

IN THE MATTER of An APPLICATION FOR CONSENTS UNDER THE
RESOURCE MANAGEMENT ACT 1991

AND

IN THE MATTER of AN APPLICATION BY SPRINGHILL FARM HOLDINGS
FOR SUBDIVISION CONSENT

BETWEEN SPRINGHILL FARM HOLDINGS

Applicant

AND CENTRAL HAWKE'S BAY DISTRICT COUNCIL

Consent Authority

BRIEF OF EVIDENCE OF JASON BEVAN KAYE



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Introduction

- 1.1 My name is Jason Bevan Kaye. I hold Bachelor's and Master's Degrees in Social Science (following a prescribed Resources and Environmental Planning programme) conferred by Waikato University. I am currently employed as a Senior Planner with Development Nous Ltd, a Hastings based multi-disciplinary development consultancy.
- 1.2 I have more than twenty years' experience in the field of Resource and Environmental Planning. I commenced my current role with Development Nous Ltd in 2017. Prior to this, I was employed in planning policy and development consenting roles with local authorities in New Zealand and the United Kingdom since 2000, including the position of Resource Consents Team Leader at Whanganui District Council.
- 1.3 I have been provided with a copy of the Code of Conduct for Expert Witnesses contained in the Environment Court's 2014 Practice Note. I have read and agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.4 I understand and accept that it is my overriding duty to assist the Independent Commissioner in matters which are within my expertise as a Planner. I understand that I have an overriding duty to assist impartially on relevant matters within my area of expertise and that I am not an advocate for the party that has engaged me.
- 1.5 This evidence is provided in respect of resource consent application RM210103 ("Application") by Springhill Farm Holdings ("Applicant") to Central Hawke's Bay District Council (Council") for a staged 312 lot subdivision and related NESCS consents ("Development") at 1080, 1152 and 1200 State Highway 50 and 604 and 612 Wakarara Road, Ongaonga ("Site").
- 1.6 Acting on behalf of the Applicant, I prepared the Assessment of Environmental Effects (AEE) for the Application, and I have been involved throughout the subsequent Application assessment process.

- 1.7 The Application has been subject to minor revisions through the course of the Council's deliberation, both in terms of lot layout and in relation to the range of matters offered to be secured by way of condition or consent notice. I agree that the scheme referenced by the Council within the S42A report is the correct and final version of the Application that is proposed to be considered for resource consent.
- 1.8 I have visited the Site on multiple occasions, most recently on 03 March 2022.
- 1.9 In preparing this evidence, I have read:
- a) The full application, the section 92 further information response, the additional further information response, and other correspondence providing further application commitments,
 - b) The Council's section 95 assessment report,
 - c) The Council's section 42A Report along with the appended internal memos and reports.

2. Structure of Evidence

- 2.1 The Application is supported by an Assessment of Environmental Effects prepared by me together with and referenced by a suit of specialist reports. The purpose of my evidence is to provide an assessment of planning related matters relevant to the Application, including the relevant assessment framework of the Central Hawke's Bay Operative District Plan (district plan). There are no substantive challenges to the information in the specialist reports however the respective authors of those reports will either be present at the hearing or will be available to answer questions should any questions be raised in the course of the hearing.
- 2.2 My evidence is structured as follows:
- a) Brief description of the Application Site
 - b) Brief description of the proposed development scheme
 - c) Summary of the technical reports supporting the Application
 - d) Brief discussion of the notification process
 - e) Discussion of the District Plan assessment and conclusions

- f) Discussion of the NESCS assessment
- g) Review of the Council's proposed conditions of consent
- h) Discussion of the proposed lapse of consent
- i) Provide a brief conclusion

3. Application Site Summary

3.1 The Site is extensively described in the Assessment of Environmental Effects submitted with the Application and that description has been adopted by the Council's s42A Report. To avoid duplication, I do not intend on repeating that description other than confirming that the Site comprises three adjoining, generally flat land parcels that form a 220.7ha pastoral farming site at the junction of State Highway 50 and Wakarara Road, Ongaonga. These three parcels are formally described as:

- i. Part Section 2 Block IV Ruataniwha Survey District held on Record of Title HBG1/1065 comprising an area of 176.1732ha,
- ii. Section 10 Block IV Ruataniwha Survey District held on Record of Title HBA2/1134 comprising an area of 2023m²,
- iii. Lot 2 DP 395788 held on Record of Title 382377 comprising an area of 44.3915ha.

3.2 I am not aware of any aspect of the Site or surrounding environment that has changed since the Assessment of Environmental Effects was prepared.

4. Proposed Development Summary

4.1 Details of the proposed development are fully described in the AEE and are confirmed by the section 42A Report.

4.2 In summary, the Application seeks subdivision consent and associated NESCS consent for a relatively straightforward scheme of subdivision to form:

- i. 312 lots ranging from 4010m² to 1.5ha over 16 development stages,
- ii. An internal road network to be vested in Council, including road entrances to the site from State Highway 50 and Wakarara Road,
- iii. Seventeen private jointly owned access lots,

- iv. Associated roadside stormwater drainage network,
 - v. Associated works to works to State Highway 50 to facilitate the new site entrance from the state highway and to improve the State Highway 50 – Wakarara Road intersection pursuant to agreement reached with Waka Kotahi.
- 4.3 The NESCS consenting concerns the identification and remediation of areas of soil contamination within the site resulting from historic agricultural practices.

5. Technical Reports

- 5.1 The Application is supported by a range of specialist technical reporting provided as appendix documents to the AEE, or submitted to the Council through the course of the application assessment. In summary, the technical reporting comprises:

Detailed Site Investigation and Draft Site Remediation Action Plan, Geosciences Ltd

- 5.2 The Detailed Site Investigation confirms the presence of soils within the site that have been impacted by historic farm practices resulting in elevated residual contaminant concentrations. The Draft Site Remediation Action Plan advises of the need for further delineation testing to be undertaken to inform a final remediation strategy but acknowledges that areas of high contaminant concentration and former farm dump areas will need to be excavated and exported from the site to an accredited receiving facility. Areas of lower contaminant concentration may be suitable for on-site dilution mixing. The reporting does not identify any matters that would preclude the effective remediation of the site.
- 5.3 Geosciences are a specialist land contamination consultancy staffed by suitably qualified and experienced contaminated land practitioners. The site investigation methodology and reporting has been undertaken in accordance with the applicable technical requirements of the MfE Contaminated Land Management Guidelines documents.

Preliminary Geotechnical Assessment, Initial Geotechnical Specialists

- 5.4 This reporting has been informed by published geological mapping of the area supported by on-site investigation in the form of 32 test pits excavated across the site to a depth of between 2.9m and 4.0m and accompanying scala penetrometer testing. The report describes the subsurface conditions encountered through the investigation and concludes that the risk of surficial expression of liquefaction across the site is negligible and the site is suited to shallow foundations for house construction. Further lot specific investigation for foundation requirements is recommended at the time of any house construction.

Transport Assessment, East Cape Consulting

- 5.5 The transport assessment describes the existing road conditions, including previously recorded traffic count information and intersection turning counts commissioned for the assessment. The traffic count information shows a maximum of use of 112 vehicles per hour on State Highway 50 in the PM peak, against a typical lane capacity of 900 vehicles per hour. Crash data was also reviewed, identifying only one accident in the preceding five years within proximity of the Site.
- 5.6 The report confirms that the traffic generated by the development can be readily accommodated within the surrounding traffic network, and that the proposed roads comply with the district plan requirements. Further work following the Transport Assessment has agreed the form of the State Highway 50 entrance to the site and the improvements to the State Highway 50 – Wakarara Road intersection.

Engineering Services Master Plan Report, Development Nous Limited

- 5.7 This report provides assessment of storm water requirements for the development and references the contamination, geotechnical, wastewater and transport reporting undertaken by others to provide an overall summary servicing strategy for the development. The report provides concept level servicing plans, including road cross sections and swale arrangement.

Preliminary On-Site Wastewater Management Site Evaluation Report, Freeman Cook Associates

5.8 This report provides a preliminary review of the climate, landform and soil characteristics of the Site and the wastewater treatment and disposal options suitable for the identified conditions and the development. This report was supplemented by further reporting providing more detailed analysis of the treatment and disposal options for permitted activity status domestic wastewater discharges to land (as governed by the Hawke's Bay Regional Resource Management Plan) and the potential and mitigation of adverse cumulative effects.

6. Section 95 Assessment and Limited Notification of Application

6.1 The Application was subject to limited notification commencing on 03 December 2021 and concluding on 26 January 2022. Seven submissions were received.

6.2 I am aware that a component of the submission of Leanne and Warren Hutt was received on 04 February 2022 as a late submission. To assist the Commissioners, I can confirm that the Applicant has no objection to the inclusion of that component of the late submission.

6.3 The notification assessment completed by Council's consultant planner concluded that the landowners and occupiers of adjacent land to the Site were affected persons pursuant to s95E of the Act. The defined adjacent properties were identified at Figure 4 of the section 95 Notification Assessment Report. This figure is repeated below at Figure 1.

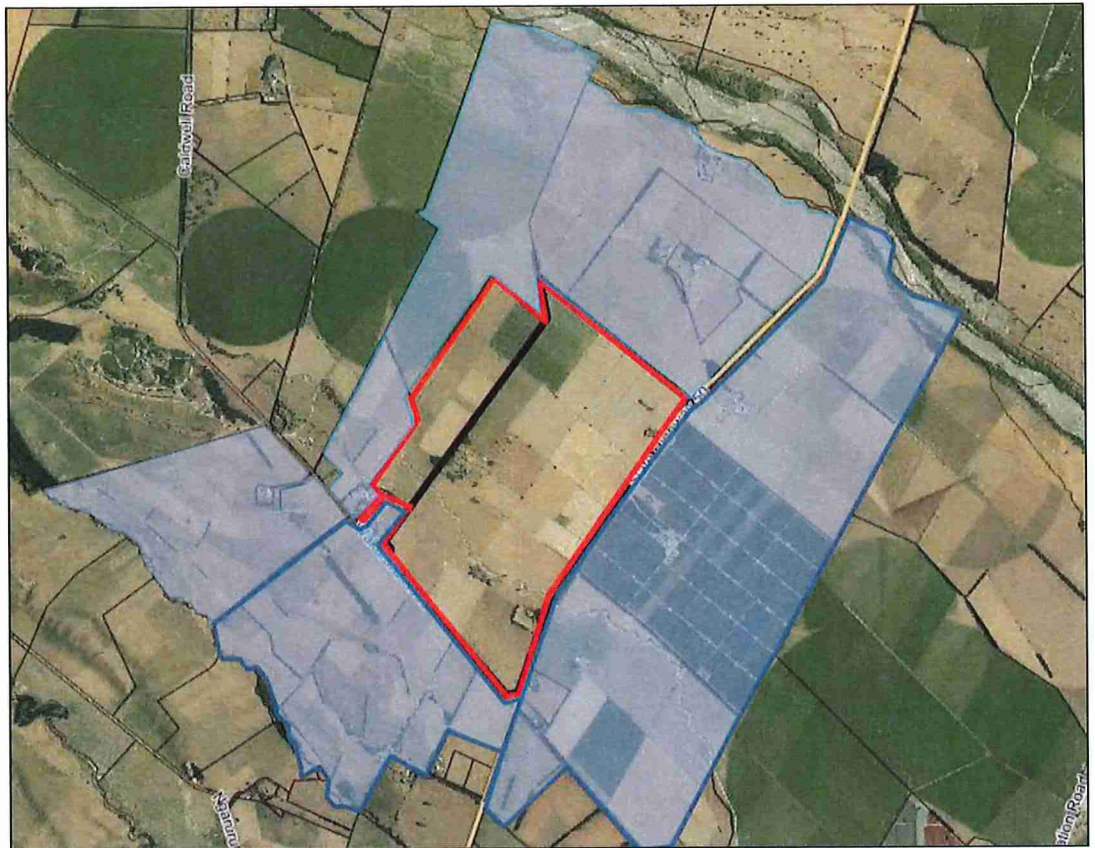


Figure 1: Figure 4 of Section 95 Notification Assessment Report

- 6.4 Figure 4 of the section 42A Report provides a map identifying the properties of submitters. This figure is repeated below at Figure 2.
- 6.5 I note that the submission of KB Sloane, which is identified in the section 42A Report as “Submission 7” has originated from the property at 646 Wakarara Road, and that this property was not identified in the section 95 Notification Assessment Report as an adjacent property for the purposes of serving of limited notification.
- 6.6 The Council has therefore included this property within the limited notification in error.
- 6.7 While this is an unusual situation, to assist the Commissioners and the submitter, I can confirm that the Applicant does not object to the inclusion of this submission or to this submitter presenting their objection to the hearing.

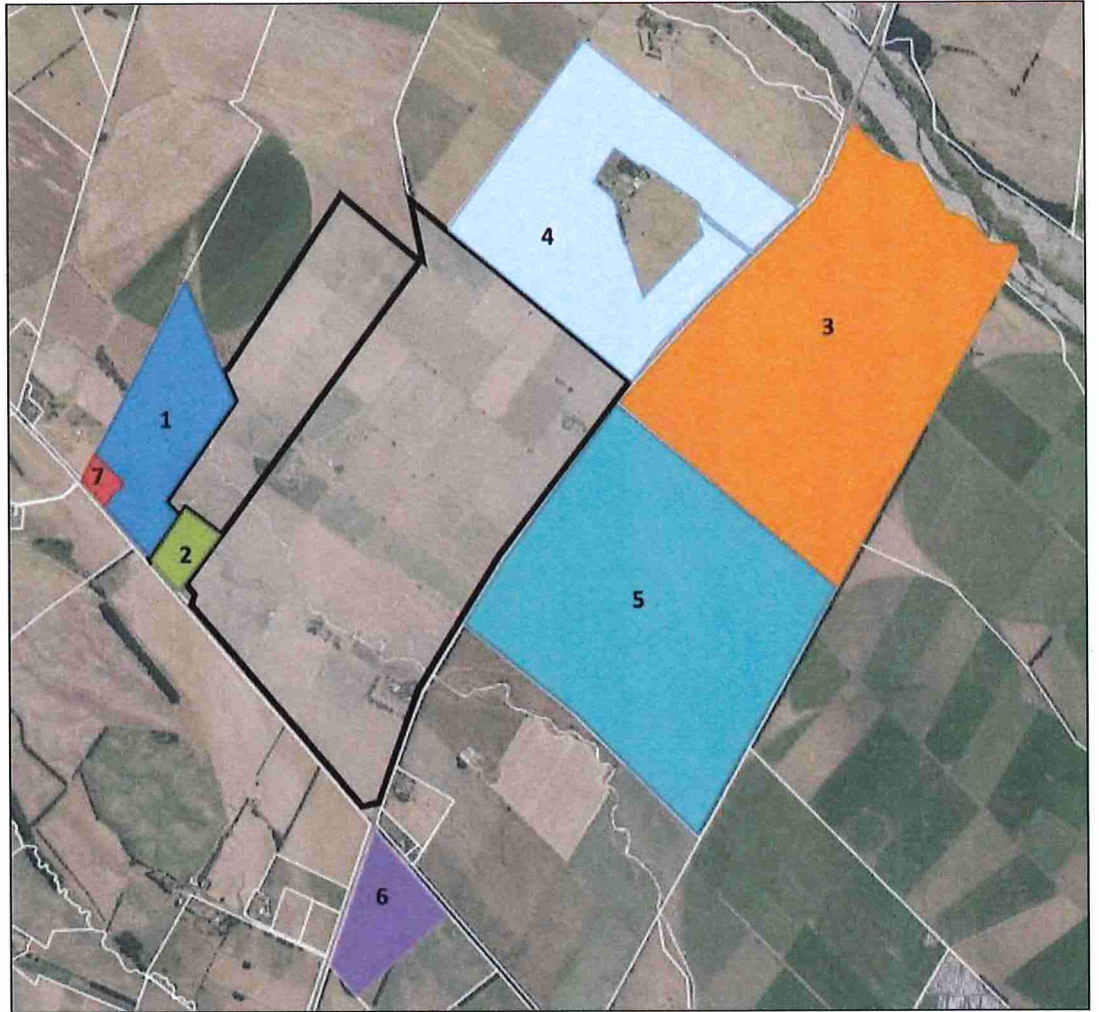


Figure 2: Figure 4 of Section 42A Report

- 6.8 I agree with the summary of the submissions provided by the Council's section 42A Report and the associated conclusions regarding applicability of the submissions to the refusal of the application and conditions.

7. District Plan Assessment

- 7.1 The Site is within the Rural Zone of the Central Hawke's Bay Operative District Plan. The AEE provided a full assessment of the subdivision against the district plan rules and performance standards. The assessment concluded that, in complying with all of the specified subdivision Performance Standards, the subdivision was classified as a controlled activity.
- 7.2 A similar assessment has been completed within the Section 42A Report that also reaches the conclusion that the subdivision is classified as a controlled activity.
- 7.3 The determination of a controlled activity is governed by the provisions of s104A of the Act, which states:

Section 104A Determination of applications for controlled activities

After considering an application for a resource consent for a controlled activity, a consent authority—

- (a) must grant the resource consent, unless it has insufficient information to determine whether or not the activity is a controlled activity; and*
- (b) may impose conditions on the consent under section 108 only for those matters—*
 - (i) over which control is reserved in national environmental standards or other regulations; or*
 - (ii) over which it has reserved its control in its plan or proposed plan.*

- 7.4 As the subdivision is classified as a controlled activity by the district plan, the Application must be approved in accordance with the requirements of s104A of the Act, and the consent authority's discretion is limited to the imposition of conditions. The section 42A Report is also clear on this position.

8. NESCS Assessment

- 8.1 The development is subject to the investigation, reporting and consent requirements of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS).
- 8.2 The effects of previous agricultural practices on the Site have resulted in elevated contaminant concentrations within the soils of identified areas of the Site, as identified in the Geosciences detailed site investigation. The remediation of these areas is classified as a restricted discretionary activity, with assessment matters relating to the adequacy of investigation, reporting and remediation. Given the discrete nature of the NESCS consent matter in relation to the wider subdivision, this consent has not been bundled with the subdivision consent.

9. Proposed Conditions of Consent

- 9.1 The objectives, policies and assessment criteria of the district plan have been considered by the reporting planner for the Council in formulating a set of proposed resource consent conditions.
- 9.2 I have reviewed the proposed conditions of consent and I agree with the condition wording and supporting rationale, with the exception of condition 33. The conditions otherwise appear practicable from an implementation perspective.
- 9.3 Condition 33 relates to street lighting and imposes a requirement to install street lighting throughout the development roads, rather than just to the road intersections as proposed by the Application. Condition 33 states:

(33) The full detailed roading design required by Condition 22 above must incorporate street lighting design of the proposed internal road

network sufficient to ensure the safety of road intersections and the wider street network within the subdivision.

- 9.4 I am concerned that if street lighting were installed throughout the development, it would lead to a suburban appearance within the development and create a suburban glow to the area at night, including when viewed by passing traffic on State Highway 50.
- 9.5 The appended supplementary statement from Mr George Eivers of East Cape Consulting provides his view that street lighting beyond the illumination of intersections is not necessary for road safety within the development, particularly as footpaths will be provided to remove pedestrians from the trafficked lane.
- 9.6 On the basis of the specific advice from Mr Eivers, the condition should be amended through the removal of the words “and the wider street network” from the condition.
- 9.7 The error of condition 4 of the Waka Kotahi set has been corrected by Waka Kotahi, as confirmed in the attached letter. The wording of condition 4 of the Waka Kotahi set is now agreed as:

Following the development of Stages 1 and 2, only Stages 3 and 4 may be developed until such a time that improvements to the intersection of State Highway 50 and Wakarara Road have been completed. Upon completion of the intersection improvements, the other stages of the development can be undertaken.

10. Proposed Lapse of Consent

- 10.1 The recommendation for approval of the consent is accompanied by a recommendation for refusal of the proposed 15 year lapse of consent that was sought to provide suitable time for implementation of the 16 stages of the subdivision.
- 10.2 The section 42A Report references the 8 years implementation limit achievable through the combination of 223 and 224 certification, considering this sufficiently reasonable to enable construction certification and issuing of titles for the 312 lots. The reluctance to provide any additional time beyond the standard of s125 of the Act is identified as being due to the progression of the proposed replacement district plan, and the resistance to such development in that proposed plan.
- 10.3 The Application is a scheme of reasonable scale that is being consented under the current district plan rules. While the directional change of the proposed replacement district plan is understood and appreciated, I do not believe that it is reasonable to limit the consent and the practicality of the implementation on the basis of the provisions of that replacement plan, in advance of that replacement district plan progressing through hearings to decisions.
- 10.4 The Applicant has dedicated significant resources to the resource consent and is not undertaking this costly exercise to then land bank the approval. The consent will be implemented, and there will be no ambiguity for third parties as to the status of the land or development. The additional time is sought in relation to the reasonable detailed design and development of sixteen stages of the subdivision and the formation and release of 312 lots.

11. Conclusion

- 11.1 Resource consent pursuant to section 88 of the Act is sought from Central Hawke's Bay District Council for the subdivision of the Site within the Rural Zone to form 312 lots and for site remediation.

- 11.2 As the subdivision complies with the district plan performance standards, it is classified as a controlled activity and the consent authority is obliged to approve the consent in accordance with the direction of s104A of the Act.
- 11.3 The NESCS consent is classified as a restricted discretionary activity and does not raise difficult remediation matters.
- 11.4 The Council's reporting officer has prepared a set of conditions and, subject to the comments on conditions made above, I agree are reasonable in terms of justification and practical implementation.
- 11.5 The recommendation includes refusal of the proposed 15 year lapse date that was sought to provide for reasonable implementation of the sixteen stages of the subdivision. This refusal recommendation is based on the provisions of the proposed replacement district plan. In my opinion, that is not a reasonable rationale for limiting the consenting of a development under the provisions of the currently operative district plan.