



CENTRAL HAWKE'S BAY DISTRICT COUNCIL

**Report and Recommendation pursuant to s127 of the Resource Management Act
1991**

RC Type: VARIATION (Section 127) RM180160A
Applicants: James Bridge
Valuation Number: 1092047637
Legal Description: Lot 1 DP 27067 (RT: HBW3/400)
Location: 3360 Pourerere Road, Pourerere
Zone: Rural
Activity Status: Discretionary



Figure 1: Locality Plan (source: AEE for application RM180160A)

1. PROPOSAL

The applicant made an application (RM180160) to Council to subdivide their property at 3360 Pourerere Road, Pourerere into 22 lots. The application was limited notified to surrounding

neighbours and a hearing was held in front of three independent commissioners on Friday, 31 January 2020 and a decision was made to grant the application on 9 March 2020.

The applicant has sought to vary their consent pursuant to Section 127 of the Resource Management Act 1991 (RMA) for the following reasons:

- To change conditions 1, 12, 21, 29 and 38 of the decision with regards to stormwater calculations and management.
- To change condition 1 and 20 with regards to the use of the communal open space lot (lot 7).
- To include a financial contributions condition with regards to the conditions 8, 9, 25 & 26 for the upgrade of Punawaitai Road.
- To add an additional stage to the application (stage A) to allow for the portion of the site that will be developed to be subdivided off first and the rest of the property to remain as the balance lot.

The approved subdivision is as follows:

Stage 1:

Lot 1: 2,432m²
Lot 2: 2,122m²
Lot 3: 2,080m²
Lot 4: 2,079m²
Lot 5: 2,133m²
Lot 6: 2,513m²
Lot 7: 4,952m² (communal open space, to be jointly owned by all owners, including balance lot)
Lot 100: 380.3737 ha (Balance Lot)

Stage 2:

Lot 8: 2,472m²
Lot 9: 2,264m²
Lot 10: 2,441m²
Lot 11: 2,096m²
Lot 12: 1,082m²
Lot 13: 2,048m²
Lot 14: 2,764m²
Lot 15: 2,626m²
Lot 16: 2,774m²
Lot 17: 2,762m²
Lot 18: 2,318m²
Lot 19: 2,725m²
Lot 20: 2,322m²
Lot 21: 2,090m²
Lot 200: 377.0233ha (Balance Lot)

Proposed lot 6 contains an existing dwelling which has recently been relocated to the site. There are no other dwellings on the development site at this time. Stage 1 road improvements to Punawaitai Road involve the upgrading of the culvert/bridge and upgrade of the road to a metal surface, 5m wide. Stage 2 requires the applicant to upgrade and seal Punawaitai Road to a width of 6.2m.

2. STATUS OF THE APPLICATION

The proposed changes are considered to fall within the scope of the original resource consent to subdivide this lot into 22. Additionally, the inclusion of the change of staging of the development will be beneficial to the applicant.

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An application for a variation to conditions under s127 of the Resource Management Act 1991 (RMA) is a **Discretionary Activity**.

Sections 88 to 121 apply with reference to resource consent and to the activity replaced with reference only to the change or cancellation of the condition and resultant effects.

3. REASONS FOR CONSENT

3.1 Stormwater conditions:

The applicant has requested a change to conditions 12, 21, 29 & 38 which relate to the management of stormwater from the individual lots once the subdivision is complete.

Conditions 12 and 29 are the same, but repeated for each stage, and read:

Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council a stormwater assessment of Stage 1/Stage 2 prepared by a suitably qualified person, including the pre-development flow rate from each proposed lot and a stormwater assessment for the discharge to communal stormwater drains for a 1 in 50 year event to ensure these drains are designed to accommodate such an event.

Note: *This assessment will be used by Council to inform each Lot Owner of their stormwater retention requirements.*

This condition directly informs the consent notice conditions 21 and 38 which read:

A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6/Lots 8-21 at the consent holder's expense advising the owners and subsequent owners thereof of the requirement to comply with the following:

Any future development and/or building on site shall not result in any increase in stormwater discharging from the property from Lots 1-7/Lots 8-21 as per the stormwater assessment report (xxxx-xxxx by xxxxxx dated xxxxx).

Note: *The stormwater assessment referenced in the consent notice will be the report submitted to the Council under Condition 12/29 of this consent.*

The applicant requests a change to these conditions for the following reasons:

- These conditions are not in line with the recommendations of the Commissioners set out in paragraph 258, page 37. These recommendations set out the requirements for the stormwater attenuation for the right of way, and information about easements. The Commissioners also recommended that stormwater could be managed at the building consent stage for each lot, which contradicts the conditions that were then approved at the decision stage.
- The applicant relies on s108AA at this point, stating that these conditions were not put on the draft conditions at the hearing stage, and therefore were not agreed to by the applicant. Further, they state that no expert advice was sought at the hearing to determine the

requirement of these conditions and there is no direct connection between this rule and the District Plan or a national environmental standard.

The requested change to conditions 12 and 29 is as follows:

The consent holder must submit a specific design for the stormwater disposal system prepared by a Chartered Professional Engineering specialising in the field of stormwater design and construction as part of the detailed right of way design, for approval under section 224(c) of the RMA.

Following on, this would result in the suggested changes to conditions 21 and 38:

A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6/8-21 at the consent holder's expense advising the owners and subsequent owners thereof of the requirement to comply with the following:

A specific design for stormwater attenuation for each lot (taking into account the actual roof and paved areas proposed for any development) must be submitted to the Council for approval at the time of applying to the Council for a building consent.

It is not immediately clear in the applicant's AEE why they have requested these changes, other than a reliance on s108AA. As the original application was for a Discretionary Activity, the Hearings Commissioners were within their remit to impose any condition they considered relevant to avoid, mitigate or remedy the effects of the proposal and there is no requirement to get the approval of the applicant at this point. Prior to lodging this s127 application, the applicant had also already lodged with Council an engineering scheme plan and calculations for stormwater run-off from each lot (LDE, ref 14668 dated 13/07/2020).

A s92 request for further information to the applicant (16/09/2020) requested some further information as to why the applicant wanted to change these conditions, and also brought to the applicant's attention the LDE engineering report, as it seemed like the work had already been started to achieve these conditions. In the s92 response from the applicant (30/09/2020), discussion was had around the intention of these stormwater conditions. As the site is a rural site and there is no Council owned reticulated network to connect to, as well as the generous size of the sites, the applicant felt that these conditions were too onerous. There should not be a need to require pre-development stormwater flow levels at the beginning of the project when this can be managed at building consent stage.

Through discussion with the applicant's agent, I as the processing planner, focussed on the intention of these conditions, specifically that stormwater was to be managed in such a way as to ensure no adverse effect on the environment, and that the kerb and channel that would be constructed alongside the internal road, could handle the effects of stormwater discharge in the future. I concur with the applicant's request to change conditions 12 and 29. However, the proposed changes to conditions 21 and 38 were not sufficient to ensure Council could be satisfied that any stormwater from developed lots in the future would be managed appropriately and left too much ambiguity for future land owners as to their responsibilities regarding on site stormwater management. The applicant's agent suggested this wording for conditions 21 and 38 which I have accepted and will assess in this report:

Conditions 21 and 38:

A Consent Notice pursuant to section 221 of the Resource Management Act 1991

must be registered on the Record of Title of Lots 1-6/8-21 at the consent holder's expense advising the owners and subsequent owners thereof of the requirement to comply with the following:

At the time of applying for building consent for development on the site, a stormwater design must be submitted for approval. The design must show how any hard or sealed surface, roof water or tank overflows from the development will impact on the initial stormwater design submitted in association with the subdivision and show that the site is hydraulically neutral.

3.2 Communal open space:

Lot 7 has been designated as a 'communal open space' lot, to be owned jointly by all lot owners of lots 1-6 and 8-22 as well as the balance farm lot, lot 200. There was very little discussion around the possible future uses of Lot 7 at the hearing and no information put forward in the application aside from this lot being mentioned in the landscape assessment by the applicant.

The applicant has correctly identified that the hearings commissioners have made an error with the current condition 20 (and condition 30, which has not been referenced in the AEE, but has been referenced in the amended conditions), which reads:

A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 7 at the consent holder's expense advising the owners and subsequent owners thereof, of the requirement to comply with the following on a continuing basis:

That the Lot must be retained and maintained as communal open space and be kept free of buildings.

As Lot 7 will not have an individual record of title, instead, as it is jointly owned by the aforementioned lots, any consent notice should be recorded on each lot individually with regards to the shared Lot 7.

Further to that, the applicant has identified in the AEE that:

2.2.4 Buildings are specifically defined in the District Plan, and include any fencing of greater than 2m in height, and any structure greater than 5m² in area and/or 2m in height. This would preclude the establishment of communal facilities such as a tennis court (with a standard fence height of between 3m and 3.6m) on this land, and potentially prevent the establishment of other shared facilities such as a communal barbeque area and play equipment.

The applicant again has relied on s108AA for reasons as to why this condition should be changed, being that the applicant did not agree to the wording of the condition, no potential adverse effects from the communal open space lot was identified by Council or submitters during the hearing and that the condition as it is at present removes permitted development rights pertinent to the functioning of this lot.

The applicant requests Condition 20 (and condition 30) be changed to:

A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 7 Lots 1-6 and 100/8-21 at the consent holder's expense advising the owners and subsequent owners thereof, of the requirement to comply with the following on a continuous basis:

That the Lot 7 DP XXXXXX must be retained and maintained as communal open space and be kept free of residential buildings.

Following discussion through the s92 request for further information, and on the phone and over email with the applicant's agent, the condition has been further amended to:

A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 7 Lots 1-6 and 100/8-21 at the consent holder's expense advising the owners and subsequent owners thereof, of the requirement to comply with the following on a continuous basis:

That Lot 7 must be retained and maintained as communal open space to be freely shared by the owners, and must be kept free of driveways, residential dwellings, and private outdoor space.

This refinement of the wording ensures that it is very clear that residential activities are not allowed on Lot 7, and provides for other rural activities, such as recreation, to occur. Any future development on this lot would need to align with the Colour and Reflectivity Scheme from the Landscape and Natural Character, and Visual Amenity Assessment: Pourerere Subdivision, Hudson Associates and Landscape Architects, July 2019.

3.3 Financial contributions:

The applicant requests a financial contributions condition be included in the condition set for the application. This financial contributions condition would set out how the applicant and Council would split the payment for the works attributed to conditions 8, 9, 25 & 26. These conditions relate to the upgrading of Punawaitai Road at each stage and the submission of As-builts and a CPEng certificate as to the completion of the constructed road.

The applicant has not specified any wording for this proposed condition, and s127 of the RMA 1991 does not provide for the inclusion of a new condition. The applicant has requested that should a financial contributions condition not be included, conditions 8, 9, 25 & 26 be cancelled.

This report will cover the reasons behind the lack of financial contribution condition on the original decision (RM180160A), subsequent legal advice given to Council upon the receipt of this s127 application, and the processing planners further recommendation.

The decision by the Hearings Commissioners not to impose a financial contributions condition was due to the intent that the applicant would pay for the full upgrade of Punawaitai Road at both Stage 1 and Stage 2. It was considered that the applicant benefited from the upgrade of the road, and the road is an access road into the subdivision, so the cost should be shouldered by the applicant.

The applicant, in this s127 application, asserts that the Council has not interpreted s9.11 of the District Plan correctly and that a maximum 50% financial cost should be borne by the applicant for the upgrade to the road.

Upon receipt of this s127 application, Council sought legal advice in relation to the decision by the Commissioners, the subsequent conditions and Council's interpretation of s9.11 of the District Plan. Council's lawyer, Ms L Beilby states:

"The council has a discretion as to whether it imposes a financial contribution condition on the consent, but that the rule does not require the council to impose such a condition for roading within and adjacent to subdivisions.

In the event that the council does elect to require financial contributions for roading, Rule 9.11(e) will apply and this requires that financial contributions shall be required “only to the extent that the roading will serve the subdivision, or in the case of an adjacent road, shall be required only to the extent of half of the estimated cost, whichever is the lesser.”

We interpret this rule to mean that:

- a. For a road that serves the subdivision, the council may only require financial contributions to the extent that the subdivision will be served by the road; and*
- b. For adjacent roads, the council can only require the applicant to contribute up to 50% of the upgrade cost.*

In this case, we are satisfied that the road in question is not an adjacent road but rather is a road that serves the subdivision.”

The applicant has requested in section 2.3.8 of the AEE:

In accordance with Council’s obligations under the RMA, we therefore request that Council include an appropriately worded condition outlining how the financial contributions associated with the upgrade of Punawaitai Road will be administered, or cancel the conditions of consent requiring these upgrade works.

While the intent is for the applicant to pay for 100% of the road upgrade, the Council is happy to acquiesce to the applicant’s request to add in a financial contributions condition. The Council agrees that the inclusion of a condition will make it absolutely clear the responsibilities placed upon the applicant to pay for the upgrade to Punawaitai Road. While s127 does not provide for a mechanism to add a condition, Council considers that this condition helps to facilitate the other road improvement conditions (8, 9, 25 & 26) and does not result in any difference to the outcome of the consent.

3.4 Inclusion of Stage A:

The original application sets out the subdivision in two stages:

- Stage 1: Subdivision of 7 lots from the balance lot and the creation of Lot 100 (balance lot). Conditions relating to easements, engineering design – culvert/bridge, erosion and sediment controls, upgrading of Punawaitai Road, formation of right of ways, stormwater, dotterel breeding grounds, lot 7 communal open space and associated consent notices.
- Stage 2: Subdivision of lots 8-22 from Lot 100 and the renaming of Lot 100 into Lot 200. Conditions relating to easements, erosion and sediment control, upgrading of Punawaitai Road, upgrading and formation of rights of way, stormwater, lot 7 communal open space, riparian planting and fencing and associated consent notices.

To allow for the balance farm land to be separated earlier from the development site, the applicant is proposing a first stage, being Stage ‘A’ which would be the subdivision of the development lot from the balance lot. No other changes are proposed to the layout or timing of the subdivision, and it would require a repositioning of conditions with regards to dotterel breeding grounds and riparian planting.

4. PUBLIC NOTIFICATION ASSESSMENT

4.1. Public notification assessment s95A

Section 95A of the RMA specifies the steps the consent authority is to follow to determine whether an application is to be publicly notified.

Step 1: mandatory public notification in certain circumstances – s.95A(2-3)

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Mandatory public notification is not required as:

- the applicant has not requested that the application is publicly notified (s95A(3)(a))
- there are no outstanding or refused requests for further information (s95C and s95A(3)(b)), and
- the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977 (s95A(3)(c)).

Step 2: Public notification precluded in certain circumstances – s.95A (4-6)

At the time of the notification decision for the original application RM180160A public notification of a resource consent application where the application is for a discretionary subdivision activity was precluded. Therefore, the application could not be publicly notified.

However, this provision of s95A has been repealed by the Resource Management Amendment Act 2020, therefore, public notification is not precluded in this instance.

Step 3: Public notification required in certain circumstances – s95A (7-8)

The application is not subject to a rule or national environmental standard that requires public notification.

To determine whether public notification is required, an assessment under s95D is as follows.

This assessment is only related to the effects of the proposed changes applied for under this s127 application and does not assess the effects of the proposal as a whole.

Stormwater amendments:

The intention of the stormwater conditions 12 and 29 (and following on, the consent notice conditions 21 and 38) was to ensure that the effects of development did not result in adverse levels of stormwater being discharged from the new lots into the surrounding environment.

Following discussion with the applicant through the processing of this application and the material received as part of the s92 request for further information, I concur that the stormwater mitigation conditions are overly onerous for what they are seeking to achieve. The site is a rural farm site, located adjacent to other rural properties and in the locale of a beach side township settlement. There is no reticulated stormwater network within Pourerere Beach and no reticulated network is proposed as part of this subdivision.

The conditions are to be updated to ensure that any development on the proposed lots can manage stormwater on site, and if the stormwater is to be discharged to the road, that the capacity of the road kerb and channel is considered. This will ensure that the effects of stormwater are managed within the site boundaries and not discharged into the wider environment.

The overall site is considered to be large enough to accommodate the effects of future stormwater disposal and each lot will be required to manage their own stormwater, as specified by the amended consent notices.

Therefore, the effects from stormwater are considered to be less than minor.

Lot 7 – Communal Open Space:

The provision of Lot 7 is for the use and enjoyment of lot owners within the subdivision, as each will have a share of the ownership of this Lot. Lot 7 is not available to be used by the general public and would need to align with the design requirements, therefore the proposed change to the condition does not affect the wider environment.

Request for Financial Contributions condition:

As previously discussed in this report, the Council will be imposing a financial contributions condition under s9.11 of the District Plan. This condition will specify that the applicant must pay for 100% of the upgrade to Punawaitai Road as required by conditions 8, 9, 25 & 26. Therefore, the outcome for the wider environment and surrounding area is the same as consented by the hearings commissioners.

Inclusion of Stage 'A':

The inclusion of Stage 'A' does not result in any change to the subdivision layout, number of lots or subsequent staging. Creating Stage 'A' will require some conditions to be carried out at an earlier stage, but does not result in any conditions being delayed or pushed back. The overall effect will of the subdivision will remain the same on the wider environment and therefore, the effects of Stage 'A' are less than minor.

Therefore, pursuant to s95D, the effects on the wider environment are considered to be less than minor.

Step 4: Public notification in special circumstances -s95A (9)

If an application has not been publicly notified as a result of any of the previous steps, then the council is required to determine whether special circumstances exist that warrant it being publicly notified.

Special circumstances are those that are:

- exceptional or unusual, but something less than extraordinary
- outside of the common run of applications of this nature, or
- circumstances which make notification desirable, notwithstanding the conclusion that the adverse effects will be no more than minor.

There are no special circumstances that warrant public notification as the request for the change of conditions discussed in this report will not materially affect the outcome of the subdivision as already approved by the hearings commissioners.

Overall, **public notification is not required.**

4.2. Limited notification assessment s95B

Section 95B of the RMA specifies the steps the consent authority is to follow to determine whether an application is to be limited notified.

Step 1: Limited notification for customary rights, customary marine titles and statutory acknowledgement groups and persons - s95B (2-4)

Limited notification is required if the consent authority believes any group with protected customary rights, customary marine titles, or those to whom a statutory acknowledgement is made are affected. None of these groups or persons are considered to be affected by the proposed activity.

Step 2: Limited notification precluded in certain circumstances – s.95B (5-6)

Limited notification of a resource consent application is precluded when the application:

- is subject to a rule or national environmental standard that precludes limited notification;
- is for a controlled activity (excluding subdivision of land);
- is for a prescribed activity.

Limited notification is not precluded under this section. There are no rules in the District Plan or a national environmental standard that preclude notification, the proposal is for the subdivision of land (controlled activity subdivision) and is not a prescribed activity.

Step 3: Limited notification of affected persons – s.95B (7-8)

An affected persons determination is required pursuant to s95E of the RMA. *“For the purpose of giving limited notification of an application for a resource consent for an activity to a person under section 95b(4) and (9) (as applicable), a person is an **affected person** if the consent authority decides that the activity’s adverse effects on the person are minor or more than minor (but are not less than minor)”(s95E(1)).*

Pursuant to section 95E(2)(a), if a rule or national environmental standard permits an activity with an effect, the adverse effect of the activity on the person may be disregarded. The approach authorises a consent authority to disregard the adverse effects of an activity if the Plan permits an activity with the same effects. This is commonly referred to as the permitted baseline. The permitted baseline is not appropriate in this instance.

Effects on owners and occupiers of the subject site and adjacent sites, persons who have given written approval and the effects of trade competition must also be disregarded.

The application RM180160 was Limited Notified to the following parties on 14/10/2019:

- Hawke’s Bay Regional Council (“the HBRC”)
- Gareth & Melaney Harris – 3339 Pourerere Road, 22 Punawaitai Road and no number Pourerere Road (Lot 3 DP 338769, Lot 1 DP 326476, Lot 2 DP 326476 and Lot 1 DP 21109).
- Susan Harty – no number Pourerere Road (Lot 2 DP 441477)
- DAC Trustees 2015 Limited and Mr Roger Peter Sinclair – 23 Punawaitai Road (Lot 1 DP 27064)

Other than the HBRC, the three affected parties were all immediate neighbours of the subject site. There are no other immediate neighbours or neighbours in the vicinity of the site that were considered affected in the notification assessment of RM180160.

No party submitted in support of the subdivision application. The HBRC put in a neutral submission and the other three submitters were all in opposition. The following is an assessment of the proposed changes on these submitters.

Stormwater amendments:

As discussed in the s95A assessment, the conditions as imposed in the decision for stormwater calculations are overly onerous and the same outcome can be achieved by rewording the conditions.

The HBRC presented in their neutral submission that they were supportive of conditions of consent to ensure stormwater management in accordance with the Regional Coastal Environmental Plan 2014.

As the outcome of the stormwater conditions does not change (stormwater can be managed on site and will not result in adverse effects on the environment) then it is considered that this proposal to change the relevant stormwater conditions does not adversely affect the HBRC.

G & M Harris at 3339 Pourerere Road, 22 Punawaitai Road and no number Pourerere Road did include in their submission a concern about Performance Standard 9.9.3(g) and the recommendation from the applicant’s engineer, LDE, geotechnical report dated October 2018 that additional water from impermeable surfaces will need to be discharged to the Pourerere Stream.

Ms Harty and DAC Trustees 2015 Limited and Mr Roger Peter Sinclair also raised in their submissions that there was insufficient detail to assess how stormwater management would occur.

As a result of these submissions, the hearings commissioners did include conditions to ensure that stormwater was calculated and managed on site and on the right of way within the site. The proposed changes to these conditions does not alter the outcome, which is that the right of way is to be constructed with a specifically designed stormwater system (conditions 12 and 29) and that the future development of the lots is to be hydraulically neutral (conditions 21 and 38). I therefore consider that the effects of stormwater disposal on these adjoining neighbours has been mitigated by the original conditions in the approved decision of RM180160 and the proposed changes do not result in any different effect on these properties.

Lot 7 – Communal Open Space:

No submitter as part of RM180160 made any comment in their submission about the communal open space proposed on Lot 7. The proposed changes to the conditions will not result in any change of effects to neighbouring properties. By refining this condition, I am satisfied that the expected activities on Lot 7 are made clearer for neighbouring properties and will allow a better expectation of what may occur on this Lot in the future.

Furthermore, Lot 7 is located at the far eastern side of the subdivision and is bordered on all sides by the subject site and balance lot and therefore is sufficiently removed from the neighbouring properties to minimise disruption from the permitted activities that could occur there. A final point is that by refining the consent notice to prohibit residential development, it will reduce the occurrence of development by stealth on this property.

Financial Contributions:

As there is no change to the requirement that the applicant is to pay 100% of the road upgrade costs, there is not considered to be any change to the effects on neighbouring properties.

Of note, G & M Harris did include in their submission a request that the road be upgraded and should the applicant fail to do so, financial contributions be taken. I consider that the current conditions 8, 9, 25 & 26 provide the requirements to ensure the road is upgraded at suitable times through the development and certainty can be given to the neighbours about this upgrade. Therefore, there is no change to the effect from the road upgrade on the neighbouring properties.

Addition of Stage 'A':

The addition of Stage 'A' is inconsequential in the effects on the submitters to the proposal. Stage 'A' does allow the applicant to create a new lot before the first stage of the approved subdivision. However, this lot is large (5.87ha) and any further subdivision of this lot or change to the approved subdivision plans from RM180160 would require a resource consent. Should the subdivision not continue after Stage 'A', the effects of this new lot on the neighbouring properties would be less than minor as it is complying with the performance standards of the District Plan and the permitted baseline for development on this lot has been determined by RM180160. Therefore, there are less than minor effects on the neighbouring properties by the inclusion of Stage 'A'.

Step 4: Limited notification in special circumstances -s95B(10)

There are no special circumstances that apply to this application because the proposed variation in accordance with the original application and does not seek to amend the scheme plan. No other changes are occurring as a result of the variation.

Overall, no persons are considered to be affected to an extent that is minor or more than minor and, therefore, **limited notification is not required**.

5. SECTION 95 NOTIFICATION RECOMMENDATION

It is recommended that pursuant to Sections 95A and 95B of the RMA, application RM180160A for a Discretionary Activity shall proceed on a **non-notified** basis for the reasons given above.

6. SECTION 104 ASSESSMENT

Section 104 of the RMA prescribes those matters which must be considered when assessing an application. The matters below are considered relevant to this application.

As a Discretionary Activity, the scope of assessment of this application is unfettered, however Section 127 of the Resource Management Act 1991 prescribes those matters which must be considered when assessing an application to be changed or cancel a condition of consent. The focus is on only to the change or cancellation of the condition and resultant effect.

6.1. Actual and potential effects relevant to this proposal (s104(1)(a))

Section 104(1)(a) requires the consent authority to have regard to *any actual and potential effects on the environment of allowing the activity*. The actual and potential effects of the proposal are considered below.

Stormwater

The proposed changes to the stormwater conditions do not result in a change to the effects that were approved under the original consent RM180160. The changes to the conditions do not remove the requirement of the applicant to design a stormwater system for the right of way and the obligations of future land owners to manage their stormwater effectively and efficiently. The conditions proposed will continue to manage the effects of stormwater from the development.

Amenity and communal use

The proposed changes to how Lot 7 can be used (and the administrative changes to the conditions with regards to the consent notice) will not alter the effects associated with the communal open space lot. The possible effects from Lot 7 were not discussed in detail in the original application or at the hearing, and through this application the effects have been able to be considered in more detail. Overall, the proposed change to the conditions regarding Lot 7 will better manage the effects from the communal open space.

Transport and road safety

The inclusion of a financial contributions condition is to ensure that the decision and consent conditions as granted by the hearings commissioners can be implemented as intended. There is no change to the effects and the aforementioned conditions will continue to manage the effects of the subdivision on the road network.

Effects from application of subdivision

Adding an additional stage 'A' does not result in any modification to the lot layout and staging. Stage 'A' will allow the applicant to better manage their processes and has not required any conditions to be altered or changed apart from the location of some of the conditions in decision.

Summary of effects

In summary, the revised proposal will not result in notable differences from the current activities. It is considered that the actual and potential effects of the proposal are able to be avoided, remedied or mitigated through the modification of existing conditions, should consent be granted.

6.2. Section 104(1)(b) – Relevant Provisions

Section 104(1)(b) requires the consent authority to have regard to *any relevant provisions of -*

- (i) a national environmental standard;
- (ii) other regulations;
- (iii) a national policy statement;
- (iv) a New Zealand coastal policy statement;
- (v) a regional policy statement or proposed regional policy statement; and
- (vi) a plan or proposed plan.

The provisions of the Central Hawke's Bay District Plan, the NZ Coastal Policy Statement 2010, the Regional Resource Management Plan (RRMP) and Regional Policy Statement (RPS) are relevant to this application. These are addressed below.

Hawke's Bay District Council District Plan 2003

3.3 Open Space and Recreation

3.3.2.1 Objective

Recreation areas that are accessible, equitably distributed, appropriately located, and adequately maintained to meet the needs of residents and visitors, while avoiding, remedying or mitigating any adverse effects.

3.3.2.2 Policies

3. To recognise privately owned open spaces and recreational facilities in the District.

8. Transport

8.2.1 Objective

Efficient use of the District's existing and future transport system through the maintenance and improvement of access, ease and safety of pedestrian movement.

8.2.2 Policies

3. To ensure the construction of parking and access is of a standard that promotes both safe and efficient use of vehicles.

9. Subdivision

9.2.1 Objective

The provision of necessary services to subdivided lots, in anticipation of the likely effects of land use activities on those lots.

9.2.2 Policies

1. To integrate subdivision with the existing roading network in an efficient manner which reflects expected traffic levels and the safe and convenient management of vehicles and pedestrians.

5. To ensure that the provision of any necessary additional infrastructure for water supply, stormwater control or sewage treatment disposal infrastructure and the upgrading of existing infrastructure is undertaken by subdividers, in recognition of the scale and nature of the anticipated land uses.

6. To encourage the retention of natural open waterbodies for stormwater disposal, where safe and practicable, and to ensure in a manner which maintains or enhances the quality of surface and ground water, and avoids unplanned inundation of land within the anticipated land uses.

9.3.1 Objective

The costs of the provision of new services or the upgrading of existing services within subdivisions is to be met by the subdividers

9.3.2 Policies

1. To require subdividers to meet the costs of upgrading services (including head works), which are attributed to the impacts of the subdivision, including where applicable:

- Roading and access (vehicular, cyclist, pedestrian);
- Water supply;
- Sewage collection, treatment and disposal;
- Stormwater collection, treatment and disposal;
- Trade waste disposal.

2. That any contributions to be in accordance with the methods of determination specified in the Rules.

The proposal is consistent with the above objectives and policies. The change to the stormwater conditions will ensure that stormwater management is continued to be provided by the applicant and future land holders. Stormwater management will maintain the quality of surface and ground water and will avoid unplanned inundation of land.

The provision of Lot 7 as communal open space is directly in line with 3.3.2.2 (3) and is supported.

Specific attention is paid to Objective 9.3.1 and policies 9.3.2 (1) and (2). The consent holder is required to meet the costs of the upgrading of Punawaitai Road. There are no methods specified in the rules as to how this cost is to be determined. Therefore, as the original consent application was a Discretionary Activity, and that activity status is carried on through this application, the Council is within their rights to determine that the applicant upgrade the road at their cost. It would not be appropriate to set a financial amount or estimate at this time, as it is unknown when the applicant will undertake the work and costs for infrastructure change frequently. The applicant did not propose any wording for a financial contributions condition in their s127 application. Therefore, the Council has included a condition that requires the applicant contribute 100% of the costs of the road upgrade by undertaking the works at a time that suits the applicant.

New Zealand Coastal Policy Statement 2010 (NZCPS) – s104(1)(b)(iv)

The purpose of the NZCPS is to state policies in order to achieve the purpose of the RMA 1991 in relation to the coastal environment of New Zealand.

The relevant objectives and policies of the NZCPS include:

Objective 1

To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:

- maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.

Policy 23 Discharge of contaminants

(1) In managing the discharges to water in the coastal environment, have particular regard to:

a. The sensitivity of the receiving environment;

(4) In managing discharges of stormwater take steps to avoid adverse effects of stormwater discharge to water in the coastal environment, on a catchment by catchment basis, by

a. Avoiding where practicable and otherwise remedying cross contamination of sewage and stormwater systems.

The proposal meets the relevant objectives and policies of the NZCPS. Stormwater can be managed on site and when discharged off site, will be managed within the road design. There is not expected to be any adverse discharge to the receiving environment.

Regional Resource Management Plan (RRMP) and Regional Policy Statement (RPS) re-published as at 24 August 2019 – s104(1)(b)(v)

The purpose of the RRMP and RPS is to state policies in order to achieve the purpose of the RMA 1991 in relation to the coastal environment of Hawke's Bay.

OBJ LW 1 Integrated management of fresh water and land use and development.

Fresh water and the effects of land use and development are managed in an integrated and sustainable manner which includes;

14. Promoting the preservation of the natural character of the coastal environment, and rivers, lakes and wetlands, and their protection from inappropriate subdivision, use and development.

POL UD12 In preparing or assessing any rezoning, structure plans, or other provisions for the urban development of land within the Region, territorial authorities shall have regard to:

(f) provision for the maintenance and enhancement of water in waterbodies, including appropriate stormwater management facilities to avoid downstream flooding and to maintain or enhance water quality.

POL UD13 Within the region, territorial authorities shall ensure development is appropriately and efficiently serviced for the collection, treatment, disposal or re-use of sewage and stormwater, and the provision of potable water by:

(c) Avoiding development which will not be serviced in a timely manner to avoid, or mitigate adverse effects on the environment and human health; and

(d) Requiring these services to be designed, built, managed or upgraded to maximise their ongoing effectiveness.

The proposal meets the requirements of the RRMP and RPS, as there are no changes to the outcome of stormwater management on site. The applicant and future land owners will ensure that the stormwater is appropriately and efficiently managed.

6.3. Section 104(1)(c) – other matters

Section 104(1)(c) requires consideration of any other matters the consent authority considers relevant and reasonably necessary to determine the application.

Under the Local Government Act 2002, Councils are permitted to take development contributions towards the costs that capital growth imposes on a community. Development contributions do not apply to this proposal.

6.4. Section 104(2&3) - effects disregarded

Pursuant to Section 104(2) of the Act, when forming an opinion for the purposes of Section 104(1)(a), a Council may disregard an adverse effect of the activity on the environment if a plan or national environmental standard permits an activity with that effect (i.e. the Council may consider the 'permitted baseline').

The permitted baseline relevant are the effects of the subdivision approved by the hearings commissioners, upon which this s127 application is based.

Pursuant to Section 104(3)(a) of the Act, when forming an opinion for the purposes of Section 104(1)(a), a Council must not have regard to any effect on a person who has given written approval to the proposal, nor any trade competition or effects of trade competition. No written approvals have been obtained, and trade competition is not a relevant consideration.

7. SECTION 106 ASSESSMENT

As a subdivision consent, assessment in terms of Section 106 of the RMA is also required.

A consent authority may refuse to grant a subdivision consent, or may grant the subdivision subject to conditions, if it considers that:

- there is a significant risk from natural hazards; or
- sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision

Section 106(1A) states that an assessment of the risk from natural hazards requires a combined assessment of—

- a) the likelihood of natural hazards occurring (whether individually or in combination); and
- b) the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and
- c) any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).

In this case, the proposed changes do not alter the original decision that the proposal was in line with the requirements of s106. The changes to the stormwater and Lot 7 conditions are irrelevant to this assessment. The required conditions to upgrade the road remain, therefore, the subdivision will continue to meet s106. Finally, the inclusion of Stage 'A' does not result in the likelihood of hazards occurring, nor does it alter the access to the subdivision. Overall, the s127 application meets s106 of the RMA.

8. CONSIDERATION OF PART 2 (PURPOSE AND PRINCIPLES)

Purpose

Section 5 identifies the purpose of the RMA as the sustainable management of natural and physical resources. This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.

The proposed changes to the conditions continue to ensure the sustainable management of the natural and physical resources and will not adversely affect future generations. The conditions will avoid, remedy and mitigate adverse effects on the environment.

Principles

Section 6 sets out a number of matters of national importance which need to be recognised and provided for. These include the protection of outstanding natural features and landscapes, the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and the protection of historic heritage.

Section 7 identifies a number of “other matters” to be given particular regard by the Council in considering an application for resource consent. These include the efficient use of natural and physical resources, and the maintenance and enhancement of amenity values.

Section 8 requires the council to take into account the principles of the Treaty of Waitangi.

The proposed changes to the consent conditions put forward by the applicant and accepted by the Council meet the matters as set out above.

RECOMMENDATION:

The conditions of consent are altered as follows: text replaced is ~~strike through~~ and new text is in **bold**.

Pursuant to sections 108, 108AA, **127** and 220 of the Resource Management Act 1991 (RMA), this subdivision consent referenced by Council as RM180160/**RM180160A** shall be subject to the following conditions:

CONDITIONS:

All Stages:

1. The Land Transfer Plan to give effect to this subdivision consent must be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the Council as resource consent number RM180160, **except as amended by RM180160A:**
 - Application Form and Assessment of Environmental Effects prepared by McFlynn Surveying and Planning, dated 23 November 2018 Rev 1 **and 127 Application Form and Assessment of Environment Effects prepared by McFlynn Surveying and Planning, dated 7 September 2020 Rev. 2.**

Report title and reference	Author	Rev	Dated
Geotechnical Investigation Report for Proposed Subdivision, 22/23 Punawaitai Road	LDE Land Development & Exploration LTD.	Project Ref: 14668	10 October 2018
Punawaitai Road Subdivision Transport Impact Assessment	Urban Connection	Ref: TIA 04/005	November 2018
Bridge Assessment Report	Stratagroup Consulting Engineers		12 November 2018
Punawaitai Road Subdivision, Section 92 Response	Urban Connection		13 February 2019
Addendum Geotechnical Subdivision Report 22 Punawaitai Road, Pourerere	LDE Land Development & Exploration LTD.	Project Ref: 14668	3 July 2019
Pourerere Subdivision Punawaitai Road Pourerere James Bridge	Hudson Associates Landscape Architects		July 2019
Proposed Subdivision of Lot 1 DP 27067	McFlynn Surveying & Planning	2018024-SP-06 Sheet 2 of 4 Rev A	19/11/18
Stage 1 Proposed Subdivision of Lot 1 DP 27067	McFlynn Surveying & Planning	2018024-SP-06 Sheet 3 of 4 Rev A	19/11/18
Report title and reference	Author	Rev	Dated
Stage 2 Proposed Subdivision of Lot 1 DP 27067	McFlynn Surveying & Planning	2018024-SP-06 Sheet 4 of 4 Rev A	19/11/18
Indicative Plan of Riparian Planting Area	McFlynn Surveying & Planning	2018024-PLANTING Sheet 1 of 1 Rev A	18/07/19
Proposed subdivision of Lot 1 DP 27067 Overall Plan	McFlynn Surveying & Planning	2018024-SP-08 Sheet 1 of 4 Rev A	04/09/2020
Proposed subdivision of Lot 1 DP 27067 Stage A	McFlynn Surveying & Planning	2018024-SP-08 Sheet 2 of 4 Rev A	04/09/2020

Proposed subdivision of Lot 1 DP 27067 Stage 1	McFlynn Surveying & Planning	2018024- SP-08 Sheet 3 of 4 Rev A	04/09/2020
Proposed subdivision of Lot 1 DP 27067 Stage 2	McFlynn Surveying & Planning	2018024- SP-08 Sheet 4 of 4 Rev A	04/09/2020

2. Under section 125 of the Resource Management Act, this consent lapses five years after the date it is granted unless:
 - a. A survey plan is submitted to council for approval under section 223 of the RMA before the consent lapses, and that plan is deposited within three years of the approval date in accordance with section 224 of the Resource Management Act; or
 - b. An application under section 125 of the Resource Management Act is made to the Council before the consent lapses (five years) to extend the period after which the consent lapses and the Council grants an extension.

Stage A

- A1. **Prior to application of 223 certification for Stage A, pursuant to section 243 of the Resource Management Act 1991 all easements shown in the memorandum on the approved scheme plan must be included in a memorandum as part of the online LT plan package, and must be reserved and granted.**

Dotterel Breeding Grounds

- A2. **Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must provide evidence that they have either entered into an Open Space Covenant pursuant to section 22 of the Queen Elizabeth The Second National Trust Act 1977, or have established Dotterel protection fencing in general accordance with the “Indicative Plan of Riparian Planting Area” prepared by McFlynn Surveying & Planning, reference 2018024-PLANTING, to the satisfaction of the Council’s Customer and Consents Manager.**
- A3. **A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 2 at the consent holder’s expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:**

Any vegetation removed from that part of the site to which the Planting Plan (Planting Plan – Pouterere Stream, created by Hudson Associates Landscape Architecture and dated 22-7-19 and submitted as part of the application for RM180160) relates must be replaced with planting in

accordance with the Planting Plan within the next available planting season (May-September). Ongoing upkeep and maintenance of the Planting Plan is required. It is the responsibility of the owner of this Lot to ensure that the Planting Plan is maintained to the standard set out in the Planting Plan.

- A4.** Where fencing is established under Condition A2, a Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 2 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

Dotterel protection fencing has been established to restrict access to the sand dunes from the farm and walking track to provide protection for the sand dunes, and in particular, a recognised Dotterel Breeding Ground that has been established within the sand dunes near the property, adjacent to the Pourerere Stream, in general accordance with the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024-PLANTING.

This fencing must be maintained by the owners and occupiers of Lot 2 on an ongoing basis.

- A5.** A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 2 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

Any riparian planting and stock proof fencing established in the area identified as the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024-PLANTING adjacent to the Pourerere Stream in accordance with the requirements of subdivision consent RM180160 must be maintained by the owners and occupiers of Lot 2 on an ongoing basis.

Stage 1 (Lots 1-7 & Lot 100):

Easements

3. Prior to application for 223 certification for Stage 1, pursuant to section 243 of the Resource Management Act 1991 all easements shown in the memorandum on the approved scheme plan, and any easements required in association with the disposal of stormwater must be included in a memorandum as part of the online LT plan package, and must be reserved and approved.
4. All cross-boundary services must be protected by easements as necessary to secure.

Engineering Design – Culvert / Bridge

5. The consent holder must submit to Council's Land Transport Manager a design of the culvert / bridge and dedicated footpath for approval prior to undertaking any work associated with the construction of the culvert / bridge. The design must include signposts and road marking as NZ Transport Agency's Manual of Traffic Signs and Markings.
6. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must provide and have approved by the Land Transport Manager:
 - a. As-builts of the constructed culvert/bridge; and
 - b. A Certificate from a CPEng Civil Engineer stating that the As-built plans are a true and correct record of the constructed culvert/bridge.

Erosion and Sediment Controls

7. Prior to any works being undertaken at the site, the consent holder must submit to Council's Customer and Consents Manager an Erosion, Sediment and Dust Control Plan for approval. This plan must detail, in accordance with best practice, how erosion, sediment and dust controls will be imposed to avoid the effects of earthworks on the nearby streams, tributaries and neighbouring properties for the following works:
 - a. Formation of the vehicle access right of ways within Lot 100;
 - b. Upgrading of Punawaitai Road; and
 - c. Removal of any existing vegetation adjacent to the Pourerere Stream.

Upgrading of Punawaitai Road & Financial Contributions

- 8A. **Pursuant to Rule 9.11(a), (b) and (e) of the Central Hawke's Bay Operative District Plan, a financial contribution (in the form of work) is required to upgrade Punawaitai Road (from the intersection shared with Pourerere Road to Punawaitai Road's legal end (approximately 220 metres in length)) to an all-weather metal surface with a minimum width of 5.0 metres.**

The consent holder is required to fund 100% of the full cost of upgrading the road in accordance with the approved design under condition 8.

8. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council's Land Transport Manager for approval a design for upgrading Punawaitai Road to an all-weather metal surface with a minimum width of 5.0 metres, from the intersection shared with Pourerere Road to Punawaitai Road's legal end (approximately 220m in length).
9. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must provide and have approved by the Land Transport Manager:
 - a. As-builts of the constructed road; and
 - b. A Certificate from a CPEng Civil Engineer stating that the As-built plans are a true and correct record of the constructed road.

Formation of Right of Ways (over Lot 100)

10. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council's Land Transport Manager for approval a design for forming the rights of way shown as B, C and D on the approved plans (excluding the culvert / bridge which is to be constructed in accordance with Condition (6) above) to an all-weather metal surface with a minimum width of 5.0 metres.

11. Prior to requesting approval under section 224(c) of the Resource Management Act 1991 the consent holder must provide and have approved by the Land Transport Manager:
 - a. As-builts of the constructed right of ways; and
 - b. A Certificate from a CPEng Civil Engineer stating that the As-built plans are a true and correct record of the constructed right of ways.

Stormwater

~~12. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council a stormwater assessment of Stage 1 prepared by a suitably qualified person, including the pre-development flow rate from each proposed lot and a stormwater assessment for the discharge to communal stormwater drains for a 1 in 50 year event to ensure these drains are designed to accommodate such an event.~~

~~Note: This assessment will be used by Council to inform each Lot Owner of their stormwater retention requirements.~~

12. **Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit a specific design for the stormwater disposal system prepared by a Chartered Professional Engineer specialising in the field of stormwater design and construction as part of the detailed right of way design.**

Dotterel Breeding Grounds

~~13. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must provide evidence that they have either entered into an Open Space Covenant pursuant to section 22 of the Queen Elizabeth The Second National Trust Act 1977, or have established Dotterel protection fencing in general accordance with the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024 PLANTING, to the satisfaction of the Council's Customer and Consents Manager.~~

Lot 7 (Communal Open Space)

14. That Lot 7 ~~heron~~ **hereon** (Communal Open Space) must be held in **as to 6** undivided one-40th shares by the owners of Lots 1-6 **hereon and one** 34 undivided one-half40th share by the owners of Lot 400 **2 DP XXXXXX** ~~heron~~ as tenants in common in the said shares and **that** individual records of title be issued in accordance **therewith**.

See LINZ amalgamation 1671625 1679708.

Consent Notices

- ~~15. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 100 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:~~

~~*Any vegetation removed from that part of the site to which the Planting Plan (Planting Plan – Pourerere Stream, created by Hudson Associates Landscape Architecture and dated 22/7/19 and submitted as part of the application for RM180160) relates must be replaced with planting in accordance with the Planting Plan within the next available planting season (May-September). Ongoing upkeep and maintenance of the Planting Plan is required. It is the responsibility of the owner of this Lot to ensure that the Planting Plan is maintained to the standard set out in the Planting Plan.*~~

16. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6 and 100 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

Any development of the site shall be in general accordance with the Section 5 Engineering Recommendations of the Geotechnical Investigation Report, prepared by LDE (Project Reference: 14668) dated 10/10/2018 and the Section 5 Recommendations of the Addendum Geotechnical Subdivision Report 22 Punawaitai Road, Pourerere, prepared by LDE (Project Reference: 14668) dated 3 July 2019.

17. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

That each Lot Owner acknowledges that the Lot is located in a productive rural area where agricultural management practices such as agrichemical spraying, use of farm machinery, the operation of bird scarers, stock crossing Punawaitai Road / bridge and other similar activities occur.

That each Lot Owner shall not bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the uses of Lot 100 (in gross) and/or rural land in the general vicinity:

- (a) make nor lodge; nor*
- (b) be party to; nor*
- (c) finance nor contribute to the cost of any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation of operations or any rural activity on Lot 100 and/or rural land in the general vicinity, including without limitation any action to require the registered owner or occupier of Lot 100 and/or rural land in the general vicinity to modify the*

rural operations carried out on Lot 100 and/or rural land in the general vicinity.

18. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof, of the requirement to comply with the following on a continuing basis:

That each Lot Owner shall not erect any building other than a single, new residential dwelling and a carport (which is to be attached to the residential dwelling) or a garage (one only) which can be either attached to the residential dwelling or separate from the residential dwelling. Any carport or garage must be constructed of the same materials as the residential dwelling and of a design to be architecturally integrated with and of the same colour scheme as the residential dwelling.

That for the residential dwelling, garage or carport erected on the site, each Lot Owner shall meet the following requirements:

- (a) the residential dwelling (including any carport or garage) must be no greater than 400 m²;*
- (b) the height of the residential dwelling must not exceed six (6) metres above the natural ground level;*
- (c) the residential dwelling must be restricted to a single storey building;*
- (d) the residential building must have a muted colour exterior design and colour scheme in accordance with the 'Colour and reflectivity scheme for Pourerere subdivision' provided as 'Figure 6' on pages 45-46 of the report "Pourerere Subdivision Punawaitai Road Pourerere James Bridge", prepared by Hudson Associates Landscape Architects, dated July 2019; and*
- (e) non-glazed exterior cladding must be used consisting of any of the following materials: kiln fired or concrete brick, stucco texture finish, stone or timber, solid weatherboard construction, or any other new exterior cladding material. Any exterior finish in the form of flat cladding, concrete block, poured or similar must have the surface textured at the time of construction.*

- ~~19. Where fencing is established under Condition 13, a Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 100 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:~~

~~*Dotterel protection fencing has been established to restrict access to the sand dunes from the farm and walking track to provide protection for the sand dunes, and in particular, a recognised Dotterel Breeding Ground that*~~

~~has been established within the sand dunes near the property, adjacent to the Pourerere Stream, in general accordance with the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024 PLANTING.~~

~~This fencing must be maintained by the owners and occupiers of Lot 100 on an ongoing basis.~~

20. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of ~~Lot 7~~ **Lots 1-6 and Lot 100** at the consent holder's expense advising the owners and subsequent owners thereof, of the requirement to comply with the following on a continuing basis:

~~That the Lot 7 must be retained and maintained as communal open space to be freely shared by the owners, and must be kept free of buildings driveways, residential dwellings, and private outdoor space.~~

Any future development on Lot 7 is to be in line with the 'Colour and reflectivity scheme for Pourerere subdivision' provided as 'Figure 6' on pages 45-46 of the report "Pourerere Subdivision Punawaitai Road Pourerere James Bridge", prepared by Hudson Associates Landscape Architects, dated July 2019;

21. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6 at the consent holder's expense advising the owners and subsequent owners thereof of the requirement to comply with the following:

~~Any future development and/or building on site shall not result in any increase in stormwater discharging from the property from Lots 1-7 as per the stormwater assessment report (xxxx-xxxx by xxxxxx dated xxxxx).~~

At the time of applying for a building consent for development on the site, a stormwater design must be submitted for approval. The design must show how any hard or sealed surface, roof water or tank overflows from the development will impact on the initial stormwater design submitted in association with the subdivision (RM180160) and show that the site is hydraulically neutral.

~~Note: The stormwater assessment referenced in the consent notice will be the report submitted to the Council under Condition 12 of this consent.~~

Stage 2 (Lots 8- 21-22 and Lot 200):

Easements

22. Prior to application for 223 certification for Stage 2, pursuant to section 243 of the Resource Management Act 1991 all easements shown in the memorandum on the approved scheme plan, and any easements required in association with the disposal

[https://sageplanning.sharepoint.com/Projects/CHB21001 CHBPDP - Post-Notification/HS6 - REZONINGS MAPS MISC/Right of Reply/REZONINGS/Appendices/Appendix 5 - Resource Consent RC180160A.docx](https://sageplanning.sharepoint.com/Projects/CHB21001_CHBPDP-Post-Notification/HS6-REZONINGS_MAPS_MISC/Right%20of%20Reply/REZONINGS/Appendices/Appendix%205-Resource%20Consent%20RC180160A.docx)

of stormwater must be included in a memorandum as part of the online LT plan package, and must be reserved and approved.

23. All cross-boundary services must be protected by easements as necessary to secure.

Erosion and Sediment Controls

24. Prior to any works being undertaken at the site, the consent holder must submit to Council's Customer and Consents Manager an Erosion, Sediment and Dust Control Plan for approval. This plan must detail, in accordance with best practice, how erosion, sediment and dust controls will be imposed to avoid the effects of earthworks on the nearby streams, tributaries and neighbouring properties for the following works:
 - a. Formation of the vehicle access right of ways within Lot 200;
 - b. Upgrading of Punawaitai Road; and
 - c. Removal of any existing vegetation adjacent to the Pourerere Stream.

Upgrading of Punawaitai Road

- 25A Pursuant to Rule 9.11(a), (b) and (e) of the Central Hawke's Bay Operative District Plan, a financial contribution (in the form of work) is required to upgrade Punawaitai Road (from the intersection shared with Pourerere Road to Punawaitai Road's legal end (approximately 220 metres in length)) to a sealed surface with a minimum width of 6.2 metres.**

The consent holder is required to fund 100% of the full cost of upgrading the road and preparation of any design requirements including drafting, plan preparation and reporting as required in accordance with the approved design under condition 25.

25. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council's Land Transport Manager for approval a design for upgrading Punawaitai Road to a sealed surface with a minimum width of 6.2 metres, from the intersection shared with Pourerere Road to Punawaitai Road's legal end (approximately 220m in length).
26. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must provide and have approved by the Land Transport Manager:
 - a. As-builts of the constructed road; and
 - b. A Certificate from a registered Civil Engineer stating that the As-built plans are a true and correct record of the constructed road.

Upgrading and Formation of Rights of Way (over Lot 200 22)

27. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council's Land Transport Manager for approval a design for upgrading the rights of way shown as 'B' and 'C' on the approved [https://sageplanning.sharepoint.com/Projects/CHB21001_CHBPDP - Post-Notification/HS6 - REZONINGS MAPS MISC/Right of Reply/REZONINGS/Appendices/Appendix 5 - Resource Consent RC180160A.docx](https://sageplanning.sharepoint.com/Projects/CHB21001_CHBPDP_-_Post-Notification/HS6_-_REZONINGS_MAPS_MISC/Right_of_Reply/REZONINGS/Appendices/Appendix_5_-_Resource_Consent_RC180160A.docx)

plans (excluding the culvert / bridge which is to be constructed in accordance with Condition (6) above) to a sealed surface with a minimum width of 6.2 metres, and forming and sealing the right of way shown as 'D' on the approved plans with a minimum width of 5 metres.

28. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, must provide and have approved by the Land Transport Manager:
 - a. As-builts of the constructed road; and
 - b. A Certificate from a CPEng Civil Engineer stating that the As-built plans are a true and correct record of the constructed road.

Stormwater

- ~~29. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council a stormwater assessment of Stage 2 prepared by a suitably qualified person, including the pre-development flow rate from each proposed lot and a stormwater assessment for the discharge to communal stormwater drains for a 1 in 50 year event to ensure these drains are designed to accommodate such an event.~~

~~Note: This assessment will be used by Council to inform each Lot Owner of their stormwater retention requirements.~~

29. **Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit a specific design for the stormwater disposal system prepared by a Chartered Professional Engineer specialising in the field of stormwater design and construction as part of the detailed right of way design.**

Lot 7 (Communal Open Space)

30. That Lot 7 ~~hereon~~ **hereon** (Communal Open Space) ~~must be held as to in 14 undivided one-40th shares by the owners of Lots 8-21 hereon and one undivided one-half share by the owners of Lot 200 hereon as tenants in common in the said shares and individual records of title be issued in accordance therewith.~~

See LINZ amalgamation 4671625 1679708.

~~Advice Note: At the time of application for certification of s224(c) of the RMA, 1991, for Stage 2 of the subdivision, Council will provide a certificate cancelling the amalgamation of Lot 7 with Lot 100.~~

Riparian Planting and Fencing

31. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must establish riparian planting and stock proof fencing along

the eastern bank of the Pourerere Stream in the area identified as the “Indicative Plan of Riparian Planting Area” prepared by McFlynn Surveying & Planning, reference 2018024-PLANTNG, to the satisfaction of the Council’s Customer and Consents Manager.

Consent Notices

32. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 8-21 at the consent holder’s expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

Any development of the site shall be in general accordance with the Section 5 Engineering Recommendations of the Geotechnical Investigation Report, prepared by LDE (Project Reference: 14668) dated 10/10/2018 and the Section 5 Recommendations of the Addendum Geotechnical Subdivision Report 22 Punawaitai Road, Pourerere, prepared by LDE (Project Reference: 14668) dated 3 July 2019.

33. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 8-21 at the consent holder’s expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

That each Lot Owner acknowledges that the Lot is located in a productive rural area where agricultural management practices such as agrichemical spraying, use of farm machinery, the operation of bird scarers, stock crossing Punawaitai Road / bridge and other similar activities occur.

That each Lot Owner shall not bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the uses of Lot 200 (in gross) and/or rural land in the general vicinity:

- (a) make nor lodge; nor*
- (b) be party to; nor*
- (c) finance nor contribute to the cost of any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation of operations or any rural activity on Lot 200 and/or rural land in the general vicinity, including without limitation any action to require the registered owner or occupier of Lot 200 and/or rural land in the general vicinity to modify the rural operations carried out on Lot 200 and/or rural land in the general vicinity.*

34. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 8-21 at the consent holder’s expense advising the owner(s) and subsequent owner(s) thereof, of the requirement to comply

with the following on a continuing basis:

That each Lot Owner shall not erect any building other than a single, new residential dwelling and a carport (which is to be attached to the residential dwelling) or a garage (one only) which can be either attached to the residential dwelling or separate from the residential dwelling. Any carport or garage must be constructed of the same materials as the residential dwelling and of a design to be architecturally integrated with and of the same colour scheme as the residential dwelling.

That for the residential dwelling, garage or carport erected on the site, each Lot Owner shall meet the following requirements:

- (a) the residential dwelling (including any carport or garage) must be no greater than 400 m²;*
- (b) the height of the residential dwelling must not exceed six (6) metres above the natural ground level;*
- (c) in respect of Lots 8, 9, 16 and 17 the residential dwelling must be restricted to a single storey building;*
- (d) the residential building must have a muted colour exterior design and colour scheme in accordance with the 'Colour and reflectivity scheme for Pourerere subdivision' provided as 'Figure 6' on pages 45-46 of the report "Pourerere Subdivision Punawaitai Road Pourerere James Bridge", prepared by Hudson Associates Landscape Architects, dated July 2019; and*
- (e) non-glazed exterior cladding must be used consisting of any of the following materials: kiln fired or concrete brick, stucco texture finish, stone or timber, solid weatherboard construction, or any other new exterior cladding material. Any exterior finish in the form of flat cladding, concrete block, poured or similar must have the surface textured at the time of construction.*

~~35. Where fencing is established under Condition 13 (Stage 1), a Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 200 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:~~

~~*Dotterel protection fencing has been established to restrict access to the sand dunes from the farm and walking track to provide protection for the sand dunes, and in particular, a recognised Dotterel-Breeding Ground that has been established within the sand dunes near the property, adjacent to the Pourerere Stream, in general accordance with the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024-PLANTING.*~~

~~This fencing must be maintained by the owners and occupiers of Lot 200 on an ongoing basis.~~

36. ~~A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 200 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:~~

~~Riparian planting and stock proof fencing has been established in the area identified as the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024-PLANTNG adjacent to the Pourerere Stream. This planting and fencing must be maintained by the owners and occupiers of Lot 200 on an ongoing basis.~~

37. ~~A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 200 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:~~

~~Any vegetation removed from that part of the site to which the Planting Plan (Planting Plan - Pourerere Stream, created by Hudson Associates Landscape Architecture and dated 22-7-19 and submitted as part of the application for RM180160) relates must be replaced with planting in accordance with the Planting Plan within the next available planting season (May-September). Ongoing upkeep and maintenance of the Planting Plan is required. It is the responsibility of the owner of this Lot to ensure that the Planting Plan is maintained to the standard set out in the Planting Plan.~~

38. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 8-21 at the consent holder's expense advising the owners and subsequent owners thereof of the requirement to comply with the following:

~~Any future development and/or building on site shall not result in any increase in stormwater discharging from the property from Lots 8-21 as per the stormwater assessment report (xxxx-xxxx by xxxxxx dated xxxxx).~~

At the time of applying for a building consent for development on the site, a stormwater design must be submitted for approval. The design must show how any hard or sealed surface, roof water or tank overflows from the development will impact on the initial stormwater design submitted in association with the subdivision (RM180160) and show that the site is hydraulically neutral.

Note: ~~The stormwater assessment referenced in the consent notice will be the report submitted to the Council under Condition 29 of this consent.~~

Part Cancellation of Consent Notices

- ~~39. Pursuant to section 221 of the Resource Management Act 1991, the Consent Notice created by Condition 15 in Stage 1 must be cancelled in part for Lots 8-21 as this only relates to Lot 200 and not Lots 8-21 in Stage 2.~~
40. Pursuant to section 221 of the Resource Management Act 1991, the Consent Notice created by Condition 16 in Stage 1 must be cancelled for Lots 8-21 and Lot 200 as the Consent Notice in Condition 32 relates specifically to these Lots.
- ~~41. Pursuant to section 221 of the Resource Management Act 1991, the Consent Notice created by Condition 19 in Stage 1 must be cancelled for part of Lots 8-21 as this only relates to Lot 200 and not Lots 8-21.~~

ADVICE NOTES:

- The consent holder is responsible for covering all costs associated with engineering approval, including site visits necessary to comply with the conditions of this consent.*
- Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
- For more information on the resource consent process with Central Hawke's Bay District Council see the council's website: www.chbdc.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.*
- If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
- The consent holder is responsible for obtaining all other necessary consents, permits, and licenses, including those under the Hawke's Bay Regional Coastal Environment Plan (in relation to stormwater and wastewater disposal, and the construction of the culvert/bridge), Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*

DELEGATION:

Under delegated authority from the Council, the Customer and Consent Manager approves this application.



Signed



Robyn Burns

Customer and Consents Manager

Date: 02/11/2020

<p>Report Prepared By:</p>  <p>Alison Francis Date: 29/10/2020 Consultant Planner</p>	<p>Report Reviewed/Approved By:</p>  <p>Sean Crocker Date: 02/11/2020 Senior Consultant Planner</p>
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Consolidated list of conditions for RM180160/RM180160A

Pursuant to sections 108, 108AA, 127 and 220 of the Resource Management Act 1991 (RMA), this subdivision consent referenced by Council as RM180160/RM180160A shall be subject to the following conditions:

CONDITIONS:

All Stages:

1. The Land Transfer Plan to give effect to this subdivision consent must be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the Council as resource consent number RM180160, **except as amended by RM180160A**
 - Application Form and Assessment of Environmental Effects prepared by McFlynn Surveying and Planning, dated 23 November 2018 Rev 1 and 127 Application Form and Assessment of Environment Effects prepared by McFlynn Surveying and Planning, dated 7 September 2020 Rev. 2.

Report title and reference	Author	Rev	Dated
Geotechnical Investigation Report for Proposed Subdivision, 22/23 Punawaitai Road	LDE Land Development & Exploration LTD.	Project Ref: 14668	10 October 2018
Punawaitai Road Subdivision Transport Impact Assessment	Urban Connection	Ref: TIA 04/005	November 2018
Bridge Assessment Report	Stratagroup Consulting Engineers		12 November 2018
Punawaitai Road Subdivision, Section 92 Response	Urban Connection		13 February 2019
Addendum Geotechnical Subdivision Report 22 Punawaitai Road, Pourerere	LDE Land Development & Exploration LTD.	Project Ref: 14668	3 July 2019
Pourerere Subdivision Punawaitai Road Pourerere James Bridge	Hudson Associates Landscape Architects		July 2019
Indicative Plan of Riparian Planting Area	McFlynn Surveying & Planning	2018024-PLANTING Sheet 1 of 1 Rev A	18/07/19

Proposed subdivision of Lot 1 DP 27067 Overall Plan	McFlynn Surveying & Planning	2018024- SP-08 Sheet 1 of 4 Rev A	04/09/2020
Proposed subdivision of Lot 1 DP 27067 Stage A	McFlynn Surveying & Planning	2018024- SP-08 Sheet 2 of 4 Rev A	04/09/2020
Proposed subdivision of Lot 1 DP 27067 Stage 1	McFlynn Surveying & Planning	2018024- SP-08 Sheet 3 of 4 Rev A	04/09/2020
Proposed subdivision of Lot 1 DP 27067 Stage 2	McFlynn Surveying & Planning	2018024- SP-08 Sheet 4 of 4 Rev A	04/09/2020

2. Under section 125 of the Resource Management Act, this consent lapses five years after the date it is granted unless:
- a. A survey plan is submitted to council for approval under section 223 of the RMA before the consent lapses, and that plan is deposited within three years of the approval date in accordance with section 224 of the Resource Management Act; or
 - b. An application under section 125 of the Resource Management Act is made to the Council before the consent lapses (five years) to extend the period after which the consent lapses and the Council grants an extension.

Stage A

- A1. Prior to application of 223 certification for Stage A, pursuant to section 243 of the Resource Management Act 1991 all easements shown in the memorandum on the approved scheme plan must be included in a memorandum as part of the online LT plan package, and must be reserved and granted.

Dotterel Breeding Grounds

- A2. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must provide evidence that they have either entered into an Open Space Covenant pursuant to section 22 of the Queen Elizabeth The Second National Trust Act 1977, or have established Dotterel protection fencing in general accordance with the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024-PLANTING, to the satisfaction of the Council's Customer and Consents Manager.
- A3. A Consent Notice pursuant to section 221 of the Resource Management Act 1991

must be registered on the Record of Title of Lot 2 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

Any vegetation removed from that part of the site to which the Planting Plan (Planting Plan – Pourerere Stream, created by Hudson Associates Landscape Architecture and dated 22-7-19 and submitted as part of the application for RM180160) relates must be replaced with planting in accordance with the Planting Plan within the next available planting season (May-September). Ongoing upkeep and maintenance of the Planting Plan is required. It is the responsibility of the owner of this Lot to ensure that the Planting Plan is maintained to the standard set out in the Planting Plan.

- A4. Where fencing is established under Condition A2, a Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 2 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

Dotterel protection fencing has been established to restrict access to the sand dunes from the farm and walking track to provide protection for the sand dunes, and in particular, a recognised Dotterel Breeding Ground that has been established within the sand dunes near the property, adjacent to the Pourerere Stream, in general accordance with the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024-PLANTING.

This fencing must be maintained by the owners and occupiers of Lot 2 on an ongoing basis.

- A5. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lot 2 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

Any riparian planting and stock proof fencing established in the area identified as the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024-PLANTING adjacent to the Pourerere Stream in accordance with the requirements of subdivision consent RM180160 must be maintained by the owners and occupiers of Lot 2 on an ongoing basis.

Stage 1 (Lots 1-7 & Lot 100):

Easements

3. Prior to application for 223 certification for Stage 1, pursuant to section 243 of the Resource Management Act 1991 all easements shown in the memorandum on the approved scheme plan, and any easements required in association with the disposal of stormwater must be included in a memorandum as part of the online LT plan package, and must be reserved and approved.
4. All cross-boundary services must be protected by easements as necessary to secure.

Engineering Design – Culvert / Bridge

5. The consent holder must submit to Council's Land Transport Manager a design of the culvert / bridge and dedicated footpath for approval prior to undertaking any work associated with the construction of the culvert / bridge. The design must include signposts and road marking as NZ Transport Agency's Manual of Traffic Signs and Markings.
6. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must provide and have approved by the Land Transport Manager:
 - a. As-builts of the constructed culvert/bridge; and
 - b. A Certificate from a CPEng Civil Engineer stating that the As-built plans are a true and correct record of the constructed culvert/bridge.

Erosion and Sediment Controls

7. Prior to any works being undertaken at the site, the consent holder must submit to Council's Customer and Consents Manager an Erosion, Sediment and Dust Control Plan for approval. This plan must detail, in accordance with best practice, how erosion, sediment and dust controls will be imposed to avoid the effects of earthworks on the nearby streams, tributaries and neighbouring properties for the following works:
 - a. Formation of the vehicle access right of ways within Lot 100;
 - b. Upgrading of Punawaitai Road; and
 - c. Removal of any existing vegetation adjacent to the Pourerere Stream.

Upgrading of Punawaitai Road

- 8A. Pursuant to Rule 9.11(a), (b) and (e) of the Central Hawke's Bay Operative District Plan, a financial contribution (in the form of work) is required to upgrade Punawaitai Road (from the intersection shared with Pourerere Road to Punawaitai Road's legal end (approximately 220 metres in length)) to an all-weather metal surface with a minimum width of 5.0 metres.

The consent holder is required to fund 100% of the full cost of upgrading the road in accordance with the approved design under condition 8.

8. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council's Land Transport Manager for approval a design for upgrading Punawaitai Road to an all-weather metal surface with a minimum width of 5.0 metres, from the intersection shared with Pourerere Road to Punawaitai Road's legal end (approximately 220m in length).
9. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must provide and have approved by the Land Transport Manager:
 - c. As-builts of the constructed road; and
 - d. A Certificate from a CPEng Civil Engineer stating that the As-built plans are a true and correct record of the constructed road.

Formation of Right of Ways (over Lot 100)

10. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council's Land Transport Manager for approval a design for forming the rights of way shown as B, C and D on the approved plans (excluding the culvert / bridge which is to be constructed in accordance with Condition (6) above) to an all-weather metal surface with a minimum width of 5.0 metres.
11. Prior to requesting approval under section 224(c) of the Resource Management Act 1991 the consent holder must provide and have approved by the Land Transport Manager:
 - a. As-builts of the constructed right of ways; and
 - b. A Certificate from a CPEng Civil Engineer stating that the As-built plans are a true and correct record of the constructed right of ways.

Stormwater

12. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit a specific design for the stormwater disposal system prepared by a Chartered Professional Engineer specialising in the field of stormwater design and construction as part of the detailed right of way design.
13. Deleted

Lot 7 (Communal Open Space)

14. That Lot 7 hereon (Communal Open Space) be held as to 6 undivided one-40th shares by the owners of Lots 1-6 hereon and one undivided one-half share by the owners of Lot 2 DP XXXXXX as tenants in common in the said shares and that individual records of title be issued in accordance therewith.

See LINZ amalgamation 1679708.

Consent Notices

15. Deleted
16. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6 and 100 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

Any development of the site shall be in general accordance with the Section 5 Engineering Recommendations of the Geotechnical Investigation Report, prepared by LDE (Project Reference: 14668) dated 10/10/2018 and the Section 5 Recommendations of the Addendum Geotechnical Subdivision Report 22 Punawaitai Road, Pourerere, prepared by LDE (Project Reference: 14668) dated 3 July 2019.

17. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

That each Lot Owner acknowledges that the Lot is located in a productive rural area where agricultural management practices such as agrichemical spraying, use of farm machinery, the operation of bird scarers, stock crossing Punawaitai Road / bridge and other similar activities occur.

That each Lot Owner shall not bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the uses of Lot 100 (in gross) and/or rural land in the general vicinity:

- (d) *make nor lodge; nor*
- (e) *be party to; nor*
- (f) *finance nor contribute to the cost of any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended*

to limit, prohibit or restrict the continuation of operations or any rural activity on Lot 100 and/or rural land in the general vicinity, including without limitation any action to require the registered owner or occupier of Lot 100 and/or rural land in the general vicinity to modify the rural operations carried out on Lot 100 and/or rural land in the general vicinity.

18. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof, of the requirement to comply with the following on a continuing basis:

That each Lot Owner shall not erect any building other than a single, new residential dwelling and a carport (which is to be attached to the residential dwelling) or a garage (one only) which can be either attached to the residential dwelling or separate from the residential dwelling. Any carport or garage must be constructed of the same materials as the residential

dwelling and of a design to be architecturally integrated with and of the same colour scheme as the residential dwelling.

That for the residential dwelling, garage or carport erected on the site, each Lot Owner shall meet the following requirements:

- (a) the residential dwelling (including any carport or garage) must be no greater than 400 m²;*
- (b) the height of the residential dwelling must not exceed six (6) metres above the natural ground level;*
- (c) the residential dwelling must be restricted to a single storey building;*
- (d) the residential building must have a muted colour exterior design and colour scheme in accordance with the 'Colour and reflectivity scheme for Pourerere subdivision' provided as 'Figure 6' on pages 45-46 of the report "Pourerere Subdivision Punawaitai Road Pourerere James Bridge", prepared by Hudson Associates Landscape Architects, dated July 2019; and*
- (e) non-glazed exterior cladding must be used consisting of any of the following materials: kiln fired or concrete brick, stucco texture finish, stone or timber, solid weatherboard construction, or any other new exterior cladding material. Any exterior finish in the form of flat cladding, concrete block, poured or similar must have the surface textured at the time of construction.*

19. Deleted
20. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6 and Lot 100 at the consent holder's expense advising the owners and subsequent owners thereof, of the requirement to comply with the following on a continuing basis:

That Lot 7 must be retained and maintained as communal open space to be freely shared by the owners, and must be kept free of driveways, residential dwellings, and private outdoor space.

Any future development on Lot 7 is to be in line with the 'Colour and reflectivity scheme for Pourerere subdivision' provided as 'Figure 6' on pages 45-46 of the report "Pourerere Subdivision Punawaitai Road Pourerere James Bridge", prepared by Hudson Associates Landscape Architects, dated July 2019;

21. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 1-6 at the consent holder's expense advising the owners and subsequent owners thereof of the requirement to comply with the following:

At the time of applying for a building consent for development on the site, a stormwater design must be submitted for approval. The design must show how any hard or sealed surface, roof water or tank overflows from the development will impact on the initial stormwater design submitted in association with the subdivision (RM180160) and show that the site is hydraulically neutral.

Stage 2 (Lots 8- 22):

Easements

22. Prior to application for 223 certification for Stage 2, pursuant to section 243 of the Resource Management Act 1991 all easements shown in the memorandum on the approved scheme plan, and any easements required in association with the disposal of stormwater must be included in a memorandum as part of the online LT plan package, and must be reserved and approved.
23. All cross-boundary services must be protected by easements as necessary to secure.

Erosion and Sediment Controls

24. Prior to any works being undertaken at the site, the consent holder must submit to Council's Customer and Consents Manager an Erosion, Sediment and Dust Control Plan for approval. This plan must detail, in accordance with best practice, how erosion, sediment and dust controls will be imposed to avoid the effects of

earthworks on the nearby streams, tributaries and neighbouring properties for the following works:

- a. Formation of the vehicle access right of ways within Lot 200;
- b. Upgrading of Punawaitai Road; and
- c. Removal of any existing vegetation adjacent to the Pourerere Stream.

Upgrading of Punawaitai Road

- 25A Pursuant to Rule 9.11(a), (b) and (e) of the Central Hawke's Bay Operative District Plan, a financial contribution (in the form of work) is required to upgrade Punawaitai Road (from the intersection shared with Pourerere Road to Punawaitai Road's legal end (approximately 220 metres in length)) to a sealed surface with a minimum width of 6.2 metres.

The consent holder is required to fund 100% of the full cost of upgrading the road and preparation of any design requirements including drafting, plan preparation and reporting as required in accordance with the approved design under condition 25.

25. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council's Land Transport Manager for approval a design for upgrading Punawaitai Road to a sealed surface with a minimum width of 6.2 metres, from the intersection shared with Pourerere Road to Punawaitai Road's legal end (approximately 220m in length).
26. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must provide and have approved by the Land Transport Manager:
 - a. As-builts of the constructed road; and
 - b. A Certificate from a registered Civil Engineer stating that the As-built plans are a true and correct record of the constructed road.

Upgrading and Formation of Rights of Way (over Lot ~~200~~ 22)

27. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit to Council's Land Transport Manager for approval a design for upgrading the rights of way shown as 'B' and 'C' on the approved plans (excluding the culvert / bridge which is to be constructed in accordance with Condition (6) above) to a sealed surface with a minimum width of 6.2 metres, and forming and sealing the right of way shown as 'D' on the approved plans with a minimum width of 5 metres.

28. Prior to requesting approval under section 224(c) of the Resource Management

Act 1991, must provide and have approved by the Land Transport Manager:

- a. As-builts of the constructed road; and
- b. A Certificate from a CPEng Civil Engineer stating that the As-built plans are a true and correct record of the constructed road.

Stormwater

29. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must submit a specific design for the stormwater disposal system prepared by a Chartered Professional Engineer specialising in the field of stormwater design and construction as part of the detailed right of way design.

Lot 7 (Communal Open Space)

30. That Lot 7 hereon (Communal Open Space) be held as to 14 undivided one-40th shares by the owners of Lots 8-21 hereon as tenants in common in the said shares and individual records of title be issued in accordance therewith.

See LINZ amalgamation 1679708.

Riparian Planting and Fencing

31. Prior to requesting approval under section 224(c) of the Resource Management Act 1991, the consent holder must establish riparian planting and stock proof fencing along the eastern bank of the Pourerere Stream in the area identified as the "Indicative Plan of Riparian Planting Area" prepared by McFlynn Surveying & Planning, reference 2018024-PLANTNG, to the satisfaction of the Council's Customer and Consents Manager.

Consent Notices

32. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 8-21 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

Any development of the site shall be in general accordance with the Section 5 Engineering Recommendations of the Geotechnical Investigation Report, prepared by LDE (Project Reference: 14668) dated 10/10/2018 and the Section 5 Recommendations of the Addendum Geotechnical Subdivision Report 22 Punawaitai Road, Pourerere, prepared by LDE (Project Reference: 14668) dated 3 July 2019.

33. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 8-21 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof of the requirement to comply with the following on a continuing basis:

That each Lot Owner acknowledges that the Lot is located in a productive rural area where agricultural management practices such as agrichemical spraying, use of farm machinery, the operation of bird scarers, stock crossing Punawaitai Road / bridge and other similar activities occur.

That each Lot Owner shall not bring any proceedings for damages, negligence, nuisance, trespass or interference arising from the uses of Lot 2 (in gross) and/or rural land in the general vicinity:

- (d) make nor lodge; nor*
- (e) be party to; nor*
- (f) finance nor contribute to the cost of any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation of operations or any rural activity on Lot 2 and/or rural land in the general vicinity, including without*

limitation any action to require the registered owner or occupier of Lot 2 and/or rural land in the general vicinity to modify the rural operations carried out on Lot 2 and/or rural land in the general vicinity.

34. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 8-21 at the consent holder's expense advising the owner(s) and subsequent owner(s) thereof, of the requirement to comply with the following on a continuing basis:

That each Lot Owner shall not erect any building other than a single, new residential dwelling and a carport (which is to be attached to the residential dwelling) or a garage (one only) which can be either attached to the residential dwelling or separate from the residential dwelling. Any carport or garage must be constructed of the same materials as the residential dwelling and of a design to be architecturally integrated with and of the same colour scheme as the residential dwelling.

That for the residential dwelling, garage or carport erected on the site, each Lot Owner shall meet the following requirements:

- (f) the residential dwelling (including any carport or garage) must be no greater than 400 m²;*
- (g) the height of the residential dwelling must not exceed six*

(6) metres above the natural ground level;

- (h) in respect of Lots 8, 9, 16 and 17 the residential dwelling must be restricted to a single storey building;*
- (i) the residential building must have a muted colour exterior design and colour scheme in accordance with the 'Colour and reflectivity scheme for Pourerere subdivision' provided as 'Figure 6' on pages 45-46 of the report "Pourerere Subdivision Punawaitai Road Pourerere James Bridge", prepared by Hudson Associates Landscape Architects, dated July 2019; and*
- (j) non-glazed exterior cladding must be used consisting of any of the following materials: kiln fired or concrete brick, stucco texture finish, stone or timber, solid weatherboard construction, or any other new exterior cladding material. Any exterior finish in the form of flat cladding, concrete block, poured or similar must have the surface textured at the time of construction.*

35. Deleted

36. Deleted

37. Deleted

38. A Consent Notice pursuant to section 221 of the Resource Management Act 1991 must be registered on the Record of Title of Lots 8-21 at the consent holder's expense advising the owners and subsequent owners thereof of the requirement to comply with the following:

At the time of applying for a building consent for development on the site, a stormwater design must be submitted for approval. The design must show how any hard or sealed surface, roof water or tank overflows from the development will impact on the initial stormwater design submitted in association with the subdivision (RM180160) and show that the site is hydraulically neutral.

Part Cancellation of Consent Notices

39. Deleted

40. Pursuant to section 221 of the Resource Management Act 1991, the Consent Notice created by Condition 16 in Stage 1 must be cancelled for Lots 8-21 as the Consent Notice in Condition 32 relates specifically to these Lots.

41. Deleted

ADVICE NOTES:

1. *The consent holder is responsible for covering all costs associated with engineering approval, including site visits necessary to comply with the conditions of this consent.*
2. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
3. *For more information on the resource consent process with Central Hawke's Bay District Council see the council's website:
www.chbdc.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.*
4. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
5. *The consent holder is responsible for obtaining all other necessary consents, permits, and licenses, including those under the Hawke's Bay Regional Coastal Environment Plan (in relation to stormwater and wastewater disposal, and the construction of the culvert/bridge), Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*

Note: Subsequent minor changes were made to this condition set pursuant to s133A of the Resource Management Act 1991 on 22/04/2020 & 25/08/2020 and these have been incorporated into this final condition set.