

RM 210103

Springhill Farms Holdings Application

Decision of the Panel of Hearing Commissioners

Hearing held in the Central Hawke's Bay District Council Chambers on 17 and 18 May 2022

INTRODUCTION

1. This is the report and decision of the Hearing Panel, Eileen von Dadelszen (Chair), Liz Lambert, and Grey Wilson. We were appointed by the Central Hawke's Bay District Council (CHBDC or 'the Council') pursuant to section 34A (1) of the Resource Management Act 1991 ('the Act' or 'the RMA') to hear the application (Subdivision and Land Use Consent RM210103) lodged by Springhill Farms Holdings ('the Applicant') and all submissions relating to it, and to make decisions, under section 357A of the Act.
2. This decision contains the findings from our deliberations on the review of the resource consent application and has been prepared in accordance with section 113 of the Act.

ATTENDANCES

Applicant:	Mr Matthew Lawson, Legal Counsel Mr and Mrs Ellmers, Landowners Professor Freeman Cook, Scientist Mr Jason Kaye, Planning Consultant
Submitters:	Mr A. S Alder Ms K. B. Sloane R. and H. Ellis K. Bell W. J. and L. F. Hutt Mr K. Davidson (Plantation Road Dairies)
Reporting Officers	Mr Philip McKay, Planning Consultant Ms Ella Boam, Senior Hydrogeologist, by Zoom Ms Hillary Lough, Technical Director, by Zoom

Hearing Facilitators Ms Robyn Burns, Customer and Consents Manager
 Ms Jana Green, Planning Support Officer
 Ms Pam Kupa

SUMMARY

SUBDIVISION CONSENT

3. Under delegated authority of Central Hawke’s Bay District Council, and pursuant to sections 104, 104A, 108, 125 and 220 of the Resource Management Act 1991:
4. We **grant** subdivision consent to Springhill Farm Holdings to subdivide to create 312 lifestyle lots at 1080, 1152 and 1200 State Highway 50 and 604 and 612 Wakarara Road, Ongaonga, being legally described as Part Section 2 Block IV Ruataniwha; Section 10 Block IV Ruataniwha; Lot 2 DP395788 and held in Records of Title BG1/1065, HBA2/1134 and RT 382377 and subject to the lapse date as specified in Conditions 3A to 3C of the Conditions listed in **Attachment 1** to this decision.
5. This consent is subject to the conditions listed in **Attachment 1** to this decision.

RESOURCE CONSENT TO SUBDIVIDE AND DISTURB SOIL IN A PIECE OF LAND SUBJECT TO THE RESOURCE MANAGEMENT (NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH) REGULATIONS 2011 (“NESTS”)

6. Under delegated authority of Central Hawke’s Bay District Council, and pursuant to Regulation 10 of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 and sections 104, 104C and 108 of the Resource Management Act 1991, we **grant** consent to Springhill Farm Holdings to subdivide and disturb soil on the land described as Part Section 2 Block IV Ruataniwha held in Record of Title BG1/1065.
7. This consent is subject to the conditions listed in **Attachment 2** to this decision.

PROCEDURAL MATTERS:

8. We visited the application site and the surrounding area on Monday 16 May 2022. This assisted us to gain a better understanding of the context for the application, and to gain a better understanding of the effects of the proposal and the issues that were discussed at the hearing. On the site visit we did not meet with, or discuss any matters associated with the hearing with, any of the parties.

9. The hearing of the application was held at the Council Chambers. After a karakia led by Ms Kupa the hearing began at 9.00 am on Tuesday 17 May 2022. Because of Covid 19 Health requirements, the number of people present in the chamber at any one time was limited, but all participants and members of the public were able to access the full hearing online. Submitters were invited to attend at specific times over the two days to present submissions and evidence.
10. A preliminary issue arose prior to the hearing being that a submission had been made by Warren and Leeanne Hutt and received by the Council before the closing date for submissions. A few days later, after the closing date for submissions, a further notice with some additional points was received by the Council and referred to the Panel for a decision as to whether that late submission could be received and considered. As the Applicant and other parties offered no objection, the Panel agreed to receive that late submission.
11. Before the hearing a report was produced under section 42A (“section 42A Report”) of the RMA on behalf of the Council by Mr Philip McKay, Consultant Planner. Details about this Report are included in para 7.6 below.
12. The s42A Report and the Applicant’s technical evidence were circulated before the hearing in accordance with section 103B of the Act to enable those documents to be read before the hearing.
13. On 18 May 2022, after all submissions were heard, the hearing was adjourned to enable information requested during the hearing (relating to possible amendments to conditions discussed during the hearing) and the right of reply to be provided.
14. Following the Hearing we received, and arranged to be circulated to all parties:
 - a legal opinion from the Council’s solicitors; and
 - the list of conditions recommended by the Reporting Officer in the Section 42A Report including some subsequently amended as a result of the Hearings process; and
 - closing reply on behalf of the Applicant, received by Commissioners on 2 June 2022.
15. The hearing was formally closed by letter on 7 June 2022.

SECTION 113 OF THE RESOURCE MANAGEMENT ACT 1991

16. Section 113(3) of the Act states:

A decision prepared under subsection (1) may, -

(a) instead of repeating material, cross-refer to all or a part of -

(i) *the assessment of environmental effects provided by the*

Applicant concerned:

(ii) *any report prepared under section 41 C, 42A, or 92; or*

(b) *adopt all or a part of the assessment or report and cross-refer to the material accordingly.*

17. In the interests of brevity and economy, we intend to make extensive use of section 113 of the Act and focus our assessment of the applications on the principal matters in contention

BACKGROUND

18. The application, made in accordance with section 88 of the Act, was lodged with the Council on 19 April 2021. Following requests for further information under section 92 of the Act, several communications took place between the council and the Applicant between June 2021 and November 2021. The application, including the “final” subdivision plan dated 9 November 2021, was “limited notified”, following acceptance of a Notification Report, on 3 December 2021 in accordance with section 95B of the Act and with clause 10 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

PROPOSED ACTIVITIES:

19. A full description of the proposal is contained within the application documents provided by the Applicant and described in the section 42A report.
20. The resource consent applied for is a Subdivision and Land Use Consent RM210103.
21. The Applicant proposes:
- to subdivide the 220ha property at 1080, 1152 and 1200 State Highway 50 and 604 and 612 Wakarara Road, Ongaonga. The proposal is to create 312 separate lots for lifestyle residential purposes, with each lot complying with the minimum lot size requirement in the CHB Operative District Plan (27 July 2000) of 4,000m². Access is proposed by an internal public road network to be vested in the Council and a series of Jointly Owned Access Lots;
 - to obtain an extended lapse period of 15 years to give effect to the consent (as opposed to the default 5-year lapse period), and proposed that subdivision occur over some 16 stages; and

- to subdivide and disturb soil because of residual contamination from historic farm activities (including sheep dips, farm sheds and a farm dump) in the vicinity of proposed Lots 198 about– 201 (Stage 14) and Lots 176 – 179 (Stage 15), under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS).
22. During the process, in responding to the s 92 requests for further information, and at the hearing, the Applicant volunteered some possible conditions, and accepted most recommended in the section 42A Report.
23. The application and associated Assessment of Effects on the Environment (“AEE”) were prepared on behalf of the Applicant by Mr Jason Kaye of Development Nous Ltd and were supported by technical reports:
- Staged scheme plans
 - Topographic Survey
 - Detailed Site Investigation (of soil contaminants)
 - Preliminary Geotechnical Assessment
 - Transport Assessment Report
 - Engineering Services Report
 - Preliminary On-site Wastewater Assessment
24. The Council’s section 42A Report summarised the applications, described the consents sought and the application site, and recommended conditions. The section 42A Report included the following technical reviews:
- Pattle Delamore Partners Limited (PDL): cumulative effects for wastewater discharge.
 - Hawke’s Bay Emergency Management: Natural Hazards
 - Stantec: Roding and Earthworks
 - Stantec: Updated Roding
 - Stantec: Stormwater, Flooding, Wastewater and Potable Water Supply
 - Stantec: Detailed site investigation
 - Stantec: Remedial Action Plan

25. The Report analysed the matters requiring consideration under the Act, described the consents sought and the application sites, and summarised the issues raised by submitters. It included recommendations to assist the Panel. These were that the two applications be granted, subject to conditions, and that the extended lapse period of 15 years be refused.

DESCRIPTION OF SITE:

26. The site of the application is described in the section 42A Report:

11. *The site description included in the AEE is adopted and, for convenience, is summarised as follows. The site occupies the north-western area of the junction of Wakarara Road and State Highway 50 ("SH50"), Ongaonga. The site presents a frontage of approximately 1.9km to SH50 and 1.08km to Wakarara Road. Two of the existing lots form a roughly rectangular area, and the third lot extends westward from the main lot set back approximately 240m from the Wakarara Road frontage and is accessed by an access leg.*
12. *The site is currently used for pastoral farming, including sheep and beef grazing. Two existing dwellings with associated curtilage are contained within the large title area of HBG1/1065, each positioned in proximity of the SH50 frontage. A cluster of rural buildings are located adjacent to the north-western boundary of the property also separately accessed from SH50. See Figure 1 below for an outline of the site and surrounding area.*
13. *The comparatively small area of HBA2/1134 is held as pasture as part of the larger holding. The western lot, held in 382377, is productively utilised as pasture and divided into paddocks. Assorted rural buildings are located at the southern end of the main body of that property. Land in the wider surrounding area is utilised for rural purposes. While this is predominantly for pastoral sheep and beef farming, orchard and cropped areas with associated irrigation systems are also scattered throughout the area*
14. *A variety of rural uses surround the site, including an apple orchard that occupies land on the eastern side of SH50, cropping land to the west and a piggery fronting Wakarara Road to the west.*
15. *From the junction with SH50, Wakarara Road extends approximately 27km westward accessing a catchment of rural land spreading to the base of the Ruahine Forest Park. Wakarara Road extends 4.7km eastward from SH50, to Ongaonga Road, providing an east-west connection to Waipawa and State Highway 2. The intersection of the east and west lengths of Wakarara Road and SH50 are offset by 40m. SH50 provides an alternative route from State Highway 2 at Takapau through to Hastings and Napier, passing through Ashley Clinton, Ongaonga, Tikokino and Maraekakaho. As shown in Figure 2 below, the site is located between the rural settlements of Ongaonga (4.7km from the existing house at 1200 SH50) and Tikokino*

(6.9km from the existing house at 1200 SH50). Beyond these immediate townships, the site is located in proximity of the larger rural service centres of Waipukurau and Waipawa being 20.4km and 19km from the property at 1200 SH50 respectively”

RELEVANT RULES AND ACTIVITY STATUS:

27. The section 42A Report ¹, outlined the relevant rules and the status of the activity under the Central Hawke’s Bay District Plan (ODP) which became Operative on 27 July 2000.
28. The site which is the subject of this application is zoned Rural in that Plan. Six weeks after the application was lodged, the District Council notified its Proposed District Plan, which contained new provisions including new zoning and subdivision standards for the subject land. We accept that section 88A of the Act stipulates that the provisions of the Proposed Plan are not relevant in considering the activity status of this application.
29. It is accepted that the operative Rule 9.9.3(a) provides for subdivision as a Controlled Activity in all zones provided compliance with all Subdivision Performance Standards is achieved. The section 42A Report set out the relevant standards and assessed the application in accordance with the Operative District Plan performance standards. Accordingly, the proposed subdivision requires assessment as a Controlled Activity under Rule 9.9.3(a) of the ODP and subject to the relevant assessment criteria as set out in section 14.6 of the ODP.
30. The proposed activity is also subject to Regulation 10 of the NESCS, being subdivision, and a soil disturbance activity within a ‘piece of land’ as defined in the NESCS. Accordingly, the proposal RM210103 24 also requires consent for a Restricted Discretionary Activity under the NESCS.
31. We have considered the issue of whether or not the 312 lot subdivision and the soil disturbance under the NESCS should be considered separately as requested by the Applicant or “bundled” so that the two activities could be considered together and assessed under the more stringent activity status of “Restricted Discretionary” activity.
32. We have considered the discussion about “bundling” in the s 42A Report ² based on the advice contained in the Quality Planning Website. Since the effects of the remediation application relate to a relatively small area covering eight lots within stages 15 and 16, and the Applicant could have simply separated these lots from the initial application and applied separately for NESCS consent, we agree with the recommendation that the two applications should be separately assessed,

¹ Section 42A Report paras 35-37 pages 17-23

² Ibid. paras 40-41, page 24

the former as a Controlled Activity, under section 104A, the latter as a Restricted Discretionary Activity, under section 104C.

33. We also note that the Applicant will need to apply to the Hawke's Bay Regional Council under rules in the Regional Resource Management Plan for consents to enable diversion of the southernmost branch of the ephemeral stream for Stage 5, and for two bridge crossings before stages 3 and 5 are completed. The section 42A report also suggests³ that should the stormwater discharge from the subdivision not meet the standards for a permitted activity, a consent for a Controlled Activity from that Council would be required.
34. With regard to these additional consents required, the original application (at Form 9) stated that no additional consents were required for the proposal. Further information was requested from the Applicant on the matter, and the following response provided⁴
35. *"Pursuant to preliminary discussions with HBRC, we anticipate the stormwater discharge from the development to be classified as a permitted activity, subject to detailing of flow rates. The realignment (diversion) now proposed to the southern overland flowpath will require resource consent triggered due to the related catchment area. The bridging of the main drain will also require consent triggered due to the catchment area. The road crossings are expected to qualify for the specified infrastructure exclusion of the NES FW and the JOAL crossings should meet the permitted activity requirements of the NES FW."*
36. On that basis, we do not consider there to be any section 91 RMA matters arising and agree with the Reporting Officer in this regard.

SUBMISSIONS

37. The application was limited notified on 3 December 2021 following acceptance of a Notification Report dated 2 December 2021.
38. Submissions closed on 26 January 2022, and seven submissions were received relating to the subdivision from adjacent landowners and occupiers, all in opposition to the proposal:
 - A.S Alder
 - K. Bell
 - R. and H. Ellis

³ Section 42A Report para 42 page 24

⁴ Development Nous Ltd – CHBDC: Section 92 Response RM210103 Springhill Farm, State Highway 50 – Wakarara Road Rural Subdivision to Form 312 Lots and Associated Road and Access Lots 5 August 2021

- W.J. and L.F. Hutt
- Mr Apple Ltd
- Plantation Road Dairies (Kevin Davidson)
- K.B Sloane

39. No submissions were received relating to the subdivision and soil disturbance proposal under the NESCS.

RELEVANT STATUTORY PROVISIONS:

40. We have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections 104, 104A, 104C, 108, 125 and 220 of the Act.
41. Under section 104(1), and subject to Part 2 of the Act, which contains the Act's purpose and principles, when considering an application for resource consent resource consent and any submissions received, we must have regard to-
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *Any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will result from allowing the activity;*
 - (c) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
 - (d) *Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
42. As discussed above (para 9.6) we assess the subdivision activity as a Controlled Activity and the land use consent as a Restricted Discretionary Activity under the NESCS.
43. Under section 104(2) RMA, when forming an opinion for the purposes of section 104(1)(a) regarding actual and potential effects on the environment, we may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This is referred to as consideration of the "permitted baseline".

44. We agree with the Reporting Officer⁵ as to the relevance of the permitted baseline in the assessment and determination of the Application and find that it is not a key issue for this decision. Where the ability to undertake activities on or adjacent to the site as of right or where the grant of consent may change the ability to do so, this is discussed within the context of our evaluation of the particular controlled matter to which that consideration relates.

45. Section 104A is specifically relevant to the **Controlled Activity**:

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.

46. This section requires consent for the subdivision activity to be granted. Therefore, the focus of our assessment has been to determine and impose conditions (relating to matters for which control has been reserved in the operative plan) to ensure that the actual and potential adverse effects of the proposal on the environment are appropriately avoided, remedied or mitigated.

47. In assessing the actual and potential effects of the proposed subdivision, the section 42A Report includes ⁶ a list of the matters over which the Plan reserves control for the assessment of Controlled Activities. These are:

- Lot Size and Dimensions
- Water Supply
- Stormwater Disposal
- Sanitary Sewage Disposal
- Trade Waste Disposal
- Vegetation and landscape

⁵ Section 42A Report paras 62 and 63 page 33

⁶ Ibid. para 56 page 32

- Easements; and
 - Building Location
48. The s 42A report also refers⁷ to the control over assessment of controlled activity subdivision applications set out under Part 14 of the District Plan in addition to Rule 9.9.3. These matters are discussed, submissions outlined, and recommended conditions, designed to mitigate or avoid any adverse effects, are provided⁸ in the Report.
49. Section 104 C is relevant to the **Restricted Discretionary Activity** required for the subdivision and soil disturbance activity within the area of contaminated soil under the NESCS.

104C DETERMINATION OF APPLICATIONS FOR RESTRICTED DISCRETIONARY ACTIVITIES

- (1) *When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which—*
- (a) *a discretion is restricted in national environmental standards or other regulations:*
 - (b) *it has restricted the exercise of its discretion in its plan or proposed plan.*
- (2) *The consent authority may grant or refuse the application.*
- (3) *However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which—*
- (a) *a discretion is restricted in national environmental standards or other regulations:*
 - (b) *it has restricted the exercise of its discretion in its plan or proposed plan.*
50. This section allows the council to grant or refuse the application and if granting to impose only conditions related to the matters, over which the NESCS restricts discretion. These matters are listed and discussed⁹ in the section 42A Report.
51. The Report concludes by recommending 52 conditions relating to the Controlled Activity and 9 conditions relating to the Restricted Discretionary Activity.

⁷ *Ibid, Para 60 page 32*

⁸ *Ibid. paras 67-252 pages 33-87*

⁹ *Ibid. paras 198-211 pp74-78*

RELEVANT DOCUMENTS:

52. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant statutory provisions of the following documents:
- Hawke's Bay Regional Policy Statement; (RPS)
 - Hawke's Bay Regional Resource Management Plan (HBRRMP or RRMP)
 - Central Hawke's Bay Operative District Plan (ODP)
 - Central Hawke's Bay Proposed District Plan (PDP)
53. Each of these documents is considered and discussed to the extent relevant in subsequent sections of this decision.¹⁰

SUMMARY OF EVIDENCE HEARD

54. Copies of all the written material submitted during the consent process are held by the Council, and the questions and responses during the hearing were recorded via video and are held on the Council records. These videos are available on:
- <https://www.chbdc.govt.nz/our-council/about/information-requests/published-responses-to-information-requests/>
55. In addition, we took our own notes of the verbal statements and verbal evidence presented, and any answers to our questions. We do, however, summarise and refer to relevant elements of the submissions, statements, and evidence in this decision, particularly in our discussion about the principal issues raised.

PRINCIPAL ISSUES

56. In assessing the applications, we have considered the application documents, all the submissions received, the evidence provided during the hearing, including the section 42A RMA Report and technical reports. In making our assessment, we are required to consider the actual and potential effects of the applications on the existing environment, including lawful existing activities, permitted activities, and any activities authorised by existing resource consents. In dealing with the issues raised, however, we are aware that this subdivision is a Controlled Activity and therefore must be granted, and any conditions must be related to the reserved matters in section 9.9.3 and 14.6 of the Operative Plan. We are aware that, as a result of the concerns expressed by submitters, the Applicant was willing to accept most of the conditions recommended in the section 42A Report to remedy or mitigate any adverse effects of the proposal.

⁸ *Ibid. paras 223-264 pp80-90*

57. Based on the evidence, we consider the principal issues in contention relating to the Applications are:

- Rural Amenity
- Servicing – wastewater
- Servicing – drinking water
- Lapse Date for the Subdivision Consent
- NES-CS Consent and Lapse Date

Rural Amenity

58. There were a range of issues raised by the application and by submitters which covered broadly this term. We have grouped these under two headings:

- (a) Reverse sensitivity
- (b) Loss of rural ambiance

Application

59. In the application, dated 19 April,¹¹ the Applicant described the proposal: “The development does not result in adverse effects on the environment and is not contrary to objectives and policies of the Central Hawke’s Bay District Plan. In the absence of complicating factors or adverse effects on neighbouring properties or the environment, it is reasonable for the Council to approve the subdivision on a non-notified basis.” No specific conditions were offered.

60. The Assessment of Environmental Effects under the heading, “Effects on Amenity of the Surrounding Area “, includes the statement: “*The large area of these lots provides ample opportunity for future development to be accommodated comfortably within the lots and open rural character of the wider area to be retained.*”¹²

61. Further information ¹³ was requested from the Applicant in relation to Reverse Sensitivity.

62. The responses provided were:

¹¹ Resource Consent Application Rural Subdivision Springhill Farm Development 1200 State Highway 50, Ongaonga. Assessment of Environmental Effects Section 1.0

¹² Ibid. Section 9.0, p44

¹³ Letter from CHBDC to Development Nous 3 June 2021 p 4

- Applicant confirmed acceptance of imposition of “No complaints” covenants on lots backing onto the western and northern site boundaries;¹⁴
- Noise buffer development setbacks are required by one of the Waka Kotahi conditions;¹⁵
- Ongoing discussions were taking place with an orchard property; and the Waka Kotahi noise buffer condition would provide suitable mitigation to protect living standards of future residents¹⁶ .

Public Submissions

63. All seven submitters, in opposing the subdivision application, specifically raised the potential of the proposed subdivision to have reverse sensitivity effects on the existing rural area and to result in the loss of rural ambiance. These specific concerns are summarised in Table 6 of the section 42A Report.¹⁷

Section 42A Report

64. The Section 42A Report includes a discussion of the issues raised by submitters relating to assessment matters in 14.6.(1)(c)¹⁸; We agree with the Reporting Officer’s opinion that these assessment matters enable us to consider the relationship of the proposed lots and compatibility with adjoining land use activities (including potential reverse sensitivity effects) and effects on the amenity of the area, (including loss of rural outlook and the increase of traffic).
65. Initially the Applicant stated the development would result in no adverse effects on the environment. However, by the conclusion of the hearing, the Applicant had provided voluntarily a proposed condition intended to protect any lawfully established activities being undertaken lawfully in accordance with the district and regional plan requirements. This was intended to avoid, remedy, and mitigate any reverse sensitivity effects.
66. This condition, requiring the registration of consent notices, will inform all new lot owners that they are moving into a productive rural environment with potential noises etc. relating to agricultural practices. Together with lot sizes and Waka Kotahi mitigation measures, some mitigation will be provided to reduce potential reverse sensitivity effects. However, we agree with the Reporting Officer’s opinion that: “these measures will not avoid the potential for reverse sensitivity effects” as they “cannot stop complaints being made to establish whether an

¹⁴ letter from Development Nours to P McKay 16 August 2021 p4

¹⁵ Ibid.

¹⁶ Section 42A report para 25 p13

¹⁷ Ibid. para73, p35

¹⁸ Ibid. para 72, p35

activity is being undertaken in compliance with the relevant provisions of the district or regional plan.”¹⁹

67. Another potential reverse sensitivity issue raised related to the potential for rainwater supplies being contaminated from agricultural or horticultural sprays. This matter was addressed by the Reporting Officer in the “Water Supply” section of the s42A Report. The Reporting Officer’s evaluation and conclusion²⁰ were that the requirements of the Act mean the Hawke’s Bay Regional Resource Management Plan in relation to agrichemicals applies, and there should be no deposition of any such contaminant on any roof.
68. The Reporting Officer included a section on “Assessment of Amenity of Surrounding Area”²¹ in which he discussed the concerns raised by submitters about the effect of the subdivision on the character and quality of the rural area. Requests included limiting the number of dwellings on each lot, requiring high quality housing, colour control, no relocated buildings or rental accommodation. He concluded that there were no controls available to the Council over these matters, but he pointed out that some of these matters can be dealt with by the developer.
69. The Reporting Officer’s conclusion was that, although there are potential reverse sensitivity effects and effects on rural amenity arising from the subdivision, because the application was for a controlled activity with limited matters of control, there were no conditions available to us to mitigate such potential effects.

Applicant’s Legal Submissions

70. In his opening legal submission Mr. Lawson, for the Applicant, noted that there was substantial agreement with the conditions recommended in the section 42A Report. Regarding effects on the environment, Mr Lawson referred to the Reporting Officer’s conclusion (see above) that there were no conditions available to us to mitigate such potential effects.
71. He advised that there had been discussions with one of the submitters (Mr Apple NZ Limited) and as a result the Applicant voluntarily offered a “no complaints covenant” as a condition. This covenant was intended to protect any lawfully established activities being undertaken lawfully in accordance with the district and regional plan requirements, and Mr Lawson stated that this would avoid remedy and mitigate any reverse sensitivity effects.
72. The draft condition was circulated to all parties and following some amendments was provided by Mr Lawson in his Right of Reply.

¹⁹ *Ibid. para 74, p37*

²⁰ *Ibid. para 136, p58*

²¹ *Ibid. paras 74-76 pp37-38*

73. In relation to the potential effects on rural character and amenity, Mr Lawson submitted that while there will be a change in the rural character and amenity, “that change is a change that is envisaged and provided for in the district plan which provided for this type of lifestyle subdivision as a controlled activity”. He added: “*Ultimately the Resource Management Act is not a “no change” regime, Sustainable management in section 5 envisages both use and development of natural and physical resources, not simply their protection.*”
74. In his closing submission, Mr. Lawson noted that under the CHBDC PDP the proposed subdivision would not be a Controlled Activity but would be a Discretionary Activity. He pointed out that the change in activity status would not mean that it was contrary to the Rural Production Zone objectives and policies, as had been suggested during the hearing.
75. In providing the final recommended wording of Condition 52, Mr Lawson also shared information regarding the concerns expressed by submitters in relation to noise and dogs. He explained that noise from residential, farming and forestry activities are exempt from the noise standards in the rural zone of the operative district plan, and activities involving stock, vehicles and mobile machinery associated with primary production are exempt from the noise standards in the proposed district plan. He also pointed out that owners of sections within the subdivision would be required to comply with the provisions of the Dog Control Act 1996 and with the Council’s dog control policy.
76. Mr Lawson also confirmed that the Applicant would not be averse to allowing limited commercial activities or a school within the subdivision and is open to discussions with council and/ or with the Ministry of Education in the future.

Evaluation

77. With regard to reverse sensitivity and rural amenity, we consider that the proposed subdivision, through the creation of 312 new titles, may lead to reverse sensitivity issues and loss of rural amenity, and we accept the recommendations of the Reporting Officer and agree with those reasons set out in the section 42A Report.²²
78. We agree that, since the proposed subdivision is a Controlled Activity, and there are only a limited number of reserved controls available to us, there are no conditions available to mitigate the potential effects beyond those offered by the Applicant.
79. Regarding the condition proposed voluntarily by the Applicant, we understand that there are possible benefits of our imposing a condition requiring registration of a consent notice with the Registrar General of Lands. We impose

²² Section 42A Report para 82, page 39

condition 52, which was offered by the Applicant during the hearing and after further refinement, offered in the Right of Reply:

“Rural Production Activities Reverse Sensitivity

52. *The consent holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for Lots 1 – 312 (All Stages), as specified below:*

a) *This property is located in a productive rural area where agricultural management practices such as agrichemical spraying, use of farm machinery, the operation of bird scarers and other similar activities may occur. Where land use activities in the surrounding area are carried out in accordance with the relevant District Plan, resource consent or existing use rights allowances, the property owner, or their successor in title shall not:*

- *Bring any proceedings for damages, negligence, nuisance, trespass, or interference arising from the use of that land; or*
- *Make nor lodge; nor*
- *Be party to; nor*
- *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 the operations of any rural activity on surrounding land, including without limitation any action to require the surrounding landowners/occupiers to modify the rural activities carried out on their land.”

80. We acknowledge the Applicant for offering this condition and sharing it with all parties to achieve general agreement.

81. We also recognise that consultation was not a requirement in making this application. However, we suggest that if the Applicant had taken the opportunity to consult with neighbours at an early stage, some of the anxiety experienced by neighbours might have been reduced and conditions developed at an earlier stage in the process.

82. Although we have no power to impose additional conditions, we note that during the hearing, references were made by Mrs Ellmers and Mr Kaye to planting plans and the intention of the Applicant to ensure a high standard of design, possibly using covenants. We also note the offer by Mr Lawson in his Right of Reply that the Applicant is open to conversations with the Council and the Ministry of Education about facilities in the future.

83. Regarding the concerns raised by Submitters about the potential for rainwater supplies being contaminated from agricultural or horticultural sprays, we agree with the evaluation and recommendation of the Reporting Officer; the requirements of the Act mean the Hawke's Bay Regional Resource Management Plan in relation to agrichemicals applies, and there should be no deposition of any such contaminant on any roof. We accept that this is, to some extent, a reverse sensitivity effect in that neighbouring properties may have dwellings located more closely to their boundary than previously. However, it is a general tenet of planning and case law under the Act that effects beyond the boundary of a site must be avoided, remedied, or mitigated and any spray operations should not be resulting in drift beyond the boundary of sites.

Servicing of the Proposed Lots - Wastewater

84. The proposed method of wastewater management for the subdivision is via on-site treatment and disposal, as there is no reticulated sewage network in the area, and none is proposed.
85. We have before us evidence relating to wastewater disposal methods and effects from experts engaged by Council and an expert engaged by the Applicant. There is agreement among the experts about the appropriateness of requiring UV treatment and drip-line irrigation for the on-site systems to mitigate the effects of pathogens. There is disagreement about the need for additional mitigation measures to address potential cumulative effects of nitrogen and phosphorus resulting from on-site wastewater discharges.
86. In terms of scope for this Panel to address potential effects related to wastewater discharges, the Applicant's position is generally that the standards for the permitted activity rule of the RRMP for domestic wastewater discharges are expected to be able to be met and there is therefore no need for further, detailed consideration of potential wastewater effects, and in fact that the District Council has no jurisdiction to control these. Counsel for the Applicant submitted via the Right of Reply²³ that the matter of wastewater discharges falls squarely within the jurisdiction of regional councils and therefore the scope of consideration of the matter and the ability to impose conditions of consent relating to wastewater is quite limited.
87. The Applicant has nonetheless provided detailed expert evidence relating to wastewater effects, largely in response to requests for further information and via a request from the Panel that the Applicant's wastewater expert appear at the hearing.
88. Submitters raised concerns around the combined effect of wastewater and livestock on water ways, and an increase of E.coli, nitrogen and phosphorus contamination in the environment, with one suggestion of boundary plantings to

²³ *Applicant's Right of Reply, Matthew Lawson, 01 June 2022*

assist with the uptake of nitrogen. Submitters also raised concern that the 'cut and carry' method (i.e. removal of grass in effluent disposal areas via mowing and disposal elsewhere) relied on in the Applicant's wastewater assessment relating to potential cumulative effects would not occur.

89. Additionally, we heard from Mr Davidson about his concerns relating to wastewater effects within the context of a discussion around the nutrient loading management requirements of the RRMP in the Tukituki Catchment, which is recognised as being degraded, and in which the subject site is located. We also heard from Mr Davidson that the subject site is near the Kahahakuri Stream, which has elevated levels of nitrogen in terms of the National Policy Statement on Freshwater Management 2020 (NPSFM20) framework, and that HBRC undertakes monitoring for the catchment at the Chesterman's Bridge.
90. The Section 42A Reporting Officer is generally accepting of the Applicant's overall position regarding the limited ability of the Panel to impose conditions relating to wastewater, particularly in terms of the more prescriptive management approach being suggested by experts for Council to address potential cumulative effects. The Reporting Officer does however acknowledge the integrated management function of the district council and that the matters of control set out in the District Plan may provide scope to address potential adverse effects of the proposed wastewater systems through conditions of consent. Likewise, Counsel for the Applicant has provided suggested wording for an additional condition relating to wastewater in the event that the Panel considers it appropriate to 'deal with wastewater via this decision'.
91. The Reporting Officer has recommended the imposition of the condition offered by the Applicant, requiring UV treatment and the use of drip-line irrigation as follows:

"The following consent notices [sic] shall be registered on the record of title of all lots other than road, access or reserve lots:
92. Any application for building consent for a habitable building shall include provision for an onsite wastewater treatment system that incorporates UV treatment and drip-line irrigation. Maintenance of the system shall be carried out [sic] accordance with the manufacturer's specifications."
93. We consider it useful and necessary to set out our finding with regard to the matter of scope and jurisdiction/ability to impose conditions first, before turning to our evaluation of the evidence and submissions relating to wastewater disposal method and effects.

Scope and Jurisdiction/Ability to Impose Conditions

94. We have had particular regard, as we must, to the subdivision provisions of the District Plan and have re-visited the cascade of provisions within the relevant

section of the District Plan (being Section 9 Subdivision) as they relate directly to wastewater. We have reproduced them here because it is helpful to demonstrate what we consider to be a very clear framework for the consideration of wastewater disposal method and effects²⁴ :

“9.2 Issue – Servicing

Subdivision usually requires roading, telecommunication, electricity, water, sewage and stormwater services to enable future owners of the land to carry out their planned activities.

Explanation

Subdivisions usually result in an intensified landuse, involving a full range of services. Good subdivision design includes roading and access routes that work efficiently and safely for both vehicles and pedestrians.

Water supply and sewage/stormwater disposal services may connect to existing reticulation networks, or be developed as self-contained services for each subdivision by the subdivider, or alternatively be developed at a later date by new owners for each individual site within a subdivision.

The proliferation of individual water supply and effluent disposal and stormwater systems can result in water contamination, flooding, or land instability in certain terrain. Subdivisions, where possible, should connect to existing reticulation systems

9.2.1 Objective

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

9.2.2 Policies

To ensure, upon subdivision or development, that anticipated land uses are provided with a means of disposing of sanitary sewage in a manner which is consistent with maintaining public health and which avoids, or mitigates contamination of surface, or groundwater and avoids land instability.

9.2.3 Explanation and Reasons

Treatment and disposal of sewage is a matter of vital importance. This is particularly significant in terms of the protection of the quality of the surface and groundwaters and in the protection of public health. Adequate treatment of sewage effluent requires adequate provision for treatment systems and means of disposal for the waste generated by the subdivision.

9.7 Environmental Results Anticipated

Adequate treatment and disposal of stormwater and sewage.

²⁴ We note that we have not reproduced the relevant performance condition for wastewater [Rule 9.10(d)] because it is not in contention as to whether or not compliance can be achieved. Rather the matter for consideration is the scope of the controlled matters and the scope of our ability or otherwise to impose conditions to wastewater

Controlled Matters

h. Sanitary Sewage Disposal

- *The method of sewage disposal where a public reticulation and treatment system is not available.*
- *The location and environmental effects of the proposed sanitary sewage system.*

14.6 Subdivision Assessment Matters

Sanitary Sewage Disposal

Where a reticulated system is not available, or a connection is impractical, provision of on-site effluent disposal systems in accordance with either District Plan Rules or by a discharge permit issued by the Hawke's Bay Regional Council.

Provision made by the applicant for monitoring mechanisms to ensure contaminants are not discharged into the environment from on-site effluent disposal systems, together with any consent notices to ensure compliance.

The need for and degree of any financial contribution to achieve the above matters.”

95. To us, it is clear within the controlled matters that the method, location and environmental effects of the proposed 'sanitary sewage system' (i.e., wastewater system) is within the scope of matters for us to consider and it is therefore appropriate that we have detailed evidence in front of us in this regard. Further, we consider that the subdivision assessment matters referenced above clearly reflect the District Council's function under section 31 of the RMA to achieve integrated management and anticipate that consent notices relating to wastewater may be appropriate to require when granting of subdivision consents.
96. In making our evaluation of the evidence and submissions relating to wastewater and determining the appropriate conditions to impose, we have had particular regard for both the controlled matters and the assessment matters, noting that we specifically asked questions of the wastewater experts relating to these.
97. In addition to the specific controlled matters and assessment matters set out in the District Plan, we find that the provisions of the Hawke's Bay Regional Resource Management Plan as they relate to wastewater disposal (as well as to nutrient loading within the Tukituki Catchment - Kahahakuri sub-catchment) and the overarching requirement of the National Policy Statement for Freshwater Management 2020(NPSFM20) to give effect to Te Mana o Te Wai are relevant to our consideration of the wastewater aspects of the proposal, and we discuss these matters in our evaluation of the evidence below.

Effects of the Proposed Method and Location of Wastewater Disposal

98. The Assessment of Effects on the Environment included in the Application, at page 40, includes a section on 'Social and Physical Infrastructure Servicing' and states the following:

"The created lots will be serviced for water supply, wastewater treatment and disposal and discharge of stormwater thereby avoiding any impact on Council's three waters servicing infrastructure".

99. The Application also includes a 'Preliminary Onsite Wastewater Assessment' prepared by Freeman Cook Associates²⁵. This assessment provides an initial, desktop assessment of wastewater disposal options with the expectation that individual systems on each lot will require specific on-site design. The assessment confirms that all proposed lots *"are larger than the 2500m³ minimum land area for wastewater discharge with no more than advance primary treatment as a permitted activity pursuant to Rule 37 Condition a of the Hawke's Bay Regional Resource Management Plan"*.

100. The Preliminary Assessment goes on to state that "no impact from groundwater would seem likely from this development. The pathogens, nitrogen and phosphorus can be expected to be reduced due to uptake by plants, soil and microorganisms". The Assessment also states, with regard to impact on soils "the nitrogen and phosphorus will be taken up by the plants and to avoid accumulation the herbage should be removed following cutting and the disposal area should not be fertilised with fertilisers containing nitrogen and phosphorus. Some application of potassium and micro-nutrients may be required from time to time."

101. The conclusion of the Preliminary Wastewater Assessment is:

"This scheme presents a low-density subdivision providing rural lots within a rural area that are likely to be developed for rural residential purposes. Based on the scheme plan information provided by Development Nous Ltd, my conclusion is that the wastewater from this development will have minor environment [sic] effect. The soils vary across the development area and individual assessment should be carried out at each site before the on-site wastewater systems is [sic] installed. In combination the subdivision form, site soils and wider environmental conditions of the site do not present any obstacle to the achievement of on-site domestic waste water disposal required from reasonably envisaged residential development of the lots".

²⁵ Preliminary On-Site Wastewater Management Site Evaluation Report, 16 April 2021, Freeman Cook Associates

102. A peer review²⁶ of the three waters aspects of the proposal identified that further consideration of the matter of wastewater effects was warranted and subsequently was requested via section 92 RMA as follows:

“7. Wastewater Effects – The three waters peer review undertaken for CHBC acknowledges the on-site wastewater evaluation for the development and states that due to the scale of the development and the rapid permeability of some sub-soils, especially for the northern half of the development area, this should be considered in more detail. The peer review also notes that in addition, the separation to the stream may need to be greater with the rapid permeability. The peer review recommends that the following information be provided:

- a. A simple 3D model for the groundwater at the site is developed considering any stream interfaces or downgradient groundwater abstractions. The assessments are required to determine the minimum level of treatment to be provided from on-site systems prior to discharge to land, to mitigate potential impacts on groundwater from pathogens or nutrients.*
- b. It is also recommended that some example site layouts are prepared for the smaller lots with watercourses through them to demonstrate that the various on-site services can be accommodated within the proposed lots, providing for separation from boundaries, water courses, buildings and stormwater soakage areas.*

103. The above information is request for consideration against the District Plan assessment criteria under Rule 14.6.7, for the matters of control under Rule 9.9.3(h) and the RMA requirement to consider cumulative effects.”

The response provided by the Applicant to this was:

“The engineering review has described the waterway through the site as a stream, and suggests the requirement for further assessment of groundwater impacts on the basis of concern of groundwater feeding the waterway. As the drain is shallow and the flow is depended on seasonal events, groundwater interaction is highly unlikely. The individual domestic discharges will be subject to the detailed and specific discharge requirements of the Hawke’s Bay Regional Resource Management Plan (HBRRMP), which is the correct assessment forum for consideration of wastewater discharge. While the interrogation of cumulative effects is understood, the HBRRMP provides a discharge to area limitation to consider the impacts of cumulative discharge. The specified area to discharge volume ration provides for the secondary treated domestic discharge. The specified area to discharge volume ration provides for the secondary treated domestic discharge of up to 13 persons on even the smallest lots of the subdivision, providing an indication of the regulated capacity of the land to

²⁶ Technical Memo - Peer review Springhill Farm Development RM 210103, 1 September 2021, Stantec

accommodate the required domestic discharge. The total domestic discharge from the site is obviously minor in relation to discharges arising from an alternative dairy farming use of the property.”

104. Additionally, further information was provided from the Applicant on the matter via letter dated 26 August 2021, including a proffered condition relating to UV treatment and sample layouts as follows:

“Details of on-site wastewater treatment to a tertiary level, achieved through UV or similar means of disinfectant, shall be provided with any application for building consent for a habitable building on the Lot. The tertiary treatment system shall be installed in accordance with the submitted details and maintained in good working order thereafter.

Sample layouts of development and related infrastructure on lots within proximity of the southern drains is provided on the southern drain realignment plan. This plan details the lots readily accommodating large houses of 300m² with associated 72m² garages and two 4m diameter water tanks. The rural sites offer significant flexibility to accommodate built development and required effluent fields”.

105. Subsequently, the Council advised the Applicant that, pursuant to section 92(2)(b) of the RMA, it would be commissioning a report from Pattle Delamore Partners (PDP) on the potential cumulative effects of the required on-site wastewater systems (and sought additional further information from the Applicant regarding several matters considered not to have been addressed adequately in previous responses).
106. The Applicant did not agree to the commissioning of a report from PDP, but rather engaged its own expert report to be prepared on the matter, by Professor Freeman Cook who prepared the Preliminary Wastewater Assessment.
107. The conclusion from that Report, along with the conclusion of the peer review of it subsequently undertaken by PDP, are set out in the Section 42A RMA Report at pages 14 -15 (paras 30-33).
108. The four key findings from Professor Cook’s Report are²⁷:
- “1. There is unlikely to be any impact of the onsite wastewater disposal to surface or groundwater by subsurface drip irrigation (SDI), bed or trenches.*
 - 2. The nutrient loading indicates that phosphorus would accumulate in the disposal areas where beds and trenches were used but SDI would not cause an increase in nutrient loading compared to the present landuse.*

²⁷ Loading from On-Site Wastewater Management and Cumulative Effects Springhill Subdivision Evaluation Report, 24 September 2021, Freeman Cook Associates

3. *The bacteriological loading showed that the total load to the site would be greatly reduced by the change from cattle grazing to housing but the intensity of loading in the wastewater SDI areas would be double that of the present land use. Thus, tertiary treatment (disinfection) to decrease any risk is considered worthwhile.*
4. *It is recommended that subsurface drip irrigation be used and that the wastewater be filtered and disinfected before discharge. This will result in no cumulative impacts to the land and is likely to improve the groundwater compared to the present land use of cattle grazing”.*

109. In the review of this report²⁸, PDP expressed concern that if ‘cut and carry’ systems are not utilised (i.e., if regular mowing and removal of grass within the disposal fields does not occur) there is potential for the cumulative effects of nitrogen leaching to the ground and surface water environments to be minor or more than minor. PDP agreed with Professor Cook’s assessment that the cumulative effects of microbial leaching would be less than minor, given the proposed secondary treatment systems, use of UV treatment and drip-line irrigation. With regard to phosphorus, PDP states:

“In the short-term, phosphorus losses are unlikely to be a significant issue based on the wastewater systems and cut-and-carry operation proposed, although there is greater potential for run-off or lateral flow on the Mangatewai soils, which could have the potential to result in more than minor adverse effects. Over time, there is the potential for phosphorus levels to increase in the soils for all three soil types due to the relatively high loading rate compared to plant uptake, which could lead to more than minor adverse cumulative effects”.

110. PDP therefore makes a series of recommendations about how the cumulative effects of the discharges could be mitigated. Professor Cook does not agree with the findings of PDP and finds that the cumulative effects arising from the wastewater discharges will be less than farming activities.²⁹

111. At the hearing, the wastewater experts provided additional detail around their assessments and recommendations. In particular, given the assessment matter in section 14.6 of the ODP relating to monitoring mechanisms proposed by the Applicant relating to the discharge of contaminants, we sought the view of both experts about any opportunities for monitoring (groundwater and/or surfacewater) that could be done to ensure that the effects of on-site wastewater systems in the proposed subdivision are as anticipated over time. We understand that there is a shallow groundwater HBRC groundwater monitoring bore within 1km of the site and a number of other bores in the area, as discussed in

²⁸ Memorandum PDP-CHBDC: Springhill Farm Holdings – Wakarara Road/SH50 Subdivision Cumulative effects assessment for wastewater discharge, 11 November 2021

²⁹ Response to Memorandum from Ella Boa (Pattle Delamore Partners) to Central Hawke’s Bay District Council entitled Springhill Farm Holdings – Wakara/SH50 Subdivision Cumulative effects assessment for wastewater discharge, Professor Freeman Cook, provide by Applicant on 24 November 2021

section 5.2 of 'the PDP memo' referred to and cited above. We also understand from Mr Davidson as a submitter that regular surfacewater monitoring is undertaken at the Chesterman's Bridge.

112. In response to our question about any monitoring proposed or that he considers appropriate, Professor Cook advised that monitoring could be useful but would essentially be very complex logistically (he contended that it would rely on an external party such as university students and eventually HBRC) and would be costly. He also noted that the direction of groundwater in the area would need to be determined to ensure effective monitoring. Subsequent to a further question clarifying his position, Professor Cook confirmed that no monitoring plan or similar had been developed by the Applicant in relation to effects of the proposed method of wastewater disposal on groundwater or surfacewater.
113. Ms Boam of PDP for the Council, later confirmed in our questioning of her that the nature of the soils and surface and groundwater interactions in the areas within and surrounding the subject site are such that it would be difficult to ensure that any monitoring undertaken was effectively measuring impacts from the on-site wastewater systems. Ms Lough for PDP, who was also in attendance, also clarified that the difficulties with monitoring as identified by the other wastewater experts, as well as the desirability of a proactive rather than reactive approach, are some of the reasons for the mitigation measures proposed by PDP which focus on managing the quality of the discharges and the nutrient loading rather than relying on monitoring to potentially identify an issue sometime in the future.

Evaluation and Findings

114. We do not entirely accept the argument put forth by Professor Cook that the effects of the proposed on-site method for wastewater disposal may be lesser than productive land uses, and therefore these effects are necessarily less than minor. We take on board the comments from the Mr Davidson as a submitter that the land within this catchment is subject to a quite specific land use and discharge regime. We do not consider that the assessment undertaken by Professor Cook gives us the entire picture in this regard and we did not receive specific evidence relating to how the land is currently managed other than anecdotal comments within the hearing documentation that there was a partial Farm Environmental Management Plan developed in 2018. Both Professor Cook and Ms Boam confirmed that a 'maximum discharge scenario' for the proposed subdivision which could include fertiliser application and stock on each property, in addition to the wastewater disposal systems has not been assessed. Neither Mr Kaye or Mr McKay as planning experts has put it to us that there is a relevant permitted baseline and we do not have a detailed picture of exactly what could be undertaken on the site (in terms of productive land uses) to establish that permitted baseline.

115. We understand the modelling approach taken by the wastewater experts and understand that a fully maximised nutrient loading scenario may be difficult to establish, and we do not think it is necessary. Rather, we think it is appropriate for us to assume some level of worst-case leaching and therefore generally prefer the more conservative approach of PDP as being more precautionary.
116. With regard to surface water effects, Professor Cook states that the development will result in lower contaminant transport to the Kahahakuri stream than present land use and that the orchard is more of a threat to the stream in terms of nutrient loading/contamination. Again, we do not have a detailed permitted activity envelope assessment in front of us, noting that productive land uses in this catchment are subject to a very specific regional plan framework which specifically manages nutrient loading, and therefore do not consider either of these assessments to be very helpful, rather we must assess the actual and *potential* effects of the proposal. There is no scope for consideration of whether an alternative activity would be better or worse than what is proposed. The fact is that under the staged approach, productive land use will continue alongside wastewater disposal of the developed lots, and it is also likely that fertiliser will be applied by new owners and stock will likely be grazed there. For these reasons, we consider the more conservative approach of PDP to be appropriate and have taken that into account in developing the conditions of consent.
117. We have considered the recommendations from PDP and tend to agree with the intent, about which Ms Lough provided further explanation at the hearing, of preferring an approach that limits the application of contaminants rather than the outcome (i.e., resulting effect on land and water). Hence, we do not entirely agree with the Reporting Officer's dismissal of the recommendations from PDP, and instead each of those recommendations should be considered in some detail, taking into account the scope of the controlled activity; the nature, scale and risk of the effect; and the practicality and enforceability of any condition stemming from the recommendation.
118. With regard to the use of 'cut and carry' systems, assessments from both wastewater experts rely, to some extent, on this occurring to mitigate the potential for accumulation of phosphorus. The Applicant addressed this in one of the responses to the PDP peer review of Professor Cook's assessment and states³⁰

"The secondary suggestion that systems will not be operated as required, in terms of cut and carry, leading to the potential for greater effects is rather speculative. We can accept a condition and consent notice requirement for operation of cut and carry if this will make you feel more comfortable, with the associated legal presumption that conditions will be complied with."

³⁰ Email dated 24 November 2021 Jason Kaye-Phil McKay, as included in Hearing Documents

119. Despite a condition requiring 'cut and carry' being offered by the Applicant, Mr McKay has not recommended one because he considered that enforcement of such a condition would be impractical. We queried this matter at the hearing because, whilst we understand Mr McKay's concern, we consider that the expectation that lot owners will automatically undertake some kind of cut and carry operation within the disposal fields is unrealistic. We also do not agree with the Applicant Planner's view above which relies on 'cut and carry' as being part of a compliant operation regime for an on-site wastewater treatment and disposal regime. We are not aware of any on-site wastewater system that requires 'cut and carry' to operate the system in accordance with manufacturer's standards nor does the RRMP require this. (As noted elsewhere Rule 37 does not deal explicitly with the matter of nitrogen or phosphorus uptake/accumulation/leaching).
120. We are generally accepting of the recommendations from PDP, with the exception of the hydraulic loading rate on the Mangatawai soils. Whilst we accept in principle the more precautionary approach of PDP in this regard, we do not consider it to be in our jurisdiction to impose a maximum hydraulic loading rate as this is regulation of the discharge, as opposed to imposing a requirement on the method of discharge, as we are able to do under the District Plan framework. Further, Rule 37 of the RRMP sets out requirements relating to maximum loading rates. RRMP Rule 37 does not, however, deal with nitrogen and phosphorus beyond requiring advanced primary and secondary treatment and, indirectly, by setting out minimum lot size requirements. We find that we are able to do so via the controlled matter relating to the proposed method of wastewater disposal and should do so given the scale of the proposed subdivision, the degraded nature of the catchment within which it is located and the intent and directions of the NPSFM20 relating to degraded waterbodies and to give effect to Te Mana o Te Wai. We therefore impose the Condition 49 as set out in the conditions of consent forming part of this decision, which requires that, on each new title, a consent notice is registered which requires UV treatment and achievement of the highest OSET rating or numerical equivalent for nitrogen and phosphorus treatment.
121. In Condition 49, we have incorporated the recommended wording from the Reporting Officer, with a slight adjustment because we do not consider it appropriate for us to tie the wastewater condition to the building consent in this instance. The requirement for a sanitary wastewater disposal system to be provided for any habitable dwelling under the Building Act 2004 is a separate matter. Rather, the condition we are imposing relates to on-going compliance with a particular environmental standard relating to the method of wastewater disposal required on each site.
122. We note that in the Applicant's Right of Reply, Counsel states at para 40:

"If the commissioners remain of the view that wastewater should be dealt with as part of this consent then that should be limited to a condition such as:

“the discharge of wastewater from residential activities undertaken on each allotment shall be undertaken in accordance with the permitted activity rules of the Hawke’s Bay Regional Resource Management Plan or a resource consent issued by the Hawke’s Bay Regional Council”.

123. For the reasons set out within this evaluation section, we are of the view that wastewater must be dealt with as part of this consent and in fact we consider that it must be, in accordance with the applicable District Plan framework.
124. We do not think it is within the sustainable management purpose of the Act to entirely sever the effects of land use enabled by a controlled activity subdivision, especially of this scale, from the consideration of effects, particularly in the context that the existing surface water body environment is recognised as being degraded. We consider that the wastewater condition we are imposing is within the scope of the controlled matters and will help to ensure the integrated management of this large scale rural residential subdivision, and that the effects are adequately mitigated.
125. We are unclear from the Right of Reply about whether the Applicant intends that the wastewater condition requiring a consent notice as recommended by the Reporting Officer is no longer appropriate, as this condition differs to that referred to in the Right of Reply. We were of the understanding during the hearing that that condition was not in contention and was generally agreed between the Reporting Officer and the Applicant, and it was likewise agreed between wastewater experts that UV treatment should be required. We are also unclear if Counsel is suggesting that a condition of consent relating to on-going compliance with wastewater disposal requirements should be imposed, rather than a consent notice framework as suggested by the Reporting Officer, noting that the District Plan anticipates the use of consent notices.
126. In any case, we have considered the suggestions from all parties relating to wastewater conditions, the potential effects associated with the location and method of wastewater disposal and taken into account that no monitoring of wastewater discharges is proposed by the Applicant and understand from the relevant experts that monitoring may be somewhat difficult given the uncertainty around groundwater flow in the area. We find that it is appropriate to impose a condition 49 requiring a consent notice be registered on all titles relating to wastewater disposal method and effects as set out in **Attachment 1**.

Servicing of the Proposed Lots – Drinking Water

Summary of Issues and Evidence

127. The AEE states the following in relation to the proposed water supply

“The relevant matters Council has reserved control over are: the supply of water (other than from a Council reticulated system), and water supply for firefighting

purposes. In the absence of an available reticulated supply, any future development of the lots would be required to be serviced by onsite means and roof surface rainwater collection and storage will be principally utilised for potable domestic water supply.

Centralised firefighting water supply is not proposed, and dedicated water storage tanks or sprinklers [sic] systems and pumped tanks will be required to accompany any future buildings constructed on the lots in accordance with the relevant standard”.

128. We understand from the Section 42A report that no additional information was requested from the Applicant regarding water supply matters, but that further relevant correspondence was received from the Applicant in a letter dated 26 August 2021³¹ in which conditions pertaining to water supply were offered in response to concerns raised at a public meeting held about the potential effects of the proposed subdivision on groundwater (refer para 19 s42A RMA Report).
129. These conditions relate to requiring that a potable water storage tank be provided at the time of building consent application and that any new bore installed on the new lots must meet the RRMP definition of ‘efficient groundwater take’.
130. Additionally, the Applicant provided to the Council further discussion of the issue of drinking water supply in an email 7 October 2021³² as follows:

“Demand on Aquifer

We have considered the suggested imposition of a consent notice preventing houses from forming water supply bores but have difficulty accepting that the potential effects of domestic extraction for the proposed lots justifies such a restriction in the context of the rural aquifer demands of the surrounding area.

Domestic supply based on 312 six person homes at 200 litres per person results in a total domestic water demand of 136,656m³ per year. Alternatively, the Regional Resource Management Plan provides a permitted activity allowance for a domestic bore to draw 15m³ per week for “reasonable domestic needs”. If all 312 homes were served by a bore drawing the maximum permitted volume for reasonable domestic needs, this would total 243,360m³ per year.

Based on our development experience across Hawke’s Bay, we expect the water supply for the majority of homes on the lots to be served by roof fed tank storage. This is reinforced by the offered requirement for all homes to be accompanied by a water tank. For the sake of a highly conservative assessment scenario, if half of the homes were served by water bores, this would result in a permitted extraction volume of 121,680m³ per year.

³¹ Letter Development Nous – CHBDC 26 August 2021: RM210103 Resource Consent Application 312 Lot Subdivision – 1080, 1152, 1200 SH 50 and 604, 612 Wakarara Road, Ongaonga - Further Supporting Information

³² Email Jason Kaye – Philip McKay: RM210103 Springhill Subdivision – Other Matters

Across the surrounding area are a multitude of approved consents for ground water extraction related to rural production. A quick (and non-comprehensive) scan of the consents in proximity of the application site identified a dozen consents (attached) authorising a total groundwater extraction exceeding 12 million cubic metres per year. If 50% of the lots were served by water bores, this would represent around 1% of the permitted water extraction of 12 consents from the surrounding area.

The consented extractions have been accepted and approved by HBRC. An additional 1% water extraction would not appear to be of such significance to justify the imposition of bore restrictions on the proposed lots.

We also note Condition c of Rule 53 of the Regional Resource Management Plan, which requires that a permitted activity status water bore “shall not adversely affect any lawfully established efficient groundwater take, or any lawfully established surface water take, which existed prior to commencement of the take unless written approval is obtained from the affected person”.

131. This limitation serves as a fall back in terms of effects on other aquifer users, preventing new bores being formed in circumstances where they will adversely affect existing bores. This condition alone would appear to obviate the need for the imposition of any bore restrictions.
132. On the basis of the insignificance of the volume of potential groundwater extraction of the development against the existing consented (and permitted activity status) groundwater extraction, and the fall back restriction of Condition c of Rule 53 of the Regional Resource Management Plan, we do not propose the imposition of a consent notice restriction preventing groundwater extraction.
133. Several Submitters raised concerns relating to drinking water primarily about the effects of spray drift from surrounding agricultural/horticultural activities on roof collection water supplies and about the effect of any taking of groundwater on existing water takes and on the Ruataniwha Aquifer and local rivers.
134. Additionally, we heard from Professor Cook during the hearing that the location of any bore to be installed within the lots would need to have careful consideration given the use of on-site wastewater treatment and disposal. When questioned about any consideration of the effects/interaction of the on-site wastewater treatment and disposal and any drinking water abstraction on the new allotment, Professor Cook stated that one would want to ensure that any necessary ‘stand down distance’ (separation distance) between a disposal field and a drinking water bore was identified and adhered to. In the PDP memo of 11 November 2021 ³³, it was recommended that the abstraction of water for drinking water purposes from the shallow groundwater system should be avoided, and any drinking water take should be from the confined aquifer, to avoid the supply

³³ Memorandum PDP-CHBDC: Springhill Farm Holdings – Wakarara Road/SH50 Subdivision Cumulative effects assessment for wastewater discharge, 11 November 2021

of water that is potentially contaminated from the on-site wastewater systems proposed.

135. The Reporting Officer has set out, in the s42A RMA Report, his consideration that of the two conditions proffered by the Applicant, only that relating to requiring a roof collection tank should be imposed. Mr McKay's view is that the proffered condition relating to groundwater bores would involve District Council being responsible for a matter that is within the jurisdiction of the Regional Council.

Evaluation and Findings

136. We generally agree with the views of the Applicant and the Reporting Officer in terms of the need for a condition requiring a consent notice for roof water collection for the supply of potable water. We are imposing a condition based on the wording recommended by the Reporting Officer, with some changes to reflect the matters we discuss below.
137. The Applicant's view, as put forth by its Planner in the October email referred to above, is that there is no need to restrict the taking of groundwater in association with development and use of the proposed new allotments on the basis that the taking of groundwater for 'reasonable domestic needs' (as defined in the RRMP – 15m³/week) would result in a very small percentage of water being taken, as compared to the volume of consented takes in the area.
138. We find this reasoning to be lacking and potentially flawed for two reasons. Firstly, a fulsome assessment of the effect of the taking of groundwater for 'reasonable domestic needs' from all proposed allotments if and when fully developed would assess this volume against the sustainable volume of water available in the aquifer, not as a percentage of nearby consented takes.
139. Secondly, the permitted activity rule (Rule 53 of the RRMP as referred to by the Applicant), permits 20m³/day per property, in addition to the 15m³ / per week allowed for reasonable domestic needs under the RRMP framework. Hence, the Applicant's assessment using 15m³/week underestimates the total volume of groundwater that could be undertaken within the development if all allotments were to install a groundwater bore. We consider it not unrealistic that at least some of the owners of new allotments may seek to be able to take water for uses beyond reasonable domestic use (i.e., drinking water), and it would seem the Applicant may have envisaged this given that the proffered condition³⁴ refers to 'water bores' and not 'drinking water bores' specifically.

³⁴ Proffered condition relating to bores: "Water Bores – The following consent notice shall be registered on the record of title of all lots other than road, access or reserve lots: Any new water bore formed on the Lot shall be of sufficient depth to meet the Regional Resource Management Plan definition of an "efficient groundwater take" enabling continued supply of water through dry months and shall incorporate a submersible pump".

140. Rule 53 is based on a maximum permitted volume **per property**, and therefore the granting of this consent to 312 new lots potentially enables a permitted activity take under Rule 53 from each of those lots. An accurate assessment of the maximum potential effect of groundwater takes if all properties put down a bore and took the full permitted amount, would therefore be based on the 15m³/week assessed by the Applicant, plus the 20m³/day per property allowed by Rule 53. A rough calculation puts this in the order of 2.25 million cubic metres per annum.
141. On that basis, we do consider that the proposed subdivision, through the creation of 312 new titles, may lead to significant demands on the fully-allocated aquifer due to the existing RRMP permitted activity framework that applies and which likely does not anticipate a subdivision of this scale that is not serviced by a centralised, reticulated supply.
142. We have no evidence in front of us relating to potential water use scenarios from the mixed, rural-residential uses likely within the subdivision which, we consider, can reasonably be expected to create some demand for irrigation water. However, we also have no hydraulic expert evidence in front of us, and therefore have no ability to determine if this maximum potential effect could actually occur i.e. what the maximum take from multiple allotments within the subdivision could be within the scope of the standards of Rule 53.
143. That said, it would seem unlikely that all allotments would be able to take water at the volumes and rates allowed under Rule 53 without having significant draw down effects that would cause a non-compliance with that Rule.
144. We accept the point made by the Reporting Officer that the management of groundwater takes is within the jurisdiction of Regional Council, and we accept that we cannot prevent an owner of one of the new allotments from putting a bore down and going through the appropriate regional council process at that time.
145. With regard to the condition proposed by the Applicant requiring that any bore installed on one of the new lots meet the RRMP definition of an 'efficient groundwater take', we consider that this is inappropriate and unnecessary. Whilst we accept that there is no ability for us to explicitly restrict the taking of groundwater, we consider it is not appropriate for us to encourage or enable the taking of water from the aquifer given the significant water issues faced in the District and the Region, and given that there is alternative drinking water supply for the subdivision available via rain collection.
146. As referred to above, the Applicant states that their experience in Hawke's Bay is that roof supply will be used and we also heard from the Applicant at the Hearing that it considers that the cost of bore installation will likely be prohibitive for many owners of the new lots. We therefore do not consider that it is overly onerous to ensure that the drinking water supply for the subdivision is only from roof collection and storage. The intention is to provide certainty that the effects that could result from the development and use of the proposed lots are not

significantly adverse on groundwater, connected surface water bodies and the catchment overall.

147. For these reasons, we impose condition 48 and find that this is within our control as it pertains to “the supply of water, other than from a Council reticulated system” and that this also goes some way towards reducing uncertainty and potential effects relating to contamination of groundwater that subsequently gets used for drinking water from the proposed on-site wastewater systems.

Lapse Date for Subdivision Consent

Application

148. In the application, dated 19 April 2021, the Applicant sought the following:

“Subdivision Consent

*Staged subdivision of the assembled site to form 312 rural lots, the formation of a network of roads to vest in Council and shared accesses to be retained in private shared ownership, associated drainage and servicing infrastructure, and necessary development formation earthworks, **incorporating a fifteen year consent lapse** – controlled activity pursuant to Rule 9.9.3 of the Central Hawke’s Bay Operative District Plan” (**our emphasis**).*

In the Applicant’s Assessment of Environmental Effects, it is stated that “An extended lapse date of fifteen years is sought to provide for the staged delivery of the development in response to market demand”.³⁵

149. Further information was requested in relation to the request to extend the lapse date and, in the response dated 5 August 2021, the Applicant provided the following explanation:
150. The Applicant’s intention is to commence development as soon as is possible following the grant of consent. There is no intention to bank the consent.
151. The fifteen year lapse date is commensurate with the total number of lots and the scale of required enabling infrastructure construction necessary to implement each stage of the development. This recognises the practicalities of physical construction, including the availability of general and specialist contractors and of construction materials. While it is hoped that the development will be completed in less than fifteen years, it will certainly span longer than the standard five year lapse of s125 of the Act, thereby necessitating a longer lapse duration.

³⁵ *Assessment of Environmental Effects 1080, 1152 and 1200 State Highway 50 and 604 and 614 Wakarara Road, Ongaonga. April 2020 p.1*

152. The proposed revision to the direction of rural subdivision within the proposed district plan is understood but land development cannot be expected to be placed on hold to wait for the outcome of a district plan review process, especially in the context of an overwhelming housing crisis and shortage of available development land throughout Hawke's Bay.³⁶

Public Submissions

153. Three of the submitters – AS Alder, R and H Ellis, and WJ and LF Hutt – specifically referenced the lapse date as part of their opposition to the application. Their issues regarding the lapse date can be summarised by their concerns around the impact of the ongoing development (earthworks, building and general disruption) over an extended period upon their farming activities and lifestyle.

Section 42A Report

154. In his assessment of the request to extend the consent lapse date the Reporting Officer stated that he is not aware of any criteria in the RMA under which a request to extend a lapse date should be considered and therefore assumes the general considerations in s.104 of the RMA to be relevant. Additionally he contended that while s.125 (1)(a) of the RMA enables an application to be made to extend a lapse date after a consent has been granted, the criterion under s 125(1A)(b)(iii) is an important consideration and is also relevant under s.104. s. 125(1A)(b)(iii) states that:

(1A) However, a consent does not lapse under subsection (1) if, before the consent lapses,—

(a) or

(b) an application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account—

(i); and

(ii); and

*(iii) **the effect of the extension on the policies and objectives of any plan or proposed plan.***

155. The Reporting Officer has determined that, in his view, while the proposed subdivision is generally consistent with the objectives and policies of the Operative District Plan, it is contrary to the objectives and policies of the Proposed District Plan. While the Applicant is clearly entitled to implement this controlled activity subdivision consent once granted regardless of whether the

³⁶ 210103-s92-response-H20210003-Wakarara-SH50-20210805

District Plan it was granted under ceases to have effect, it is another matter for Council to exercise its discretion to extend the lapse period if the subdivision consent and allow more time for it to be implemented when the subdivision is considered to be directly contrary to its proposed policy direction on rural subdivision.

156. The Reporting Officer concluded that it would not be appropriate to grant an extension of the five -year lapse date as sought in the Application as doing so would be providing additional time to enable the full extent of the subdivision to be completed. It is the scale of the subdivision that creates the adverse effects and the inconsistency with the objectives and policies of the Proposed District Plan. He concluded that he does not consider that granting the time extension sought would be consistent with the sustainable management purpose of the RMA.

Applicant's Opening Legal Submission

157. In opening legal submissions, Mr. Lawson for the Applicant noted there is substantial agreement with the conditions for the subdivision consent proposed by the Reporting Officer with minor amendment. One of these amendments is around the lapse date. The Applicant notes that there is no agreement on this matter as they have sought a 15-year lapse period that the Reporting Officer recommends a 5-year lapse date.

The Applicant set out their reasons for the 15-year lapse date which are essentially:

- (i) the application is for a 16-stage subdivision consent comprising some 312 lifestyle residential sites. A lapse date of 15 years will allow stages to be developed in a progressive manner to meet demand
 - (ii) the development of the land in stages over time will allow for the balance of the (undeveloped) land to be available for continued rural land uses.
158. The Applicant notes that there are strong policy reasons why a resource consent should not subsist for a length period without being out into effect. However, both Mrs Ellmers, as the Applicant, and Mr. Lawson, confirmed that it is the Applicant's intent that the consent be given effect to (commenced) as soon as practicable after granting and that this will be well within the five-year period.
159. On behalf of the Applicant Mr. Lawson reiterated that a lapse period of 15 years was still sought and proffered a refinement of amending the lapse dates based on the three proposed stages of development, with this staged approach to the lapse date giving the necessary commitment to ensuring that the consent is implemented while allowing sufficient time for that implementation.

Additional legal advice

160. Following the adjournment of the hearing we requested advice from Council's legal advisers (Rice Speirs) in relation to the lapse period sought by the Applicant. The conclusion of this advice is as follows:

We have considered the Applicant's submissions and consider that:

- (i) It is appropriate to assess the proposal against the objectives and policies of the PDP when determining whether to grant the Applicant's request for a longer lapse date*
- (ii) The Applicant's request appears to be primarily driven by commercial considerations, which are not relevant when determining the appropriate lapse date for a consent*
- (iii) While ultimately a matter for the Commissioners, in all of the circumstances, the factors in favour of retaining the default lapse date appear to outweigh the reasons given by the Applicant for seeking a longer lapse period.*

161. The legal advice also referenced the staged approach to the lapse period as raised at the hearing. The advice concluded that while ultimately the Reporting Officer's recommendation for a five-year lapse date is supported, if we were minded to grant the consent subject to staged lapse periods it was suggested that in relation to each stage, if that stage had not been given effect to by the relevant lapse date then the remainder of the consent should lapse.

Applicant's Right of Reply

162. In his closing legal submissions Mr. Lawson noted that in acknowledging the strong policy reasoning regarding resource consents not subsisting for a lengthy period of time before being put into effect the Applicant had suggested a stepwise lapse framework by amending the 15-year period sought in the application to an alternative requiring stages 1 to 5 to be given effect to (as that term is used in s.223 RMA) within five years, stages 6-10 within ten years and stages 11-6 within 15 years.

163. Mr. Lawson recorded that the Reporting Officer, in his updated s.42A report, has recommended the stepwise lapse date as follows:

(3A) That Stages 1-5 will lapse if not given effect to in accordance with s.125 of the Resource Management Act 1991 within five years of the date that this consent is granted. If Stages 1-5 (inclusive) are not given effect to within that timeframe the remaining stages of the subdivision (being stages 6-16) shall also lapse within 5 years of the date that this consent is granted.

(3A) That Stages 6-10 will lapse if not given effect to in accordance with s.125 of the Resource Management Act 1991 within ten years of the date that this consent is granted. If Stages 6-10 (inclusive) are not given effect to within that timeframe the remaining stages of the subdivision (being stages 11-16) shall also lapse within ten years of the date that this consent is granted.

(3A) That Stages 11-16 will lapse if not given effect to in accordance with s.125 of the Resource Management Act 1991 within fifteen years of the date that this consent is granted.

Evaluation

164. Section 125 of the Resource Management Act 1991 (the “RMA”) provides that if a resource consent is not given effect to within five years of the date of the decision, or any other time that is specified in the decision, it automatically lapses.
165. A subdivision consent is given effect to when the survey plan is approved by the Council pursuant to s223. (However, under s224 the survey plan will lapse if it is not subsequently deposited within three years of the plans being approved.) The survey plan must conform to the subdivision consent and ensure that the subdivision layout and provisions are correct. It may include matters such as required construction activities, vesting of lands for roads and reserves, payment of financial or development contributions, granting or reserving of easements, and registration of bonds or consent notices for securing conditions of a continuing nature.
166. In assessing our decision on the lapse date we acknowledge that cases have been made for both the five-year lapse date for the entire consent and for the ability for the lapse date to be extended beyond that. We have noted the arguments for and against the weighting that should be given to the lapse date consideration by the objectives and policies in the Proposed District Plan.
167. On balance we have determined that the stepped approach to the lapse date, as outlined above, is the preferred approach to this issue and will incorporate this into the conditions of consent accordingly. It is acceptable to the Council and the Applicant and, in our view, will provide certainty and reassurance to the submitters about the commitment of the Applicant to the development while acknowledging the practical realities of implementing a 16-stage comprehensive subdivision development of 312 lots.

NES-CS Consent and lapse date

Application

168. In the application, dated 19 April 2021, the Applicant sought the following:

“NES-CS Consent

Subdivision of a HAIL site in the presence of a detailed site investigation identifying soil contaminants in excess of relevant soil contaminant standards – restricted discretionary activity pursuant to regulation 10 of the Resource Management (National Environment Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. “

169. In the Applicant’s Assessment of Environmental Effects it is stated that discrete areas of soil remediation are necessitated by the development. A further description of this proposed activity identified an area of the property likely to have been used for practices associated with pastoral farming, such as sheep dips.
170. A Detailed Site Investigation (DSI) commissioned by the Applicant identified the location of a former (pre-1952) sheep dip, farm fuel storage area, farm refuse disposal pit and building related lead-based paint halos and wastewater discharge fields.³⁷
171. Accompanying the DSI a Draft Remedial Action Plan has been prepared. This includes recommending an updated Remedial Action Plan for Council approval prior to any remedial works commencing on site. This requirement is included in the conditions of consent.
172. A 15 year lapse date has been sought by the Applicant for the NES-CS consent in line with the extended lapse date sought for the subdivision consent.

Public Submissions

173. No submissions specifically addressed the lapse date for the NES-CS consent.

S.42A Report

174. The Reporting Officer concludes that a portion of the site, in Stages 14 and 15 of the proposed subdivision, adjacent to the existing farm buildings and yards has been identified as containing contaminated soils exceeding the NES-CS standards for rural residential land use. A DSI Report and Draft Remedial Action Plan (RAP) have been prepared by the Applicant by Geosciences Ltd. That report and plan has been peer reviewed for Council by Stantec³⁸, verifying the appropriateness of the Geosciences Ltd’s findings and recommendations, provided specific amendments are made to the RAP.

³⁷ *Assessment of Environmental Effects 1080, 1152 and 1200 State Highway 50 and 604 and 614 Wakarara Road, Ongaonga. Appendix C – Detailed Site Investigation, Geosciences Ltd 9 April 2021*

³⁸ *Stantec Peer Review of RM210103- Draft Remedial Action Plan Springhill Farm Lifestyle Development, State Highway 50, Ongaonga, Central Hawke’s Bay 31 August 2021.*

175. The Reporting Officer's assessment of the request for an extended consent lapse date has been traversed in a previous section on the subdivision consent lapse date and does not need to be repeated here.

Legal Submission

176. In his closing legal submission Mr. Lawson noted that the longer lapse period to address the soil contamination issues was sought due to the practical reality that the contamination is associated with the sheep dip and stock handling facilities which are not intended to be removed until the final stages of the subdivision, allowing for farming activities to occur on the balance of the land over the course of the staged development.

177. Mr. Lawson also proposed amendments to the conditions proposed in the section 42A report to provide for an update to the RAP to take into account any additional information for, or potentially obsolete information in, the draft RAP. We agree with the inclusion of these amendments.

Evaluation

178. The Section 42A Report outlines the matters relevant to the NES-CS land use consent on pp 74- 78. We accept the findings of the Report and having assessed the relevant information including that from the Applicant, the Stantec report and the peer review of the Stantec Report we are granting consent to this application.

179. As set out in our decision on the lapse date for the subdivision consent, we prefer the staged approach that has been put forward by the Reporting Officer following the adjournment of the Hearing.

180. In consideration of this, and of the location of the area for which the NES-CS consent applies, we are accepting of the need for an extended (15-year) consent lapse date for the land use consent to subdivide and disturb soil on the land described as Part Section 2 Block IV Ruataniwha held in Record of Title BG1/1065. We do however consider that it is appropriate to make this consent subject to the concurrent existence of the subdivision consent in that if the subdivision consent lapses prior to the implementation of Stages 11-16 then the NES-CS consent will also lapse at the same time.

OTHER ISSUES

181. Other issues which have arisen through the Hearing are addressed in the following sections. For any matters, including but not limited to property access and subdivision design, including conditions relating to earthworks and roading design approval, that we have not specifically addressed here or in previous sections, we rely on the information as set out and summarised in the Section

42A RMA Report and accept the recommendations therein, including recommended conditions of consent.

Servicing of the Proposed Lots - Stormwater

182. The Applicant proposes to utilise on-site stormwater management for each of the proposed allotments, including for any overflows of the water storage tanks proposed. Stormwater from formed roads and joint ownership access lots will be directed primarily to the ephemeral stream within the southern part of the site, with some flows being directed to an existing swale along State Highway 50.
183. The original Application includes an Engineering Services Master Plan Report³⁹ which includes a 'Stormwater Master Plan Analysis'. This sets out a pre-development assessment of drainage conditions, hydrology, catchment data and stormwater run-off data summary, along with post-development assessment of the same. The Stormwater Master Plan Analysis also identifies methods for stormwater development within the site (namely via on-site infiltration systems), the need for scour protection at the proposed discharge sites and the need for a stormwater easement for the ephemeral stream which will serve as the 'main drainage corridor' for the subdivision.
184. The AEE included within the original application does not discuss any matters relating to the quality of the receiving water bodies for stormwater and states that no additional consents are required in this (or any) regard. We note that the matter of additional consents was addressed in the further information request from Council in June 2021⁴⁰ and we set out our consideration of Section 91 RMA matters elsewhere in this decision.
185. We understand that an initial technical peer review of the engineering aspects of the proposal was undertaken on behalf of Council (by Stantec) in May 2021⁴¹ to assist the Reporting Officer in assessing the wastewater, stormwater and drinking water aspects of the Application. Further information relating to stormwater was requested from the Applicant in the 3 June 2021 section 92 RMA Request as follows:

"4. Subdivision Design – As is identified in the AEE and supporting documents the subject site is traversed by an ephemeral stream including a confluence with a second ephemeral stream. While the main branch of the stream is proposed to form the boundary between adjoining lots and to include an easement in gross, the secondary stream is not referenced in the

³⁹ Engineering Services Master Plan Report – 1200 State Highway 50, Ongaonga – Central Hawke's Bay H20210003 – ESMR Prepared For Springhill Farm Holdings April 2021 V1, Development Nous Limited

⁴⁰ Letter CHBDC – Development Nous Limited: Section 92(1) RMA - Resource Consent Application: 312 Lot Subdivision, 1080, 1152, & 1200 State Highway 50 and 604 & 612 Wakarara Road, Ongaonga – RM210103, 3 June 2021

⁴¹ May 2021 Review Notes – Technical Memo, Stantec (attached to 3 Waters Peer Review Memo)

subdivision design at all. The District Plan includes the following subdivision assessment matters under Rule 14.6:

2. Subdivision Design

- b. The provision for and practicality of walkways and cycleways, and the relationship of these to reserves (existing or proposed), access to the waterways, etc.*
- c. The provision for and practicality of using natural stormwater channels and wetland areas.*

6. Stormwater Disposal

- d. The ability to retain open natural waterway systems for stormwater disposal in preference to piped or canal systems and any adverse impacts on existing waterways.*
- j. For stormwater pipes and open waterway systems, the provision of appropriate easements in favour of either the registered user or in the case of the Council, easements in gross, to be shown on the survey plan for the subdivision, including private connections passing over other land protected by easements in favour of the user.*
- m. The need for a local purpose reserve to be set aside and vested in the Council as a site for a public utility for stormwater disposal purposes. Please provide an assessment against the above criteria with consideration of the two ephemeral watercourses and whether the subdivision design should be changed to better meet these criteria, including an opportunity to provide a local purpose reserve.*

6. Stormwater Effects – The three waters peer review undertaken for CHBDC states that it is not clear if the basis for stormwater mitigation meets the appropriate guidelines, and there is no basis or design standard on what the storage or soakage systems will be designed to achieve. The peer review recommends that a design approach for the on-site systems with an appropriate design storm (100-year event) be confirmed with the following information provided:

- a. Proposed design standard for the design of on-site soakage/storage systems for individual lots, private access ways and proposed public roads.*
 - i. Typical example sizing is determined for on-site storage/soakage approach based on conservative soakage rates. This can then be used when the properties are developed as part of building consent or roads are designed but confirmed based on the extent of site development and ground conditions at each site. This is expected to be a minimum volume/area*

required for storage/soakage from say a 100m² of impervious surfaces (roofs, hardstand, roads).

- ii. *Maintenance provisions for private access swales and soakage systems, along with on-site stormwater storage/soakage systems. The above information is requested for consideration against the District Plan assessment criteria under Rule 14.6.6 and the matters of control under Rule 9.9.3(g)."*

186. The Applicant subsequently submitted a revised Engineering Services Master Plan⁴² and provided the following responses via its letter of 5 August 2021:⁴³

"4. Subdivision Design

The proposed subdivision has been amended to better address the southern drain, which generally takes the form of a well-defined overland flowpath. To best manage this drain, it will be intercepted where it enters the site from Lot 1 DP 395788, and directed to the main drain by way of formed swales crossing lots (from west to east) 45 and 46, 50 and 38 and 39. The swale will benefit from necessary easements to CHBDC. The realignment is detailed on the accompanying plan H2021003 Springhill Overland Flow Path Diversion Plan⁴⁴.

- c. *The provision for and practicality of using natural stormwater channels and wetland areas.*

The development will utilise the natural stormwater channel of the principal drain and will retain an open swale form for the realigned minor drain. The site does not contain any wetland areas, and the prolonged dry season would compromise the ability to maintain the flora of a constructed wetland.

6. Stormwater Disposal

- d. *The ability to retain open natural waterway systems for stormwater disposal in preference to piped or canal systems and any adverse impacts on existing waterways.*

As above, the development retains open stormwater channels. While the minor drain is to be diverted through a formed swale, this will retain an open form. The drains will not be adversely affected by the development. Water will be collected from impervious roof areas for domestic use, and surplus

⁴² *Engineering Services Master Plan Report – 1200 State Highway 50, Ongaonga – Central Hawke’s Bay H20210003 – ESMPR Prepared For Springhill Farm Holdings July 2021 V2, Development Nous Limited*

⁴³ *Development Nous Ltd – CHBDC: Section 92 Response RM210103 Springhill Farm, State Highway 50 – Wakarara Road Rural Subdivision to Form 312 Lots and Associated Road and Access Lots 5 August 2021*

⁴⁴ *Springhill Subdivision – Overland Flow Path Diversion Plan, Development Nous Ltd, H20210003, 19 July 2021*

and other controlled stormwater within lots will be directed to ground soakage.

- j. For stormwater pipes and open waterway systems, the provision of appropriate easements in favour of either the registered user or in the case of the Council, easements in gross, to be shown on the survey plan for the subdivision, including private connections passing over other land protected by easements in favour of the user. Appropriate easements are proposed for the drains.*
- m. The need for a local purpose reserve to be set aside and vested in the Council as a site for a public utility for stormwater disposal purposes. As set out in the accompanying revised Engineering Services Master Plan document, the impacts of increased impervious surface within the application site can be readily mitigated through onsite measures. Accordingly, a local purpose reserve is not necessary to be provided as a public utility for stormwater ponding or other stormwater mitigation.*

6. Stormwater 6a.(i) On-site soakage design standard

Section 3.1.2.7 of the revised Engineering Services Master Plan document provides a typical sizing calculation for soakage/storage design. The large rural size of the proposed lots ensures that such storage can be readily accommodated on the sites.

6a.(ii) Swale maintenance Section 3.2 and Appendix E of the revised Engineering Services Master Plan provide standard swale maintenance guidance. These are commonly utilised stormwater controls and no specific problems or system vulnerabilities are evident.”

187. Subsequently, a further ‘3 Waters’ peer review was undertaken by Stantec on behalf of the Council⁴⁵ which states:

“Development Nous has provided further information in a revised engineering services report. This includes:

- Recommendations for maintenance provisions for the swales to be in accordance Auckland Council guidelines. Maintenance would be carried out by CHBDC for vested roads and individual owners for private systems, however no mechanism for this is noted. It is recommended that maintenance requirements are assigned against individual titles as ineffective maintenance of on-site stormwater systems will be potentially detrimental to the overall development and wider environment.*

⁴⁵ Peer review Springhill Farm Development RM 210103 – Technical Memo, Stantec, 1 September 2021

- *Indicative sizing for infiltration systems has been provided based on an assumed infiltration rate of around 40mm/hour (1m/day) based on guidance from Minnesota. It is not clear what rainfall or design storm has been assumed in these calculations and whether these infiltration devices would be sized for mitigating runoff to pre-development rates or to take the full areas of hardstand and overflow from roof tanks. It is noted that HBRC has guidance on infiltration rates in their Waterway Guidelines, Table 5-1 for different soil types, and design guidance for designing infiltration practices.*

Whilst Development Nours has provided some additional information this has not answered the main queries raised previously around design standards and mitigating to predevelopment runoff for the existing flow paths. Due to the uncertainty in the design basis proposed, the various flow paths for runoff from the sites matching predevelopment and erosion effects, it is recommended that individual lots are designed to provide infiltration systems sized for the full lot runoff up to the 100-year event.

It is recommended that all the infiltration systems for the development are designed in accordance with the HBRC Waterway Guidelines 2009, using a 100-year event design storm with rainfall from Hirds V4 with climate change allowance of RCP 6.0 2081-100.”

188. The Reporting Officer has recommended the adoption of conditions of consent which reflect the matters raised in the 3 Waters Peer Review, including stipulating design events for on-site infiltration systems and peer review requirements for engineering design.
189. There were no submissions received relating to the matter of stormwater management and disposal.

Evaluation and Findings

190. It is surprising, and unfortunate in our view, that the Application appears not to include any consideration of the quality of stormwater discharges from the site and any associated effects, particularly given that one of the controlled matters⁴⁶ relating to stormwater disposal is:

“the effectiveness and environmental impacts of any measures proposed for mitigating the effects of stormwater run-off, including the control of water-borne contaminants, little, debris and sediments”

⁴⁶ Para 141 of the Section 42A RMA Report sets out the full suite of controlled matters and associated assessment criteria

191. and one of the assessment criteria is:

“c. The adequacy of any proposed means for screening out litter, the capture of chemical spillages, the containment of contamination from roads and paved areas and of siltation”.

192. The Applicant appears to rely on the permitted activity framework of the RRMP as the basis for not including any such assessment.

193. We agree with the concerns raised in the 3 Waters Peer Review of the further stormwater information provided and therefore impose the conditions 44-47 recommended by the Reporting Officer. We note in particular the requirement in Condition 47 requiring a hydraulically neutral stormwater design for all lots in association with development. This serves to mitigate the effects of stormwater discharges on the wider environment.

Servicing of the Proposed Lots - Firefighting Supply

Summary of Issues and Evidence

194. The Section 42A Report includes a discussion of the matter of the supply of water for firefighting purposes to the proposed subdivision. Whilst there was some concern raised in submissions relating to this matter, it is not a principal matter in contention nor do we consider there to be significant issues for us to address and determine. We therefore find it unnecessary for us to traverse the issue in detail, noting that we find that the Applicant (at the suggestion of the Council) consulted with Fire and Emergency New Zealand (FENZ). We understand that the condition recommended by the Reporting Officer provides a viable alternative to the shared storage option recommended by FENZ and is considered appropriate by the Applicant and the Reporting Officer.

Evaluation and Findings

195. We accept the recommendations of the Reporting Officer and agree with those reasons set out in paragraph 135 of the section 42A Report and impose Condition 48 as recommended.

Natural Hazards including Section 106 RMA Matters

196. The technical review of the Application undertaken by Stantec in May 2021 and again in September 2021⁴⁷ identified that the site is subject to a flooding hazard which requires mitigation, and we understand from the s42A RMA Report that

⁴⁷ Peer review Springhill Farm Development RM 210103 – Technical Memo, Stantec, 1 September 2021

this is able to be achieved via conditions of consent relating to engineering design requirements during the section 224 RMA subdivision approval process.

197. With regard to flooding and stormwater, we also note the requirements of Conditions 45 through Condition 47 relating to appropriate mitigation of flood hazards and hydraulically neutral stormwater design for the new allotments when they are developed.
198. We understand the Reporting Officer specifically discussed the issue of section 106 RMA with the authors of the Technical Review of the Application (refer para 123 of the s42A RMA Report) and is satisfied that any natural hazard risk to the site can be appropriately mitigated via conditions of consent. We therefore concur with the Reporting Officer that there are no section 106 RMA matters arising, also given that sufficient provision has been made for legal and physical access to the allotments created by the proposed subdivision.

Evaluation and Findings

199. The Reporting Officer has recommended a suite of conditions relating to flood hazard and stormwater management, as also discussed in the section of this decision relating to stormwater matters, and we have adopted the conditions as recommended.

Geotechnical Issues

Application

200. One of the matters for control in considering the subdivision consent is building location, and assessment of this includes the local ground conditions and the suitability of the site of the building. It also includes assessment of whether or not a lot should be restricted from development on parts of the site, and minimum floor heights for buildings where inundation, and subsequent damage, may occur.
201. In the Applicant's Assessment of Environmental Effects, the following comments are made in paras. 185 and 186 respectively in relation to building location:

Building platforms for the proposed lots (other than the already developed lots 25 and 129) can be readily achieved in the absence of notable constraints in the large sites. There is ample space within the proposed lots for the future development of dwellings and accessory buildings which comply with the relevant performance standards for the Rural Zone.

As noted within the site description, Appendix D provides a Geotechnical Report detailing specialist subsurface investigations and conclusions of liquefaction vulnerability. The report concludes that the site is unlikely to liquefy during a

design seismic event and that suitable foundations for future houses can be readily formed through shallow excavation of topsoil.

Public Submissions

202. No submissions specifically addressed geotechnical issues although building location *per se* was raised around reverse sensitivity and amenity effects.

Section 42A Report

203. The Reporting Officer noted that Stantec undertook a peer review of the geotechnical aspects of the application and concluded that the report had been done in a professional manner and is suitable for the task of the consent application.

204. The Reporting Officer concluded that the recommended conditions will appropriately avoid, remedy or mitigate any risk to building location from unstable ground.

Evaluation

205. We did not hear any additional evidence in relation to geotechnical issues at the Hearing nor did we pursue any further this issue. We are satisfied with the findings of the Applicant's report, the Stantec peer review and the proposed conditions put forward by the Reporting Officer.

Possible pollution of water storage tanks and through weeds being brought into the area

206. Rainwater tanks are acceptable as an appropriate method of water supply to rural dwellings and any application of agrichemicals must not result on deposits on roof or water supply structure.

Increased traffic emissions and effects on rural roads

207. These issues are beyond the scope of this hearing. However, Waka Kotahi has provided affected party approval to the application with a list of conditions designed to protect the State Highway.

Impact on community services and lack of amenities and facilities for future landowners

208. The application was simply for the subdivision approval and this hearing has only limited power to impose conditions relating to additional matters. However,

conditions will ensure there are footpaths on at least one side of some roads, and that there is appropriate street lighting throughout the area. While it is beyond the scope of this hearing to require design standards, planting, reserves and other facilities are provided for the future landowners, statements made at the hearing by the Applicant and the Applicant's solicitor indicate that, in the future, there is some intention to provide planting, and that the Applicant was not averse to discussing with the council and education authorities the provision of land for additional facilities.

Weighting to be given to Objectives and Policies of Proposed District Plan

Application

209. The application was received by the Central Hawke's Bay District Council on 19 April 2021. It was lodged in accordance with the provisions of the Operative District Plan in which the site is located in the Rural Zone
210. A review of the Operative District Plan was publicly notified on 28 May 2021 as the Central Hawkes Bay Proposed District Plan. Under the PDP the site is zoned 'Rural Production'.
211. The application documents contained an analysis of the application against the relevant objectives and policies of the Operative District Plan.⁴⁸ The conclusion in the application documents was that the proposal was not contrary to the suite of relevant objectives and policies in the Operative District Plan.
212. We accept this analysis.

Section 42A Report

213. In his report the Reporting Officer assessed the application against what he considered to be the relevant objectives and policies in Chapters 4 (Rural Zone), 8 (Transport) and 9 (Subdivision) of the Operative District Plan.⁴⁹
214. He concluded that given the controlled activity status of the proposed subdivision, it follows that it achieves general consistency with the objectives and policies of the District Plan. He noted that this assessment was also helpful in providing direction as to whether conditions that may be in contention should be applied in the subdivision consent.
215. Following on from this assessment – in paras 254- 264 - Mr. McKay assessed the application against the provisions of the Proposed District Plan as he contended that although the Proposed District Plan does not impact the activity

⁴⁸ *Resource Consent Application Rural Subdivision Springhill Farm Development 1200 State Highway 50, Ongaonga. Assessment of Environmental Effects Section 10.0 pp 41-45*

⁴⁹ *S.42A Report, Central Hawkes Bay District Council. Subdivision and Land Use Consent RM210103 paras 238 – 253 pp. 82-87*

status of the application (as a Controlled Activity) as it has now been notified, it is necessary to have regard to the relevant objectives and policies under s. 104(1)(b)(vi).

216. His conclusion is that the proposed subdivision is inconsistent with, and directly contrary to, the objectives and policies of the Rural Production Zone of the Proposed District Plan as 312 lots on an area the size of the subject site will not protect the productive rural land resource, will change the character of the zone in that area away from a predominance of rural production activities and open space, will create the potential for adverse reverse sensitivity effects, and is rural lifestyle subdivision that limits the use of land for primary production.
217. Importantly Mr. McKay notes that *“although I have had regard to these objectives and policies, in terms of the weight that should be given them, it is my opinion that they should be given limited weight in the decision on the subdivision application. Although they have legal effect, they are subject to submissions and may change through the hearings and appeal process. Further, the relevant rules do not have legal effect and, as such, the objectives and policies do not change the controlled activity status of this application.”*⁵⁰

Legal submissions

218. In his opening legal submission to the Panel Mr Lawson, for the Applicant, addressed the issue of the absence of an assessment of the proposal against the provisions of the Proposed District Plan as it was not required (nor indeed publicly available) at the time of lodgement of the application. He also raised the matter of the use of the objectives and policies of the Proposed District Plan in consideration of the lapse period, but this matter has been covered by us under a separate section of this decision.
219. In his Right of Reply Mr. Lawson briefly reinforced his earlier conclusion regarding weighting of the Proposed District Plan in respect of the activity status and objectives and policies, as this did not appear to be a matter of contention among the parties.

Evaluation

220. We accept both Mr. McKay’s and Mr. Lawson’s evidence on the issue of weighting to be given to the Proposed District Plan objectives and policies. They are generally in agreement in that the proposed rules, objectives and policies do not have legal effect for this application and therefore the Controlled Activity status is unchanged.

⁵⁰ *ibid para 263*

221. Mr. McKay's assessment of the proposed objectives and policies, as notified, has assisted us in drafting and/or considering potential consent conditions but no further regard can be had to those objectives and policies by us.

Effects on Tangata Whenua

222. During the hearing we queried the Applicant regarding the limited discussion of the effects of the proposal on matters of importance to tangata whenua or any recognition of mana whenua. We understand, from verbal responses from Mr Kaye that the Applicant's position is generally that the application is for a controlled activity and such issues are not matters listed as controlled matters in the District Plan and therefore no relevant issues arise.

223. We further queried the Reporting Officer in this regard, in the context of understanding the notification decision that the Heretaunga Tamatea Settlement Trust was served notice of the application. We understand that this was on the basis that there is a Statutory Acknowledgement for the Tukituki River and its tributaries, and that the Application site is within the Area of Interest for Heretaunga Tamatea Settlement Trust. We also queried the matter of scope for consideration of wider section 6(e) RMA (and potentially section 8) RMA matters given case law surrounding the ability for such matters to be taken into account despite control not being specifically reserved over them and the general duties imposed under section 8 RMA in particular.

224. Mr McKay stated his understanding is that there is, in some cases, scope for Section 6(e) RMA matters to be considered irrespective of activity status but that his view in this instance is that no such matters arise given that no waahi tapu are affected, noting also that no submission was lodged by the Heretaunga Tamatea Settlement Trust.

225. We note that the AEE states:

"The site is not known to contain any archaeological or other cultural heritage assets. While there are no known culturally significant sites within the development, should any remains or artefacts be discovered through development of the site, the established Accidental Discovery Protocol of Heritage New Zealand Pouhere Taonga will obviously be followed. Effects in this respect are therefore less than minor."

226. The Reporting Officer recommended an advice note on accidental discovery on the basis that accidental discovery is not specifically a matter for control.

Evaluation and Findings

227. We are generally accepting of the Reporting Officer's assessment with respect to effects on tangata whenua. We note however that the AEE only considers effects on 'cultural heritage assets' and a more detailed consideration of potential

effects on tangata whenua, including recognition of mana whenua and the Statutory Acknowledgement area, would have been helpful.

228. We consider it appropriate that the accidental discovery protocol be imposed as a condition of consent, given that there may be culturally significant artefacts within the site. We find that this is within the matters over which we have control, specifically under 9.9.3(c) *the environmental effects as a result of earthworks*.

CONCLUSION

229. On the basis of our consideration of the assessments of effects on the environment and the proposed and recommended measures to avoid, remedy or mitigate adverse effects and our consideration of the statutory provisions, we conclude that the proposal is unlikely to have any significant adverse effects on the environment and is generally consistent with the relevant statutory planning documents and provisions.

230. In taking into account the existing environment, we conclude that the Applicant's final proffered conditions and the Reporting Officer's recommended conditions, and as changed by us in this decision, adequately avoid, mitigate or remedy the actual and potential effects of the project such that they are not significant.

231. There was agreement reached during the hearing about consent duration and the adoption of a staged approach. We acknowledge the Applicant's willingness to meet concerns raised throughout the hearing by including conditions in relation to a consent notice for reverse sensitivity. We also acknowledge the comments from submitters on the proposed consent notice condition and confirm we have considered these in determining the final wording of the relevant condition that we have imposed.

232. We have outlined the substantive changes to conditions, including the reasons, throughout our decision in relation to requiring additional consideration of wastewater servicing. We do not repeat those here.

233. The conditions we have imposed relate to the effects of the proposed activities, and are enforceable, reasonable and appropriate. We record that the conclusions we reached on adverse effects, and the granting of the application, rely heavily on the Applicant fully complying with these conditions.

13 July 2022



Eileen von Dadelszen
Hearing Commissioner
(Chair)



Liz Lambert
Hearing Commissioner



Grey Wilson
Hearing Commissioner

ATTACHMENT 1

SUBDIVISION CONSENT RM210103

Pursuant to Sections 104, 104A, 108, 125 and 220 of the Resource Management Act 1991, the Central Hawke's Bay District Council:

Grants subdivision consent to Springhill Farm Holdings to create 312 lifestyle lots at 1080, 1152 and 1200 State Highway 50 and 604 and 612 Wakarara Road, Ongaonga, being legally described as Part Section 2 Block IV Ruataniwha; Section 10 Block IV Ruataniwha; Lot 2 DP 395788 and held in Records of Title BG1/1065, HBA2/1134 and RT 382377 and subject to the lapse date as specified in Conditions 3A – 3C.

CONDITIONS OF CONSENT

Under sections 108, 125 and 220 of the RMA, this subdivision consent is subject to the following conditions:

General

- (1) The subdivision shall be carried out in general accordance with the Application dated 19 April 2021 submitted by Development Nous Limited and subsequent information received including the plans and information set out in the following table.

Name of Plan / Report	Author	Reference	Date
Springhill Farm Holdings, 1200 State Highway 50 & 612 Wakarara Road, Ongaonga – Springhill Farm Lifestyle Development – Overall Scheme Plan	Development Nous Limited	Drawing No: H20210003-C010 (Revision 3)	22 September 2021
Springhill Farm Holdings, 1200 State Highway 50 & 612 Wakarara Road, Ongaonga – Springhill Farm Lifestyle Development – Stages 1 – 16	Development Nous Limited	Drawing No: H20210003-C011 – C026 (Revision 2)	22 September 2021
Form 9 and Assessment of Environmental Effects – Staged subdivision of assembled site to form 312 rural lots, formation of a network of roads to vest in Council and shared accesses to be retained in private shared ownership, associated drainage and servicing infrastructure, and necessary development formation earthworks and site remediation, incorporating a fifteen-year consent lapse.	Development Nous Limited	H20210003	19 April 2021

Name of Plan / Report	Author	Reference	Date
Topographical Survey Plan	Development Nous Limited	H20210003 – RC – C300 (Revision 1)	19 April 2021
Detailed Site Investigation (DSI) Springhill Farm Lifestyle Development, State Highway 50, Ongaonga	Geosciences Limited	REP- H0151/DSI/ APR21	09 April 2021
Springhill Farm Holdings – Springhill Farm Lifestyle Development – Preliminary Geotechnical Assessment	Initia Geotechnical Specialists	P-001061 REV1	April 2021
Transportation Assessment Report, Springhill Subdivision	East Cape Consulting Limited	Springhill 210330.docx	30 March 2021
Engineering Services Master Plan (refer in particular drawings in Appendix D)	Development Nous Limited	H20210003- ESMPR V1	July 2021
Preliminary On-Site Wastewater Management Site Evaluation Report	Freeman Cook Associates Pty Ltd	NA	16 April 2021
RM210103 Resource Consent Application 312 Lot Subdivision – 1080, 1152, 1200 SH 50 and 604, 612 Wakarara Road, Ongaonga – Additional Information to Address Section 92 Request	Development Nous Limited	H20210003	5 August 2021
Engineering Services Masterplan Report	Development Nous Limited	H20210003- ESMPR V2	July 2021
Springhill Subdivision – Overland Flow Path Diversion Plan	Development Nous Limited	H20210003	19 July 2021
Written Approval (Revised) – Proposed 312-Lot Rural Residential Subdivision – 1080, 1152 and 1200 State Highway 50 and 604 and 612 Wakarara Road, Ongaonga – Springhill Farm Holdings	Waka Kotahi NZ Transport Agency	2021-0523	3 May 2022
Noise Exposure Buffer Zone – Waka Kotahi NZ 1200 State Highway 50 & 612 Wakarara Road – Reverse Sensitivity Buffer and Effects Areas	Development Nous Limited	H20210003	19 July 2021

Name of Plan / Report	Author	Reference	Date
RM210103 Resource Consent Application 312 Lot Subdivision – 1080, 1152, 1200 SH 50 and 604, 612 Wakarara Road, Ongaonga – Further Supporting Information	Development Nous Limited	H2021003	26 August 2021
Draft Remediation Action Plan (RAP) Springhill Farm Lifestyle Development, State Highway 50, Ongaonga	Geosciences Limited	REP-H0151/SMP/APR21	9 April 2021
Loading from On-Site Wastewater Management and Cumulative Effects Springhill Subdivision Evaluation Report	Freeman Cook Associates Pty Ltd	NA	24 September 2021
RM210103 Wastewater Effects Analysis (by E-mail) – <i>volunteering additional conditions for onsite wastewater treatment systems</i>	Development Nous Limited	NA	7 October 2021
RM210103 Springhill Subdivision – Other Matters (by E-mail) – <i>including attachments:</i> Water Permits in Vicinity E-mail Correspondence with Bob Palmer, Fire & Emergency New Zealand on matter of Fire Fighting Water Storage	Development Nous Limited	NA	7 October 2021
RM210103 Springhill Subdivision – Revised Staging of Lot 129 Springhill Subdivision – Response to PDP Assessment (by E-mail) – <i>volunteering further additional conditions for onsite wastewater treatment systems</i>	Development Nous Limited	NA	24 November 2021
Response to: Memorandum from Ella Boam (Pattle Delamore Partners) to Central Hawke’s Bay District Council entitled Springhill Farm Holdings – Wakarara Road / SH50 Subdivision Cumulative effects assessment for wastewater discharge	Freeman Cook Associates Pty Ltd	NA	Undated, received 24 November 2021

Survey Plan Approval

- (2) The Land Transfer Plans to give effect to this subdivision consent shall be consistent with the approved overall scheme plan and staging plans prepared by Development Nous, dated: 22.09.2021 (CHBDC Ref: RM210103), Surveyors Reference H20210003-C010 (Rev 3) and Drawing No: H20210003-C011 – C026 (Rev 2), unless otherwise altered by the consent conditions.
- (3) Approval is granted to carry out the subdivision in stages as follows:
- Stage 1 – Lots 7, 8, 13 – 31, 57 – 59, & 129; Balance Lot 501; and Lot 401 to vest as Road.
 - Stage 2 – Lots 84 – 104, 192, 193, & 242 – 246; Balance Lot 502; Access Lot 405, and Lot 404 to vest as Road.
 - Stage 3 – Lots 68 – 83, & 188 – 191; Balance Lot 503; Access Lot 402, and Lot 403 to vest as Road.
 - Stage 4 – Lots 1 – 6, & 9 – 12; and Balance Lot 504.
 - Stage 5 – Lots 32 – 40, & 43 – 56; Balance Lot 505; Access Lot 422, and Lot 421 to vest as Road.
 - Stage 6 – Lots 60 – 67, & 180 – 187; Balance Lot 506; Access Lot 419, and Lot 420 to vest as Road.
 - Stage 7 – Lots 194 – 197, 212 – 216, 255 – 262, & 271 – 273; Balance Lot 507; Access Lot 417, and Lot 418 to vest as Road.
 - Stage 8 – Lots 105 – 122, 247 – 250, & 274; Balance Lot 508; Access Lots 407 & 408, and Lot 406 to vest as Road.
 - Stage 9 – Lots 217 – 220, 251 – 254, 263 – 266, 267 – 270 & 275 – 278; Balance Lot 509; Access Lot 416, and Lot 415 to vest as Road.
 - Stage 10 – Lots 123 – 128, 130 – 137 & 290 – 292; Balance Lot 510; Access Lot 410, and Lot 409 to vest as Road.
 - Stage 11 – Lots 138 – 146, 279 – 289 & 306 – 311; Balance Lot 511; Access Lots 412, 413 & 414, and Lot 411 to vest as Road.
 - Stage 12 – Lots 221 – 230 & 293 – 299; Balance Lot 512; Access Lots 427 & 429, and Lot 428 to vest as Road.
 - Stage 13 – Lots 147 – 162, 231 - 237 & 300 – 305; Balance Lot 513; Access Lot 430, and Lot 431 to vest as Road.
 - Stage 14 – Lots 163 – 165, 198 – 203 & 204 – 211; Balance Lot 514; Access Lot 426, and Lot 425 to vest as Road.
 - Stage 15 - Lots 41, 42, 166, 167 & 172 – 179; Balance Lot 515; and Lot 424 to vest as Road.
 - Stage 16 – Lots 168 – 171; and Access Lot 423.
- (3A) That subdivision consent for Stages 1 – 5 will lapse if not given effect to in accordance with s125 of the Resource Management Act 1991 within 5 years of the date that this consent is granted. If Stages 1 – 5 (inclusive) are not given effect within that timeframe the remaining stages of the subdivision (being

stages 6 – 16) shall also lapse within 5 years of the date that this consent is granted.

- (3B) That subdivision consent Stages 6 – 10 will lapse if not given effect to in accordance with s125 of the Resource Management Act 1991 within 10 years of the date that this consent is granted. If Stages 6 – 10 (inclusive) are not given effect within that timeframe the remaining stages of the subdivision (being stages 11 – 16) shall also lapse within 10 years of the date that this consent is granted.
- (3C) That Stages 11 – 16 will lapse if not given effect to in accordance with s125 of the Resource Management Act 1991 within 15 years of the date that this consent is granted.
- (4) The Land Transfer Plans to give effect to this subdivision for Stages 1, 2, 3, 4, 8 and 10 shall identify the location of the Waka Kotahi New Zealand Reverse Sensitivity Buffer and Effects Areas identified on the plan prepared by Development Nours Limited, dated: 19 July 2021 (CHBDC Ref: RM210103), Surveyors Reference H20210003-C100 (Rev 1).
- (5) The Land Transfer Plans to give effect to this subdivision for Stages 14 and 15 shall identify locations where farm-dumping has occurred, or where soil has been removed and replaced with fill and be annotated as posing a potential stability risk to any buildings constructed in the identified areas.

Easements

- (6) The easements shown on the schedule of proposed easements on the subdivision scheme plans for Stages 1 - 16 shall be included in a memorandum of easements endorsed on the survey plans and shall be duly granted or reserved.
- (7) The easements shown on the schedule of proposed easements in gross on the subdivision scheme plans for Stages 1 - 16 shall be included in a memorandum of easements endorsed on the survey plans and shall be duly granted or reserved.

Amalgamations

- (8) That pursuant to Section 220(1)(b)(iv) of the Resource Management Act 1991 the following amalgamations conditions shall be imposed (LINZ Reference: 1761453):
- Stage 2
 - That Lot 405 hereon be held in 6 undivided one-sixth shares by the owners of Lots 92-97 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
 - Stage 3
 - That Lot 402 hereon be held in 10 undivided one-tenth shares by the owners of Lots 71-80 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
 - Stage 5
 - That Lot 422 hereon be held in 5 undivided one-fifth shares by the

owners of Lots 45 - 49 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.

- Stage 6
 - That Lot 419 hereon be held in 3 undivided one-third shares by the owners of Lots 184 - 186 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
- Stage 7
 - That Lot 417 hereon be held in 8 undivided one-eighth shares by the owners of Lots 255 - 262 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
- Stage 8
 - That Lot 407 hereon be held in 5 undivided one-fifth shares by the owners of Lots 111 - 115 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
 - That Lot 408 hereon be held in 2 undivided one-half shares by the owners of Lots 117 - 118 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
- Stage 9
 - That Lot 416 hereon be held in 5 undivided one-fifth shares by the owners of Lots 253 – 254, 263 – 265 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
- Stage 10
 - That Lot 410 hereon be held in 9 undivided one-ninth shares by the owners of Lots 126 – 128, 130 - 135 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.

(9) That pursuant to Section 220(1)(b)(iv) of the Resource Management Act 1991 the following amalgamations conditions shall be imposed (LINZ Reference: 1761470):

- Stage 11
 - That Lot 412 hereon be held in 2 undivided one-half shares by the owners of Lots 144 - 145 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
 - That Lot 413 hereon be held in 2 undivided one-half shares by the owners of Lots 309 - 310 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
 - That Lot 414 hereon be held in 5 undivided one-fifth shares by the owners of Lots 280 - 284 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.

- Stage 12
 - That Lot 427 hereon be held in 6 undivided one-sixth shares by the owners of Lots 223 - 228 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
 - That Lot 429 hereon be held in 3 undivided one-third shares by the owners of Lots 296 - 298 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
- Stage 13
 - That Lot 430 hereon be held in 2 undivided one-half shares by the owners of Lots 150 - 151 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
- Stage 14
 - That Lot 426 hereon be held in 5 undivided one-fifth shares by the owners of Lots 207 - 211 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.
- Stage 16
 - That Lot 423 hereon be held in 4 undivided one-quarter shares by the owners of Lots 168 - 171 hereon as tenants in common in the said shares & that individual records of title be issued in accordance herewith.

Vehicle Access and Roading

Conditions Agreed with Waka Kotahi (Letter Reference: 2021-0523, dated 3 May 2022)

- (10) Stages 1 to 4 of the development, excluding associated infrastructure, shall proceed in numerical order in accordance with the stages identified in Plan H20210003-C010 (Revision 3). Only Stages 1 and 2 may be developed until such time as the formation of a new intersection with State Highway 50, between Lots 89 and 90 has been completed and is operational.
- (11) Prior to works occurring within the road reserve for the relevant stage, including formation and improvements of intersections and accesses, the Consent Holder shall submit to Council a copy of the NZ Transport Agency's approval to undertake works on the State Highway (as detailed in advice notes a - c).
- (12) Prior to the issuing of certificates pursuant to Section 224(c) of the Resource Management Act 1991 for stages 2 and 4 of the subdivision, the Consent Holder shall provide to Council, written approval from the NZ Transport Agency confirming that the relevant intersections with State Highway 50, have been constructed to the NZ Transport Agency standards.
- (13) 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.

- (14) The existing vehicle crossings to proposed Lot 26 (CP711) and Lot 129 (CP 708) (Stage 1) shall be upgraded in accordance with the NZ Transport Agency's Diagram C standard as outlined in the Planning Policy Manual (2007) and to the satisfaction of the NZ Transport Agency Network Manager.
- (15) Prior to the issuing of certificates for Lot 26 and Lot 129 (Stage 1) pursuant to Section 224(c) of the Resource Management Act 1991, the Consent Holder shall provide to Council confirmation that NZ Transport Agency confirming that works in the State Highway, including the upgrade of the existing vehicle crossings, have been constructed to the NZ Transport Agency Standards.
- (16) Prior to the issuing of certificates for Lots 26 and 129 pursuant to Section 224(c) of the Resource Management Act 1991, the Consent Holder shall provide to Council confirmation that the NZ Transport Agency has been advised of the new Records of Title to issue and received the approved survey plan, to facilitate the registration of any new Crossing Place (CP) Notices against those new titles, under Section 91 of the Government Rounding Powers Act 1989.
- (17) Prior to the issuing of certificates pursuant to Section 224(c) of the Resource Management Act 1991 for Stage 1 of the subdivision, the Consent Holder shall provide to Council, written approval from the NZ Transport Agency confirming that the existing vehicle crossing (farm gate - CP712) located opposite the access for the property at 1231 State Highway 50, has been permanently closed, including reinstatement of any fence line, grassed areas, berm, highway drainage or kerb. Reinstatement works shall be consistent with the adjacent road reserve treatment, to the satisfaction of the NZ Transport Agency Network Manager.
- (18) Pursuant to Section 221 of the RMA, a consent notice shall be registered on the titles of all new lots located within the effects buffer identified on Plan H20210003-C100 (Revision 1). The consent notice shall state that any new dwellings constructed on these lots and within the effects buffer area must be designed, constructed and maintained to achieve a design noise level of 40 dB L Aeq(24h) inside all habitable spaces within the effects buffer area. (See *Condition 20 below*).
- (19) Pursuant to Section 221 of the RMA, a consent notice shall be registered on the titles of the following lots which states that direct access to State Highway 50 is prohibited: Stage 1: 20, 21, 22, 23, 24; Stage 2: 89, 90, 92, 93, 94; Stage 3: 73, 74, 75, 76; Stage 4: 12; Stage 8: 113, 114, 115, 116, 117; Stage 10: 130, 131, 132. (See *Condition 21 below*).

ADVICE NOTES:

- a) *It is a requirement of the Government Rounding Powers Act 1989 that any person wanting to carry out works on a state highway first gain the approval of Waka Kotahi NZ Transport Agency for the works and that a Corridor Access Request (CAR) is applied for and subsequently a Work Access Permit issued before any works commence.*
- b) *Detailed design approval will be required prior to the CAR process. In developing the detailed design, the Consent Holder will need to consult with the Waka Kotahi appointed state highway maintenance contractor for Hawkes Bay (Higgins) and a Waka Kotahi Safety Engineer (Ben Grapes).*

- c) A CAR is made online via www.beforeudig.co.nz and/or www.submitica.co.nz. The CAR needs to be submitted at least 15 working days before the planned start of works. A copy should also be sent to the Waka Kotahi NZ Transport Agency environmental planning team at environmentalplanning@nzta.govt.nz. The Corridor Access Request will need to include:
- i) The approved detailed design for those works within the state highway corridor.
 - ii) A Construction Traffic Management Plan that has attained approval from the Waka Kotahi appointed state highway maintenance contractor for Hawkes Bay (Higgins).

Roading and Access Related Consent Notices

- (20) The Consent Holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for Lots 20 – 24, 26 & 129 (Stage 1); Lots 89, 90, 92 – 94 (Stage 2); Lots 73 – 76 (Stage 3); Lot 12 (Stage 4); Lots 113 – 117 (Stage 8); and Lots 130 – 132 (Stage 10), as specified below:
- a) Any new dwelling constructed on this Lot within the effects buffer area as defined on the Land Transfer Plan must be designed, constructed and maintained to achieve a design noise level of 40 dB L Aeq(24h) inside all habitable spaces within the effects buffer area.
- (21) The Consent Holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for Lots 20 – 24 (Stage 1); Lots 89, 90, 92 – 94 (Stage 2); Lots 73 – 76 (Stage 3); Lot 12 (Stage 4); Lots 113 – 117 (Stage 8); and Lots 130 – 132 (Stage 10), as specified below:
- a) Direct access to State Highway 50 from this Lot is prohibited.

Roading Design and Works Approval

- (22) A full detailed roading design shall be undertaken by a suitably qualified and registered chartered engineer and be provided to Council's Customer and Consents Manager (or nominee) prior to construction works starting for certification. Council will assess the design and documentation against the Central Hawkes Bay District Plan, NZS4404: Code of Practice for Urban Land Subdivision and the Hastings District Council Code of Practice for Subdivisions.
- (23) Prior to the commencement of construction works, the Consent Holder shall submit a Construction Management Plan (CMP), for certification to Council's Customer and Consents Manager (or nominee), detailing the ways in which the proposed construction will occur, how construction effects will be mitigated (noise, dust, traffic etc.) for that stage.
- (24) Prior to the commencement of construction works, the Consent Holder shall submit a Traffic Management Plan in regard to construction traffic entering and leaving the site, for certification to Council's Customer and Consents Manager (or nominee).

- (25) A plan shall be submitted showing detail of the proposed accessways onto Wakarara Road to Council's Customer and Consents Manager (or nominee) for certification.
- (26) A Site Safety plan must be certified by Council's Customer and Consents Manager (or nominee) prior to work starting on any public land in Wakarara Road.

ADVICE NOTES:

A vehicle crossing application will be required to be submitted to and approved by the Council's Land Transport Department to authorise the detail of this vehicle crossing work

Roading Construction Works

- (27) That all construction works carried out on the site shall be in accordance with the CMP.
- (28) No work shall commence on site until engineering plans and documentation have received written certification by Council. All work must be carried out in accordance with the documents certified by Council and in accordance with sound civil engineering practices. This shall include standard hold points for inspection prior to further works being undertaken.
- (29) All engineering design and construction must conform to the information as supplied with the certified plans. The pavement design (depth and type) shall be confirmed with existing subgrade material being fully tested to confirm CBR and a full pavement design shall be carried out by the Consent Holder's Engineers with calculations to be presented.
- (30) During the construction period the Consent Holder shall take all measures including the management of any contractors to ensure that:
 - No dust or noise nuisance is created that would be detrimental to the adjacent neighbourhood.
 - No siltation or significant discolouration occurs in the stream or drainage channels.
 - No construction work is undertaken on Sundays or outside the hours between 7am and 7pm on other days.

Roading – Completion of Works

- (31) Upon completion of the works the Consent Holder must provide to Council a Certificate of Assurance from a Chartered Professional Engineer, that all works have been constructed to the plans, specifications and standards approved by Council. These must accompany a marked up As Built set of drawings confirming these works.
- (32) Any damage to Council's existing infrastructure caused by the development during construction shall be repaired under the direction of Council at the Consent Holder's expense.

Street Lighting and Footpaths

- (33) *The full detailed roading design required by Condition 22 above must incorporate street lighting design of the proposed internal road network in accordance with AS/NZS 1158.3.1:2020 Lighting for roads and public spaces,*

Part 3.1: Pedestrian area (Category P) such that street lighting is sufficient to ensure safety of road intersections and the wider street network within the subdivision while avoiding the adverse effects of excessive light pollution within the rural zone.

- (34) The full detailed roading design required by Condition 22 above, shall incorporate a footpath on at least one side of the roads to be vested within Lots 401, 403, 404, 406, 409, 411, 415, 418, 420, 421, 424, 425, 428 and 431, in accordance with the concept design shown in the Concept Civil Plans 'Typical Road Pavement Sections' Drawing Number H20210003-RC-C401 (Appendix D Engineering Services Master Plan, Development Nous Limited, July 2021).

Earthworks

- (35) All earthworks shall be undertaken in accordance with NZS 4404:2010 Land Development and Subdivision Infrastructure and NZS 4431, 1989 "Earth Fill for Residential Development" (incorporating all amendments), or an alternative standard approved by the Council's Customer and Consent Manager (or nominee).
- (36) Where land filling is to be undertaken, the areas affected, together with dimensions relative to the new property boundaries, shall be shown on 'As Built' plans to be supplied to Council prior to the issue of a Certificate pursuant to Section 224(c) of the Resource Management Act 1991.
- (37) That as part of the earthworks, no filling shall take place that will obstruct overland flow (unless certified as appropriate by the Council's Customer and Consent Manager (or nominee)).
- (38) The Consent Holder shall submit a sediment control plan by an appropriately qualified person to Council's Customer and Consent Manager (or nominee) for certification by prior to the commencement of any work on the site. The plan shall detail how sediment and erosion controls will be carried out at the site in accordance with current engineering best practice. A statement shall be included with the plan stating the author's qualification and experience in this area.
- (39) The Consent Holder shall install sediment and erosion controls in accordance with the certified plan prior to the commencement of the earthworks and that these controls shall be maintained throughout the period of the works.
- (40) That a suitability qualified Chartered Professional Engineer or other appropriately qualified person shall certify that the sediment works have been constructed in accordance with the approved plans.
- (41) That only clean fill as defined in NZS 4431, 1989 "Earth Fill for Residential Development" shall be used as fill.
- (42) That all areas of earthworks shall be re-grassed following construction and prior to application for certification under section 224(c) of the Resource Management Act 1991.
- (43) That there shall be no off-site deposit of sediment or detritus from the area of the works and no deposit of sediment or detritus into any watercourse or stormwater drain.

Flooding and Stormwater

- (44) Engineering Design plans for stormwater and overland flow design shall be submitted to Council's Customer and Consent Manager (or nominee) for review as part of engineering design certification, and that in preparing those plans regard is to be given to the Stantec Technical Memo prepared on behalf of the Council, titled 'Peer review Springhill Farm Development RM 210103', and dated 1 September 2021, as part of that peer review. The design considerations shall be addressed for the whole development at the time of submitting designs for the first stage of the development.
- (45) That engineering assessment be provided with the detailed engineering design plans submitted for section 224 certification under condition 44 above, demonstrating:
 - a) Mitigation of potential flood hazards and resilience in the development to accommodate flood events by providing flow path linkages through the proposed lots where appropriate and identifying building avoidance areas if development on that Lot may be compromised by the flow paths. Where such areas are identified they shall be shown on the land transfer plan for the affected lots.
 - b) An appropriate buffer from the main watercourse incorporated within the easements in gross over those Lots adjoining the water course.
- (46) All the infiltration systems for the development shall be designed in accordance with the HBRC Waterway Guidelines 2009, using a 100-year event design storm with rainfall from Hirds V4 with climate change allowance of RCP 6.0 2081-100.
- (47) The Consent Holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for Lots 1 – 312 (All Stages), as specified below:
 - a) Any future development and/or building(s) onsite shall not result in an increased flow of stormwater discharging from the boundaries of the site. A hydraulically neutral stormwater design must be completed and provided to Council for approval at the time of building consent identifying a method to attenuate stormwater discharge to a predevelopment flowrate (based on a 10% Annual Exceedance Probability).
 - b) On-site stormwater systems shall be maintained on an ongoing basis.

Water Supply, Including for Fire Fighting

- (48) The consent holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for Lots 1 – 312 (All Stages), as specified below:
 - a) Potable drinking water supply for this lot must be from rainwater collection and any application for building consent shall include provision of a rain water collection and storage system for this purpose. The system must be installed in accordance with the relevant manufacturer's specifications and any other such requirements and maintained in good working order

thereafter.

- b) Any application for building consent for a habitable building shall include provision for firefighting water storage that meets the requirements of SNZ PAS 4509:2008 including either storage provision of 7,000 litres for houses with fire sprinkler systems or 45,000 litres for houses without fire sprinkler systems.

Method of Wastewater Disposal

- (49) The Consent Holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for Lots 1 – 312 (All Stages), as specified below:

Any domestic wastewater system installed and utilised on this lot must be in compliance with the requirements of the Hawke's Bay Regional Council's Regional Resource Management Plan or any successor of that Plan and must:

- Utilise drip-line irrigation for the discharge of treated effluent;
- Include UV Treatment for the purpose of disinfection;
- be of an OSET¹ rating of A or better, or equivalent (being discharge quality of median total Nitrogen of <15mg/L and median total phosphorous of <2mg/L)

The land owner must install, operate and maintain the system, and keep records in accordance with manufacturer's specifications and for the purpose of compliance with Section 15 of the Resource Management Act 1991.

Geotechnical Stability

- (50) The Consent Holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section 221 of the Resource Management Act 1991, against the records of title for Lots 1 – 312 (All Stages), as specified below:

- a) Site specific investigations shall be undertaken at the time of building consent to confirm the underlying near surface materials in accordance with the recommendations of the Initia Geotechnical Specialists Preliminary Geotechnical Report REF P-001061 REV 1, dated April 2021. – contained in Appendix D of resource consent application RM210103.

- (51) A. The areas identified as former farm dump sites, or where contaminated soil has been removed from and replaced with fill (as identified on the land transfer plans for Stages 14 and 15 under condition 5 of this consent) shall be remediated by removal of un-engineered fill, and reinstated with engineered fill certified by a qualified and registered geotechnical engineer as being safe for building development.

Or

B. The Consent Holder shall register with the Registrar General of Land a consent notice to be complied with on an ongoing basis, pursuant to Section

¹ National Testing Programme for treatment plant review, performance certification, and benchmarking the performance of on-site effluent treatment (OSET) systems

221 of the Resource Management Act 1991, against the records of title for Lots within Stages 14 and 15 as per condition 5 of this consent

- a) That no building shall take place on the area identified on the land transfer plan as being subject to fill unless supported by, and in compliance with, a site specific geotechnical report specifying the remedial actions and foundation design necessary to achieve a stable building platform.

Rural Production Activities Reverse Sensitivity

- (52) Pursuant to section 221 of the Resource Management Act 1991, the Consent Holder shall register with the Registrar General of Land a consent notice against the records of title for Lots 1-312 (All Stages).

The consent notice must record the following condition to be complied with on an ongoing basis:

This property is located in a productive rural area where agricultural practices such as stock management practices such as stock management practices associated with pastoral farming, agrichemical spraying, use of farm machinery, harvesting operations, the operation of bird scarers, frost fans and other similar activities may occur. Where such activities and agricultural management practices in the surrounding area are lawfully undertaken in accordance with either the relevant district and regional planning framework or a resource consent or existing use rights under section 10 of the Resource Management Act 1991, the property owner, or their successors in title shall not:

- bring any proceedings for damages, negligence, nuisance, trespass, or interference arising from the agricultural practices and use of that land; nor
- make nor lodge; nor
- be party to; nor
- finance nor contribute to the cost of:
any complaint to a local authority or 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 the operations of any such activities and agricultural management practices on surrounding land, including without limitation any action to require the surrounding landowners /occupiers to modify the agricultural management practices carried out on their land.

Accidental Discovery

- (53) If kōiwi tangata (human remains), taonga or archaeological sites are discovered, the Consent Holder shall cease work immediately and contact Heritage New Zealand - Pouhere Taonga, Heretaunga Tamatea Settlement Trust and Central Hawke's Bay District Council and, in the case that the discovery includes or may include kōiwi tangata, the New Zealand Police Ngā Pirihimana o Aotearoa. Works shall not recommence until approval to do so has been given by the Consent Authority.

ADVICE NOTES:

(1) Conditions of Consent

Unless otherwise stated within the conditions of this subdivision consent, all conditions must be met at the Consent Holder's expense, prior to any application for a Section 224(c) certificate and the issue of any new record/s of title. If you have any questions, please feel free to contact the Duty Planner at the Central Hawke's Bay District Council to discuss this matter further. The contact details are: Phone: (06) 8578060, Email: planner@chbdc.govt.nz

(2) Earthworks

In regard to earthworks required to form any of the proposed works (e.g. stormwater infrastructure, roads and rights of way), it is noted that compliance with the standards of the Regional Resource Management Plan Rule 7 'Vegetation Clearance and Soil Disturbance' is required.

(3) Subdivision Expenses

Unless otherwise stated the above conditions shall be met at the expense of the subdivider and prior to the release of a certificate in accordance with Section 224(c) of the Resource Management Act 1991.

(4) Subdivision Certification Fees

The fees payable for certification of this subdivision are as follows. These fees are correct at the time of writing and are subject to change in accordance with Council's Schedule of Fees and Charges:

223 Certificate	\$400
224 (c) Certificate	\$400
Or Joint 223/224(c)	\$400
Consent Notice(s)	\$150
Application for Service Connection	\$135
Vehicle Crossing Approval	\$205.10

(5) Vehicle Crossings

A vehicle crossing application needs to be completed and returned to the land transport department before any work commences.

(6) Power and Telephone

Council has not required the installation of power and telecommunications services to the lots and it is recommended that prospective owner investigate servicing costs.

(7) Variations

Should the Consent Holder wish to apply for a change or cancellation of any of the conditions of consent in accordance with Section 127 of the Resource

Management Act 1991 such application must be made to Council in writing prior to issue of a certificate under Section 224(c) of the Resource Management Act 1991.

(8) Objections

Any objection to Council's decision on such application must be made in writing in accordance with Section 357 of the Resource Management Act 1991 within 15 working days of notification of this decision and be accompanied by the required Council fee.

(9) Three Waters Bylaws

All development shall be undertaken in accordance with Central Hawke's Bay District Council Bylaws for Water Supply, Stormwater and Wastewater. The Bylaws can be found on the Central Hawke's Bay District Council website at www.chbdc.govt.nz

(10) Other Consents

The Consent Holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the 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) 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.

ATTACHMENT 2

RESOURCE CONSENT TO SUBDIVIDE AND DISTURB SOIL IN A PIECE OF LAND SUBJECT TO THE RESOURCE MANAGEMENT (NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH) REGULATIONS 2011 (“NESCS”)

Pursuant to Regulation 10 of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 and Sections 104, 104C and 108 of the Resource Management Act 1991, the Central Hawke’s Bay District Council grants resource consent to Springhill Farm Holdings to subdivide to subdivide and disturb soil on the land legally described as Part Section 2 Block IV Ruataniwha; held in Record of Title BG1/1065.

This consent will lapse if not given effect to within fifteen years of the date that this consent is granted, except that where the subdivision consent lapses prior to fifteen years in accordance with conditions 3A and 3B of RM210103 this land use consent shall also lapse at the same time.

CONDITIONS OF CONSENT

General

- (1) The subdivision and soil disturbance activities subject to this consent shall be carried out in general accordance with the application dated 19 April 2021 submitted by Development Nous Limited and subsequent information received including the plans and information set out in the following table.

Name of Plan / Report	Author	Reference	Date
Form 9 and Assessment of Environmental Effects – Staged subdivision of assembled site to form 312 rural lots, formation of a network of roads to vest in Council and shared accesses to be retained in private shared ownership, associated drainage and servicing infrastructure, and necessary development formation earthworks and site remediation, incorporating a fifteen-year consent lapse.	Development Nous Limited	H20210003	19 April 2021
Detailed Site Investigation (DSI) Springhill Farm Lifestyle Development, State Highway 50, Ongaonga	Geosciences Limited	REP-H0151/DSI/APR21	9 April 2021

Name of Plan / Report	Author	Reference	Date
Draft Remediation Action Plan (RAP) Springhill Farm Lifestyle Development, State Highway 50, Ongaonga	Geosciences Limited	REP-H0151/SMP/APR21	9 April 2021

- (2) Additional delineation soil sampling shall be undertaken across the areas adversely impacted, as identified in the Geosciences Limited DSI Report dated 9 April 2021, to determine the lateral and vertical extent of any impacted soils by contamination as follows:
 - a) Grid based soil sampling using cardinal delineation points around the areas of identified lead impacts in the central yard portion of the site;
 - b) Expanding ring sampling to the south and east of the sheep dip to confirm the full extent of plume discharge beyond SS17 and SS11 alongside further depth soil sampling to confirm the extent;
- (3) The submission of an updated Remediation Action Plan to Council's Customer and Consent Manager (or nominee) for certification.
- (4) No remedial works shall commence on site until the certification required by condition (3) above has been obtained.
- (5) In the event of demolition and removal of the existing residences, Hazardous building material surveys shall be commissioned on the residential dwellings to identify the full extent of any asbestos containing materials present and allow for licensed removal where required prior to any demolition occurring in accordance with the Health and Safety at Work (Asbestos) Regulations 2016.
- (6) Decommissioning and removal of onsite wastewater treatment systems where these are no longer required shall take place in accordance with the recommendations of the Draft Remediation Action Plan.
- (7) That the updated Remediation Action Plan shall address those details outlined as requiring amendment or updating in the Memorandum prepared by Scott Fellers, Stantec, titled 'RM210103 – Draft Remedial Action Plan Springhill Farm Lifestyle Development, State Highway 50, Ongaonga, Central Hawke's Bay' and dated 31 August 2021.
- (8) That the works and actions required by the above conditions shall be completed prior to a section 224 certificate being issued for Stages 14 and 15 of subdivision consent RM210103, or prior to any soil disturbance activities or change of use occurring on the 'piece of land'.
- (9) Site Validation inspections, sampling and reporting shall be completed by a suitably qualified person as necessary to confirm that impacted soils have been appropriately remediated and managed in accordance with the Remediation Action Plan certified by the Council and that all residual soils achieve compliance with the rural residential land use standard. Confirmation of site validation should then be submitted to Council's Customer and Consent Manager (or nominee) for certification.