard landscaping has been completed.

Advice Note: The intent of this condition is that the erosion and sediment control will remain in place until grass is established and driveways are formed so that sediment from these areas as a result of site works is controlled.

- 34 When building consents are granted, buildings shall have an independent domestic water supply sourced from within their respective boundaries or as otherwise approved by Council to the satisfaction of the Chief Executive. Confirmation of the source and location of the water supply shall be provided for each building.
35. If any use generates liquid trade wastes these wastes should be stored on site in tanks approved for the type of waste to be stored. The trade waste tanks should be emptied at a frequency recommended for the type of waste being stored, to the satisfaction of the Chief Executive.

## **APPENDIX II**

### **PROPOSED LAND USES AND PERFORMANCE STANDARDS – RURAL RESIDENTIAL**

The following land uses and performance standards are to be applied over the Nau Mai Rural Residential Development shown as Lots 5 to 9 and 11 on McCracken Surveys Plan Numbered 08157 Sheets 1 – 3 and 6.

Meaning of words: Unless otherwise stated the meaning of words in the following sections labelled 'A', 'B', and 'C' shall be the same as those in the *Proposed Waikato District Plan (Appeals Version)*. Reference to the "District Plan" shall mean the *Proposed Waikato District Plan (Appeals Version)*.

#### **A. Land Uses Permitted**

Provided the performance standards in 'C' below are met the following land uses/activities will be permitted activities within Lots 5 to 9 and 11 on McCracken Surveys Plan Numbered 08157 Sheets 1 – 3, and 6 of the Nau Mai Rural Residential Development.

1. A dwelling;
2. A dependent person's dwelling provided; and
  - (a) there is only one dependent person's dwelling on the site; and
  - (b) it is within 20m of the main dwelling on the site; and
  - (c) it shares an outdoor living court with the main dwelling on the site; and
  - (d) has a maximum floor area of 70m<sup>2</sup>.
3. The following are permitted activities if they comply with the conditions for home occupations:
  - (a) an office; or
  - (b) a homestay that provides accommodation for no more than four temporary residents; or
  - (c) an arts and crafts workshop.

#### **B. Land Uses not Permitted**

Despite meeting the performance standards in 'C' below the following land uses/activities will not be permitted within Lots 5 to 9 and 11 on McCracken Surveys Plan Numbered 08157 Sheets 1 – 3 and 6 of the Nau Mai Rural Residential Development.

- (a) a child care facility for 11 or more children; or
- (b) a commercial activity (excluding a produce stall); or
- (c) a community facility; or
- (d) a comprehensive residential development; or
- (e) an educational facility; or
- (f) a funeral parlour, crematorium or cemetery; or
- (g) a health facility; or
- (h) a hospital or hospice of 10 or more beds; or

- (i) a residential centre for more than five residents in addition to caregivers; or
- (j) travellers accommodation; or
- (k) an extractive industry; or
- (l) an industrial activity; or
- (m) a correctional facility; or
- (n) a wind energy facility; or
- (o) an intensive farming activity (including pig and poultry farming).

**C. Performance Standards**

1. Landscape planting and mitigation in terms of the Bernard Brown Associates Ltd report *Landscape and Visual Effects Assessment and Proposed Landscape Mitigation concept*, dated May 2009 and supplement dated 3 December 2009, is to be maintained within each lot on a continuing basis by the owner and subsequent owners.
2. Proposed activities are to be designed and conducted so that noise from the activity, other than construction noise, within any rural-residential site in the Nau Mai Business Park and Lifestyle Subdivision (Lots 5-9 and 11) and within the notional boundary of any dwelling on Lot 10 and in the Rural Zone does not exceed:
  - (i) 50dBA (L<sub>10</sub>), 7am to 7pm any day;
  - (ii) 45dBA (L<sub>10</sub>), 7pm to 10pm any day; and
  - (iii) 40dBA (L<sub>10</sub>) and 70dBA (L<sub>max</sub>), at all other times.

Advice note: These limits do not apply to construction noise, farming noise and forestry harvesting noise and emergency sirens.

Noise levels shall be measured in accordance with the requirements of New Zealand Standard NZS 6801:1991 "*Measurement of Sound*" and assessed in accordance with the requirements of New Zealand Standard NZS 6802:1991 "*Assessment of Environmental Sound*".

3. Noise from construction shall not exceed the limits recommended in, and shall be measured and assessed in accordance with New Zealand Standard NZS 6803:1999 "*Acoustics – Construction Noise*".
4. Any vibration arising from the activity must comply with Appendix I (Ground Vibration) of the District Plan.
5. Light spill from artificial lighting must not exceed 10 lux measured vertically at any lot and any adjoining site.
6. No objectionable or offensive dust, smoke, fumes or odour having adverse effects

on any other lot.

7. No incineration of any kind including rubbish, waste and recreational fires are to take place in any lot, except for internal home heating purposes.
8. Earthworks (additional to earthworks approved as part of a subdivision, land use or building consent) must comply with Appendix B (Engineering Standards) of the District Plan, and if within 5m of the lot boundary, including cut and batter faces or filled areas, are revegetated to achieve 80% ground cover within 12 months of the earthworks being commenced, and:
  - (a) does not involve the removal of material from the site (except topsoil); and
  - (b) retains sediment on the site through implementation and maintenance of sediment controls; and
  - (c) does not adversely affect other adjoining land through changes in natural water flows or established drainage paths; and
  - (d) does not disturb or move more than 100m<sup>3</sup> within a site in a single calendar year; and
  - (e) In relation to the height of any cut or batter face does not exceed 3m; and
  - (f) Does not exceed 1000m<sup>2</sup>.
9. Earthworks filling (additional to earthworks approved as part of a subdivision, land use or building consent) may be carried out provided:
  - (a) all material for filling is clean fill; and
  - (b) filling:
    - (i) that is part of building work approved by a building consent is carried out in accordance with New Zealand Standard *NZS 4431:1989 Code of Practice* for earth fill for residential development; or
    - (ii) that is not part of building work does not include a building platform; and
    - (iii) does not include placing fill into an area of significant indigenous vegetation or habitat.
10. When Building Consents are applied for, on site wastewater treatment is to be provided within the Lot in accordance with:

- (a) Appendix B (Engineering Standards) of the District Plan; and
  - (b) The Waikato Regional Council's permitted activity standards (or alternatively a resource consent is obtained) for on-site wastewater treatment; and
  - (c) A wastewater land application field (primary or secondary level treatment) is to be designed by a suitably qualified person and submitted with the application. The site assessment and design documentation is to be in accordance with AS/NZS 1547:2000 and refer to the requirements of the *Waikato Regional Plan*; and
  - (d) The requirements of Section 7.0 "On-site effluent disposal" of the AECOM New Zealand Ltd report *Preliminary Geotechnical Assessment of Rural Residential Lots*, dated 3 September 2009.
11. When Building Consents are applied for, on site stormwater disposal is to be provided within each Lot, in accordance with:
- (a) Appendix B (Engineering Standards) of the District Plan; and
  - (b) The Regional Council's Permitted Activity standards for stormwater discharge; and
  - (c) The requirements of the AECOM New Zealand Ltd reports *Preliminary Geotechnical Assessment of Rural Residential Lots* (dated 3 September 2009), *Lot 17 Pavement and Stormwater Design* (dated 7 May 2010) and supplement dated 11 June 2010; and
  - (d) A retention system shall be installed on each property for all stormwater from roof, paved and impermeable surface at time of building consent (or at any time that development alters site coverage or greenfields runoff characteristics). The design and sizing of the retention system shall be carried out by a suitably qualified person in accordance with *NZWRF On-site Stormwater Management Guideline*, October 2004 (or similar approved), to attenuate 10% AEP storm event to greenfield runoff to the satisfaction of Council. All stormwater discharges (overflows and surface runoff) shall be controlled in a manner that does not accelerate, worsen or result in erosion, scour or slope instability.
12. Any shelter belt, landscape mitigation planting or hedge will not cast a shadow longer than 12m onto an adjoining lot or rural site outside the lots at midday on the shortest day of the year.

13. Construction or alteration of a building or structure must comply with the following:
- (a) height does not exceed 7.5m; and
  - (b) the building does not protrude through a height control plane rising at an angle of 37 degrees commencing at an elevation of 2.5m above ground level at every point of the lot boundary; and
  - (c) be located within the setbacks shown on McCracken Surveys Plan Numbered 08157 Sheets 1 – 3 and 6; and
  - (d) be carried out in accordance with the recommendations of the AECOM New Zealand Ltd report *Preliminary Geotechnical Assessment of Rural Residential Lots* dated 3 September 2009.
14. Construction or alteration of a building must comply with the following:
- (a) Total building coverage does not exceed 10% of the lot area, and
  - (b) The gross floor area of all accessory buildings does not exceed 80m<sup>2</sup>.
15. To promote the visual integration of buildings into the surrounding landscape, exterior colours (including roofing materials) that are visually recessive and/or do not contrast with surrounding natural colours shall be used. Non-painted natural cladding materials (including, but not limited to, bricks or timber) that are not likely to result in reflective glare, are acceptable. The use of highly reflective materials, such as unpainted metallic surfaces, mirrored glazing and metallic finishes (such as Silver Zincolume), shall be avoided.

Advice note: The following colours, from the BSS 5252 colour range, are considered to be acceptable and should be used for guidance when assessing the appropriateness of proposed colour schemes. Colours outside this range should only be considered where they are not visible from outside the property:

Group A

00A01 - A13 inclusive  
02A03, 02A07, 02A11  
06A03, 06A07, 06A11  
08A14  
10A03 - A11 inclusive  
16A03, 16A07, 16A11  
18A14

Group B

04B19 - B29 inclusive  
08B17 - B29 inclusive  
10B17 - B29 inclusive  
12B17 - B29 inclusive  
18B17 - B29 inclusive  
22B27, 22B29

Group C

06C37 - C40 inclusive  
08C37 - C40 inclusive  
10C37, 10C39  
12 C37 - C40 inclusive  
14 C37 - C40 inclusive  
16 C37 - C40 inclusive  
18 C37 - C40 inclusive

16. Earthworks to prepare a building site or site access shall not occur unless under the direction of a Chartered Professional Engineer with geotechnical experience who has also carried out a geotechnical assessment of the site. The geotechnical report shall be approved by Council prior to commencing and provide a minimum of the following:
- (a) Slope stability assessment; and
  - (b) Requirements for building foundations; and
  - (c) Earthworks Management Plan; and
  - (d) Confirmation that any applicable consideration required in the Geotechnical Completion report approved at the issuing of a certificate pursuant to section 224(c) of the Resource Management Act 1991 have been adopted.
17. When Building Consents are applied for, specific foundation design shall be provided by a Chartered Professional Engineer with geotechnical experience who has also carried out a geotechnical assessment of the site.

Advice Note: A preliminary geotechnical assessment has been provided in *Nau Mai Business Park & Rural Residential Development, Preliminary Geotechnical Assessment of Rural Residential Lots* dated 3 September 2009, prepared by AECOM New Zealand Ltd.

18. At the time of building consent application, an earthworks management plan shall be provided to the satisfaction of Council's engineers showing how sediment shall be prevented from leaving the construction site, and entering the road reserve and Council's stormwater network. The management plan shall be in accordance with *Environment Waikato Erosion and Sediment Control Guidelines for Soil Disturbing Activities*, January 2009.
19. Erosion and sediment control works approved at the time of building consent application shall be constructed and maintained at all times until 80% grass cover has been achieved, and hard landscaping has been completed.

Advice Note: The intent of this condition is that the erosion and sediment control will remain in place until grass is established and driveways are formed so that sediment from these areas as a result of the bulk site works is controlled.

20. The owners shall be advised of the following conditions:
  - (a) Vegetative cover and planting of gully slopes shall be maintained to assist in the control of surface erosion; and
  - (b) Ponding of stormwater at the top of all slopes shall be prevented and there shall be no concentrated flows of stormwater such as discharges from stormwater pipes, over the edge of slopes; and
  - (c) No fill, including inorganic or organic matter shall be placed over the gully edges and/or steep slopes; and
  - (d) The use of gully areas shall be restricted to uses compatible with soil conservation and erosion control.
21. At the time of building consent application, buildings shall have an independent domestic water supply sourced from within their respective boundaries or as otherwise approved by Council to the satisfaction of the Chief Executive. Confirmation of the source and location of the water supply shall be provided for each building.

**IN THE MATTER**

of the Resource Management Act  
1991

**AND**

**IN THE MATTER**

of an appeal under section 120 of  
the Act

**BETWEEN**

**TASMAN LANDS LIMITED**

ENV-2010-AKL-000227

Appellant

**AND**

**WAIKATO DISTRICT COUNCIL**

Respondent

**BEFORE THE ENVIRONMENT COURT**

Environment Judge M Harland sitting alone under section 279 of the Act

**IN CHAMBERS** at Auckland.

**CONSENT ORDER**

**Introduction**

1. The Court has read and considered the appeal and the memorandum of the parties dated 7 June 2011.
2. The New Zealand Transport Agency, and Mr M Grant have given notice to become parties to this appeal under s274 and have signed the memorandum setting out the relief sought.
3. The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
  - (a) All parties to the proceedings have executed the memorandum requesting this order;
  - (b) All parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.



**Order**

4. Therefore the Court orders, by consent, that the conditions of consent as granted to Tasman Lands Limited are amended in accordance with **attachment 'A'**.
5. All matters relating to this appeal have now been resolved in their entirety.
6. There is no order as to costs.

**DATED** at Auckland this 17<sup>th</sup> day of June 2011



M Harland

Environment Judge



## Roading Conditions

- RC1 Prior to any further development occurring on the site the consent holder shall upgrade the existing access to the site generally as shown in McCracken Surveys drawing 08157 (Hearings Version – Intersection Proposal) and AECOM drawing 6004290-001 REV 06, in accordance with NZTA standards, except as otherwise approved by the Chief Executive in consultation with the State Highways Manager, and the following minimum dimensions:
- Eastbound shoulder - 220m at 3.5m wide
    - 60m taper including runoff area
  - All as per AECOM Plan 60042920-004
  - Westbound shoulder - 150m at 3.5m wide
    - 50m taper from existing edge of seal to commencement of 150m full width length
  - Right turn bay
    - To Austroads and MOTSAM standards
    - width of right turn bay stacking length to be 3.5m
- RC2 Internal roading layout, design and construction, including parking, loading and manoeuvring areas, shall be in accordance with Waikato District Council standards and subject to the approval of the Chief Executive.
- RC3 The design and construction of the measures required by Condition RC1 and any further mitigation works affecting State Highway 23 shall be subject to the approval of the Chief Executive in consultation with the State Highways Manager. Unless otherwise directed by the Chief Executive after consultation with the State Highways Manager, any further mitigation works affecting State Highway 23, shall be subject to Stage 3 and 4 road safety audits at each stage to the satisfaction of the Chief Executive after consultation with the consent holder and the State Highways Manager. The consent holder shall implement the recommendations of the safety audits at its cost, unless otherwise agreed by the Chief Executive, after consultation with the State Highways Manager.
- RC4 The consent holder shall prepare and comply with a Traffic Management Plan in accordance with the Code of Practice for Temporary Traffic Management (COPTTM) and best practice for construction of any works on, or that affect State Highway 23.
- RC5 In the event of a crash occurring between (and excluding) the intersection of Okete Road/SH23 and the summit of the eastbound gradient approximately 800m to the east of the site entrance, following



the implementation of the works in RC1 and prior to the completion of works required under conditions RC6 and RC7 the Council may, if it considers the crash could have been influenced by the roading treatments as defined in RC1 (or any other mitigation works on SH23 that are subsequently constructed in association with this consent or variation thereof), require the consent holder to engage a suitably qualified and independent traffic/road safety engineer ("the reviewing engineer") as agreed with the Chief Executive, after consultation with the State Highways Manager to conduct a safety review and report, which shall identify the following:

- (i) The extent to which the crash(es) was/were influenced by the roading treatments as defined in RC1 or any other mitigation works on SH23 that are subsequently constructed in association with this consent or variation thereof; and
- (ii) What, if any, monitoring and/or mitigation works ("works") are recommended to reduce or eliminate the potential for a similar crash to occur in the future, and;
- (iii) Recommend an appropriate timeframe for implementation of any recommended works, and any restriction on additional or intensified land use that might be required to limit additional traffic generation until any recommended works are implemented.

The safety review shall be submitted to the Chief Executive within three months of the consent holder being required to commission the safety review. Following consultation with the State Highway's Manager, the Chief Executive shall notify the consent holder if any works recommended by the reviewing engineer are required to address any safety matters identified. If works are required, the notification may include a requirement for limitation of additional or intensified land use pursuant to this consent until the required further works are implemented.

RC6 Once precincts 16 and 23 are developed and in use for activity authorised by this consent, to 75% of the maximum authorised developable and usable areas within those combined precincts, the consent holder shall prepare a review of the adequacy of the works required by condition RC1 (and any other roading works subsequently constructed) in rendering current and future traffic effects no more than minor; and identify any additional works required to ensure current and future traffic related effects will be no more than minor.

The review shall be completed by a suitably qualified and independent traffic/road safety engineer, to the satisfaction of the Chief Executive after consultation with the State Highways Manager, and shall, as a minimum, consider crash records, site observations of traffic interactions, traffic surveys (including vehicle characteristics, turning movements, and speeds), trip generation, the adequacy of the mitigation of the effects of traffic from the development, and any additional mitigation works that may be required to ensure that the adverse effects associated with the development or with the mitigation of the development, are no more than minor.



Advice note: The improvements/additional mitigation may include but are not limited to work at the proposed intersection, extension to shoulder widening or acceleration facilities, changes to road markings or signage, and/or provision of alternative overtaking opportunities.

- RC7 No development or use of land pursuant to this consent shall take place outside of precincts 16 and 23 until the review required in condition RC6 has been completed and any actions required have been fully implemented by the consent holder to the satisfaction of the Chief Executive after consultation with the State Highways Manager.

#### Utility Conditions

- UC7 The consent holder shall engage Chartered Professional Engineers with geotechnical and civil engineering experience, as agreed with the Chief Executive, to direct and supervise any additional investigations, to undertake design, to supervise construction, and to certify the construction of all works in accordance with the procedures set out in the Earthworks Design and Management Plan.

#### Legal Conditions

- LC2 Pursuant to section 125 of the Resource Management Act 1991, this consent shall lapse 10 years after the date of commencement of the consent.

