

BEFORE THE EXPERT CONSENTING PANEL

CONCERNING THE VINES AFFORDABLE SUBDIVISION PROPOSAL

IN THE MATTER

of the COVID-19 Recovery (Fast-Track Consenting) Act 2020 and the deliberations and final decision of the Expert Consenting Panel appointed under Clauses 2, 3, and 4 of Schedule 5 of the COVID-19 Recovery (Fast-Track Consenting) Act 2020 to consider an application for subdivision and other consents to create a residential development in Richmond, Tasman District

Expert Consenting Panel:

Jennifer Caldwell (Chair)
Janine Bell
Glenice Paine

Comments received under Clause 17(4) of Schedule 6 of the FTA:

24

Details of any hearing if held under Clause 21 of Schedule 6 of the FTA:

No hearing was held

Date of Decision:

17 September 2021

Date of Issue:

17 September 2021

**RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER
CLAUSE 37 SCHEDULE 6 OF THE FTA**

CONTENTS

1.	EXECUTIVE SUMMARY	1
2.	INTRODUCTION AND PROCEDURE	4
	Introduction	4
	Procedure	5
	Further Information requests	6
	Suspension of processing	6
	Hearing	6
	Conditions	7
3.	SCOPE OF APPLICATION, CONSENTS SOUGHT AND ACTIVITY STATUS	7
4.	LEGAL FRAMEWORK	9
5.	MANA WHENUA	12
	Relevant Iwi Authorities	12
	Treaty of Waitangi and Treaty Settlements	13
	Customary Marine Title and Protected Customary Rights	13
	Iwi Management Plans	14
	Cultural Impact Assessment	15
6.	EVALUATION OF ACTUAL AND POTENTIAL EFFECTS	18
	Existing environment & receiving environment	18
	Stormwater management	19
	Flooding	24
	Freshwater	27
	Site contamination	28
	Traffic & roading	30
	Effects of residential development on productive use of rural zoned land	35
	Reverse sensitivity	38
	Noise effects	39
	Visual and urban design effects	42
	Positive effects	45
	Summary of Effects	46
7.	CLAUSE 31 ASSESSMENT AGAINST SPECIFIC STATUTORY DOCUMENTS	47
	National Environmental Standards	47
	National Policy Statements	48
	Regional Planning Instruments	51
	Other matters – Nelson Tasman Future Development Strategy (2019) (NTFDS)	53
	Tasman Resource Management Plan	55
8.	SECTION 104D CONCLUSION	59

9.	RMA 1991, PART 2 AND PURPOSE OF THE FTA	60
	Purpose of the FTA	60
	Part 2 RMA	64
10.	FINAL DECISION	64
	APPENDIX 1	65

1. EXECUTIVE SUMMARY

- 1.1 The Vines Affordable Subdivision (**Proposal**) is a referred project included in Schedule 6 to the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020. The Proposal requires subdivision and other resource consents to establish a 44-lot residential development on a site located at 115 Main Road Hope (State Highway 6), south of Richmond (the **Site**).¹
- 1.2 The applicants, Mr & Mrs Mudgway (**Applicant**), previously sought approval for the Proposal as a Special Housing Area (**SHA**) under the Housing Accords and Special Housing Areas Act 2013 (**HASHAA**). The HASHAA enabled streamlining of new housing developments and allowed SHAs to be designated under housing accords between the government and councils. The HASHAA has now been repealed.²
- 1.3 The Panel considers that the Applicant's apparently deliberate decision to re-purpose its SHA application material as a request for referral under the COVID-19 Recovery (Fast Track Consenting) Act 2020 (**FTA**) has, to a considerable extent, shaped the course of the processing of the Proposal, including the outcome reached by the Panel.
- 1.4 The Panel declines the resource consents sought.
- 1.5 The Panel's reasons for declining the consents sought in respect of the Proposal are set out in full in the body of the decision. In summary:
- (a) The Proposal is for an intensive residential use on a Rural 1 zoned site and has an overall activity status of non-complying;
 - (b) The Panel finds that the Proposal does not pass either the "gateway" or threshold tests for non-complying activities pursuant to section 104D of the Resource Management Act 1991 (**RMA**):
 - (i) After careful evaluation of extensive further information sought from and provided by the Applicant, the Tasman District Council (**Council**) and Waka Kotahi New Zealand Transport Agency (**Waka Kotahi**), the Panel concludes that while some of the effects of the Proposal are, or can be, mitigated to be no more than minor, subject to appropriate conditions, other adverse effects are likely to be more than minor, particularly those in respect of productive land and noise experienced by potential future residents from locating

¹ The number of lots is referred to variously as 44, 45 and 47 throughout the application documentation. The total new residential lots created for sale and development will be 44; the 45th lot is the location of the Applicants' own home. There are additional lots to be created to vest as recreation reserve and road reserve, and the lot on which the stormwater detention pond is proposed will remain in the Applicants' ownership.

² Section 3 of HASHAA required sections 16 and 17 of HASHAA to automatically repeal on 16 September 2019 and the remaining sections were repealed on 16 September 2021.

adjacent to State Highway 6 (**SH6**). In respect of some further effects, an assessment of significance cannot be made due to the adequacy of the evidence before the Panel;

- (ii) In seeking to subdivide a rural site with highly productive soils for intensive residential development the Proposal is contrary to a range of objectives and policies in the Tasman Regional Policy Statement (**TRPS**) and the Tasman Resource Management Plan (**TRMP**);
- (c) An assessment of the Proposal under clause 31 of Schedule 6 of the FTA, having regard to Part 2 of the RMA and the purpose of the FTA, leads the Panel to conclude that:
- (i) The Proposal would not give effect to the purpose of the FTA. Any promotion of employment to support New Zealand's economic recovery from the COVID-19 pandemic would be modest and of short-term duration. The Proposal is unlikely to deliver substantial or sustained support for that recovery and would not continue to promote the sustainable use of natural and physical resources;
 - (ii) While the Proposal would provide 44 subdivided lots capable of residential development, enabling that level of urban activity on a rural zoned site with highly productive soils would be contrary to the strong policy directives in the relevant planning documents that urban growth in the Richmond-Hope area should occur on land already identified for growth over the next decade. The Site is not within that category and is not identified as having potential for growth until 2033-2038;
 - (iii) The Panel was provided with very little information to support the Applicant's contention that there is unmet demand for developable residential lots (or housing) in the Richmond-Hope area. To the contrary, data provided by the Council indicates that supply exceeds demand; and
 - (iv) The Proposal's use of the rural land resource would therefore not result in public benefit nor enable the people and communities of Tasman District to provide appropriately for their wellbeing.

1.6 The Panel wishes to record that the information provided in support of the application was inadequate. Provision of further information by the Applicant and their advisors in response to multiple further information requests occurred in a timely manner, including on two occasions with the assistance of a suspension of processing requested by the Applicant. Ultimately, however, the Panel was required to resolve some of the matters in

contention with little or no evidential basis offered by the Applicant. To the extent that a lack of information constrained the Panel's ability to make definitive findings on some of the effects of the Proposal, the Panel considers it appropriate to rely on clause 31(8) of Schedule 6 of the FTA as a partial ground on which consent is being declined. In assessing the adequacy of the information provided by the Applicant, the Panel has had regard to the requests for further information made to the Applicant and the information provided in response to those requests, as required by clause 31(9) of Schedule 6.

- 1.7 The Panel records that the Applicant did not appear to have obtained legal advice in respect of the application, despite being expressly encouraged to do so by the Panel.
- 1.8 The principal issues in contention were identified and developed over time as the Applicant and specific commenters provided further information in response to Panel requests. These issues are discussed in detail in the body of this decision. Subject to that discussion, the issues can be summarised as follows:
 - (a) Scope of the application, and in particular the adequacy of consents sought, and information provided to support the grant of those consents;
 - (b) The generic land use consents sought to enable the construction by subsequent purchasers of one residential dwelling unit on each subdivided lot, given the continued rural zoning of the site and likely non-complying activity status of such dwellings in the absence of detailed design information;
 - (c) The effect of enabling urban development on a Rural 1 zoned site with the highest level of protection for Class A productive land, and whether the Proposal site is suitable for urban growth when assessed against the relevant objectives and policies in the TRPS and the TRMP;
 - (d) The applicability of the National Policy Statement – Urban Development 2020 (**NPS-UD**) and the relevance of the spatial and temporal growth projections in the Nelson Tasman Future Development Strategy (**NTFDS**);
 - (e) The proposed stormwater management system;
 - (f) The extent of flooding on and in the vicinity of the Site;
 - (g) Whether the Proposal would give rise to any freshwater effects, in particular on the Hope Aquifers as a result of the stormwater management proposal;
 - (h) The effects of additional traffic on the surrounding road network and in particular the impact on the existing White Road/SH6 intersection, including safety concerns;

- (i) The access and internal roading configuration of the Site, including adequacy of internal road width and the proposed onsite and on-street parking arrangements;
 - (j) The potential for contaminated soils to be found on the Site due to past horticultural activities;
 - (k) Reverse sensitivity and noise issues, raised by adjacent landowners and also by Waka Kotahi in respect of SH6; and
 - (l) Visual and urban design matters.
- 1.9 The Panel's discussion and findings on these matters are set out in the balance of this decision.
- 1.10 In view of the Panel's decision to decline the consents sought, no draft conditions of consent were circulated.

2. INTRODUCTION AND PROCEDURE

Introduction

- 2.1 The Proposal seeks consent to undertake subdivision of a Rural 1 zoned 3.6719ha site at 115 Main Road, Hope to provide 44 residential development lots and other lots to vest as road and recreation reserve.
- 2.2 The Proposal is a referred project under Schedule 3 of the FTA and was inserted in Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 on 4 December 2020. The Panel records here that the description of project set out in the Order does not include housing, but rather refers only to "*subdivide land and develop up to 48 residential sections for future housing development.*" There is no reference to the construction of dwellings or the need to obtain land use consent in respect of construction.
- 2.3 The Applicant lodged the application with the EPA on 5 March 2021. On 12 March 2021, the EPA determined that the application complied with the requirements of clause 3, Schedule 6 of the FTA.
- 2.4 According to section 2 of the application, the Site had previously been accepted and recommended by Council in 2019 for inclusion as a SHA under the HASHAA. The deadline for SHA applications expired in September 2019, which prevented the formal establishment of a SHA on the Site. It was clear to the Panel that many of the technical reports prepared to support the SHA application were not substantively updated or amended prior to the Application being made for referral under the FTA.

Procedure

- 2.5 The Panel was established on 12 May 2021. One of its first tasks was to consider the application and identify the persons and groups from whom it would invite to comment pursuant to clauses 17(6), 17(7) and 17(8) of Schedule 6 of the FTA.
- 2.6 On 21 May 2021 the Panel invited comments on the Application from those persons and groups identified in Minute 1, including directly affected and adjacent property owners. Comments were due to be received on or before 14 June 2021.
- 2.7 We should also record here that the Applicant provided supplementary information in support of the Application after the invitation to comment had been issued on 21 May 2021. That information, submitted on 31 May 2021, comprised a Stormwater Management Addendum from the Applicant's lead consultant, Davis Ogilvie & Partners Ltd (**Davis Ogilvie**), and an updated set of draft subdivision conditions to replace Appendix 10 of the original Application. In Minute 2, issued on 2 June 2021, the Panel confirmed that it would accept the additional information and would provide it immediately to all those invited to comment to ensure that they could consider the information prior to the closing date for comments.
- 2.8 A total of 24 comments were received from those commenters listed in **Appendix 1**. Many comments were received from adjacent landowners in White Road and on SH6. These comments generally opposed the application and raised a number of concerns regarding traffic, pedestrian safety, flooding, access to the subdivision, reverse sensitivity effects, loss of productive land, noise pollution and visual impact. Other comments were received from various Ministers of the Crown, from the Council and from Waka Kotahi.
- 2.9 In accordance with clause 18(5) of Schedule 6 of the FTA, copies of all comments were provided to the Applicant for response. The Applicant provided a response to comments (pursuant to clause 19) dated 21 June 2021.
- 2.10 The Panel met and conducted an all-day site visit to the Site and the wider Richmond-Hope area on 10 June 2021. This included a walkover of the Site and visits to White Road, SH6 between Richmond and Hope, Paton Road, and a new residential subdivision known as Hart Rise on Hart Road towards Richmond.
- 2.11 The Panel conducted Zoom meetings on the following dates:
- (a) 18 May 2021;
 - (b) 01 June 2021;
 - (c) 22 June 2021;

- (d) 29 June 2021;
- (e) 10 August 2021;
- (f) 17 August 2021; and
- (g) 14 September 2021.

Further Information requests

- 2.12 The Panel made the following further information requests via the EPA pursuant to clause 25(1) of Schedule 6 of the FTA:
- (a) On 2 July 2021, the Panel issued Minute 3, setting out extensive further information requests for the Applicant, the Council and Waka Kotahi. The further information was due to be received by 15 July 2021 but that deadline was extended by virtue of the Applicant's request on 7 July 2021 that the application be suspended. The application resumed processing on 30 July 2021 in response to the Applicant's request. The further information sought in Minute 3 was received on 6 August 2021;
 - (b) On 13 August 2021, the Panel issued Minute 7, setting out further information requests in relation to noise effects on future residents of the subdivision.

Suspension of processing

- 2.13 The Applicant requested that processing of the application be suspended pursuant to clauses 23(1) and (4) of Schedule 6 of the FTA on two separate occasions:
- (a) By request made on 7 July 2021, as set out above. The Panel suspended processing on 8 July 2021 until 30 July 2021 in accordance with a request made by the Applicant on 29 July 2021 to resume processing;
 - (b) By request made on 19 August 2021. The Panel suspended processing until 24 August 2021 in accordance with a request made by the Applicant on 24 August 2021 to resume processing.
- 2.14 By Minute 6, dated 10 August 2021, the Panel extended the time for issuing its decision pursuant to clause 37(2) of Schedule 6 of the FTA.

Hearing

- 2.15 A hearing was not required.

Conditions

- 2.16 Before a panel grants a resource consent, clause 36 of Schedule 6 of the FTA requires it to provide a copy of its draft conditions to the consent applicant and every person or group that provided comments and to invite comments on the draft conditions.
- 2.17 Draft conditions have not been circulated for comment since the Panel has decided to decline the consents sought.

3. SCOPE OF APPLICATION, CONSENTS SOUGHT AND ACTIVITY STATUS

3.1 The Applicant sought the following consents in the original Application document:

- (a) Subdivision consent to create 45 residential lots,³ Lot 46 for stormwater detention,⁴ Lot 200 to vest as recreation reserve and various lots to vest as road;
- (b) Land use consent to "*erect a dwelling on each of Lots 1-44 with the equivalent Residential zone building setbacks and consent to have dwellings within 30m of a rural zoned property*"; and
- (c) Land use consent to carry out earthworks on the proposed subdivision.

3.2 During the processing of the application, assisted by comments it received from the Council, the Panel reached the view that additional consents were required, as follows:⁵

- (a) Land disturbance consent pursuant to the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NES-CS**) (restricted discretionary activity);
- (b) Stormwater discharge consent (restricted discretionary) that did not comply with relevant permitted activity standards in the TRMP.⁶

3.3 In relation to the potential requirement for an NES-CS consent, raised by the Council in its comments, the Applicant maintained in its response to comments dated 21 June 2021 that, in summary:

- (a) The Site has no history of orcharding and no former sheep dips;

³ See footnote 1; 44 new residential lots together with lot 45 on which the Applicants' home is located.

⁴ After several rounds of further information and comment as between the Applicant and the Council, the Applicant ultimately sought to retain ownership of Lot 46 and to provide easements in favour of the Council for maintenance purposes.

⁵ The procedural issues raised by these additional consent requirements are discussed further in para 3.7 below.

⁶ The Application had assessed the Proposal against the permitted activity standards in Rule 36.4.2.1 of the TRMP and concluded that it would be fully complying – see section 6.6.

- (b) There are no HAIL sites within the property but an adjoining property (111 Main Road Hope) was a former landfill; but
 - (c) It would volunteer that a detailed site investigation (**DSI**) under the NES:CS be completed "*for the land adjoining 115 Main Road Hope*" prior to commencement of any earthworks on the site.
- 3.4 The Panel did not accept that a condition requiring assessment of an adjoining site would be sufficient to determine whether a consent was required for the Site under the NES-CS. The Panel's further information request to the Applicant on 2 July 2021 therefore sought an assessment under the NES-CS to confirm the requirement for, and if necessary to support, a restricted discretionary activity consent.
- 3.5 The assessment report submitted to the Panel on 30 July 2021 confirmed that HAIL activities had taken place on the site and that contaminated soil would require remediation thereby confirming the requirement for consent. The Applicant's covering memo acknowledged this consent requirement.
- 3.6 In relation to stormwater, the Council's original comment on the application stated there is a requirement for a stormwater discharge consent on the basis that the stormwater management system did not meet the relevant Rural 1 zone permitted activity standards in the TRMP, in particular the standard requiring the groundwater infiltration rate to be greater than the disposal rate. The Applicant advised in its response to comments dated 21 June 2021 that, while it did not accept that consent was required for stormwater discharge,⁷ it would nevertheless seek consent and provided a two-page assessment of environmental effects to support that request.
- 3.7 On the basis of the Applicant's correspondence and the further information subsequently provided to support these additional consent matters, and pursuant to the Panel's ability to regulate its own procedure under clause 10(1) of Schedule 5 of the FTA, the Panel has amended the application. In summary, the list of consents set out in section 1.3 of the application should be read subject to the addition of the two consents referred to in paragraph 3.2 above.
- 3.8 In terms of activity status:
- (a) subdivision in Rural 1 zone is non-complying when assessed against the Chapter 16 – Rural Subdivision Rules in the TRMP;⁸

⁷ See Applicant's Comment dated 21 June 2021, p 4.

⁸ See Application, section 6.1.

- (b) residential dwellings on newly created lots are a discretionary activity when assessed against Chapter 17 – Rural Land Use Rules in the TRMP;⁹
 - (c) land disturbance is a restricted discretionary activity when assessed against Chapter 18 - Land Disturbance Area 1 Rules in the TRMP;
 - (d) both of the additional consents in respect of stormwater and NES-CS are for restricted discretionary activities.
- 3.9 Overall, the Applicant advised that, in accordance with the TRMP rules, the status of the activities would be bundled to non-complying overall, and we agree with that assessment.¹⁰

4. LEGAL FRAMEWORK

- 4.1 The FTA makes provision for both listed and referred projects; this Proposal is a referred project. Decisions released recently by other expert consenting panels¹¹ in respect of referred projects have carefully set out the legal framework applicable to such applications in some detail and we do not intend to repeat that detail here.
- 4.2 Nevertheless, the Panel has found the following matters to be of particular relevance to this application:
- (a) A referred project is one that is referred to a Panel by an Order in Council after scrutiny by the responsible Ministers, taking into account the criteria and related matters at sections 18 and 19 of the FTA. As the Proposal was referred to the Panel, the Minister was therefore satisfied that the Proposal would be consistent with the purpose of the FTA. However, as the Kohimarama Retirement Village Panel pointed out, the Panel is not bound by the referral decision to grant resource consents.¹² Panels set up to consider referred applications have a wide discretion to grant or decline consent.
 - (b) The purpose of the FTA as set out in section 4, namely "*to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.*"

⁹ See Application, section 6.2.

¹⁰ See Application, p 21.

¹¹ Refer to Kohimarama Retirement Village (6 April 2021), Ohinewai Foam Factory (24 August 2021) and Northbrook Wanaka Retirement Village (4 August 2021).

¹² Kohimarama decision at [32].

- (c) Section 6 of the FTA addresses the relationship between the purpose and the Treaty of Waitangi. We agree with the comment made by the panel in the Ohinewai Foam Factory decision that section 6 *"is worded differently to section 8 of the Resource Management Act 1991 and is more stringent in its terms."*¹³ All persons performing functions and exercising powers under the FTA must act in a manner that is consistent with the principles of the Treaty of Waitangi and with Treaty settlements.
- (d) The relationship between the FTA and the RMA in respect of resource consents is described in section 12 of the FTA. The process for obtaining a consent under Schedule 6 of the FTA applies in place of the process under the RMA, but the Proposal remains subject to the RMA's purpose and principles pursuant to section 4 of the FTA and also to many other RMA provisions where no specific alternative provisions apply.¹⁴ As the Kohimarama Panel observed, *"the purpose of the FTA does not "trump" Part 2 of the RMA."*¹⁵
- (e) Subclauses 31(1) and (2) of Schedule 6 of the FTA set out the matters to which the Panel must have regard in considering applications for referred projects and any comments received in response to invitations, as follows:
- (1) When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to-
 - (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
 - (c) any relevant provisions of any of the documents listed in clause 29(2); and
 - (d) any other matter the panel considers relevant and reasonably necessary to determine the consent application.
 - (2) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).
- (f) Subclause 31(3) specifies a further mandatory matter in relation to areas where planning documents prepared by customary marine title groups under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 (**MACAA**) apply. This subclause is not applicable to the Proposal.

¹³ Ohinewai decision at [56].

¹⁴ Section 12(10).

¹⁵ Kohimarama decision, at [41].

- (g) Subclauses 31(4) to (6) set out matters which the Panel may or must disregard including adverse effects where a national environmental standard or the plan permits an activity with that effect, trade competition effects, and any effect on a person who has given written approval to the application. None of these matters arise in respect of the Proposal.
- (h) The Panel has considered the "*other matters relevant to decisions*" set out in subclauses 31(7) to (12). In terms of subclause 31(7), the Applicant acknowledges that the Proposal is a non-complying activity overall. The Panel agrees and has assessed it on that basis. In terms of subclause 31(8), the Panel considers that the information contained in the original application was not sufficient to determine the application. It has reached the view that, taken together with all further information subsequently provided by the Applicant, there is sufficient information to determine the application. However, the Panel has had regard to the adequacy of information provided in reaching findings on various effects of the Proposal, and to the extent that it has been unable to make definitive findings on certain effects, it relies in part on clause 31(8) in its reasons for declining consent.
- (i) Referred projects require consideration of Sections 104A to 104D, 105-107 and various subclauses of Section 138A of the RMA.¹⁶

4.3 The planning framework relevant to this application comprises the documents referred to in clause 29(2), namely:

- (a) National Environmental Standards;
- (b) Other regulations made under the RMA;
- (c) National Policy Statements;
- (d) New Zealand Coastal Policy Statement;
- (e) Regional Policy Statements or Proposed Regional Policy Statements;
- (f) Plans and Proposed Plans;
- (g) Planning documents recognised by a relevant iwi authority and lodged with a local authority.

¹⁶ Clause 32(1) Schedule 6 of the FTA.

4.4 Finally, clause 37(6) sets out the content requirements for this decision, most notably:

- (6) The written report of the decision must—
 - (a) state the decision made by the panel; and
 - (b) state the panel's reasons for its decision; and
 - (c) include a statement of the principal issues that were in contention; and
 - (d) include the main findings of the panel on those issues.

5. MANA WHENUA

5.1 The FTA requires that all applications lodged with the EPA include the following information:

- (a) A list of persons the applicant considers are likely to be affected by the Proposal, including the relevant iwi authorities and relevant Treaty settlement entities (section 20(3)(h) of the FTA);
- (b) Information about Treaty settlements that apply to the Site (clause 9(1)(i) Schedule 6 of the FTA);
- (c) A Cultural Impact Assessment (**CIA**) or statement of reasons given by the relevant iwi authority for not providing a CIA (clause 9(5) Schedule 6 of the FTA);
- (d) Information on customary marine title groups, if relevant (clause 9(6)(b) of Schedule 6 of the FTA);
- (e) Views of iwi or hapū that have not been consulted in relation to the proposal and if the iwi or hapū elect not to respond when consulted, any reasons they have specified for that decision (clauses 10(1)(e) and (f) of Schedule 6 of the FTA); and
- (f) Information on protected customary rights (clause 10(1)(h) Schedule 6 of the FTA).

Relevant Iwi Authorities

5.2 The Site is located at 115 Main Road, (SH6) Hope. It lies approximately 1.5km southwest of the town of Richmond, in the Tasman District in the northern region of the South Island, which is known as Te Tau Ihu.

5.3 There are eight Iwi and eight corresponding Iwi authorities which have overlapping areas of interest in Te Tau Ihu. They are:

- (a) Ngāti Apa ki Te Rā Tō, represented by Ngāti Apa ki Te Rā Tō Charitable Trust;
- (b) Ngāti Kuia, represented by Te Runanga o Ngāti Kuia Trust;

- (c) Rangitāne o Wairau, represented by Rangitāne o Wairau Settlement Trust;
- (d) Ngāti Kōata, represented by Te Pātaka a Ngāti Koata;
- (e) Ngāti Rārua, represented by Ngāti Rārua Settlement Trust;
- (f) Ngāti Tama ki Te Tau Ihu, represented by Ngāti Tama ki Te Waipounamu Trust;
- (g) Te Atiawa o Te Waka-a-Māui, represented by Te Atiawa o Te Waka-a-Māui Trust;
and
- (h) Ngāti Toa Rangatira, represented by Te Runanga o Toa Rangatira Inc.

Treaty of Waitangi and Treaty Settlements

- 5.4 The FTA does not contain a list of Treaty principles but case law indicates that these are evolving and may include, of relevance to the Proposal, the principles of active protection, good faith consultation and communication, and a spirit of partnership.¹⁷
- 5.5 There are various Treaty of Waitangi settlement acts across the eight Iwi in the District that are relevant to the area in which the Site is located:
- (a) Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014;
 - (b) Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014;
 - (c) Ngati Toa Rangatira Claims Settlement Act 2014 (together the **Settlement Acts**).
- 5.6 The report prepared in accordance with section 17 of the FTA¹⁸ outlines the relevant provisions in the Treaty settlements relevant to resource consent applications within their respective areas of interests. The Panel notes that the Site is not covered by a Statutory Acknowledgement under any of the above Settlements.¹⁹

Customary Marine Title and Protected Customary Rights

- 5.7 We agree with the Applicant that the Site is well away from the coast and on that basis:
- (a) It is unaffected by the provisions of the MACAA, and
 - (b) There are no relevant court orders recognising customary marine title or protected customary rights under MACCA requiring consideration.

¹⁷ *Carter Holt Harvey Ltd v Te Runanga o Tuwharetoa Ki Kawerau* [2003] 2 NZLR 349 at [27].

¹⁸ Prepared by the Ministry for the Environment in consultation with the Office for Maori Crown Relations – Te Arawhiti.

¹⁹ See Application, Appendix 8, section 4, para 5.

Iwi Management Plans

- 5.8 The RMA describes an iwi management plan (**IMP**) as "...a relevant planning document recognised by an iwi authority and lodged with the council". Ngāti Kuia, Ngāti Kōata and Ngāti Tama ki Te Tau Ihu have all lodged IMPs with the Council. In the following section we discuss their relevance to the Proposal.

Te Runanga o Ngāti Kuia Pakohe Management Plan

- 5.9 Pakohe is a taonga which is synonymous with Ngāti Kuia. It symbolises the intense nature of their relationship to the environment, and the mauri (life force) that is contained in all parts of the natural environment and binds the spiritual and physical world. Ngāti Kuia have a responsibility and an obligation to this taonga and its cultural, spiritual, historic and traditional values. The purpose of Te Runanga o Ngāti Kuia Pakohe Management Plan is "*Maintaining our whakapapa and historical connections to Pakohe for today and for future generations and for managing its sustainable use forever.*"²⁰
- 5.10 We saw no evidence that there is pakohe present on or within the Proposal site.

Ngāti Kōata No Rangitoto ki Te Tonga Trust Iwi Management Plan

- 5.11 The primary purpose of this IMP is to provide a means by which Ngāti Kōata are properly and fully considered in decision-making affecting their interests in Te Tau Ihu. Ngāti Kōata consider that one of the key benefits of their IMP is in setting down guidelines for consultation in an attempt to avoid inadequate consultation leading to negative outcomes.²¹
- 5.12 In relation to this Proposal, Ngāti Kōata were consulted as part of the CIA development process (discussed further below) and provided a letter stating that they were comfortable with the CIA and requesting an Iwi monitor be on site during excavations and that an Accidental Findings Protocol be included in any consent.

- 5.13 We note that these two requests were not reflected in the draft conditions or advice notes offered by the Applicant.

Ngāti Tama ki Te Waipounamu Environmental Management Plan

- 5.14 The purpose of this Plan, among other things, is to highlight Ngāti Tama aspirations for managing ancestral whenua, awa, wāhi tapu and wāhi taonga in the Ngāti Tama rohe. The Plan is also a guide for councils, government agencies and natural resource users to

²⁰ Te Runanga o Ngāti Kuia Pakohe Management Plan.

²¹ Ngāti Kōata No Rangitoto ki Te Tonga Trust Iwi Management Plan.

understand issues of significance to Ngāti Tama, and how those issues can be resolved in a manner consistent with cultural values and interests to:²²

- (i) ...
- (ii) determine the nature and extent of engagement that may be required regarding particular activities or places of importance; and
- (iii) to ensure appropriate weight is given to Ngāti Tama values and customary rights in decision making processes.

5.15 During the CIA process, Ngāti Tama expressed disappointment at both the timing and form of the consultation undertaken by the Applicant. While the CIA discussed tikanga values, mauri and kaitiakitanga, the nature of the discussion focused on these values as common to Maori, rather than as specific Ngāti Tama cultural values.

5.16 We saw no evidence that specific Ngāti Tama values had been considered in the application.

Cultural Impact Assessment

5.17 A CIA dated March 2021 was provided with the application, commissioned by the Applicant from Te Arahanga Ltd, whose Managing Director, Mr Geoff Mullen, advised:²³

This CIA is based on a consultative process aimed at facilitating affected Iwi to understand the proposal, provide input into this assessment of the consent application and to collate their feedback on the cultural impacts of the proposal before being fully completed...

5.18 In addition to the CIA, the Applicant provided an "Addendum: Update of the Consultation Process with Iwi" as part of the Application documentation. The information was provided in response to advice from the EPA to the Applicant that, under the FTA;²⁴ "only iwi can request a CIA". In fact, clause 9(5) of Schedule 6 requires a CIA "*prepared by or on behalf of the relevant iwi authority*" or if a CIA is not provided, a statement of any reason given by the relevant iwi authority for not providing that assessment.

5.19 The Addendum summarised the timeline of the "consultation process" over preparation of the CIA and attached copies of 35 emails from 5 January 2021 to 1 March 2021 between Davis Ogilvie, Te Arahanga Ltd and various Te Tau Ihu Iwi.

5.20 The whakapapa of the CIA can be summarised as follows:

- (a) In 2019 a draft copy of the Proposal was sent by the Applicant's lead consultant, Davis Ogilvie to five of the eight Te Tau Ihu Iwi;

²² Ngāti Tama EMP, p.11.

²³ Appendix 8, section 1, p 3, para 4.

²⁴ The Addendum refers to section 9(5) of the FTA. The relevant provision is clause 9(5) of Schedule 6.

- (b) On 17 December 2020 Davis Ogilvie commissioned Te Arahanga to prepare a draft CIA by 11 January 2021. The Addendum explains that this deadline was to enable the Applicant to meet "the low-cost housing funding deadline", presumably associated with the SHA process;
- (c) On 5 January 2021 a draft CIA was forwarded to all eight Iwi with a request for feedback and a deadline of 11 January 2021 for that feedback to be provided. This notice coincided with the Christmas/New Year office closures for Iwi with the result being that some Iwi were not in a position to respond;
- (d) Mr Mullen sent out further correspondence to Iwi in February 2021 to facilitate greater input. This further correspondence included Ngāti Toa Rangatira as they had been omitted from the original list of Iwi to notify. Ngāti Toa Rangatira were advised that the Applicant had extended their submission date to allow Iwi more time to respond;
- (e) As a result of Mr Mullen's engagement with Iwi over time, Ngāti Kōata responded by letter dated 23 February 2021 advising that they were "comfortable" that the CIA is sufficient to represent Ngāti Kōata, and that the recommendations proposed in the CIA would mitigate against any cultural impacts of the Proposal. They also advised that they wished to be informed of any finds resulting from iwi monitoring;
- (f) In a meeting with Te Atiawa on 26 February 2021, Te Atiawa advised that they had no objections, but these comments were made in relation to the recommendations in the CIA rather than the Proposal itself;
- (g) The Iwi that did respond did not comment on the Application but did express disappointment with the process of consultation;
- (h) Not all iwi responded to emails and/or questionnaires that were sent out by Mr Mullen.

5.21 The CIA outlined the relationship of Te Tau Ihu Iwi to the Waimea River and rohe (area) noting that the eight Iwi of Te Tau Ihu have identified a direct and historic relationship with the Waimea River and view the river as a Tupuna awa (a Maori world view includes viewing river and maunga as Tupuna (ancestors)).

5.22 The CIA advised that since 2014, both the Council and Iwi have been working on the process of minimising any risk to cultural sites or taonga. The Crown provided the statutory acknowledgements as cultural redress instruments to Iwi to settle their historical Treaty claims. As discussed above, the Site is not within any of the statutory

acknowledgement areas as set out in the various Settlement Acts across the eight Iwi in the District.

- 5.23 The cultural and environmental impacts of the proposal were outlined in the CIA, but no potential and/or adverse effects were identified or discussed arising out of the activities comprising the Proposal.
- 5.24 The CIA made the following recommendations:
- (a) For a cultural monitor to be on site for any excavation work carried out; and
 - (b) For the Accidental Findings Protocol to be implemented during all activities if any artefacts are unearthed during excavations.
- 5.25 Neither of these matters were the subject of draft subdivision consent conditions offered by the Applicant.
- 5.26 The FTA specifically requires a CIA to be prepared by or on behalf of the relevant iwi authority. The CIA for this Application was not prepared on that basis. Although information about the Proposal (albeit in its earlier SHA form) was sent to five Iwi²⁵ in 2019, the Applicant has not confirmed whether those Iwi were asked if they wished to provide a CIA or whether they would assent to the preparation of a CIA on their behalf.
- 5.27 Further, while extensive email correspondence with Iwi has been provided as an Addendum to the CIA, there is no clear statement of reasons from most iwi about why they did not or would not provide a CIA, or indeed any commentary from them on the CIA that was prepared and provided to them for review and feedback.²⁶
- 5.28 It is clear from both the CIA and correspondence between Davis Ogilvie and the EPA that the Applicant struggled both to adapt the SHA application material to suit the FTA process, and to understand the enhanced role of iwi in the latter process, as explained to them by the EPA. Instead, Davis Ogilvie had followed its usual process for consulting with iwi in respect of RMA applications.²⁷
- 5.29 The fact that the draft CIA was sent to Iwi over the New Year period, with a request for feedback within one week, is not consistent with the Treaty principle of good faith consultation and communication and did not facilitate iwi participation in the FTA Application process.
- 5.30 The Panel invited comments on the Application from all eight Te Tau Ihu Iwi. No comments were received. In the absence of substantive comment, the only evidence

²⁵ Ngāti Tama, Te Atiawa, Ngāti Koata, Ngāti Kuia and Ngāti Apa.

²⁶ The exception is Ngāti Koata, who provided a letter stating that they were "comfortable" with the CIA.

²⁷ Appendix 8, Addendum, p.13.

available to the Panel on which it can make findings in relation to cultural effects, including the matters in section 6(e) and 7 of Part 2 of the RMA, is that contained in the CIA and its Addendum.

- 5.31 Section 6(e) of the RMA requires the Panel in making its decision on this Application (and subject to the FTA purpose) to recognise and provide for, as a matter of national importance, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. The Treaty settlements of the eight Iwi of Te Tau Ihu establishes their relationship with the Proposal site and the wider Tasman area. The CIA advises that it is important to acknowledge the close proximity of the Proposal site to identified cultural sites and the relationship Te Tau Ihu iwi have with the Waimea rohe.²⁸
- 5.32 We hereby provide that acknowledgment. Further, we confirm that we have no evidence on which to conclude that the Proposal would, if consent were granted, interfere with the relationship of Māori with their ancestral lands, water, sites, wāhi tapu and other taonga.
- 5.33 In relation to the requirements of section 7, we note that the traditional concept of kaitiakitanga is an intergenerational obligation that Maori inherit from their Tupuna. We find on the basis of the evidence before us that the eight Iwi are kaitiaki in the Waimea rohe.²⁹ As discussed above, Ngāti Kōata and Te Atiawa choose to exercise kaitiakitanga through their response to the Applicant requests for feedback. Other Iwi were invited to do so and chose not to respond.
- 5.34 Despite deficiencies of the consultation and CIA process, we consider on the basis of the evidence that, were we to grant the consents sought, the requirements of sections 6(e) and 7 of the RMA, and of section 6 of the FTA would not be offended by the Proposal.

6. EVALUATION OF ACTUAL AND POTENTIAL EFFECTS

Existing environment & receiving environment

- 6.1 The Site has road frontage to both Main Road and White Road. The site is flat, largely square, approximately 3.6 hectares in area, occupied by two residential dwellings and some accessory building structures. While the site could be characterised as a corner site, there are three sites fronting Main Road (125 and 127 Main Road and 1 White Road) which do not form part of the Application site. Until recently the bulk of the site had been planted in grape vines, the majority of which have been removed, except for the vines between Main Road entrance to the site and the residential dwellings.

²⁸ Appendix 8, section 4, para 5, p.7.

²⁹ Appendix 8, section 5, para 4, p.8.

- 6.2 The site and the land in the surrounding area are zoned Rural 1. Under the TRMP the Rural 1 Zone "*covers land areas identified as having generally high existing and potential productive value. In the area of this zone, rules for subdivision and development have been developed primarily to protect these qualities on a long-term basis, while allowing for reasonable use and development of the land resource*". In accordance with the zoning, the land in the surrounding area is used for a range of intensive agricultural, horticultural uses, orchards, packing houses, glasshouses and vineyards including the adjacent sites to the north east and south east and the land to the north west on the opposite side of SH6 which is planted in vines.
- 6.3 The land on the opposite side of White Road is also zoned Rural 1. These sites are occupied by single storey residential dwellings and accessory buildings. The dwellings are generally set back some 10m from the road boundary with well landscaped front yards, with the sites varying in size from 898m² to 1.5196 ha, with the majority around 1,000m². This pattern of residential land use is also evident along the Main Road frontage to the west, where residential development of a similar scale and intensity has occurred, with the sites to the rear of these house lots retained in agricultural production. There is also a commercially used site at 149 Main Road on the corner of Main Road and White Road. Richmond town centre is located just over 2 kms to the east of the site. It is surrounded by residentially zoned land and the Richmond growth areas in which the Council is seeking to encourage medium density housing developments that achieve a high standard of amenity.
- 6.4 Main Road is an arterial road and designated by Waka Kotahi as SH6. White Road is classed as an access road. The site has a combined frontage to Main Road of approximately 127m and 168m to White Road. Land along the full length of the Main Road frontage is designated for State Highway purposes (D120). Main Road is strategically important, being a 'through route' which makes a significant contribution to the social and economic wellbeing linking regionally significant places, industries, ports and airports. At this location it has an annual average daily traffic count of 14,557 vehicles, approximately 10% are heavy vehicles. It is a Limited Access Road.

Stormwater management

- 6.5 The management of stormwater from the subdivided lots was a key issue in contention, since the Proposal site is not connected into a reticulated stormwater system and according to the Council's Development Engineer is unlikely to be serviced in the next decade. The Council's Long-Term Plan (**LTP**) programmes reticulation in this location from 2031 onwards, consistent with the projections for urban growth in this part of the

District. An adequate stormwater management system is therefore integral to the success of the Proposal.

- 6.6 As discussed in section 3 of this decision, the original Application did not seek consent for the discharge of stormwater but did discuss potential discharge effects and provided a report from Envirolink setting out the proposals for stormwater management onsite via detention and soakage that would ensure no discharge beyond the site boundaries.³⁰
- 6.7 The stormwater management system proposed in the earlier SHA proposal had attracted adverse comment from the Council, which according to the Envirolink report provided feedback that "*the proposed stormwater management solution is still considered to be poor. Council has concerns that the solution will direct flood waters onto State Highway 6*", and signalled various improvements that would need to be made.³¹ The Envirolink Report calculated the additional runoff that would be generated by the Proposal (assuming constructed dwellings and impervious surfaces) for both Q10 and Q100 events. Primary disposal would be via 5000L detention tanks on each lot, with overflow to the internal roads with a sump and chamber system connected by a piped network leading to a 2500m³ secondary soakage pond in the northern reserve area of the subdivision (now lot 46). Rapid infiltration to groundwater would occur, disposing of a Q100 storm volume (705m³) in less than one hour. Incoming stormwater from neighbouring properties was not allowed for, on the basis of "anecdotal" evidence of no surface flooding in a major 2013 storm event.
- 6.8 During the comment period, the Applicant amended some features of the stormwater management system. The revised proposal, documented in a report from Davis Ogilvie dated 26 May 2021, includes the following features:
- (a) Runoff from all impervious surfaces within residential lots to be managed via soakage, with each site having a soakage pit to manage up to a Q10 storm event in accordance with the Nelson Tasman Land Development Manual (2020) (**NTLDM**);
 - (b) No lot connections to a piped network to be provided for residential lots, since the primary flow can be managed onsite;
 - (c) Runoff from new internal roads would go to a communal infiltration basin via a pipe network within the road reserve;

³⁰ Notwithstanding the statement in the Application that all relevant standards were met, such that no consent was required, the Envirolink Report, dated 28 January 2021 appears to acknowledge in section 1 that "the proposed discharge does not meet the permitted activity criteria of TRMP Chapter 36.4 Discharges".

³¹ Envirolink Report, p 5.

- (d) During a secondary rainfall event all runoff from residential lots and roads will be routed to the infiltration basin via overland flow on the basis that all overland flow in a 1%AEP rainfall event will be contained within the road reserve;
- (e) Runoff from the upgraded portion of White Road during a secondary rainfall event would be routed to roadside soakage pits via standard sumps, with no piped connection, not across the site as occurs under existing conditions. Runoff from a secondary rainfall event would be routed along White Road to SH6.

6.9 The Council made the following comment on this amended proposal:³²

There are no large-scale residential developments in this District that rely on soakage. If the applicant wants to rely on soakage, they will need to design and provide for Q100 soakage onsite and still show how the secondary flow paths to the roading network are achieved.

The revised stormwater solution with soakage on site and no connection to the road is a retrograde step and doesn't allow the development to be integrated into a larger residential stormwater unit later.

It is difficult from the application to understand the secondary flows across the site. There are likely to be flows from the uphill properties that flow onto the site. The applicant will need to continue to accept these overland flows and allow them to flow through the site, though this may be challenging with the changes proposed to allow building platforms.

6.10 The Council's Development Engineer and Team Leader Natural Resources also raised concerns about the stormwater management proposal, including:³³

- (a) The provision of onsite soakage for each lot up to a Q10 storm event is a "gross under design" as the NTLDM standard specifies a minimum of a Q20 design storm event to be dealt with in the primary system: *"if this design was implemented then the land around the house will be flooded in regular storm events"*;
- (b) The detention pond on lot 46 is likely to be in place for over 10 years and be maintained by the Council and therefore needs to vest with Council;
- (c) Soakage is not a long-term solution, particularly for roads, and is likely to lead to secondary flows affecting the State Highway;
- (d) When compared to the performance outcomes desired by the NTLDM the proposed solution does not rank highly; it is not what is expected in a residential area, soakage is a low-cost option and is not considered to be robust, durable and easily maintained and it is unclear how it will fit into any future development of neighbouring properties.³⁴

³² Council comment, p 5.

³³ Development Engineer memorandum p 3-4, or p 26-27 of complete Council comment document.

³⁴ Team Leader Natural Resources, Resource Consents memo, p 36-41 of complete Council comment document.

- 6.11 In its comment Waka Kotahi noted the potential for stormwater discharges from the development to increase the risk of flooding on SH6 and expressed support for the use of onsite detention tanks for each dwelling, use of soakage pits to treat runoff from roads and driveways, and the provision of a stormwater detention pond. However, it remained concerned about secondary flows being directed onto SH6 and expressly sought mitigation of that potential effect by the Applicant.
- 6.12 The Applicant responded to these comments on 21 June 2021 by way of a further report from Davis Ogilvie, which made a number of changes to the stormwater management proposal. Somewhat unhelpfully, the Applicant did not clearly summarise the changes made, but the Council's response of 6 August 2021 provides the following summary:³⁵
- (a) The overflows from the onsite soakage pits will now be piped to the road;
 - (b) Lot connections will be provided to the stormwater network within the road;
 - (c) All primary runoff from lots will be managed via soakage pits;
 - (d) Unpainted or untreated building materials will require treatment;
 - (e) All runoff from roofs shall have leaf traps or alternative approved methods to prevent ingress of solids and organic material into the stormwater system;
 - (f) Runoff from impervious ground cover to be routed to the residential soakage via a sump to capture sediment and reduce blockage of soakage devices.
- 6.13 In light of the concerns expressed by both the Council and Waka Kotahi, the Panel was keen to understand their views on the further information provided by the Applicant. They responded as follows:
- (a) The Council advised that:

Overall the proposed stormwater management proposal adequately manages the potential effects and it is now in line with the TRMP and the [NTLDM]. The applicant has addressed the key concerns raised by [Council] in previous communications.
 - (b) To ensure compliance with these measures the Council recommended conditions of the subdivision consent requiring provision of detailed designs for Council to check as part of engineering approvals, and imposition of consent notices on subdivided lots;

³⁵ Council response of 30 July, p 10.

- (c) The Council provided an update set of subdivision conditions as an attachment to its information response of 6 August, including a proposed condition 43, which it explained in the following terms:

Condition 43 seeks to obtain appropriate detail to confirm that the bulk earthworks design appropriately accommodate Q100 flows within the site, ensure building platforms have the required freeboard, and avoids exacerbating any offsite flooding effects. This condition arises from the review of the further information provided by the Applicant. The Council notes that typically as part of an application assessment it would require a finished ground level in the first instance to understand the anticipated contours for a subdivision development of this scale, but is of the view that it is possible to appropriately manage the potential for adverse flood hazard effects via the proposed condition.

- (d) Waka Kotahi retained some concerns, particularly in relation to:
- (i) Adequate capacity of the existing receiving stormwater main pipe in the road reserve (200mm) is insufficient to accommodate additional stormwater from the development. The risk of overflow to the road network and increasing secondary flow is not mitigated;
 - (ii) Lack of confirmation that the existing secondary flow path will not be affected by the development – Applicant's assessment is different to Council's modelling;
 - (iii) Further confirmation required of groundwater level to ensure 2m depth as required by Council;
 - (iv) Confirmation of infiltration rate of soil is required – four soakage tests is inadequate for a site of this size;
 - (v) Only one duration has been assessed for the 1%AEP event (24 hours). A Range of durations should be assessed, since the soakage rate of the receiving soils may not be sufficient to receive stormwater from shorter, higher intensity events, increasing the risk of flooding (including to SH6);
 - (vi) Increased runoff flow to western corner of development remains a problem, contrary to the Applicant's assertion;
 - (vii) Design should meet specific requirements for the 10%AEP event and the 1%AEP event, including analysis of flooding of road carriageway.

- 6.14 While these responses and concerns have been available on the EPA website for the Applicant to view and comment on, no further comments have been received from the Applicant specifically responding to them.³⁶
- 6.15 We make the following findings in relation to stormwater effects:
- (a) Amendments made by the Applicant to the stormwater management proposal during the processing period were helpful in resolving Council's concerns to the point where the Council was satisfied that, subject to appropriate conditions, consent could be granted to the Proposal;
 - (b) Had we determined that consent could be granted for the Proposal, we would have circulated draft conditions to the Applicant and all commenters and may have received further comments on the adequacy of the conditions to address the outstanding concerns of Waka Kotahi;
 - (c) On that basis, we are prepared to find that the potential stormwater effects **within** the subdivided site are capable of being managed so that they are no more than minor. In respect of the potential **offsite** effects, and effects on SH6 in particular, we find that, while it is likely that those effects could be appropriately mitigated by conditions, we are not able to make a definitive finding on the basis of the evidence before us. In any event, due to the decision we have made to decline consent on other grounds, the outcome of the Application does not turn on resolution of the stormwater management issues.

Flooding

- 6.16 The Panel experienced some difficulty in considering the potential flooding effects of the Proposal as distinct from the potential stormwater effects; both related to overland flow during secondary rainfall events, and the potential for flooding effects could be mitigated to a significant extent by the stormwater management proposal (in its final form, subject to the latest version of conditions proposed by the Council.)
- 6.17 In its original Application the Applicant provided no assessment of flood hazards on the site. The issue was raised anecdotally by some adjacent landowner commenters, and by the Council. The Council raised the following concerns in its original comment on the Application:

³⁶ In accordance with clause 19 of Schedule 6 of the FTA the Applicant had five working days to provide a response to these comments had it chosen to do so.

- (a) Section 106 RMA is relevant to FTA applications by virtue of clause 32 of Schedule 6. The Applicant has not assessed the Proposal in terms of natural hazards, and flooding in particular;
 - (b) The Application site is known to be subject to flood hazards;
 - (c) Council's flood modelling indicates that in a Q100 even the site can expect some significant flows up to 3m³/sec with flood depths of approximately 200m across parts of the site, with ponding being the primary issue of concern;
 - (d) While the Applicant offered conditions 36(c) and 37, the Application material did not demonstrate how the outcomes offered could be achieved;
 - (e) Damming and diversion of flood waters could require consent under TRMP rule 31.1.5.2.
- 6.18 Some commenters described their observations of flooding issues on and in the vicinity of the site. The comment from Ms Stade was particularly detailed and included photographs of flooding events.³⁷
- 6.19 The report provided by Davis Ogilvie dated 21 June 2021 provides a flood risk assessment, undertaken on a desktop basis. That assessment indicated two overland flow paths across the site with an additional major flow path down White Road and diverting through rural land to the south of the Proposal site. These are consistent with the Council's flood plain maps from the Richmond Catchment Management Plan (**RCMP**).
- 6.20 An assessment of pre- and post-development flows was undertaken to determine the effect of the Proposal on peak flows at SH6 in the northern corner of the site during a Q100 rainfall event. When considered together with the proposed stormwater management system, the flooding assessment concluded that all flooding effects could be dealt with onsite (ie within the subdivision) and that any excess flow off-site would not exceed pre-development levels. However, to mitigate flood risk within the development, the report recommended imposition of a freeboard requirement above the estimated top water levels during a Q100 rainfall event, including provision for the effects of climate change, for the propose dwelling floor levels. The report recommended a minimum freeboard of 0.5m above the maximum computed water elevation within the road adjacent to each lot.³⁸
- 6.21 The Council commented further on the 21 June report in its 6 August response to the Panel's further information request, and raised the following concerns:

³⁷ Comment from Ms T Stade dated 13 June 2021.

³⁸ Davis Ogilvie Stormwater and flooding report dated 21 June 2021, p 8-9.

- (a) The site is subject to flood hazard from overland flood flows during extreme rainfall events, and the actual flood patterns can differ significantly between rainfall events, often being dictated by the occurrence of debris blocking the many channels and culverts in the vicinity of the site;
- (b) The Applicant intends that the internal road network will serve as the flow path for overland flows crossing the southwestern site boundary. The Council considers this a viable solution in principle, but little detail is provided about how the flows will be captured and directed into the road reserve/carriageway;
- (c) It is less clear how the overland flows from the south that cross the eastern corner of the property will be managed. If these are not to be captured in the road, they will be diverted and could affect flood flow patterns on neighbouring properties;
- (d) While the recommended freeboard of 0.5m is sufficient to satisfy the requirements of section 106 of the RMA, it is unclear whether this will be achieved by raising the ground levels on the lots. Given the lack of detail of anticipated finished ground levels across the site after preparatory earthworks (including for formation of access and building platforms), it is not clear how the Q100 flows and the 0.5m freeboard for building platforms will be provide while avoiding any increase in flood risk to adjacent properties;
- (e) To address the deficiency in information, the Council recommended two conditions (42 and 43) requiring the Applicant to demonstrate in appropriate detail how they will achieve the outcome based on a finished ground level plan for Council's approval prior to earthworks commencing.

6.22 The Waka Kotahi comments set out above at paragraph 6.13(d) are also applicable to the flooding issues; Waka Kotahi remains concerned at some of the assumptions used to assess the flooding risk and that there is still a risk of increased flows to SH6 and flooding at the SH6/White Road intersection in high rainfall events.

6.23 As discussed above in relation to stormwater effects, in light of the Panel's decision to decline the Application draft conditions were not circulated for comment. Our findings in relation to flooding effects are therefore similar to those reached in relation to stormwater:

- (a) Further information provided by the Applicant, including flood hazard modelling and assessment, during the processing of the Application have largely cured the information gaps that were of concern. The Proposal site is clearly subject to flooding risk;

- (b) Any potential increase in flooding effects as a result of development on the Proposal site should be capable of mitigation by the proposed stormwater management regime, particularly in relation to secondary rainfall event flows, and by imposing a freeboard requirement on individual lots;
- (c) There are still unanswered questions regarding the mitigation of flooding risk on SH6;
- (d) On that basis, we are prepared to find that the potential flooding effects **within** the subdivided site are capable of being managed so that they are no more than minor. In respect of the potential **offsite** effects on SH6, we find that, while it is likely that those effects could be appropriately mitigated by conditions, we are not able to make a definitive finding on the basis of the evidence before us;
- (e) In any event, due to the decision we have made to decline consent on other grounds, the outcome of the Application does not turn on resolution of the flooding issues.

Freshwater

6.24 The Application contained a very brief discussion of potential effects on groundwater and/or watercourses at section 8.14:

... the stormwater will be entirely contained within the site and will infiltrate in to the existing aquifer under the property.

Measures can be imposed on the road sumps so that the runoff discharge effects from the road does not affect existing ground water resources.

Sediment & erosion control measures such [sic] silt fences and sediment control ponds will be installed during the construction phase to ensure sediment runoff does not adverse [sic] the surrounding environment and downstream watercourses.

6.25 The following statement was made in relation to the application of the National Policy Statement for Freshwater Management 2020 (**NPS-FM**), and the National Environmental Standard: Freshwater (**NES-F**) to the Proposal:³⁹

... the project does not contain any wetland or watercourse and there [sic] no wetlands or watercourses nearby. The stormwater from the proposed development will be contained entirely within the site and will not adversely [sic] downstream water quality. Therefore, it is considered that the proposal is in accordance with the NPS on Freshwater Management.

6.26 We agreed with the Council's comment that this level of assessment was inadequate and that an analysis of the NPS-FM and NES-F is a material and relevant consideration, particularly given the shallow nature of the groundwater aquifer. We therefore requested

³⁹ See Application, p 22-24.

that the Applicant provide further information including the potential need for consent to discharge stormwater to the groundwater aquifer.

- 6.27 In response the Applicant provided a report from Envirolink dated 27 July 2021, principally to assess the impact of discharging stormwater from the detention basin to groundwater. The report focused on the use of sumps and soakage devices on lots, and catchpits within road berms, in the management of contaminant-laden stormwater and reached the following conclusion:

... the proposed Vines stormwater discharge to the underlying Hope Minor Aquifer system should comply with the objectives and rules of the NES-F in terms of discharge to water bodies. On a catchment scale the development is relatively small, and given the depth to water table of at least 2m and existing use of the aquifer, the likely existing nitrate levels, together with the water quality management methods proposed, the contaminant loading to the receiving water is unlikely to be more than minor. It is also expected that the discharge method will only be temporary and will be replaced in the medium term with a reticulated system as part of the wider Eastern Hills drainage network.

- 6.28 Subject to implementation of the stormwater management system, we are satisfied that any freshwater effects from the Proposal would be no more than minor.⁴⁰

Site contamination

- 6.29 As discussed in section 3 of this decision, the Applicant was extremely reluctant to accept that there could be contaminated soils on the Proposal site, or that an investigation should be undertaken prior to the grant of an earthworks consent. The Panel's specific request on 2 July 2021 therefore sought an assessment under the NES-CS to confirm the requirement, and if necessary to support a restricted discretionary activity consent for, land disturbance involving contaminated material. As noted in paragraph 3.5 the Applicant ultimately acknowledged in its response of 30 July 2021 that HAIL activities had occurred on the site and that a consent was required to be obtained.

- 6.30 The DSI comprised a mix of desktop review, site walkover, soil sampling, test pit excavation, laboratory analysis of samples for heavy metals and an assessment of landfill gas in installed wells. The report from Davis Ogilvie dated 29 July 2021 offered the following key findings and recommendations:

- (a) Four HAIL activities were identified (summarised): A18 (@1000 CCA treated timber posts due to vineyard use for the past 20-30 years; A1 (application of copper based sprays to the vineyard); H (landfill use on adjacent site); I (lead based paint likely

⁴⁰ In relation to the groundwater depth we have noted a number of different levels in information provided to us. The Davis Ogilvie DSI report notes at para 2.5 that geotechnical investigations undertaken in 2018-2019 encountered groundwater between 1.6-1.8m below Existing Ground Level and that onsite observations for the DSI encountered groundwater at 1.5m below EGL. Waka Kotahi agreed that a level of 1.5m depth below ground level should be adopted but noted that only two piezometers were taken and that the groundwater table should be confirmed at the location of the stormwater detention basin.

used on former buildings leading to elevated concentrations of heavy metals in surrounding soils);⁴¹

- (b) Potential contaminants of concern (principally heavy metals and landfill gas), potentially relevant receptors given proposed future residential use, and potential contaminant pathways;
- (c) Soil sampling results include:⁴²
 - (i) Detection of lead concentrations in excess of Soil Contaminant Standards (**SCS**) for residential land use in respect of two areas associated with historic buildings (together with concentrations of other heavy metals above background levels);
 - (ii) Concentrations of arsenic in excess of SCS for residential land use around each timber post hole sampled and two other surface soil samples, and elevated levels above background of copper and chromium associated with the same samples;
 - (iii) Concentrations of copper, chromium and nickel in excess of background levels in a number of other samples across the site;
- (d) No methane, carbon monoxide or hydrogen sulphide detected during landfill gas monitoring;
- (e) Due to the concentrations of lead and arsenic above SCS for residential land use, the proposed activities (subdivision, change of land use and associated soil disturbance and removal) will require consent under Regulation 10 of the NES:CS;
- (f) A Remediation Action Plan (**RAP**) will be required. A remediation options assessment is recommended to determine the most appropriate remedial methodology. A preliminary review of options suggests excavation and offsite disposal will be appropriate for lead contamination while arsenic contamination could be addressed by mixing soils insitu or in a topsoil stockpile.

6.31 After reviewing the DSI the Council included conditions 40 to 42 in the subdivision consent conditions, requiring a RAP to be certified by the Council before the commencement of any earthworks, all physical works to be undertaken in accordance with the certified RAP, and submission of a Site Validation Report to Council within 3 months of completion of the works to demonstrate that the remedial action has been undertaken in accordance with

⁴¹ DSI, section 3, p 12.

⁴² DSI, section 5.2, p 16.

the RAP. Further comment from the Council noted that retention of the contaminated soil onsite would not be supported by the Council.

- 6.32 As with many of the potential effects of this Proposal, a drawn-out process of requests for and submission of further information to address a deficient application has ultimately enabled the Panel to make a finding that it should have been able to make much earlier. It appears that, with the benefit of conditions proposed by the Council, the effects of any site contamination can be appropriately mitigated to be no more than minor.

Traffic & roading

- 6.33 As set out under Existing Environment earlier in this section of our Decision, the Proposal site is located on Main Road Hope, an arterial road in the TRMP but also SH6, an important strategic road link for the South Island. White Road, which bounds the site to the south, provides a connection between SH6 and Paton Road, which is a distributor road in the TRMP and provides an alternative north-south link running parallel to SH6.
- 6.34 The Proposal will give rise to 44 new residential lots, with access to the development from White Road at a point approximately 180m from the SH6 intersection. The existing accesses off SH6 will be removed. Traffic generation from the developed lots is expected to be around 380 vehicle movements per day with some 40 movements per hour at peak times. Around 90% of the new vehicle movements are expected to use the SH6/White Road intersection.
- 6.35 The Traffic Concepts traffic assessment report attached to the original Application is dated 6 March 2019 and was clearly prepared for the earlier SHA version of the Proposal and not updated to respond to the requirements of the FTA (or indeed the RMA).⁴³ The assessment report concludes that the low level of vehicle movements associated with the site post-development could be "*readily accommodated*" within the surrounding road network and that the Proposal was not expected to "*change the current levels of safety experienced by road users.*"⁴⁴ In particular, there was expected to be no impact on the operation of the SH6/White Road intersection, which was described as "*well designed with a right turn bay and excellent sight distances.*"⁴⁵
- 6.36 In relation to the internal road network, the road design and widths were considered appropriate given the anticipated level of traffic movements. The Proposal was assessed

⁴³ Indeed, the author of the Traffic Concepts response to the Panel's further information requests, dated 29 July 2021, expressly acknowledges this point.

⁴⁴ Application, section 8.8 and see Appendix 7.

⁴⁵ Application, Appendix 7, section 6.

as giving effect to the objectives and policies of Chapter 11 Land Transport Effects of the TRMP.⁴⁶

6.37 Comments on the traffic aspects of the Proposal were received from:

- (a) The Council's Development Engineer;
- (b) Waka Kotahi; and
- (c) A number of adjacent landowners including residents of White Road.⁴⁷

6.38 The Council noted that it had expected to see a Traffic Safety Audit carried out, pursuant to a requirement in the NTLDM, and expressed concerns about the sub-width right turn bay from SH6 into White Road. It also queried the lack of sight visibility at the access from White Road into the subdivision due to an existing shelter belt on the adjacent property boundary. A condition was proposed to require modification of the SH6/White Road intersection to the appropriate standard, and the Applicant was encouraged to consider relocating the access to lots 6 and 16. Internal street widths were considered to be under-designed (in terms of ease of access for rubbish trucks, for example) and the Council recommended upgrade of both road frontages with kerb and channel and footpaths.⁴⁸

6.39 Waka Kotahi has provided comment or further information on this Application on three separate occasions:

- (a) Initial comment received on or before 14 June 2021;
- (b) Further information provided on or before 6 August 2021 in response to the Panel's request dated 2 July 2021;
- (c) Further comment provided on or before 17 August 2021 in response to the Panel's invitation to comment on the further information provided by the Applicant and Council on 6 August.

6.40 The traffic and roading safety concerns raised by Waka Kotahi in its initial comment can be summarised as follows:

- (a) The Application has not assessed the cumulative traffic effects of residential growth in Richmond South on SH6, which is a strategically important "through route" making

⁴⁶ Application, section 12.1.

⁴⁷ See note to para 6.42.

⁴⁸ Development Engineer memo dated 24 May 2021, p 25 of Council's complete response document.

a significant contribution to social and economic wellbeing by linking regionally significant places, industries, ports and airports;

- (b) The Proposal would increase traffic volumes on SH6 between Hope and Richmond, which is already under pressure from residential development in Brightwater and Wakefield and is expected to come under increasing pressure with further residential development in the Richmond South area;
 - (c) The White Road/SH6 intersection has substandard dimensions, and while improvements are identified in the Richmond Programme Business Case currently under preparation, they are recognised as being "development-driven". No funding has been secured, and consideration should be given to seeking a financial contribution from the Applicant to the future intersection upgrade;
 - (d) The vesting of lots 100 and 101 as road to provide for a future off-road shared path is supported;
 - (e) Construction traffic should be via White Road, and Waka Kotahi would need to approve a Traffic Management Plan;
 - (f) Multi-modal transport options need to be available within and through the development site to avoid cementing car dependence. A walkway reserve on lot 102 is supported but the Applicant should build a safe off-road shared path facility from lot 102 to White Road as part of the development.
- 6.41 The comments from adjacent landowners raised the following traffic and safety concerns from the perspective of local road users:⁴⁹
- (a) Narrow width of White Road and concern about use by large construction vehicles;
 - (b) Current lack of footpaths on White Road means it cannot safely accommodate pedestrians (particularly school children) and cyclists; and
 - (c) Existing difficulties turning from White Road onto SH6.
- 6.42 The Panel sought extensive further information from the Applicant in relation to traffic and safety matters, including the Traffic Safety Audit recommended by the Council's Development Engineer, and the need for improvements to the White Road/SH6 intersection to respond to the capacity and safety concerns raised in comments. We asked the Applicant to explain the inconsistencies evident in the Applicant's traffic assessment when compared to the comments from Waka Kotahi in relation to the

⁴⁹ The following commenters raised these issues: Janice Charles, Loretta Clifton, Susan Cornelius, Garry Higgins, Colleen Roberts, Harry & Heather Scoltock, and Brendon Taylor.

standard and operation of that intersection. We also sought clarity about the parking arrangements within the development and a response to the Council's proposal that the access to the site be moved to address sight visibility.

6.43 In response the Applicant provided a Safety Audit of the White Road/SH6 intersection and commentary on the Panel's questions from Traffic Concepts, which had prepared the original traffic assessment.⁵⁰ The Panel found this information to be very helpful.

6.44 The Safety Audit made the following findings:

- (a) There are existing deficiencies with the intersection that may lead to a crash. These include the poor condition of road markings (minor), impaired sight lines due to legal parking on SH6 (moderate), poor positioning of power poles (significant), low level of intersection warning on approach (moderate), narrow width of White Road carriageway (minor), parking on White Road near intersection (minor). A range of recommendations are made to address these issues;
- (b) While the right turn bay from SH6 is narrow, at 2.5m it meets the relevant legal width requirement and is consistent with other facilities along Main Road Hope. The crash history shows that this has not created a crash issue along this section of SH6;
- (c) The safety issues identified in the audit are existing issues and are not related to the Application; the Proposal may add to the safety risk for users of the intersection but due to the low level of increase in road use, it would be unmeasurable against existing flows.

6.45 The Traffic Concept response to the remaining questions from the Panel clarified the following matters:

- (a) While Waka Kotahi refer to the "substandard dimensions" of the right turn bay into White Road, the right turn treatment (flush median) was installed by Waka Kotahi at the current width, and provides a safe waiting area, demonstrated by the absence of crashes. Moreover, the 2.5m width is consistent with other right turn treatments along Main Road Hope, including recent improvements;
- (b) The crash records indicate that while it may be difficult to exit White Road, motorists are taking due care to carry out this movement. There have been no reported crashes at the intersection since 2002 and none of these involved the existing

⁵⁰ Traffic Concepts letter dated 29 July 2021. The letter acknowledges on page 1 that the original traffic assessment was prepared for a "different development than what is now proposed. It should be noted that the traffic assessment did not go into the detail now required by the Authority under the new legislation. The traffic assessment related to a development to subdivide the property under the HASHAA and only provided a high level assessment of the effects of a 47 lot subdivision."

narrow right turn bay, despite the notable increase in traffic flows along the highway during that period;

- (c) This is a fit for purpose intersection that allows safe vehicle use. However, there are issues with the White Road/SH6 intersection that should be addressed regardless of development on the Proposal site;
- (d) The traffic increase from the Proposal based solely on highway traffic is less than 3%; this is a relatively small increase in the number of vehicle movements across the wider network, and the site has alternative routes to access that wider network (for example, Paton Road, which provides a convenient and uncongested link to Richmond);
- (e) The network performance issues identified by Waka Kotahi are existing issues related to the significant Richmond West Development area and are not part of the road network relevant to this Proposal;
- (f) The roads within the development have yet to be designed but a new plan provided with the Traffic Concepts report shows road cross sections with a carriageway width of 7.5m which exceeds the 5.5m required in the NTLDM (in response to Council concerns). Completed design should have indented parking bays and no-stopping restrictions to manage parking and ensure emergency access is maintained; and
- (g) The commenter concerns about the safety of pedestrians, and school children in particular, were answered by reference to the width of grass berms, and the provision of a new footpath along the development frontage as part of the Proposal.

6.46 Waka Kotahi has provided further comments on the Safety Audit recommendations. Some (such as road markings) will be undertaken as part of standard re-application of paint after re-sealing (which occurred in early 2021). Others (such as "no stopping" restrictions to address sightline concerns) will be monitored by Waka Kotahi. The relocation of the poles is not feasible (unless an intersection upgrade is undertaken) and is considered by Waka Kotahi to represent a minor safety risk in terms of crash hazard. Other issues are tied directly to any future decision to upgrade the intersection; in that regard, Waka Kotahi agrees with the Council that an intersection improvement will be necessary in the future.

6.47 The latest version of draft conditions proposed by the Council on 6 August 2021 specifies (at condition 21) minimum design details for the internal roads that appear to be met by the Applicant's latest road cross section plan.

6.48 With the most recent information provided by the Applicant, we are satisfied that the traffic and safety effects of the Proposal would be no more than minor and that conditions would assist to mitigate any potential for adverse effects from construction activity. In relation to specific matters raised by various commenters, we make the following findings:

- (a) It is clear from the Safety Audit and the accident record that, while the White Road/SH6 intersection has some deficiencies, it has been and is likely to continue operating safely. The level of additional traffic that would be generated by the Proposal is minor in the context of the surrounding road network, and vehicles to and from the development would have the option of traveling via Paton Road;
- (b) Had we been minded to grant consent to the Proposal, we would not have accepted the Council's proposed condition requiring the Applicant to upgrade the White Road/SH6 intersection. While Waka Kotahi may regard the required Richmond area upgrades as being "triggered" by residential development, there is no basis, in terms of effects, for the imposition of this condition⁵¹;
- (c) We are not persuaded on the evidence before us that the additional traffic would give rise to problematic cumulative traffic effects having regard to other development in the wider Richmond area;
- (d) The safety of pedestrians and cyclists along White Road and through the development would be improved with formation of footpaths and a walkway connecting to SH6;
- (e) We note that the Applicant's latest internal roading plan shows an increased in width of internal roads (apparently meeting the Council's requirements) to accommodate on-street parking and to facilitate large and emergency vehicle access.

Effects of residential development on productive use of rural zoned land

6.49 The issue of whether, having regard to Part 2 of the RMA and the purpose of the FTA, residential subdivision is an appropriate use of Rural 1, Class A productive land is one of two critical issues for this Application, the other being the closely related question of policy support for urban development on the Proposal site, notwithstanding its current zoning. Both questions are discussed in detail later in the decision, within the context of our assessment of the Proposal against the relevant plan and policy provisions, but there is an effects aspect to the first question that we address here.

⁵¹ See section 108AA(1)(b)(i) of the RMA.

6.50 The Applicant assessed what it termed "productivity effects" in the Application in the following way:⁵²

It is accepted that the subdivision will result in a loss of productive potential for the site, which is currently in vineyard. The small loss of productive value from the property needs to be seen in the context of the fact that the area has been specified as a growth area for Richmond and that the TRMP anticipates that there will be residential development on this property and others on the northern side of Whites [sic] Road. Therefore, the TRMP does not anticipate the long-term productive use of this site.

6.51 This statement is incorrect and misleading in several respects, as discussed later in this Decision, but the characterisation of the site as being both within a specified growth area and somehow sanctioned by the TRMP as transitioning from rural to urban has been repeated by the Applicant in several subsequent comments and responses.

6.52 The current zoning of the Proposal site under the TRMP, and its high land productivity classification (Rural 1, Class A), was one of the three main issues of concern raised by the Council in its original comment on the Application. The Council drew the Panel's attention to the following matters in particular:

- (a) the Application incorrectly identifies the land as being in the Richmond South Development Area;
- (b) The Application has not considered any potential adverse effects of the development on the surrounding rural area, and focuses on residential amenity without recognising any other attributes and character of the surrounding area;
- (c) The Application provides very limited examination of the TRMP provisions, given the proposal is a non-complying activity under that Plan. The short analysis provided does not examine objectives and policies that are relevant to the application, and misses several relevant chapters of the TRMP covering both district and regional functions under the RMA; and
- (d) The application does not address the impact of the Proposal on the high land productivity classification for the Rural 1 zoned site. This is the most highly protected land within the TRMP provisions.

6.53 The Council did not pursue the effects side of this issue any further in its comment, choosing instead to focus on the plan provisions, which we discuss later in the context of the TRMP. However, the Council was not alone in expressing concerns regarding this aspect of the Proposal. Several other commenters⁵³ made similar points, in particular

⁵² Application, section 8.12, p 30.

⁵³ Garry Higgins and Mr & Mrs Scoltock.

Walter Roberts Investments Ltd (**WRIL**), which provided a lengthy and well-reasoned comment highlighting that Class A land is a very finite resource, comprising only a few percent of land area in the District. WRIL is the new owner of 132 Main Road Hope and is itself owned by a long-standing orcharding family in the District. The company's made the following compelling points:⁵⁴

- (a) The continuing loss of highly productive land around the Richmond urban area continues to diminish the land available for horticultural production and expansion;
- (b) Cumulative effects arise from ad hoc decision making that does not follow the planned sequence or spatial extent of provision for urban growth set out under the TRMP;
- (c) While the Applicant identifies a range of economic benefits arising from the subdivision of the site, there is a need to examine the economic benefits and costs of avoiding the loss of highly productive land both in the short and long term for current and future generations;
- (d) WRIL has assessed the productive potential and assessed the number of jobs generated from production from 3.67ha Class A rural land; an area this size as productive orchard generates new export earnings of up to \$1.1m per year for Tasman District, accruing to the grower and downstream services including transport providers and Port Nelson;
- (e) In respect of employment, 3.67ha of land in fully productive orchard would support 3.5FTE workers, including those employed to work on planting, thinning, pruning, harvesting together with permanent jobs generated in transport and logistics. These jobs would be permanent, year on year, not short-term jobs over a construction period;
- (f) The removal of this site from productive use will be a permanent loss once housing is developed.

6.54 We found this information, based on the experience of a company involved in orcharding in Tasman District over many years, to be credible, and in the absence of any equivalent economic analysis from the Applicant it is the only information we have on these issues. The Applicant's only response to this comment is to repeat that the Council "*does not anticipate the long term productive use of this block. This makes this site different from other Rural 1 sites which are not part within the Richmond 'growth boundary'*".⁵⁵ The Applicant has also referred to the likelihood that the adjacent property at 39 White Road,

⁵⁴ WRIL Comment, dated 14 June 2021.

⁵⁵ Applicant Comment dated 21 June 2021, p 2.

currently an orchard, will inevitably be developed for residential purposes. While the Applicant regards this prospect as bolstering their case for consent, the Panel can only reiterate that an appropriate assessment of the effects of this Proposal on the productivity of rural land would have included these incremental and cumulative effects on adjacent rural zoned properties.

- 6.55 In view of the complete absence of effects assessment, and the findings we make later in this decision regarding the strength of objectives and policies in the TRMP to support the retention of Rural 1 Class A highly productive land, we have no hesitation in finding that the effects of the Proposal on the highly productive land resource represented by this site would be significant and adverse and are incapable of being mitigated given the permanent loss of the site from production with a conversion to residential use.

Reverse sensitivity

- 6.56 The Application contained a brief discussion of "cross boundary effects" in relation to the adjoining apple orchard and greenhouse at 39 White Road and the potential for spray drift effects to be experienced by future residents of Lots 39-41. The Applicant noted the following measures:
- (a) Construction of an artificial shelter belt along the boundary (though it was not clear that the Applicant was committing to such construction);
 - (b) Subdivision design to ensure that much of the boundary is taken up with road reserve (50m), recreation reserve (57m), road connection (12m);
 - (c) Imposition of rural emanation easements on the titles of Lots 39-41 in favour of the orchard property, allowing authorised commercial horticulture production to continue without interference from the residents.
- 6.57 The owner of 39 White Road did not comment on the application, but others did, with similar reverse sensitivity concerns:
- (a) Crates Services – located on an adjacent site, a return depot for hire pallets and returnable plastic crates, a busy site with many truck movements and 5 forklifts operating, regarded as an essential business in lockdown;
 - (b) Waimea Estates (Nelson) Ltd – viticulture site across SH6, can be noisy with traffic movements and machinery operating at night, would like to see imposition of rural emanation easements across the whole Proposal site;

- (c) Vicmatt Properties – owner of 128-130 Main Road Hope, soon to be rezoned to industrial/commercial, and concerned about potential objections from residential occupants to future industrial/commercial activities.

6.58 In response to these comments the Applicant agreed to extend the rural emanation easement to all residential lots within the subdivision. It did not, however, specify which properties the easements would be created in favour of, and the latest version of the relevant condition (provided by the Council on 6 August) refers only to Lots 39 to 41, in favour of 39 White Road and subject to the agreement of the adjoining landowner.

6.59 Given the Applicant's willingness to resolve these concerns, we find that the reverse sensitivity effects identified by both the Applicant and several commenters would be no more than minor and are capable of being mitigated by use of rural emanation easements in some situations, subject to specific identification of the relevant properties and appropriately worded conditions and consent notices.

Noise effects

6.60 The Application document contains one paragraph on noise effects.⁵⁶ That paragraph provides reassurance that the TRMP contains noise control standards to ensure that neither the subdivision activity nor the resulting dwellings will result in any significant adverse noise effects on neighbouring properties. The paragraph concludes:

In the context of a property is [sic] bounded by the State Highway on the western side, the noise effects of the proposed subdivision are considered to be less than minor.

6.61 It did not occur to the Applicant that locating reasonably intensive residential development within metres of the edge of SH6 might give rise to adverse noise effects on future residents of the subdivided lots.

6.62 Waka Kotahi raised this issue under the heading "reverse sensitivity" in its original comment documents, stating that three lots (9, 10 and 11) would be entirely within the reverse sensitivity "buffer area" calculated by Waka Kotahi (and illustrated in Figure 1 of its comment) and that a further three lots (12, 13 and 14) would be partially within this area. A further 16 lots appeared to be located either entirely or partially within the "effects area", extending beyond the buffer area.⁵⁷ Waka Kotahi sought that appropriate mechanisms be put in place for all lots falling within these two areas to ensure that human health effects from State Highway noise and vibration are sufficiently mitigated.

⁵⁶ Application, dated March 2021, section 8.17, p 32.

⁵⁷ These were Lots 5-8, 15, 17, 26-31 and 42-44.

- 6.63 Specifically, Waka Kotahi proposed a standard set of resource consent conditions (enforced by way of consent notices on the titles of the new lots) that would apply to new dwellings within the effects area. The consent notice would require noise sensitive activities located in or partly within 100m of the sealed edge of the SH6 carriageway to be designed, constructed and maintained to achieve a design noise level of 40dB LAeq(24h) inside all habitable spaces (with additional ventilation requirements if achieving the noise standard required closed windows) and a specific road-traffic vibration standard.⁵⁸ A design report prepared by an acoustics specialist would need to be submitted to the Council demonstrating compliance with these standards prior to construction or alteration of any dwelling. Waka Kotahi also asked that consideration be given to the provision of outdoor living space for each dwelling that is not subject to excessive noise or vibration effects.
- 6.64 In response to this comment, the Applicant indicated they "would be happy to work with Waka Kotahi and their requirements for final designs."⁵⁹
- 6.65 The Panel was concerned to ensure that the basis for the proposed conditions was robust. The 100m noise effects area apparently modelled by Waka Kotahi extended almost to midline of the site and would impact approximately 23 lots. Compliance with the conditions would come at a cost, either to the Applicant or the future owners of the lots when they came to build their dwellings. On 2 July 2021 we issued Minute 3 seeking further information from Waka Kotahi including details of any modelling and/or noise contour development that informed its reverse sensitivity effects buffer and effects area, and in particular whether any site-specific assessments had been undertaken.
- 6.66 In summary, we were advised that:⁶⁰
- (a) The buffer and effects area shown in Figure 1 were based on specific 2017 data on traffic volume, percentage of heavy vehicles, posted speed limit and road surface type in the location of the site to estimate noise exposure. The estimation did not account for topography or the screening effect of buildings;
 - (b) A model produced in 2019 updated the results, shown on an updated figure. This model was prepared for strategic purposes and was not verified for specific sites, but manual calculations for the Proposal site indicate that the 2019 model underestimates the noise exposure based on current traffic and road surface data;

⁵⁸ Class C of NS8176E:2005. See further details of the proposed consents notice at p 8 of Waka Kotahi's original submission.

⁵⁹ Applicant's response to comments, 21 June 2021, p 3.

⁶⁰ Waka Kotahi Response to further information request dated 6 August 2021, p 4-7.

- (c) The manual calculation indicates that the effects area for the site should extend approximately 80m from SH6.
- 6.67 The Council has had some experience with conditions requiring management of reverse sensitivity effects via State Highway buffer requirements. There are other examples in the District, in many instances offered by applicants as part of their proposal in order, it seems, to secure Waka Kotahi approval to the application.⁶¹ In light of the focus on affordability in this Proposal, the Council then made a helpful suggestion that the Applicant should provide an acoustic engineer's assessment to inform the conditions of both the subdivision consent and land use consents. Recommendations from that assessment would then be used at building consent stage with certification from a qualified acoustic expert that the dwelling is constructed in accordance with the specified design standards.
- 6.68 We then offered the Applicant an opportunity to comment on this suggestion, coupled with a request for an acoustic assessment of the predicted noise effects from the operation of SH6 on the future residents of the subdivision, stipulating the level of noise attenuation that may be required and identifying potential mechanisms for achieving that level together with an estimate of cost that would be incurred by each purchaser in complying with the requirements.⁶² In response the Applicant provided a report from Acoustic Engineering Services dated 23 August 2021.
- 6.69 That report contained several unpleasant surprises, chiefly that 1.8m high acoustic fencing will need to be constructed along the SH6 frontage of the site (Lots 9, 10, 11) and the site boundaries between Lot 9 and 1 White Road, and Lot 11 and 127 Main Road. The predicted traffic noise contours assume the fence is in place. At the SH6 site boundary, received levels at Lots 9-11 will be up to 64dB LAeq (24h) and at Lots 8, 12-14, 42-44 will be up to 60dB LAeq (24h), with 57dB LAeq (24h) at all other lots impacted by the Waka Kotahi noise buffer and effects areas.
- 6.70 The report goes on to set out various levels of building upgrade likely to be required for those lots receiving 64 or 60dB, including a ventilation and cooling system, estimated to increase by 0-2% of the cost of dwelling construction. Proposed condition wording was included, broadly consistent with the wording proposed by Waka Kotahi and including specifications for the acoustic fencing.
- 6.71 A statement from the Applicant dated 24 August 2021 accompanied the report, confirming that they *"agree to discount the 10 sections that will be affected by the road noise as stated in the report by 1% of the build cost of the homes"*.

⁶¹ Council response of 30 July to Panel's request for further information dated 3 July.

⁶² Panel Minute 7, dated 13 August 2021.

- 6.72 Once again, the Panel feels compelled to comment on the inadequate scope of the effects assessment undertaken to support this Application. Despite a complete lack of information provided in the Application, it is clear that proximity of the site to SH6 will give rise to adverse noise effects on future residents of the subdivided lots, particularly those lots adjacent or proximate to the SH6 frontage. These effects are technically capable of being mitigated, but the mechanisms for doing so are not straightforward, will increase the cost of constructing dwellings and potentially give rise to other effects that have not been identified or assessed.
- 6.73 The report of 23 August 2021 raises for the first time the issue of acoustic fencing. The visual, landscape and amenity effects of the fencing, from SH6, from within the subdivision and in relation to the individual lots affected, have not been assessed. From our site visit we do not recall seeing any other acoustic fencing along the SH6 frontage from Richmond to Hope, which is characterised by open rural pasture or rural production activities punctuated by single or clustered houses along the frontage, often with open pasture or horticulture activity to the rear.
- 6.74 On the basis of the information before us, we find that the adverse noise effects from SH6 on the future residents of some subdivided lots would be more than minor. The provision of acoustic fencing, and conditions of the type proposed by the Applicant's acoustic expert and Waka Kotahi to ensure future dwellings are designed to achieve appropriate internal noise levels, may be sufficient to mitigate those effects. However, we have insufficient information before us to enable us to evaluate the effects of the acoustic fencing proposed, including any comment from Waka Kotahi as to the desirability and/or operational impacts of installing acoustic fencing along this section of SH6.
- 6.75 It follows that we are not in a position to confirm that the proposed mitigation measures are acceptable, or to express a level of confidence in their ability to achieve the desired level of attenuation.

Visual and urban design effects

- 6.76 The application seeks consent to erect dwellings on all new subdivided lots⁶³ in accordance with the residential zone standards including bulk, location and height provisions.
- 6.77 The application provides an assessment against Chapter 17 TRMP, R17.1.3.1 permitted activities and concludes that discretionary land use consent is required for bulk and location issues. Proposed development controls "*seek to ensure that residential sections*

⁶³ See para 2.2 of this Decision regarding the absence of reference to land use consents in the Order in Council accepting the Proposal for referral.

remain characterised by open space, spaciousness, privacy, access to sunlight and daylight and ensure buildings remain compatible with the scale and effects of other buildings in the surrounding environment."⁶⁴

- 6.78 Consent is sought to have a 3m setback (vs 4.5m) on two lots to provide a better useable building site area. The 40% building coverage standard, outdoor living space requirements, dwelling number limit can all be met. The height limit of 7.5m can be met and all other setbacks can meet the 4.5m requirement. Some sites do not meet the minimum lot size standard (450m²) but the average lot size is 490m².
- 6.79 The assessment has been done on the basis that the site will essentially become residential in form if not in zone. That may well have been the outcome of a successful SHA application, but as things stand any subdivision consented will still be subject to the rules of the Rural 1 zone. Unless consented as part of this application, future dwellings will need to obtain their own resource consent, likely to be non-complying activities.
- 6.80 The Council explained⁶⁵ that a land use consent could be granted expressly authorising the following land use activities:
- (a) Dwellings constructed in accordance with the residential zone standards (or presumably those standards as expressly modified by the Application); and
 - (b) Any specific dwelling that is not in accordance with those standards.
- 6.81 A consent notice to this effect would be imposed via the subdivision consent and refer to the land use consent. Any future dwelling construction that does not meet the residential zone standards authorised by the land use consent could "*potentially be assessed via a section 127 RMA application process without needing also to vary the consent notice under section 221(3) RMA.*"
- 6.82 We accept that this arrangement is workable; we could consent one compliant dwelling per lot and section 127 would then enable any dwelling that departs from the consented residential zone standards to seek an amendment to that consent in respect of specific infringements.
- 6.83 However, given the generic nature of the land use consent sought for the dwellings, and the lack of any substantive design information for the dwellings, the extensive discussion of visual, amenity, character and urban design matters contained in the application was unnecessary and beyond the scope of the consents sought. The landscape and urban design assessment attached to the application⁶⁶ contains out of date information relating

⁶⁴ Ibid, section 8.1, p 25.

⁶⁵ Council's Further Information Response, dated 6 August 2021, p 3.

⁶⁶ Application, Appendix 4, dated 22 August 2019 and Appendix 9.

to the SHA proposal, with different lot sizes and roading layout, and a detailed explanation of how the proposal would meet the "7 C's" of the Urban Design Protocol (which we understand to have been a requirement of an SHA proposal).

- 6.84 The assessment is characterised by reference to the residential nature of the proposal and involves only passing reference to the rural context and zoning of the site.⁶⁷ The application notes "*the proposed pattern of development is slightly more intensive than what is allowed 'as-of-right' as a controlled activity in the residential zone*" but the smaller lots are balanced by the larger lots "*such that a degree of openness is retained*";
- 6.85 Most of the neighbouring properties in the immediate neighbourhood are described as residential in character and smaller rural residential properties. In terms of the wider community the Proposal is described as "not out of character with the existing development of Richmond South". Any visual effects are said to be largely internalised within the development itself.
- 6.86 We have no basis on which to make a finding in respect of the visual, character or urban design effects of the Proposal. The information available to us is inaccurate and out of date and, in view of the generic land use consent sought for dwellings that have not been designed, is of limited or no use. The one matter on which we were particularly keen to see some level of visual assessment is the acoustic fence, but that aspect of the proposal has only emerged during the course of processing the application and we have not received any further comment on or assessment of it from the Applicant, despite the ability for further comment to be offered pursuant to clause 19 of Schedule 6 of the FTA.
- 6.87 The Applicant, despite being a building contractor, advises it has no intention of developing the dwellings on the subdivided lots, and has proposed covenants on lot titles to ensure that no other commercial housing provider is able to purchase or develop lots. The reasons given for this approach include a commitment to enabling choice of housing style, which of course makes it difficult to form a coherent picture of the completed development.
- 6.88 In relation to the effects of the land use consent, we remain without a complete visual, amenity and character effects assessment of a residential development on a Rural 1 zoned site. We are therefore unable to make findings in relation to these effects.

⁶⁷ Application sections 8.1-8.4, p 25-27.

Positive effects

- 6.89 Clause 31(1)(b) of Schedule 6 of the FTA requires the Panel to identify any measure proposed or agreed to by the Applicant, to ensure positive effects on the environment to offset or compensate for any adverse effects that may result from allowing the activity.
- 6.90 Many of the matters that might be considered positive effects are also relevant to our assessment of whether the Proposal gives effect to the purpose of the FTA. We make that assessment at the end of our Decision, but for present purposes we acknowledge the following matters that may be regarded as positive effects⁶⁸ (subject to reservations we express later in this Decision regarding the evidence base):
- (a) Employment of 28 FTEs during the subdivision's one year construction phase;
 - (b) The provision of 44 affordable residential sections in an area where section prices are (anecdotally) becoming more unaffordable;
 - (c) Consequently a positive social impact on the District through enhancement of housing choice by facilitating increased housing supply.
- 6.91 Despite the lack of expert economic assessment, the Panel regards the Applicant's good faith intentions regarding affordability as a positive aspect of the Proposal. However, those intentions were described in vague terms, and it is not certain that they would ultimately be realised. While the Applicant offered details of design and affordability covenants that they intend to impose on titles, the draft covenants themselves gave rise to a number of questions and conflicts in relation to their intersection with the permitted activity standards of the residential zone, which the Applicant also sought to have applied to the subdivided lots. We were not provided with any assessment that sought to reconcile these two sets of standards, and in view of our comments above about the urban design assessment, it is possible that the covenants are also relics of the former SHA proposal.
- 6.92 Ultimately the Panel determined that, if consent had been granted (or if the Applicant chose to pursue a fresh application outside the FTA process) the Applicant was free to take such steps as they wished to ensure that the subdivided lots could be sold for a lower price relative to other similar lots available for sale.
- 6.93 The affordability proposals were however considered by the Panel in the context of potential positive effects, and in assessing whether the Application gave effect to the purpose of the FTA.

⁶⁸ Application, section 8.11 p 30.

- 6.94 Other measures proposed or agreed to by the Applicant to ensure positive effects or to mitigate any adverse effects have already been discussed in the context of specific effects:
- (a) Provision of a stormwater management system;
 - (b) Vesting of a recreation reserve;
 - (c) Vesting of road reserve along SH6 frontage;
 - (d) Volunteered rural emanation easements;
 - (e) Volunteered discount of Lot sale prices by 1% to address additional design required for dwellings to meet noise attenuation levels.

Summary of Effects

- 6.95 In the foregoing assessment we have indicated where we are satisfied the individual effects of the Proposal that would be no more than minor, taking into account the potential for mitigation of those effects offered by various draft conditions that emerged in various iterations during the comment and further information process.
- 6.96 In summary, the Panel finds that the following effects are or could be mitigated to an acceptable level in the event that the Proposal were to proceed:
- (a) stormwater and flooding effects within the subdivided site;
 - (b) potential reverse sensitivity effects;
 - (c) traffic and traffic safety effects;
 - (d) the effects of any soil contamination.
- 6.97 In respect of the following effects we were not able to make definitive findings on the basis of the evidence before us:
- (a) potential offsite stormwater and flooding effects, including in particular effects on SH6;
 - (b) visual and character effects of a residential development on a Rural 1 zoned site and wider rural production environment.
- 6.98 We consider that the following potential effects are more than minor and are not, or may not, be capable of mitigation:
- (a) the potential effects on highly productive land;

- (b) noise effects on some of the future residents of the subdivision. While proposed conditions requiring design of dwellings to achieve attenuation would assist, we have no information regarding the effects of the proposed acoustic fence to enable us to make a definitive finding on the whole noise mitigation solution proposed.

6.99 Taken as a whole, we consider that the potential adverse effects of the Proposal are more than minor.

7. CLAUSE 31 ASSESSMENT AGAINST SPECIFIC STATUTORY DOCUMENTS

National Environmental Standards

7.1 The National Environmental Standards relevant to the panel's consideration of the application are the:

- (a) Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS).
- (b) Resource Management (National Environmental Standard Freshwater) Regulations 2020 (NES-FW).

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

7.2 The NES-CS aims to ensure that land affected by contaminants in soil is appropriately identified and assessed when soil disturbance and/or land development activities take place and, if necessary, remediated or the contaminants contained to make the land safe for human use.

7.3 Given the historical horticultural use of the site as a vineyard, the NES requires an investigation and assessment prior to any subdivision, change of use or earthworks occurring on this production land. As discussed above in the context of effects, while not included in the Application as originally lodged, the Applicant has since submitted a DSI report prepared by Davis Ogilvie.⁶⁹

7.4 We discuss the report findings and preliminary recommendations in respect of remediation earlier in this Decision.

7.5 From the evidence before us we are satisfied that, with the imposition of appropriate remediation conditions, the proposed earthworks and subsequent occupation of the site

⁶⁹ Detailed Site Investigation: 115 Main Road and 11 White Road, Hope, Richmond (29 July 2021).

for residential use could be conducted without endangering the human health of the occupants, users, construction workers or persons around the site. However, as recorded earlier, we agree with the Council that the onsite retention, dilution and/or containment of the contaminated soil within the land proposed as reserve to vest is inappropriate. All contaminated soils would need to be excavated and disposed to a licensed facility to avoid, mitigate and remediate the risk to human health. such an approach being consistent with the NES-CS.

National Environmental Standard Freshwater

- 7.6 The NES-FW sets requirements for carrying out certain activities that pose risks to freshwater and freshwater ecosystems. The Application as originally lodged did not address the National Policy Statement on Freshwater Management 2020 (**NPS-FM**) or the NES-FW, stating that there are no water ways involved.
- 7.7 We have discussed earlier in this Decision the further information sought by the Panel and provided by the Applicant on the application of the NES-FM to the proposal, including whether any consent requirement is triggered by the proposal. We are satisfied by the report prepared by Hydrology consultant Tony Hewitt⁷⁰ which confirmed the proposed subdivision overlies the Hope Minor Aquifers. Mr Hewitt undertook an assessment of the NPS-FM and the NES-FW in relation to the Proposal; in his assessment there are no specific policies or rules that could restrict the discharge from the development any more than what is currently proposed. We accept that assessment and find that the Application is consistent with both documents.

National Policy Statements

- 7.8 Other than the NPS-FM (which is discussed together with the NES-F above), the National Policy Statement on Urban Development 2020 (**NPS-UD**) is the only other National Policy Statement that is relevant to this Proposal. The NPS on Highly Productive Soils would have been relevant had it been in force, but despite its release for public comment on 14 August 2019 it remains in draft and therefore cannot be considered relevant.

National Policy Statement on Urban Development 2020

- 7.9 The Application was lodged in March 2021 but did not assess the Proposal against the NPS-UD, referring only to the National Policy Statement on Urban Development Capacity 2016 (**NPS-UDC**).⁷¹ No assessment against the objectives and policies of the NPS-UDC was undertaken. Rather, the Applicant made various statements about the Proposal site being included within an area "*earmarked for future development in ... the TRMP Urban*

⁷⁰ Memorandum from Tony Hewitt, Hydrological Consultant, Envirolink, dated 27 July 2021.

⁷¹ Application, p 23-24.

Expansion policy 6.8.3.10"; that the site "has also been defined as a future growth area" in the Nelson Tasman Future Development Strategy (**NTFDS**) 2019 and that "there simply is not enough land being released for residential housing in the Richmond area, making housing less and less affordable." The Applicant therefore concluded that the Proposal was in accordance with the NPS-UDC.

7.10 In the absence of an assessment from either the Applicant or the Council, the Panel makes the following observations in relation to the NPS-UD and its relevance to this Proposal:⁷²

- (a) The NPS-UD became operative in August 2020 and its objectives are focused on enabling growth by requiring councils to provide development capacity to meet the needs of communities and to encourage well-functioning urban environments;
- (b) The Tasman District Council is identified in the Appendix to the NPS-UD as a Tier 2 local authority, meaning that all provisions except Policies 3 and 4 apply;
- (c) Objective 6 requires local authority decisions on urban development that affect urban environments be integrated with infrastructure planning and funding decisions, strategic over the medium and long term, and be responsive, particularly in relation to out of sequence proposals that would supply significant development capacity;
- (d) Policy 1 describes the characteristics of "well-functioning urban environments". These include: a variety of homes that meet the needs, in terms of type, price and location, of different households;
- (e) Policy 2 requires Tier 1, 2 and 3 local authorities at all times to provide at least sufficient development capacity to meet expected demand for housing and business land over the short, medium and long term. Part 3 Implementation provides greater detail for local authorities about sufficiency and requirements for plan-enabled and infrastructure-ready development capacity;
- (f) Policy 6 requires decision makers, when making planning decisions that affect urban environments, have particular regard to specific matters, including any relevant contribution that will be made to meeting the requirements of the NPS-UD to provide or realise development capacity. Other matters relate to accessibility, climate change resilience and supporting reduction in greenhouse gas emissions;
- (g) Subpart 4 of the NPS-UD sets out the mandatory requirement on Tier 2 councils such as Tasman District Council to provide a Future Development Strategy (**FDS**).

⁷² The Panel would like to acknowledge the assistance provided by recent decisions of two other panels who had cause to consider the application of the NPS-UD to their applications: Northbrook Wanaka Retirement Village, and Faringdon South West and South East Development.

These provisions are an evolution of similar requirements in the earlier NPS-UDC and set out the methodology for preparing and content of an FDS that will set out how a local authority intends to achieve well-functioning urban environments in its existing and future urban areas and provide at least sufficient development capacity to meet expected demand over the next 30 years.⁷³

7.11 We will discuss the Council's FDS in greater detail later in this decision, but it is sufficient to record here that the FDS is one of the key mechanisms available to councils to give effect to their obligations under the NPS-UD and provides a critical "bridge" between the NPS-UD and their own planning documents, particularly during the period before amendment of those documents as specifically required by the implementation provisions of the NPS-UD.

7.12 In relation to the objectives and policies in the NPS-UD that refer to "planning decisions", the Panel is aware of the Environment Court's findings in *Eden-Epsom Residential Protection Society Inc v Auckland Council*,⁷⁴ where the Court decided that there was no requirement to give effect to objectives and policies in the NPS-UD that do not require "planning decisions", and that that term should be interpreted to mean decisions on plan changes. While the application of those findings to resource consents was not expressly considered, it is arguable that "planning decisions" could also include decisions on resource consents. In this instance, we are required by clause 39(1) of Schedule 6 of the FTA to have regard to the NPS-UD and have considered whether the Application is broadly consistent with the themes and objectives of that document.

7.13 On that basis we find that:

- (a) With 44 new residential lots the Proposal would add modestly to the development capacity and supply and choice of housing in Tasman District.⁷⁵ However, we have no expert evidence that 44 additional residential lots would provide a much-needed contribution to that capacity in order to meet excess demand, only informal anecdotal commentary from the Applicant, including newspaper articles.⁷⁶ To the contrary, evidence from the Council (discussed later in this Decision) suggests that supply has exceeded demand for residential property in Nelson-Tasman in the last several years;
- (b) The Proposal is not particularly well integrated with infrastructure planning and funding, with reticulated stormwater infrastructure at least a decade away;

⁷³ NPS-UD clause 3.13(1).

⁷⁴ *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 82.

⁷⁵ We note that the Faringdon decision involved a comprehensive subdivision and development of 850 lots.

⁷⁶ See Application, Attachment 3: Nelson Mail Article dated 1 June 2019; Attachment 4: Waimea weekly dated 12 June 2019; and Attachment 5: Nelson Mail Article dated 24 August 2020.

- (c) While the Proposal provides good accessibility within the development, it does little to further accessibility for the future residents to Richmond or beyond by way of active transport modes;
- (d) The Proposal offers nothing to support reduction in greenhouse gas emissions. Climate change resilience has been factored into the stormwater management system.⁷⁷

7.14 The Applicant has made much of the affordability of the proposed development, likely driven by the original intention to seek authorisation as a SHA under the HASHAA. Several aspects of the Proposal are intended to ensure that the purchase price⁷⁸ for the residential lots is below market for similar sized lots elsewhere in the District, and the Applicant has provided an example set of covenants that it says it will register against all titles to ensure ongoing affordability.⁷⁹ While some aspects of the proposed covenants address matters that are more relevant to the urban design aspects of the dwellings, others are intended to provide flexibility for purchasers, such as maximum house sizes, no requirement for a garage, and restrictions on on-sale and leasing.⁸⁰

7.15 The Applicant's commitment to making the subdivided residential lots affordable is acknowledged and has been noted in our earlier discussion of the positive effects of the Proposal. To the extent that this commitment is achievable and would be likely to increase housing choice in the District, we find that the Proposal is generally consistent with some of the high level NPS-UD objectives. In other respects, however, it is neutral.

Regional Planning Instruments

7.16 The Tasman Regional Policy Statement (**TRPS**) is the strategic resource management plan to promote sustainable resource management in the Tasman District. It contains the broad issues, objectives and policies for the District as well as methods of implementation; anticipated environmental results and performance monitoring indicators.

7.17 The Applicant considered that it was unnecessary to undertake a detailed assessment of the Proposal against the TRPS as this has been given effect to by the TRMP. In their opinion while there is a small loss of productive land, "*the site is within the defined 'locational limits' for residential development that is anticipated under Policy 5.1 of the*

⁷⁷ See Applicant Further Information Response, dated 21 June 2021, Attachment 6, para 1.0 and 3.5.

⁷⁸ See Applicant Further Information Response dated 30 July, Attachment 3. The intention is to sell the lots for "around the \$340,000 mark which is around \$70,000 to \$100,000 lower than any other equal type of section in the Richmond, Brightwater area, but costs are increasing rapidly, so will have to look at the prices closer to the time of going on the market."

⁷⁹ Applicant Further Information Response dated 30 July, Attachment 4.

⁸⁰ A full explanation of the proposed covenants is included in Attachment 3 to the Applicant's Further Information Response of 30 July.

*TRPS and Chapter 6 of the TRMP, and therefore overall, the proposed development is accordance with the TRPS”.*⁸¹

- 7.18 In response to the Panel’s request for further information we received a slightly expanded analysis of the Proposal against provisions of the TRPS which referred to Objective 5.1 and Policy 5.1. It acknowledged that the Council is seeking to avoid the loss of productive pre-urban land, but nevertheless maintained that our assessment needed to be seen in the context of Chapters 6 and 7 of the TRMP. The assessment concluded with the familiar conclusion advanced in earlier documents from the Applicant that the small loss of productive land is anticipated for the growth of Richmond to the South, with White Road providing a well-defined boundary to that growth.
- 7.19 The Panel considers this analysis to be deficient and inaccurate.
- 7.20 Section 5 Urban Development Objectives of the TRPS is clearly relevant to our consideration of the Application. The “Allocation of High Quality Periurban Lands” is identified as one of the significant resource management issues for the District. The issue notes that urban expansion onto adjacent areas of highly productive soil in some parts of the District has resulted in irreversible loss, including areas adjacent to the significant urban centres of Richmond, Motueka and Takaka.
- 7.21 The TRPS recognises that meeting the needs of both future urban dwellers and horticulturalists may require a slowing of growth on the urban fringe by encouraging more medium density development in the core of the major centres, or by containing peripheral growth. It also acknowledges that continued peripheral growth may be detrimental to the upgrade of existing infrastructure. These concerns are articulated in Objective 5.1 and Policy 5.1:

Objective 5.1

Avoidance of the loss through urban development, of the potential of land having high productive value to meet the needs of future generations.”

Policy 5.1

Council will avoid the loss of land of high productive value in allowing for further urban development, while having regard to:

- (i) the efficient use of resources including land, infrastructure, and energy;
- (ii) the quality of the urban environment including:
 - (a) access to services;
 - (b) water and air quality;
 - (c) amenity values.

- 7.22 The rationale for the objective is clearly articulated in the reason which states that
“Allocation of periurban land for urban expansion rather than for high value production

⁸¹ Application, dated March 2021, p 35.

activities is an irreversible community cost. Urban expansion should minimise the extent of encroachment onto land with such qualities unless there are significant community benefits.”⁸²

7.23 This policy position is reinforced in the explanation and reason for Policy 5.1:

The main urban areas of Motueka, Richmond and Takaka as well as some smaller settlements are located on fertile plains that also have a favourable climate for biological production. Such land is a finite resource and urban development is encroaching onto it. High value production in the Tasman District is a major contributor to the national and regional economy and existing operations are likely to be displaced by continued urban development unless it is contained.

7.24 We cannot agree with the Applicant's repeated assertion that the TRPS anticipates the loss of productive land to enable the growth of Richmond. The TRPS has a clear policy direction articulated in Sections 5 and 6 that address the significant district issues of Urban Development and Land Resources which recognises that there is limited land in the District of high quality or value for biological production and identifies the need to manage the subdivision of rural land so that progressive fragmentation of land for biological production or other activities is an efficient and sustainable use of the land's production potential. Urban development of periurban areas should be avoided unless such development will result in significant community benefits.

7.25 As evidenced by our earlier discussion, while consenting the Proposal would have the potential to give rise to some positive benefits, there is no evidence before us of significant community benefit that would enable us to conclude that urban development of this site would be consistent with the objectives and policies of the TRPS.

7.26 Regional Plan matters are considered in the context of the TRMP, which is a unitary district and regional plan.

Other matters – Nelson Tasman Future Development Strategy (2019) (NTFDS)

7.27 While not a statutory document, the Panel has also considered the Nelson Tasman Future Development Strategy 2019 (**NTFDS**), adopted by the Nelson City and Tasman District councils in July 2019. The NTFDS sets out the long-term picture for future urban growth over the 30-year period (2018-2048) and was developed in response to mandatory requirements of the NPS-UDC 2016 to show how Nelson and Tasman will provide sufficient development capacity to meet the needs of their growing communities.⁸³ The NTFDS clearly states that:⁸⁴

⁸² Tasman Regional Policy Statement, p 31.

⁸³ See similar requirements in the NPS-UD 2020, clauses 3.2, 3.3, 3.27 and 3.30.

⁸⁴ Nelson Tasman Future Development Strategy (2019), p 3.

the fact that a site is earmarked as potentially suitable for housing or business development in the future in the NTFDS does not mean that area of land is appropriate for development now. The phasing of the potential site is critically important to the success of the NTFDS in encouraging intensification and phasing infrastructure investment.

- 7.28 As signalled earlier in this Decision, the Applicant has expressed the view that there is not enough land being released for residential housing in the Richmond area, that they consider the Proposal to develop the site for residential housing is generally consistent with the pattern of growth anticipated in the NTFDS and that the site is identified as a future growth area under the NTFDS.⁸⁵
- 7.29 The Council's Growth Co-ordinator advised us that Central Government's monitoring of growth in Tasman up until the end of 2020 showed that new dwelling consents kept up with the household growth until 2018. Moreover, the latest Nelson Tasman annual monitoring report showed, that according to Tasman's own growth model, for the year ending June 2020 demand existed for 431 dwellings across the District. In this same period 440 new residential titles were issued, which will lead to the creation of new dwellings. The report did acknowledge that capacity across the district is not even, with capacity exceeding demand in towns such as Richmond and Moutere, whereas others such as Mapua and Mouteka are lagging behind demand.⁸⁶
- 7.30 The NTFDS identifies the Application site part of a larger area identified for possible medium density development, with average lot sizes of 550 sqm. This is the "Hope" site. The adjacent growth areas "Paton Road Foothills" and "Hill Street South foothills" are identified in the NTFDS as being for standard density residential development with average lot sizes ranging from 550 sqm to 1,000 sqm.
- 7.31 At the time the NTFDS was adopted in 2019, population projections indicated the Hope growth area would be needed between 2038-2048. New population projections were commissioned in February 2020, to assist preparation of the Tasman Long Term Plan 2021-2031. Growth modelling has informed the almost completed Long Term Plan 2021-2031 and suggests that the Richmond South growth area may now be needed earlier, between 2032 and 2041. One of the reasons why this growth area was scheduled for long term growth was due to its highly productive land value. The NTFDS concludes that use of more productive land should be minimised and restricted to areas adjacent to the existing urban area.
- 7.32 The Applicant has repeatedly asserted that the Proposal site is within the Richmond South Development Area. It is not, as helpfully illustrated by a composite of two TRMP zoning

⁸⁵ Application, p 23-24.

⁸⁶ Council's Comment on Application dated 14 June 2021, p 28-30.

maps (127 and 128) provided in the WRIL comment document. The boundary of the Richmond South Development Area lies some distance from the Proposal site.

- 7.33 The Council noted that it has recently commenced a review of its Regional Policy Statement and Resource Management Plan, and that the precise location of the recommended growth areas will be determined as part of this review once further detailed evaluations of each location are undertaken. Sequencing of development in particular will be determined using latest population projections and assessments of housing demand through Council's growth model, which is reviewed at least every two years to inform the Long-Term Plan. Pending the conclusion of that review process, which we expect will also enable the Council to implement its obligations under the NPS-UD, the NTFDS provides valuable guidance on where and when growth will occur.
- 7.34 We received several other comments on the importance of the NTFDS. Waka Kotahi supports the NTFDS, which it sees as providing greater certainty to future infrastructure needs. Waka Kotahi expressed concerns that the Application is out of sequence with the NTFDS and, consequently, the existing multi-modal transport infrastructure is not yet adequate to cater for active transport modes to and from the application site. Waka Kotahi strongly favours intensification in existing urban areas especially around public transport and active mode facilities where there is opportunity to influence modal shift and improve access to social and economic activities and decrease reliance on private car travel.
- 7.35 The WRIL submission also addressed the NTFDS, as discussed above.
- 7.36 We find that this Proposal for an "out of sequence" subdivision of the site and its development for residential housing is not consistent with the pattern of growth anticipated in the NTFDS. We rely on the advice from Council showing that new dwelling consents have kept up with the household growth in Tasman and that, while capacity across the district is not even, in Richmond capacity has been exceeding demand. We received no expert evidence to the contrary to support the Applicant's proposition that there is not enough land being released for residential housing in the Richmond area.

Tasman Resource Management Plan

- 7.37 The TRMP is a combined district and regional plan that relates to both sets of functions. The Plan states objectives, policies and methods to achieve integrated management of various natural and physical resources in Tasman District.

- 7.38 The Panel notes that the Tasman District's land resources are largely rural and that the TRMP records that "*Rural character, amenity values, and the productive use of rural land underpins the social, economic and cultural well-being of the people of the District*".⁸⁷
- 7.39 Under the provisions of the TRMP, the application site is zoned Rural 1. The TRMP applies Rural 1 Zone to land with generally high existing and potential productive value. The rules applied in this zone "*to subdivision and development have been developed primarily to protect these qualities on a long-term basis, while allowing for reasonable use and development of the land resource*".⁸⁸
- 7.40 The Applicant contends that the objectives and policies of the TRMP "*want[s] to enable and facilitate growth and expansion of existing main settlements, being Richmond, Brightwater, Wakefield and Motueka and this is clearly set out in Chapter 6 of the of the TRMP*".⁸⁹ The Panel were directed to Chapter 6.8 that deals specifically with the future development of Richmond which, in the opinion of the Applicant, shows a policy acceptance that "*in order for Richmond to grow there will have to be some loss of productive land to enable further greenfield development. 6.8 sets out the extent of that growth to at least White Road*".⁹⁰ As signalled earlier in this Decision, the Applicant makes a range of other assertions regarding the demand for residential housing in Richmond, that the site is part of an area that has been earmarked for future development in the TRMP under policy 6.8.3.10 and that the TRMP does not anticipate the long-term productive use of the site.⁹¹
- 7.41 In terms of the TRMP the Applicant considers that overall, the proposed development is consistent with the relevant assessment criteria, objectives and policies of the District Plan and meets the purpose of the Act in that it "*delivers additional affordable housing stock in the Richmond South/Hope area and it creates at least 28 FTEs during the projects on year construction period*".⁹²
- 7.42 The Panel has reviewed the provisions of the TRMP regarding Urban Environment Effects (Chapter 6) which sets out the key locational and urban form issues, the general urban objectives and related policies and the further policies applying to the future development of Richmond. While Mr Morris, the Applicant's planner, provided an analysis of what he considered all the relevant objectives and policies in the TRMP, we consider there were omissions in this analysis.

⁸⁷ Tasman Resource Management Plan, Clause 7.0 Introduction.

⁸⁸ Ibid, Clause 7.1.20.1(a)(i).

⁸⁹ Mark Morris, Davis Ogilvie & Partners Ltd, Response to Information Request, Appendix 7, Conclusions.

⁹⁰ Ibid.

⁹¹ Application, dated March 2021, p 24.

⁹² Ibid, p 51.

- 7.43 Not surprisingly the TRMP gives effect to the TRPS and reinforces the need for urban growth that avoids or mitigates the loss of land of high productive value and encourages more efficient use of land, energy and provision of infrastructure, services and amenities.⁹³ Policies of relevance include 6.2.3.2A, 6.2.3.3, 6.2.3.4 and 6.2.3.5. We note in particular policy 6.2.3.2A that seeks to encourage and promote medium density development that achieves a high standard of amenity in areas specified on the planning maps as development areas. Included in these areas is Richmond South. We further note that the TRMP recognises that demand for urban growth requires the identification of rural land for future urban purposes. The Plan has identified areas suitable for future urban use and development. However, rather than creating a false expectation that all areas will be immediately available for development it has applied a rural deferred residential zone to these areas to enable the provision of urban infrastructure.
- 7.44 From our examination of the planning maps, we record that the site is not located within, or adjoining, the Richmond South Development Area nor has the site been included in the Rural 1 deferred Residential zone. Rather, the site is zoned Rural 1 in recognition that it is Class A land which is the most highly protected in the TRMP and the NTFDS.
- 7.45 The TRMP addresses the issues for the future development of Richmond in Section 6.8. Key issues relevant to this application include the management of peripheral growth in a manner that enables the Council to progressively upgrade services on the western, south-eastern and north-eastern margins of Richmond and meeting the demand for residential housing within the residential zone in Richmond.
- 7.46 While the Applicant is correct that the TRMP policies for Richmond address urban expansion and intensification of the Richmond urban area over a 20-year timeframe from 2006 to 2026, this is within “a contained footprint and clearly identified urban boundaries.”⁹⁴ In respect to Richmond South the policy is stated as “*Limited southward residential expansion between State Highway 6 north of Hope and Hill Street, and a local commercial node, with Stage 1 being defined by Spur Ridges between Hart Road and Whites Road*”. This area aligns with the boundaries of the Richmond South Development Area depicted on the planning maps.
- 7.47 Policy 6.8.3.11 does highlight its intention to provide for the extension of the Richmond urban area beyond 2026 to the Hope and Richmond West. With respect to Hope, the policy outlines “*Limited expansion in Hope to accommodate residential and business development*”. This policy is complemented by policy 6.8.3.12 that reinforces the

⁹³ Tasman Resource Management Plan, Land Effects of Urban Growth, Objectives 6.2.2, p 6/6.

⁹⁴ Ibid, Urban Expansion Policy 6.8.3.10, p 6/27.

Council's intention for development to occur in a planned way and ensure that the pattern of development being set to 2026 serves Richmond over the longer term: 2026 to 2051.

- 7.48 Chapter 7 of the TRMP deals with Rural Environment Effects, the fragmentation of rural land, the availability of rural land for a range of purposes, protection of rural character and amenity, and reverse sensitivity. The Rural objectives emphasise that unless rural land is deferred for urban use, there is a need to avoid the loss of potential for all rural land of existing and potential productive value to meet the needs of future generations, particularly land of high productive value.

Objective 7.1.2.2:

“Retention and enhancement of opportunities for plant and animal production on land with high productive value in the District, identified as the Rural 1 Zone.”⁹⁵

- 7.49 This objective reinforced by the following policies:

7.1.3.8 To limit further subdivision and residential development of existing small allotments in the Rural 1 and Rural 2 zones to avoid the potential for reverse sensitivity and increasing value of surrounding land that cumulatively adversely affect the potential of that land to be used for plant and animal production.

7.1.3.9 To protect land of high productive value from residential activity, except for that directly associated with plant and animal production.⁹⁶

- 7.50 The TRMP's zone framework within the District's rural areas is *“based on the productive capacity of the Tasman District's land and soil resources. The rural production zones are the Rural 1 and Rural 2 zones, and the Rural 3 Zone where that zone contains land with high productive value. In these zones where that value is high, activities involving plant and animal production are prioritised above opportunities for rural housing, industry or commercial activity unless the activity is a rural industry directly associated with plant and animal production”*.⁹⁷

- 7.51 In our view the proposed development of this rural site for residential housing is contrary to the planning framework in the TRMP and to some of the key objectives and policies in Chapter 6 Urban Environment Effects and Chapter 7 Rural Environmental Effects. The TRMP sets up a structured zoning approach to development in the District that emphasises the need to protect land with a high productive value particularly from further subdivision and residential development. At the same time the Plan makes provision for planned urban growth, encouraging medium density housing development in the forms of compact density and comprehensive housing and intensive residential development within walking distance of or close to town centres and urban facilities, including public transport.

⁹⁵ Ibid, p 7/3.

⁹⁶ Ibid, p 7/4.

⁹⁷ Ibid, p 7/2.

Provision is also made for medium density housing developments that achieve a high standard of amenity in areas identified on the planning maps as the Richmond South, Richmond West, Mapua Special and Richmond Intensive development areas and the Motueka West Compact Density Residential Area.

- 7.52 In addition, the Plan has identified rural areas for future urban development. Servicing upgrades are required in these areas prior to rezoning and the rural deferred residential zoning has been applied to enable stage development to avoid adverse effects on the environment. The proposed development of this site is both out of sequence and more intensive than envisaged by the Council's planning framework.

8. SECTION 104D CONCLUSION

- 8.1 The Proposal seeks consent for a range of activities that, taken together, fall to be considered as non-complying pursuant to section 104D of the RMA. That section requires the Panel to form a view on whether it can pass one of the two gateway or threshold tests set out in that section, namely that the adverse effects of the activity on the environment will be minor or that the activity will not be contrary to the objectives and policies of the relevant plan. The Panel may only grant consent to a non-complying activity if it is satisfied as to either of these matters. Section 104D is expressly applicable to this Application pursuant to clause 32(1) of Schedule 6 of the FTA.
- 8.2 We have found that while some of the potential effects of the Proposal would be minor, or are capable of being mitigated to that level including by use of conditions, other effects are either not capable of definitive findings given the inadequacy of evidence before us, or are likely to be adverse to an extent that is more than minor and potentially significant. Taken as a whole, we consider the effects of the Proposal to be more than minor. On that basis, the effects gateway test is not passed.
- 8.3 As is evident from the foregoing analysis of the Application against the relevant provisions of the TRMP, we find that the Proposal is contrary to and inconsistent with those provisions. The policy gateway test is therefore not passed.
- 8.4 In the normal course of an application for a non-complying activity under the RMA, the Panel would not proceed to an overall merits evaluation of the proposal under section 104 if neither threshold test were satisfied because consent cannot be granted. It is not entirely clear that the same consequence applies in an Application being considered under clause 31(1) of Schedule 6 of the FTA. For completeness, and for the avoidance of doubt, we consider it prudent to consider the Application through the lens of Part 2 of the RMA and the purpose of the FTA notwithstanding our conclusion under section 104D. The next section of our Decision briefly records our findings on those matters.

9. RMA 1991, PART 2 AND PURPOSE OF THE FTA

- 9.1 As other Decisions have observed,⁹⁸ clause 31(1) requires that the consideration undertaken by a panel must be subject to both Part 2 of the RMA and to the purpose of the FTA; there is no indication in the FTA that one purpose is to be given primacy or emphasis over the other. It follows from the plain meaning of the provision that the purpose of each statute must be applied equally when considering the proposal.
- 9.2 The Panels in both the Kohimarama and Northbrook Wanaka Decisions have emphasised that, given this dual purpose and the short-term duration of the FTA, the short-term economic benefits of a project should not result in bad long-term planning outcomes. We agree and consider that this is particularly apposite to this Application.

Purpose of the FTA

- 9.3 The purpose of the FTA is to:⁹⁹

... urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

- 9.4 Guidance on whether a project helps to achieve the purpose of the FTA may be found in section 19 of the FTA itself, which lists matters to which the Minister may have regard (assessed at whatever level of detail the Minister considers appropriate) in making a decision on a referral application:

- (a) the project's economic benefits and costs for people or industries affected by COVID-19:
- (b) the project's effect on the social and cultural well-being of current and future generations:
- (c) whether the project would be likely to progress faster by using the processes provided by this Act than would otherwise be the case:
- (d) whether the project may result in a public benefit by, for example,—
 - (i) generating employment:
 - (ii) increasing housing supply:
 - (iii) contributing to well-functioning urban environments:
 - (iv) providing infrastructure in order to improve economic, employment, and environmental outcomes, and increase productivity:
 - (v) improving environmental outcomes for coastal or freshwater quality, air quality, or indigenous biodiversity:
 - (vi) minimising waste:

⁹⁸ See for example Northbrook Wanaka Retirement Village, para [273] to [274] and Kohimarama [34] – [38].

⁹⁹ Section 4 of FTA.

- (vii) contributing to New Zealand's efforts to mitigate climate change and transition more quickly to a low-emissions economy (in terms of reducing New Zealand's net emissions of greenhouse gases):
- (viii) promoting the protection of historic heritage:
- (ix) strengthening environmental, economic, and social resilience, in terms of managing the risks from natural hazards and the effects of climate change:
- (e) whether there is potential for the project to have significant adverse environmental effects, including greenhouse gas emissions:
- (f) any other matter that the Minister considers relevant.

9.5 The Application assessed the Proposal against these matters.¹⁰⁰ In summary it made the following points:

- (a) The project will provide a "significant economic benefit to the District" by way of creation of 28 FTEs during the construction phase and affordable housing to cater for post-COVID-19 development of the Tasman region;
- (b) The project will provide 44 affordable residential sections within an area that has become increasingly unaffordable over the past 5 years, which will be a positive effect on current first home buyers and future generations;
- (c) If the application had progressed under the RMA it would likely have been publicly notified and involve an expensive and lengthy hearing with no certainty of success;
- (d) The development has been designed to provide a well-functioning urban environment with good connectivity;
- (e) The stormwater treatment system will result in "positive outcomes for downstream water quality";
- (f) Proximity to Richmond will help reduce net emissions of greenhouse gas, which would be higher in other areas where there is a longer commute;
- (g) Flooding and stormwater management should provide resilience from the effects of climate change;
- (h) There should be no significant adverse effects from the site.

9.6 Many of the statements made on these matters in the Application document were not supported by expert assessment or other evidence. For example, there was no assessment of the impact of the stormwater management system on downstream water quality until the Panel insisted that it be provided; that report concluded that there was

¹⁰⁰ Application, section 16, p 45-48.

unlikely to be any adverse effect from stormwater infiltration on the Hope Aquifers. There is no evidence of "positive outcomes for downstream water quality".

- 9.7 Whether 28FTEs over a short earthworks and dwelling construction period comprises a "significant economic benefit to the District" is difficult to assess in the absence of any expert economic assessment. At one point during a Further Information Response the Applicants noted the possibility that residential purchasers could elect to erect a flat pack dwelling obtained from Bunnings.¹⁰¹ No evidence was provided to support this assertion, but the Panel was left to wonder how construction decisions by purchasers might impact the FTE assessment given by the Applicant. Ultimately, we were not able to assess the economic benefits offered by this Proposal when compared to the ongoing, year-on-year benefits from continued productive use of the Rural 1 Class A site.
- 9.8 As we have previously noted, we have received no expert evidence on housing supply and demand in Tasman to verify the claim of significant unmet demand, particularly in Hope. In the absence of any compelling evidence from the Applicant, we found the comments from the Council's Growth Co-ordinator most helpful in assessing the situation. Ms Deans advised that new dwelling consents have kept up with the household growth up until 2018. This was reinforced by the Nelson Tasman annual monitoring report (June 2020) that showed supply was keeping pace with demand across the District. While the information acknowledged that capacity across the district was not even, it confirmed that in Richmond and Moutere capacity was exceeding demand.
- 9.9 The Schedule 6 of the COVID-19 Recovery (Fast-Track Consenting) Referred Projects Order 2020 referring the project for consideration under the FTA states that the Application was accepted for referral for the following reasons:¹⁰²
- (a) the project will help to achieve the Act's purpose; and
 - (b) the project offers employment opportunities, providing the equivalent of 28 jobs during the 1-year development period; and
 - (c) the project seeks to develop sections for future housing in an area that has a significant housing demand; and
 - (d) any adverse effects arising from the activities that are to occur under the project or from any mitigation measures can be tested by an expert consenting panel, having regard to Part 2 of the Resource Management Act 1991 and the purpose of the Act.
- 9.10 We have briefly considered whether the Minister's decision to accept the Application for referral confers any expectation that the Panel will consider itself bound to reach the same view in respect of the Act's purpose. In short, we are satisfied there is no such constraint.

¹⁰¹ See Applicant Further Information Response, dated 2 July 2021, Attachment 3, para D.

¹⁰² This statement of reasons is published for the purposes of clause 4 of Schedule 3 of the FTA.

- 9.11 In contrast to the statutory framework for listed projects, the Panel has a wide discretion to consent or decline a referred application. In referring the Proposal the Minister highlighted the need for the expert panel to “test” any adverse effects arising from the activities that occur under the project or from any mitigation measures, having regard to Part 2 of the RMA and the purpose of the FTA.
- 9.12 As our detailed discussion of effects and statutory planning matters illustrates, we consider there are many aspects of the Proposal that do not meet the purpose of the FTA. Inherent in the selection of projects for fast tracking is a focus not just on the short-term economic benefits to communities affected by COVID-19, but also on ensuring the continued promotion of sustainable management of natural and physical resources.
- 9.13 The Vines subdivision proposal ultimately results in an out of sequence urban expansion, physically separate from the urban zoned area in Richmond and outside the areas currently identified for future growth. The TRMP policy framework for urban growth favours intensification in the existing urban areas with planned expansion in accordance with the NTFDS. Enabling out of sequence greenfield development at this time on this site is counter to both District’s policy for urban intensification and to its protection of land with high productive value from residential activity. The TRMP emphasises that, unless rural land is deferred for urban use (which this site is not), the intention is to limit further subdivision and residential development in the Rural 1 (and Rural 2) zone to avoid the potential for reverse sensitivity and to avoid increasing the value of surrounding land that would cumulatively affect the potential use of all rural land with productive value to meet the needs of present and future generations.
- 9.14 We note from the Application documents that this is by no means a discrete or unique site and that approval to the proposed subdivision could provide the impetus for the loss of further Rural 1 zoned land in the adjacent area. In this regard we note the Applicant’s advice in relation to the adjoining Hanna orchard and greenhouse operation at 39 White Road which suggests that “*the ongoing productive use of 39 Whites Road is likely to be short term use and it is quite possible that by the time Lots 39-41 are developed for residential housing, that residential development may be happening on the adjoining Hanna property*”.¹⁰³ As we have discussed earlier in this Decision, we would have expected an assessment of the Proposal’s effects on highly productive rural land to have considered this potential for precedent or cumulative impact on surrounding land.
- 9.15 Our finding is that the Application does not present a compelling case in respect of the purpose of the FTA. Any promotion of employment is modest and of short-term duration, and is unlikely to deliver substantial or sustained support for New Zealand’s recovery from

¹⁰³ Ibid, p 31 at para 8.13.

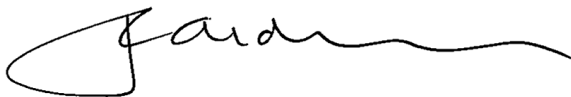
the economic and social impacts of COVID-19. Other benefits of the Proposal have been assessed as positive effects, but the Application falls short principally in the context of sustainable management.

Part 2 RMA

- 9.16 Having reviewed the Application documentation and all the information and comments received, we do not consider that the Proposal will promote the sustainable management of the District's natural and physical resources or better enable the people of the Tasman/Richmond community to better provide for their social and economic well-being and for their health and safety.
- 9.17 For the reasons set out specifically in our assessment of the Proposal against the TRMP, we consider that the use of protected, highly productive, rural land in this location for a residential subdivision will not enable the Tasman/Richmond community to meet the reasonably foreseeable needs of future generations.

10. FINAL DECISION

- 10.1 The Application is declined.
- 10.2 Pursuant to clauses 38 and 45 of Schedule 6 of the FTA, persons entitled to appeal are to commence any appeals within the 15 working day period from the day they are notified of this decision.



Jennifer Caldwell (Chair)



Glenice Paine (Member)



Janine Bell (Member)

APPENDIX 1

Summary of Comments Received

Name/organisation	Summary of comments
Minister for Arts, Culture and Heritage	Supports Heritage New Zealand Pouhere Taonga proposed conditions and advice note. Requests to review draft conditions.
Minister for Land Information	Support application.
Minister for Māori Crown Relations	No comment to make on the application.
Minister for Treaty of Waitangi Negotiations	No comment to make on the application.
Janice Charles	Increase of traffic on White Road a safety issue. Increase in noise pollution from increase in vehicle movements. Road signage could pose a distraction to drivers. Residents of White Road may have their secure rural community lost by the development. Entry pricing of \$500,00 is still unaffordable for poorer people.
Loretta Clifton	Increase of traffic on White Road a safety issue. Too many houses in development. Construction trucks may badly impact on the apple orchard in White Road.
Susan Cornelius	Increase of traffic on White Road a safety issue. Too many houses in development. Current road flooding could increase.
Heritage New Zealand Pouhere Taonga	Proposes new condition on accidental discovery of archaeological material to replace condition 5 on cultural heritage.
Garry Higgins	Lack of consultation. Loss of quality horticultural land to housing. History of site shows no attempt made to retain land as horticultural land. Construction vibration damaging houses. Construction noise. Increase of traffic on White Road, and surrounding roads a safety issue. Needs a detailed site investigation for contaminated land. Area is flood prone. Impact of new subdivision on house and rate values. Houses need garage.
Kevin and Lorraine Leonard	Right of Way extension suggested. Garages are needed in the development. Fencing needs to be 1.8m and of high quality.
Dean and Beverly Moffat	Questions aspects of the covenant list for the subdivision: <ul style="list-style-type: none"> • Maximum house size of development. • Suggest Tasman District Council standard site coverage would suit development better. • Specialist housing companies are not allowed to be used to construct the houses. • Why no 2-storied houses. • 3 sections not covered by the covenant. Questions affordability of development.
Crates Nelson	Describes activities of Crate Services Ltd operating next to the development, including use of machinery.
Property Council New Zealand	No comment on application.
PT Booster Investments	Impact of business operating machinery, sometimes 24/7 on the residential development needs to be considered.

	Imposition of Rural Emanation easement across the whole site should be considered.
Colleen Roberts	Increase of traffic on White Road and Patons. No stormwater infrastructure. Lack of consultation will all residents on White Road.
Elizabeth and Robin Simpson	Support application.
Harry and Heather Scoltock	Increase of traffic on White Road a safety issue. Lack of consultation. Lost of quality horticultural land to housing. Storm and sewage water infrastructure will be compromised. Questions affordability of development.
Tracey Stade	Stormwater infrastructure insufficient. Monitoring of groundwater was not done in winter as recommended. Flooding in Hope area already an issue, likely to increase with new subdivision.
Tasman District Council	Stormwater management plan and infrastructure insufficient and will not effectively manage stormwater. Flood hazards are not addressed. Site visibility at junction of White Road and subdivision an issue. No conditions provided for erosion and sedimentation control. Contaminated migration from a landfill on the adjacent site land needs a NES CS detailed site investigation. Lack of detail in application around effects on rural zoning, national policy statements and other conditions of consent for earthworks, stormwater and land use. Included track changed set of draft conditions.
Brendon Taylor	Increase of traffic on White Road a safety issue. Lack of consultation. Lost of quality horticultural land to housing.
Vicmatt Properties Ltd	Owner of a commercial/industrial site sited across the road from the subdivision. Future residents may object to industrial activities. History of water levels rising rapidly in the area. Some assumptions in the application are overly optimistic and may affect the outcome of the development.
Waka Kotahi NZTA	Current traffic pressure on SH6 in the Hope and Richmond areas will be increased by traffic from the subdivision. Intersection between SH6 and White Road needs an upgrade. Waka Kotahi needs to approve the traffic management plan. Multi-modal transport options need to be made available. Safe pedestrian access needs to be provided. Consent conditions managing noise need to be included for housing planned in noise buffer areas adjacent to SH6. Concerned about secondary stormwater flow directing flood waters onto SH6.
Walter Robert Investments	Loss of quality horticultural land to housing.