

## Decision following the hearing of an application for resource consent under the Resource Management Act 1991

### Proposal

To construct, operate and maintain a retirement village.

By a majority of the Commissioners, the application for resource consent is **GRANTED**. The reasons are set out below.

<b>Application numbers:</b>	REG-2142199 (Regional Bore Consent) LN-2142200 (District Landuse, Regional Earthworks) REG-2142201 (Regional Stormwater Discharge) REG-2142202 (Regional Groundwater Diversion) REG-2142203 (Groundwater Take) REG-2142204 (Regional Coastal) REG-2142205 (Regional Contaminated Site Discharge)
<b>Site address:</b>	7-37 Ngataringa Road, 1-88 Wakakura Crescent, and 29 Lake Road, Devonport
<b>Applicant:</b>	Ryman Healthcare Limited
<b>Hearing commenced:</b>	9.30am, 5 December 2016
<b>Hearing panel:</b>	Kitt Littlejohn (Chair) Dave Serjeant John Hill
<b>Appearances:</b>	<u>For the Applicant:</u> Luke Hinchey/Nicola de Wit – Counsel Andrew Mitchell – Ryman Healthcare Limited Taylor Allison – Village Design Assoc Prof Clinton Bird – Urban Design Dr Rod Clough – Heritage Leo Hills – Traffic and Transportation Dale Paice – Civil Engineering/Infrastructure Pierre Malan – Geotechnical Engineering Dr Gary Bramley - Ecology Dr Phil Mitchell – Planner  <u>Submitters:</u>

	<p>Victoria Brown  Gay Richards  Joy Mace  Petra Heemskerk  Trish Deans  Christine Thomas  Dinah Connon  Jonathan Cutler  Rixt Brownlow  Katherine Beauchamp  Grey Power North Shore Inc  Paul Cornish  Simon O'Brien  Cameron Smith  Forest &amp; Bird (North Shore Branch)  Ron Dykman  Geoff Richards  Guy Davies  Ken Davis  Ngataranga Bay Action Group (Joel Cayford, Lucy Bucknall, George Rea-Bucknall, Alan McNatty, Jean Day, Susan Claridge, Marinka Teague, Susan Davis, Keith Humphreys, Iain Rea, Ian Goldingham, Suzanna Stickney, Jacqueline Goldingham, John Duder, Lyndsay Brock (statement read), Nigel and Susan Cope, Andrew Skokandich, Graham Pettersen, Christopher Jackson, Richard Reid)  Heather Young  Peter Wakeman</p> <p><u>For Council:</u>  Quentin Budd – Senior Project Manager  Brooke Dales – Reporting Officer  Chris Butler – Urban Design  Brad Coombs – Landscape Architect  Myfanwy Eaves – Heritage  Sam Shumane – Traffic and Transportation  Paulette Kenihan – Hearings Advisor</p>
<b>Hearing adjourned</b>	9 December 2016
<b>Commissioners' site</b>	1 and 13 December 2016

<b>visits</b>	
<b>Hearing closed:</b>	15 December 2016

## Introduction

1. The hearing of this application by Ryman Healthcare Limited was undertaken on behalf of the Auckland Council (**the Council**) by Independent Hearing Commissioners Kitt Littlejohn, Dave Serjeant and John Hill appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (**RMA**).
2. The application was publicly notified on 16 September 2016. A total of 392 submissions were received, with 73 in support, 14 neutral and 305 in opposition. Twenty-nine submissions were received late, of which 2 were in support, 2 were neutral and 25 were in opposition.
3. This decision contains the findings from the deliberations of the Commissioners on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
4. The decision to grant the resource consent is made by Commissioners Littlejohn and Hill, as a majority of the Commissioners appointed to hear and determine the application. For the reasons separately recorded below, Commissioner Serjeant would have refused consent to the application.

## Procedural matters

5. With the consent of the applicant, at the outset of the hearing we granted waivers of the time within which submissions should have been received under sections 37 and 37A of the RMA, thereby allowing the late submissions to be considered as part of our decision making.
6. No other procedural matters arose for consideration.

## Historic Background to the Application site

7. The application site at 7 – 37 Ngataranga Road and 29 Lake Road, Devonport is presently undeveloped, except for a residential dwelling situated at 29 Lake Road, Devonport. The site is approximately 4.2 ha in area and is surrounded by residential dwellings to the north, east and west. The southern extent of the site comprises a 20 metre marginal strip of regenerating native vegetation and a public walkway which borders Ngataranga Bay.
8. The site is owned by Ngāti Whātua Orakei Trust and was returned to Ngāti Whātua under the Ngāti Whātua Orakei Claims Settlement Act 2012. It is identified as containing a scheduled archaeological site in the relevant planning documents – being the Duder Brickworks. Beyond the area affected by the construction of the proposed retirement village buildings are Maori shell midden deposits and further

remains associated with the Duder brickworks within the Mary Barrett Glade Loop Track, located within the marginal strip.

9. The site has been rehabilitated and developed several times since the brickworks ceased operations in 1936. The Duder Brickworks operated on the site from approximately 1875 to 1936. Most of the building structures were located in the south-eastern part of the site. A jetty extended into Ngataringa Bay to enable the transport of bricks to other parts of Auckland. The brickworks consisted of a horizontal brick machine with a capacity of 5000 bricks per day and a pipe machine – all driven by a 6 horse power boiler and engine. There were also two kilns, each with a capacity of 20,000 bricks. Production of the brickworks began to decrease by the mid-1930s, and production ceased between 1934 and 1936 due to a brick chimney collapsing in a storm. The site was subsequently utilised for military purposes during World War II and “Camp Duder” was established from 1944. Some of the existing remnants of brickworks were demolished at this time including three brick drying sheds.
10. The site was permanently acquired by the Government for naval housing in January 1953. The site was completely cleared and 2 storey “terrace-style” naval housing blocks were completed on the site between 1957 and 1958. This development included the construction of Wakakura Crescent, which ran along the front of the housing blocks. The naval housing blocks were demolished in 2003. Shortly after the return of the land to Ngāti Whātua, Ryman Healthcare Limited (**Ryman**) acquired a leasehold interest in the site, for a term of 150 years.

## Description of locality

11. The site is located in Devonport, a popular and attractive harbourside suburb located at the southern end of a peninsula that runs south-east from near Lake Pupuke in Takapuna, forming the northern side of the Waitemata Harbour. The volcanic cone of Maungauika (North Head) is located at the eastern end of Devonport and forms the headland overlooking the mouth of the Waitemata Harbour. The volcanic cone of Takarunga, Mt Victoria is located behind the Devonport shopping centre and has a network of accessible old bunkers and tunnels from its past use by the military for coastal defence purposes. Since 1909 Devonport has been a naval base with a deep water anchorage at Stanley Bay at the southern end of the peninsula. The Devonport naval base remains the home of the New Zealand navy.
12. Devonport and the surrounding suburbs of Cheltenham, Narrow Neck and Bayswater are characterised by a mix of housing types, including many buildings dating from the latter 1800s. Victorian and Edwardian Villas are prominent throughout the area, as well as later bungalow style buildings and earlier workers’ cottages. Amongst the older houses are a smaller number of 1960s units and homes.
13. The site is approximately 1.5 kilometers from the Devonport shops. The majority of the site is vacant and comprises a disused private road (Wakakura Crescent), and two sealed car park areas, with the remainder of the site being a mix of green space and stands of exotic and native vegetation. A single dwelling is located in the east of the site and is accessible off Lake Road. The site is bordered by Ngataringa Road to the north, Wesley Street to the west and a small section of the north-east of the site

borders Lake Road. From Ngataringa Road the site slopes in a north to south gradient, down to the coastal margin at Ngataringa Bay in the Waitemata Harbour.

14. The residential properties directly opposite the Ngataringa Road frontage of the site contain one and two storey high, typically suburban, detached houses, which vary widely in age, materials and architectural style. A similar situation applies to the houses opposite the east and the western boundaries of the site.
15. Ngataringa Bay to the south of the site is a tidal bay identified as a Significant Ecological Area – Marine 2 in the Proposed Auckland Unitary Plan and has an important wading bird-feeding ground. The coastal reserve to the south of the site has a large variety of well-established native species including rimu and puriri in a dense stand along the entire coastal property boundary. The broader coastline is dominated by vegetation, albeit within an urban setting and characterised by residential development at clifftop and also near the water's edge.
16. In relation to the site, Ngataringa Road and Wesley Street are classified as local roads in the relevant planning documents, while Lake Road is classified as a primary/regional arterial road. Ngataringa Road intersects with Lake Road with a priority controlled intersection. A right turn bay is provided on the southbound Lake Road approach. Motorway access is approximately 4.5 km from the site to the north-west. From this access, motorists can travel either north towards Whangarei or south towards the Auckland CBD. The area served by Ngataringa Road is suburban/residential in nature with a speed limit of 50 km/hr. The cross section of Ngataringa Road and the vicinity of the site consists of an 8.5 metre wide carriageway made up of one traffic lane in each direction. Parking is permitted on both sides of the road.
17. Traffic count data extracted from Auckland Transport for Ngataringa Road indicates that the most recent 5-day average daily traffic flows on Ngataringa Road are approximately 1,150 vehicles per day in both directions. For Lake Road, in the vicinity of the site, the most recent 5-day average traffic flow is 18,500 vehicles per day in both directions. Lake Road is acknowledged as congested at peak times, the duration of which peaks have, over time, extended to significant periods of the day, particularly as one travels further to the south-west from Devonport towards Esmonde Road/Takapuna. Lake Road has been frequently described as “at capacity” in terms of its available vehicle capacity compared to the extent of existing usage.

## **Summary of proposal**

18. Ryman's proposal is to establish a comprehensive retirement village on the site. Its village has been designed to provide a full range of elderly housing options, comprising independent living apartments, assisted living suites, and rest home care including higher level care and dementia care. Ryman is recognised as a leading provider of retirement living and has been operating in New Zealand for 31 years. Through this experience we accept that Ryman has developed knowledge and expertise in both the construction and operation of purpose-built retirement villages that meet the needs of the community, as well as the needs of its residents.

19. The retirement village layout and design is depicted in detail on various site plans, elevations and photo-montages. The key features of the village are summarised as follows:
- 120 care beds – located in Building B01;
  - 78 assisted living suites – all located in Building B01;
  - 195 apartments, comprising 8 one bedroom apartments, 149 two bedroom apartments and 39 three bedroom apartments variously located in Buildings B01, B02, B03, B04, B05 and B06; and
  - 269 car parks.
20. Building B01 is the main services building for the village. Located in the centre of the site it will cover an area of 3721 m<sup>2</sup> ranging in height from between 1 to 5 storeys. Although the building will contain some apartments, it will provide all of the facilities for resident care, including rest home, hospital and dementia care. Ancillary amenities to be located within B01 include:
- Outdoor patio with canopy and terrace areas;
  - Indoor swimming pool;
  - Gym;
  - Activities room;
  - Theatre;
  - Games room;
  - Large common lounge, bar and dining areas;
  - Library;
  - Staff conveniences and manager's office;
  - Sales offices;
  - Kitchen;
  - Salon and beauty/treatment facilities;
  - Shopping amenities for residents;
  - Residents workshop; and
  - Utilities and equipment (including the laundry, maintenance area and a transformer/sub-station).
21. Level 1 of Building B01 will open out to a garden courtyard, which will provide the main communal open space area for the retirement village. A bowling green will also be located to the south of this building, between the internal roading network and the southern boundary of the site.

22. As noted, the other proposed buildings in the village will contain a various mix of one, two and three-bedroom apartments within stand-alone buildings of different heights. All will contain basement car parking for residents.
23. Access to the site will be provided by an existing vehicle crossing onto Ngataringa Road, two secondary access points onto Wesley Street, and a separate access point to Building B06 via Lake Road. Building B06 will not have a vehicle connection to the remainder of the retirement village or its internal roading network. The Ngataringa Road vehicle crossing is proposed to continue to operate as a two-way vehicle crossing and will accommodate two-way vehicle movements. The access point at the top of Wesley Street will provide two-way vehicle access to Building B04 only, whereas the second access point off Wesley Street will provide a two-way vehicle access to Building B03 and the internal roading network within the village.
24. Ryman proposes to widen the Wesley Street carriageway to a width of 8 metres in order to safely accommodate two-way traffic along its entire link. The additional width will be provided via land from the site. The existing vehicle crossing at 29 Lake Road will be removed and relocated to the southern extent of this property to service building B06.
25. Car parking within the site will consist of a total of 269 car parks, of which 245 will be located in the basements of Buildings B01 to B06. An additional 24 car parks will be provided on grade outside B01 and at convenient locations around the internal roading network for visitors etc.
26. A series of pedestrian paths are proposed throughout the retirement village to provide linkages between the key access points of each building and between buildings (including the bowling green). Building B06 will only be connected to the rest of the village via a pedestrian path that extends onward from Building B05.
27. The existing public access along the southern boundary of the site via the Mary Barrett Glade Loop Track (located within the marginal strip area) will not be impacted by the retirement village proposal. There will be some restrictions on its use as a result of the applicant's proposals to upgrade the stormwater infrastructure which traverses under the track and improve the surface of the track generally, but these would be limited to the period of the construction works required for these upgrades.
28. A comprehensive landscape plan has been proposed for the outdoor areas around and within the site to provide a "park-like" setting for village residents.
29. Existing reticulated services (water, waste water, electricity, gas, telecommunications) will, as necessary, be upgraded and extended to the site to service the village. Stormwater will be managed on-site, an aspect of which will see the upgrade of an existing stormwater outlet discharge point into Ngataringa Bay.
30. Construction of the village will take approximately 36 to 40 months and is to be undertaken in stages. A total excavation of approximately 85,000 m<sup>3</sup> of cut and approximately 8,500 m<sup>3</sup> of fill is required across the site to construct foundations and basements for the various buildings, establish the internal roading network and level the car parking areas, widen Wesley Street and install infrastructure services. The applicant proposes the development, approval and implementation of a detailed

construction management plan to manage construction activities including dust, noise, traffic, hours of construction and sediment run-off during construction. During construction, earthworks and stormwater on the site will be managed on-site in accordance with a Sediment and Erosion Control Plan. All the sediment and erosion controls for earthworks at the site will be designed in accordance with the relevant sections of Auckland Council's TP90 Guidelines.

31. Construction of the retirement village will also require the removal of four mature exotic trees on the site. All other existing site vegetation is to remain intact.

### **Relevant statutory provisions, standards, policy statements and plan provisions considered**

32. We have considered the application in accordance with the requirements of sections 104, 105 and 107 of the RMA. In evaluating the proposed conditions of consent, and subsequently imposing them, we have referred to section 108 of the RMA. In determining whether, overall, consent should be granted or not under section 104B of the RMA, we have referred to Part 2 of the RMA to ensure our decision promotes the sustainable management of natural and physical resources.
33. Under section 104(1)(b) of the RMA, we have had regard to the following standards and national policy statements:
  - National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NESCS**);
  - The New Zealand Coastal Policy Statement 2010 (**NZCPS**);
  - National Policy Statement on Urban Development Capacity 2016 (**NPSUDC**).
34. During the processing of the application the Council notified its decisions on the recommendations of the Independent Hearings Panel on the Proposed Auckland Unitary Plan (**PAUP**) under clause 10(5) of Schedule 1 of the RMA. Subsequently, on 15 November 2016, the Council gave notice pursuant to clause 20 of Schedule 1 of the RMA that those parts of the PAUP not challenged by appeals were now operative. These statutory changes to the planning framework for the assessment of the application have had the effect of amending rules which had immediate legal effect upon notification of the PAUP (which the application addressed on lodgement), making other rules (and associated objectives and policies) in the PAUP legally applicable (and most recently operative) to the application, and making obsolete other rules and provisions of legacy plans that applied at the date the application was lodged.
35. In advance of the hearing the Commissioners directed the reporting officer and applicant to confer and agree on the relevant rules and other policy provisions that applied to the application at the date the hearing commenced. A joint statement was filed and we have relied on it as describing the consent requirements and policy framework now applicable to this proposal. Most notably, the applicant and the reporting officer considered that rules that had earlier applied to the proposal that classified aspects of it as non-complying, had been superseded with the effect that the proposal was now classified as a fully discretionary activity. No party to the hearing

contended otherwise and we have therefore proceeded with our assessment and determination of the application on that basis.

36. Under section 104(1)(b) of the RMA, we have also had regard to the following policy statement and plans:
- Operative Regional Policy Statement (Part B of the Auckland Unitary Plan) (**RPS**);<sup>1</sup>
  - Auckland Regional Plan: Coastal (**ARPC**);<sup>2</sup>
  - Operative Auckland Unitary Plan (**OAUP**), in particular:
    - Chapter C General Rules;
    - Chapter D Overlays (D9 Significant Ecological Areas Overlay; D14 Volcanic Viewshafts and Height Sensitive Areas Overlay; D17 Historic Heritage Overlay);
    - Chapter E Auckland Wide (E7 Taking Water; E8 Stormwater - discharge and diversion; E11 Land disturbance – Regional; E12 Land disturbance – District; E15 Vegetation management and biodiversity; E23 Signs; E27 Transport; E30 Contaminated land; E36 Natural hazards and flooding);
    - Chapter F Coastal;
    - Chapter H Zones – Mixed Housing Suburban (**MHS**) zone;
    - Chapter I Precincts – Devonport Peninsula Precinct (I508) (**DPP**).
37. After analysing the OAUP and the reasons for which consent was required initially under the Auckland Council District Plan (North Shore) Section (**Legacy Plan**), we have determined that none of the provisions of the Legacy Plan remain relevant to the application. Although we observe that various standards in the OAUP's MHS zone are the subject of appeals, thereby technically keeping the complementary Legacy Plan provisions 'alive', none of the challenged standards are infringed by the proposal. In the result, we proceed on the basis that the land use zoning and activity framework for the site, including the DPP provisions, are fully operative.
38. Under section 104(1)(c) of the RMA we have also given consideration to:
- The Auckland Plan;
  - The marginal strip reservation under Part 4A of the Conservation Act 1987 registered on the title to the application site.

### **Reasons for consent**

39. The following table sets out in detail the reasons for consent under the OAUP and any relevant matters of discretion. The table was included as Appendix 2 to the evidence of Dr P Mitchell and accepted as correct by the reporting officer in the joint statement

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<sup>1</sup> We have carefully reviewed the parts of the RPS that cannot yet be treated as operative due to appeals and find that they are not engaged by or do not relate to the issues raised by the applications. We therefore make no reference to the legacy Auckland Regional Policy Statement.

<sup>2</sup> The ARPC is still relevant as Chapter F of the OAUP is not yet operative

provided to us prior to the commencement of the hearing. No submitter or witness appearing at the hearing disputed the contents or accuracy of the table.

<b>Rule</b>	<b>Resource Consent Required</b>	<b>Activity Status</b>	<b>Commentary</b>
D17.4.1(A1)	A land use consent for the demolition or destruction of a Historic Heritage Category B Extent of Place.	Discretionary	The construction of Building B05 will require works within the area scheduled extent of place for the Duder Brickworks and Jetty (00831 – Schedule 14.1).  The jetty will not be affected by the construction of Building B05.
D17.4.1(A10)	A land use consent for a new building and structures in the Historic Heritage Category B Extent of Place.	Discretionary	The construction of Building B05 will constitute a new building or structure in the scheduled extent of place for the Duder Brickworks and Jetty (00831 – Schedule 14.1).  The jetty will not be affected by the construction of Building B05.
E23.4.2(A53)	A land use consent for the establishment of signage on the fence line of the retirement village.	Restricted Discretionary	As the retirement village is deemed to be a comprehensive development, resource consent is required for the site signage as a restricted discretionary activity.  The relevant matters of discretion include: <ul style="list-style-type: none"> <li>• visual amenity;</li> <li>• scale and location;</li> <li>• lighting and traffic safety;</li> <li>• duration of consent; and</li> <li>• cumulative effects.</li> </ul>
E27.4.1(A2)	A land use consent for an activity that does not comply with the loading and parking design requirements of the PAUP.	Restricted Discretionary	The retirement village will only have one loading bay, whereas Rule E27.6.2.7 (T114) requires two loading bays.  Rule E27.6.3 specifies the dimension and design requirement for carparking. The carparking within the retirement village will not comply with these requirements. The relevant matters of discretion for activities which provide fewer than the minimum number of loading spaces include: <ul style="list-style-type: none"> <li>• effects of the loading arrangements on the safe and efficient operation of adjacent transport network;</li> <li>• the specific business practice, operation or type of customer associated with the activities;</li> <li>• the extent to which an accessible and adequate on-street loading space is available nearby;</li> <li>• the extent to which loading can be provided informally on site; or</li> <li>• the extent to which the reduction in loading spaces will contribute to the efficient use of the site.</li> </ul>
E36.4.1(A41 & A42)	A land use consent for the diversion / alteration of an overland flow and	Restricted Discretionary	The retirement village will involve diverting / altering overland flowpaths on the site, and the establishment of buildings and structures within flowpaths.

	the establishment of buildings and structures within an overland flowpath.		<p>The relevant matters of discretion include:</p> <ul style="list-style-type: none"> <li>• the potential impacts on the overland flow path;</li> <li>• the provision of alternative overland flow paths;</li> <li>• the extent of any associated earthworks;</li> <li>• the extent to which methods for long term maintenance of areas affected by flooding are provided;</li> <li>• the effects of flooding on the activity proposed;</li> <li>• the effects on the location of habitable rooms;</li> <li>• the extent to which the design of the building provides for safe access and the potential effects of flood hazards on chosen access routes; and</li> <li>• the effects on people during a flood event and the ability to avoid, remedy or mitigate these.</li> </ul>
E11.4.1(A8 & A9)	A regional land use consent for earthworks, including earthworks in the Sediment Control Protection Area.	Restricted Discretionary	<p>The Sediment Control Protection Area is defined as extending 100m landward of the Coastal Marine Area, which captures approximately two-thirds of the site. Earthwork on the site will also exceed the 2,500m<sup>2</sup> limit specified in the rule.</p> <p>All restricted discretionary activities in Table E11.4.1 must also comply with permitted activity standards relating to:</p> <ul style="list-style-type: none"> <li>• land disturbance must not, after reasonable mixing, result in any of the effects listed in section 107(1) of the RMA;</li> <li>• best practice erosion and sediment control measures must be implemented;</li> <li>• dewatering of trenches and excavations must be done in accordance with best practice and must not result in a discharge of untreated sediment laden water to any water body;</li> <li>• trenching must be progressively closed and stabilised such that no more than 120m of continuous trench is exposed to erosion at any one time;</li> <li>• only cleanfill material may be imported and utilised as part of the land disturbance;</li> <li>• vehicle and equipment hygiene procedures must be adopted when working within 3 times the radius of the canopy drip line of a New Zealand kauri tree; and</li> <li>• earthworks associated with a temporary activity within the Significant Ecological Areas Overlay shall be limited to the area of earthwork previously disturbed or modified.</li> </ul> <p>The relevant matters of discretion include:</p> <ul style="list-style-type: none"> <li>• compliance with the relevant standards;</li> </ul>

			<ul style="list-style-type: none"> <li>the design and suitability of erosion and sediment control measures;</li> <li>effects of land disturbance and sediment discharge on water bodies;</li> <li>effects on cultural and spiritual values of Mana Whenua;</li> <li>the proportion of the catchment which is exposed;</li> <li>staging of works and progressive stabilisation;</li> <li>timing and duration of works;</li> <li>term of consent;</li> <li>effects on significant ecological and indigenous biodiversity values;</li> <li>the treatment of stockpiled materials; and</li> <li>information and monitoring requirements.</li> </ul> <p>The temporary diversion, damming and discharge of treated sediment laden water from land disturbance activities is a permitted activity in accordance with Rule E11.4.2(A14).</p>
E11.4.3(A28 & A30)	A regional land use consent for earthworks exceeding 5m <sup>2</sup> and 5m <sup>3</sup> in a Significant Ecological Area Overlay.	Restricted Discretionary	<p>The vegetation along the southern boundary of the site, adjacent to Ngataringa Bay, is scheduled as a Significant Ecological Area – Terrestrial. The earthworks for the upgrade of the stormwater pipe for the site will involve an area and volume exceeding the limits in Rule E11.4.3(A28 &amp; A30).</p> <p>As with Rule E11.4.1(A8 &amp; A9), all restricted discretionary activities in Table E11.4.3 must also comply with permitted activity standards.</p> <p>In addition to the matters of discretion listed in the row above, restricted discretionary activities under Rule E11.4.3 (A28 &amp; A30) are subject to the following matters:</p> <ul style="list-style-type: none"> <li>cumulative effects of sedimentation; and</li> <li>effects on significant ecological and indigenous biodiversity values.</li> </ul>
E12.4.1(A6 & A10)	A land use consent for earthworks exceeding 2,500m <sup>2</sup> and 2,500m <sup>3</sup> in a residential zone.	Restricted Discretionary	<p>The construction of the retirement village will involve the excavation of approximately 85,000m<sup>3</sup> of cut and approximately 8,500m<sup>3</sup> of fill across the site (which is 4.2 ha).</p> <p>All restricted discretionary activities in Table E12.4.1 must also comply with a number of permitted activity standards, with the relevant standards including:</p> <ul style="list-style-type: none"> <li>land disturbance must not result in any instability of land or structures beyond the boundary of the property;</li> <li>the land disturbance must not cause malfunction or result in damage to network utilities;</li> <li>access to public footpaths, berms, private properties, network utilities, or public reserves must not be obstructed unless that is necessary to undertake the works or prevent harm to the public;</li> </ul>

			<ul style="list-style-type: none"> <li>measures must be implemented to ensure that any discharge of dust beyond the boundary of the site is avoided or limited;</li> <li>earthworks within a 100 year AEP flood plain must not raise ground levels more than 300mm (to a total fill volume up to 10m<sup>3</sup>) and must not result in any adverse changes in flood hazard beyond the site; earthworks within overland flowpaths must maintain the same entry and exit point at the boundaries of a site and not result in any adverse changes in flood hazards beyond the site; and</li> <li>temporary land disturbance and stockpiling of soil and other materials within the 1% AEP flood plain and/or overland flow path for up to a maximum of 28 days in any calendar year may occur as part of construction activities.</li> </ul> <p>The relevant matters of discretion include:</p> <ul style="list-style-type: none"> <li>compliance with the relevant standards;</li> <li>effects of noise, vibration, odour, dust, lighting and traffic on the surrounding environment;</li> <li>effects on the stability and safety of surrounding land, buildings and structures;</li> <li>effects on overland flow paths and flooding;</li> <li>protocol for the accidental discovery of kōiwi, archaeology and artefacts of Māori origin;</li> <li>the treatment of stockpiled materials on the site;</li> <li>staging of works;</li> <li>information and monitoring requirements;</li> <li>timing and duration of works;</li> <li>term of consent;</li> <li>effects on significant ecological and indigenous biodiversity values;</li> <li>risk that may occur as a result of natural hazards;</li> <li>protection of or provision of network utilities and road networks;</li> <li>potential effects on the natural character and values of the coastal environment;</li> <li>positive effects enabled through the land disturbance; and</li> <li>effects on historic heritage.</li> </ul>
E12.4.2(A30 & A33)	A land use consent for earthworks exceeding 50m <sup>2</sup> and 250m <sup>3</sup> in a Historic Heritage Overlay.	Restricted Discretionary	<p>The construction of Building B05 will require earthworks within the area scheduled extent of place for the Duder Brickworks and Jetty (00831 – Schedule 14.1).</p> <p>The same permitted activity standards and matters of discretion apply as listed in the row above.</p>
E30.4.1(A6)	A discharge permit for the	Controlled	A resource consent for a controlled activity is required as the volume of soil disturbed will

	discharge of contaminants to land or water from the remediation of the site.		<p>exceed 200m<sup>3</sup>.</p> <p>The relevant matters of control relate to the following:</p> <ul style="list-style-type: none"> <li>• the adequacy of the detailed site investigation report;</li> <li>• the need for and adequacy of a site management plan;</li> <li>• the need for and adequacy of a remedial action plan;</li> <li>• how the discharge is to be managed and monitored;</li> <li>• the physical constraints of the site and operational practicalities;</li> <li>• the transport, disposal and tracking of soil and other materials taken away in the course of the activity;</li> <li>• methods to identify contaminant risks prior to works commencing such as qualitative assessments of risk;</li> <li>• protocols around notifying the Council of contaminant risks;</li> <li>• stormwater management;</li> <li>• soil management during work and at the completion of the works;</li> <li>• odour and vapour control;</li> <li>• groundwater management;</li> <li>• contingency plans;</li> <li>• remediation or ongoing management of the site;</li> <li>• the nature and type of close out criteria if proposed;</li> <li>• the need for a financial bond; and</li> <li>• the need for any review conditions in the event that standards to be achieved are not achieved.</li> </ul>
E15.4.1(A22)	A land use consent for vegetation alteration or removal greater than 25m <sup>2</sup> within a cliff area that is within 150m of Mean High Water Springs.	Restricted Discretionary	<p>Rule E15.4.1 (A22) states that vegetation alteration or removal of greater than 25m<sup>2</sup> of contiguous vegetation, or tree alteration or tree removal of any indigenous tree over 3m in height, that is within:</p> <ul style="list-style-type: none"> <li>• a horizontal distance of 20m from the top of any cliff with;</li> <li>• a slope angle steeper than 1 in 3; and</li> <li>• within 150m of Mean high water springs.</li> </ul> <p>There is no definition of a cliff in the PAUP, but we have conservatively assumed resource consent may be required for the works along the access track in order to enable the upgrade of the stormwater pipe given that it sits above the edge of Ngataringa Bay.</p> <p>All restricted discretionary activities in Table E15.4.1 must also comply with a number of permitted activity standards, although none of the standards in Rule E15.6 are relevant to this application.</p> <p>The relevant matters of discretion include:</p>

			<ul style="list-style-type: none"> <li>• the effects that the vegetation removal will have on ecological values;</li> <li>• the extent to which it is appropriate to require measures to contain and control plant pathogens and diseases including Kauri die back;</li> <li>• the role of the vegetation in avoiding or mitigating natural hazards and the extent to which the vegetation removal will increase any hazard risk;</li> <li>• the effects the vegetation removal will have on mitigating bush fire risk;</li> <li>• the effects the vegetation removal will have on soil conservation, water quality and hydrological function;</li> <li>• the effects the vegetation removal will have on landscape, natural features and natural character;</li> <li>• the effects the vegetation removal will have on the amenity values of any adjacent open space, including the coast and walkways;</li> <li>• the extent to which the vegetation alteration or removal is necessary to enable reasonable use of a site for existing activities on the site;</li> <li>• the extent to which the vegetation removal is necessary taking into account the need for, or purpose of, the proposed structure;</li> <li>• the extent to which the vegetation removal is necessary to provide for the functional and operational needs of infrastructure;</li> <li>• the minimisation of effects from the removal of vegetation and land disturbance through alternative locations on the site and/or methods of undertaking the works;</li> <li>• the remedy or mitigation of adverse effects, including through revegetation;</li> <li>• the benefit of imposing bonds, covenants or similar instruments; and</li> <li>• the effects on Mana Whenua values associated with a Significant Ecological Areas Overlays.</li> </ul>
E15.4.2(A43)	A land use consent for vegetation clearance in a Significant Ecological Area – Terrestrial.	Discretionary	The vegetation along the southern boundary of the site, adjacent to Ngataringa Bay, is scheduled as a Significant Ecological Area – Terrestrial. Vegetation clearance is required in this area in order to enable the upgrade of the stormwater pipe.
E7.4.1 (A41)	A land use consent for the drilling and construction of a bore(s) for groundwater abstraction.	Controlled	The drilling and construction of a bore(s) will be undertaken in accordance with the controlled activity standards in Rule E7.6.2.3.
E7.4.1 (A26)	A water permit for	Discretionary	

	the take and use of groundwater for irrigation purposes.		
E7.4.1 (A28)	A water / discharge permit for the diversion of groundwater through the site in order to enable the construction of the basements of Buildings B01 to B06.	Restricted Discretionary	<p>The diversion of groundwater during the construction of the basements of the building is a restricted discretionary activity as it may not comply with all of the permitted activity standards in Rule E7.6.1.10.</p> <p>The relevant matters of discretion include:</p> <ul style="list-style-type: none"> <li>• effects on Mana Whenua values;</li> <li>• how the proposal will avoid, remedy or mitigate adverse effects on (i) the base flow of rivers, springs and wetlands; (ii) existing lawful groundwater takes; (iii) groundwater pressures, levels and saline intrusion; (vi) ground settlement; (v) the frequency or magnitude of flood events; (vi) cumulative effects; (vii) the discharge of groundwater containing sediment or other contaminants; (viii) scheduled historic heritage places; and (ix) terrestrial and freshwater ecosystems and habitats;</li> <li>• monitoring and reporting requirements;</li> <li>• the duration of the consent and the timing and nature of reviews;</li> <li>• the requirement for and conditions of a financial contribution and/or bond; and</li> <li>• the requirement for a monitoring and contingency plan or contingency and remedial action plan.</li> </ul>
E8.4.1(A10 & A11)	A water / discharge permit for the diversion and discharge of stormwater from the site to land or water (including the Coastal Marine Area).	Discretionary	The diversion and discharge of stormwater runoff from the site will be from impervious areas that are greater than 5,000m <sup>2</sup> .
F2 19.4(A50)	A coastal permit for the removal of mangroves in a Significant Ecological Area – Marine 2 Overlay associated with the upgrade of the stormwater outfall in Ngataranga Bay.	Discretionary	<p>Ngataranga Bay is scheduled as a Significant Ecological Area – Marine 2 in the PAUP. The upgrade of the stormwater outfall will require the removal of mangroves in the immediate surrounds.</p> <p>Rule F2 19.4 (A47) does provide for mangrove removal to enable the ‘use, maintenance and functioning’ of existing lawful structures as a permitted activity. However, as functioning is not defined in the PAUP we have assumed that it does not extend to the upgrade of structures.</p>
F2.19.10(A13 3)	A coastal permit for the upgrade of the stormwater outlet structure in the Coastal Marine Area.	Discretionary	
H4.4.1(A8)	A land use consent for an	Restricted Discretionary	The relevant standards for integrated residential development under Rule H4.4.1(A8)

	integrated residential development in the Mixed Housing Suburban Zone.		<p>are building height, height in relation to boundary, alternative height in relation to boundary and yards. The only standard that will not be complied with is building height.</p> <p>Restricted discretionary activities that breach the standards (in this case for building height) are still deemed to be restricted discretionary activities in accordance with Rule C1.9(2).</p> <p>The relevant matters of discretion include:</p> <ul style="list-style-type: none"> <li>• effects on the neighbourhood character, residential amenity, safety and the surrounding residential area from (i) building intensity, scale, location, form and appearance; (ii) traffic; (iii) design of parking and access; and (iv) noise, lighting and hours of operation;</li> <li>• standards relating to (i) maximum impervious areas; (ii) building coverage; (iii) landscaped areas; (iv) outlook space; (v) daylighting; (vi) outdoor living spaces; (vii) front, side and rear fences and walls; and (viii) minimum dwelling sizes; and</li> <li>• infrastructure and servicing.</li> </ul> <p>For buildings that do not comply with the standard for building height, the matters of discretion also include:</p> <ul style="list-style-type: none"> <li>• relevant policies;</li> <li>• the purpose of the standard;</li> <li>• the effect of the infringement;</li> <li>• the effect on rural and coastal character;</li> <li>• the effect on the amenity of neighbouring sites;</li> <li>• the effect of any special or unusual characteristic of the site which is relevant to the standard;</li> <li>• the characteristics of the development; and</li> <li>• any other matters specifically listed for the standard.</li> </ul>
I508.6.1	A land use consent for a development that exceeds the building height limits in Areas 1 - 4 of the Devonport Peninsula Sub-Precinct F.	Discretionary	The buildings comprising the retirement village will exceed some of the height limits for Areas 1 – 4 of the Devonport Peninsula Precinct.

40. To be added to this table as further reasons for consent are the activities for which consent is still required under the ARPC, that document still being operative.<sup>3</sup>

41. We note that OAUP Rule C1.8(1) requires us, when considering any restricted discretionary or discretionary activity, to also consider all relevant overlay, zone,

<sup>3</sup> Stormwater outlet upgrade (Rule 12.5.18 – discretionary activity per Rule 12.5.22); disturbance of foreshore and seabed (including mangrove removal) (Rule 6.5.17 – discretionary activity per Rule 16.5.20).

Auckland-wide and precinct objectives and policies that apply to the activity or to the site where the activity will occur.<sup>4</sup> To set out all of these provisions here would be cumbersome. Appendix 4 to Dr Mitchell's evidence helpfully included them all and we have reviewed them carefully as they relate to the various aspect of the proposal.

42. However, as the principal focus of the hearing was the land use component of the application and its proposed built form, we propose to set out the relevant objectives and policies for the MHS zone and the DPP.
43. The relevant MHS zone objectives (H4.2) are:
  - (1) *Housing capacity, intensity and choice in the zone is increased.*
  - (2) *Development is in keeping with the neighbourhood's planned suburban built character of predominantly two-storeyed buildings, in a variety of forms (attached and detached).*
  - (3) *Development provides quality on-site residential amenity for residents in adjoining sites in the street.*
44. The relevant policies (H4.3) are:
  - (1) *Enable a variety of housing types including integrated residential development such as retirement villages;*
  - (2) *Achieve the planned suburban built character of predominantly two storey buildings, in a variety of forms by:*
    - (a) *limiting the height, bulk and form of development;*
    - (b) *managing the design and appearance of multiple-unit residential development; and*
    - (c) *requiring sufficient setbacks and landscaped areas.*
  - (3) *Encourage development to achieve attractive and safe streets and public open spaces including by:*
    - (a) *providing for passive surveillance;*
    - (b) *optimising front yard landscaping;*
    - (c) *minimising visual dominance of garage doors;*
  - (4) *Require the height, bulk and location of development to maintain a reasonable standard of sunlight access and privacy and to minimise visual dominance effects to adjoining sites;*
  - (5) *Require accommodation to be designed to:*
    - (a) *provide privacy and outlook; and*

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<sup>4</sup> Section 104(1)(b) would require that approach on a discretionary proposal in any event. The rule appears to make objectives and policies de facto assessment matters for restricted discretionary activities, where not explicitly noted.

- (b) *be functional, have access to daylight and sunlight and provide the amenities necessary to meet the day-to-day needs of residents.*
  - (6) *Encourage accommodation to have useable and accessible outdoor living space;*
  - (7) *Restrict the maximum impervious area on a site in order to manage the amount of stormwater runoff generated by a development and ensure that adverse effects on water quality, quantity and amenity values are avoided or mitigated;*
  - (8) *Enable more efficient use of larger sites by providing for integrated residential development.*
45. The general underlying MHS zone provisions need to be read in conjunction with the specific DPP provisions that apply to the site. The relevant objectives (I508.2) are:
- (1) *Integrated high quality housing development on large contiguous sites, which incorporate additional building height while complementing building heights at the interface with adjacent residential areas.*
  - (2) *Development that mitigates general visual and dominance effects.*
46. The relevant policies (I508.3) are:
- (1) *Enable greater building height in Areas 1, 2 and 3, and generally in areas with outlook across open space while:*
    - (a) *avoiding wider dominance or visual effects;*
    - (b) *ensuring an appropriate building height transition to adjacent residentially zoned areas through lower building heights in Area 3 and Area 4;*
    - (c) *ensuring a mix of building heights across Areas 1 and 2 as viewed from open spaces and the external boundaries of the site; and*
    - (d) *ensuring that the additional intensity of development enabled by greater building height is adequately serviced by open space and infrastructure.*
47. Although the proposal is to be considered overall in an integrated effects assessment manner, we have found it helpful to analyse the application's key consent requirements under three 'headings'.

#### Integrated Residential Development

48. Retirement villages are expressly included within the definition of 'Integrated residential development' in Chapter J of the OAUP. In the MHS zone such developments are provided for as a restricted discretionary activity provided they comply with four development standards (building height, height in relation to boundary, alternative height in relation to boundary and yards). Failure to meet any of these standards triggers a further restricted discretionary consent requirement (OAUP Rule C1.9(2)).
49. The MHS zone standards are expressly varied for this site by virtue of the DPP provisions and therefore take precedence (OAUP Rule C1.6(4)). Of particular relevance is the standard in relation to building height, which in Precinct F (this site) is

varied from the MHS zone permitted height of 8-9 metres<sup>5</sup> to, depending on the location within the site (by reference to Precinct Plan 6), 8-9, 11-12 and 16-17 metres.

50. In this case because there are portions of several of the proposed buildings that exceed the additional height limits in the DPP, these buildings are to be treated as fully discretionary (OAUP Rule I508.6.1(3)).
51. Aspects of the proposed layout of the site for parking/loading and its provision of signage also trigger restricted discretionary consent requirements due to a variation from the permitted standards in the OAUP.

#### Works and buildings in a heritage area

52. The construction and location of Building B05 requires specific consideration as a discretionary activity because this building is to be located in the Historic Heritage Category B Extent of Place of the *Duder Brickworks and jetty*, which is a listed heritage area in the OAUP (OAUP Rules D17.4.1(A1) and (A10)).

#### Development works

53. All of the works required to establish the village (construction earthworks, stormwater diversions and sediment control) are classified by the OAUP as either controlled or restrictive discretionary activities.
54. The upgrade to the stormwater outfall, including vegetation clearance within Significant Ecological Areas, operational discharges of stormwater from the site through that upgraded outfall, and the water bore for irrigation purposes are classified as discretionary activities.

#### **Activity Status**

55. By application of Rules C1.5 and C1.6, under the OAUP the proposal is to be considered overall as a discretionary activity. Bundling the discretionary consent requirements under the ARPC with those under the OAUP also yields an overall discretionary status.
56. This analysis substantially changes the statutory framework for assessment and determination of the application from that which applied at the date it was lodged and notified. The proposal is no longer a non-complying activity (to which the consent thresholds in section 104D of the RMA applied), but rather a discretionary one, for which consent may or may not be granted following consideration of the matters in section 104 of the RMA and an overall assessment as to whether the purpose of the RMA will be achieved or not.

### **Summary of evidence heard**

57. The reporting officer's section 42A report and recommendation was circulated prior to the hearing and studied by the Commissioners. The report included all of the application materials to that point, copies of all submissions received on the application

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<sup>5</sup> Expressing height this way acknowledges that the rules enable 50% of the height of a roof in elevation to exceed the permitted height by up to a further 1m (Rule H4.6.4(1); Rule I508.6.1(2))

and a number of specialist reports from other Council officers or consultants acting in a review capacity. The section 42A report was taken 'as read' at the hearing.

58. The applicant filed its evidence in support of the application and in response to the section 42A report on 18 November 2016. Expert evidence to be called by submitters was also pre-circulated before the rescheduled hearing date commencement of 5 December 2016. Two such briefs of evidence were received. All pre-circulated evidence was read by the Commissioners prior to the commencement of the hearing.
59. At the hearing, the applicant's witnesses summarised their written evidence and answered questions. Assoc Prof Bird provided a further statement of evidence in response to the expert evidence of Mr Reid who had filed urban design evidence for one of the submitters. Ms Paice also produced a further brief response to some engineering issues raised in submitter evidence by Mr Duder. The applicant closed the hearing with submissions in reply and further application materials (plans and proposed conditions).
60. Submitters who were not calling expert evidence also appeared at the hearing and presented summary submission statements to us, as well as oral presentations. Not all of the submitters attended the hearing. Some tabled further summary submissions.
61. All of the written material is now a matter of record. What follows is a brief summary of the key aspects of the evidence and submissions we heard.

### **Applicant's Evidence**

62. Counsel for the applicant, **Mr Luke Hinchey**, presented opening legal submissions in support of Ryman's application. He submitted that there would be significant positive effects from the proposed retirement village in that it would provide a high quality living environment for elderly residents located within the community which would provide for their particular care needs. Referring to the evidence of Mr Mitchell, he noted the very real shortages in the provision of quality care for the elderly and the problems this shortage will cause in the future if new accommodation is not provided.
63. Mr Hinchey submitted that there was no legal impediment under the RMA or any other legislation that would prevent the consent being granted. He noted that there was broad agreement between Ryman, Ryman's expert consultants, the reporting officer and accompanying specialist reviewers, that the actual and potential effects on the environment would be less than minor or minor. In conclusion, he submitted that the benefits of the proposal substantially outweighed its minor adverse effects, which would largely be confined to its construction period.
64. **Mr Andrew Mitchell** (Group Development Manager for Ryman Healthcare Limited) provided evidence on behalf of the applicant. Mr Mitchell began his presentation with a brief audio visual display showcasing other Ryman villages and including interviews with existing residents expressing their views about life within a Ryman retirement village.
65. In relation to the proposed village at Ngataringa Road, Mr Mitchell's evidence was that the village was urgently needed in the Devonport area and consequently would make a positive contribution to the local and wider community. Mr Mitchell advised that Ryman

has already collated a list of over 300 people who have expressed an interest in living in the village, despite no official marketing to date. Mr Mitchell considered that the design of the Ngataringa proposal achieved the high standards that Ryman sets for its villages so as to provide a high quality living and care environment for its residents.

66. Mr Mitchell confirmed that Ryman considered the site was ideally suited for the proposal given its size, flat/sloping topography, coastal setting and views and mature boundary vegetation. From his research, large relatively flat sites are very rare in the existing urban area of Auckland and Ryman had been looking actively for such a site in this location for almost 20 years. He considered that there were no other available sites in the Devonport community suitable for a comprehensive care retirement village as proposed. He also noted that the site is located within a well-developed urban area with a mix of residential development, and that the site is in reasonably close proximity to local amenities including cafes, shops, parks and the like.
67. In addition to the economic effects arising from the investment in the construction of the village, and the provision of much needed retirement living and care facilities for elderly residents, Mr Mitchell considered that there would be other important community benefits achieved following the development of the village, namely the release of approximately 300 plus family homes (from residents moving into the village), the upgrade to the local Mary Barrett Glade Walkway and the freeing up of scarce hospital resources used by elderly people as they become more dependant.
68. **Mr Taylor Allison**, the design manager for Ryman, summarised to us the key features of the village layout, essentially describing in narrative terms the detailed plans that had been prepared and included with the application documents. Mr Allison has worked as a designer for 35 years, of which the last 16 years had been for Ryman and he has been responsible for the design of the last 29 Ryman villages, including alterations and extensions to those villages. He advised us that Ryman villages are designed to the highest quality, providing comfort, security and safety and that the design and layout aim to meet the day-to-day needs of residents within the village community. He emphasised the need for a central 'community facilities'/care building and good, at-grade connections between buildings. He considered the design to be generally conservative, to blend in with existing architecture in the area and immediately adjacent sites.
69. Mr Allison also described how the photo montages, shadow diagrams, 'permitted' building envelope and existing boundary tree shadows had been constructed and presented by reference to various CAD software and methods, including how the original 'point cloud' images had been prepared.
70. **Associate Professor Clinton Bird** provided detailed urban design evidence on behalf of Ryman. In his opinion the site was well suited for use as a comprehensive retirement village of the type and scale proposed, noting that sites of the requisite scale in appropriate locations are hard to find. After briefly describing key aspects of the topography at present on and adjacent to the site, he noted that, despite the intensity of the proposal and the heights of some of the six buildings, his evidence demonstrated that actual and/or potential adverse effects arising from infringements of the relevant standards in the OAUP would be less than minor. In particular, he opined that the steeply sloping site contours along the northern edge of the site would result in those

retirement village buildings facing onto the southern (lower) side of Ngataringa Road to appear generally as two to three storeys above the level of the road. Together with the buildings being set back from the Ngataringa Road boundary to enable the retention of the existing trees, this fact would ensure, in his view, that the proposal was responsive to and integrated well into its Ngataringa Road residential context. Assoc Prof Bird also carefully addressed urban design related concerns arising from submissions. Overall, he considered that the proposal would result in an attractive, efficient and sustainable use of this scarce land resource.

71. In a supplementary statement of evidence, Assoc Prof Bird responded in detail to the expert evidence of Mr Richard Reid, pre-circulated as expert evidence for the Ngataringa Bay Action Group. In short, he did not agree that Mr Reid's criticisms of the proposal from an urban design and landscape perspective were reasonable or soundly based, holding firm to his opinions as to the relevant urban design effects managed/avoided by the design of the proposal.
72. **Dr Rod Clough** provided expert heritage effects evidence for the applicant. He described how he had undertaken detailed assessments of the *Duder Brickworks and jetty* scheduled historic place (OAUP ID 831), which included exploratory archaeological investigations to determine the extent and condition of the remains. He confirmed that earthworks and building B05 of the proposed retirement village were to occur within part of the extent of site of the heritage item, but that his investigations established that the remains of the brickworks within the proposed area of works had been largely destroyed and that no significant surviving remains above the former ground level would be expected. However, Dr Clough considered that there are likely to be discrete areas where partial remains of the features such as working floors, kiln floors and sub-surface flues had survived, and that these have the potential to provide information through further archaeological investigation.
73. Dr Clough noted that the proposal would not affect the coastal margins to the south of the site through which the Mary Barrett Glade Walkway runs and in which a number of archaeological features that are part of the Duder Brickwork site and midden deposits relating to Maori occupation are located.
74. Overall, Dr Clough considered that the adverse effects of the proposal would likely be no more than minor and could be appropriately mitigated through archaeological investigation and information recovery, public information and continued public access to the Mary Barrett Glade Walkway. He also considered that the works would not diminish the reasons for which the historic place had been identified in the OAUP.
75. Although Dr Clough indicated in his evidence some concerns with conditions related to heritage matters proposed by the Council's heritage specialist, he advised by the close of the hearing (following further discussions with Ms Eaves), that a suite of conditions had been agreed between them that, in his (and Ms Eaves) opinion appropriately addressed all heritage related effects matters.
76. **Mr Leo Hills** provided traffic and transportation evidence for the applicant. He indicated that the proposed retirement village satisfied most of the transport related standards for permitted activities, except in relation to the number of bicycle parking spaces, parking space dimensions and number of loading spaces. Despite these

shortfalls, however, he advised that the proposal would not have adverse effects arising from such matters, a conclusion with which Council's reviewing traffic specialist (Mr Shumane) agreed.

77. Mr Hills advised that the number and design of vehicle accesses to the site were acceptable and furthermore that the vehicle accesses to Buildings B04 and B06 should be a vehicle crossing (with pedestrian priority) off the main access road, and its vehicle accesses at Ngataringa Road and Wesley Street, should be "road" designs with curb and channel (with vehicle priority).
78. In relation to potential traffic generation by the retirement village, as described and estimated in detail in the TAR included with the application, Mr Hills opined that the expected generation was appropriate and acceptable; in his view it reflected a lower level of traffic generation than a standard residential development scenario that could be anticipated on the site. Consequently, his opinion was that effects on the nearby Lake Road/Ngataringa Road intersection would be minimal.
79. In relation to construction traffic effects, Mr Hills was of the opinion that these could be appropriately managed with a construction traffic management plan. He further recommended restrictions in terms of hours of truck operations to and from the site.
80. In response to a number of submitters concerned with wider traffic congestion on Lake Road, Mr Hills advice to us was that the proposed retirement village would generate traffic that would be less than what could be generated from the anticipated residential development on the site undertaken in accordance with the underlying zoning and relevant precinct provisions (i.e. it is not generating traffic movements beyond what could be reasonably expected from the site developed in accordance with the OAUP). On this basis he considered there was little scope for Ryman to undertake large scale mitigation measures in respect of Lake Road to resolve what is widely accepted as a road network capacity issue.
81. **Ms Dale Paice** provided civil engineering evidence on behalf of the applicant. In respect of earthworks she advised that the site will require substantial earthworks to create roads, outdoor areas and building platforms for the village. Approximately 85,000m<sup>3</sup> of earthworks would be required with the majority of spoil disposed of off-site. Earthworks would be subject to erosion and sediment control using a management plan approach, and in this case it would involve a central sediment pond into which all run-off from staged earthwork areas will flow before being discharged off site. She indicated that detailed conditions of consent in relation to sediment and erosion control had been agreed with Council's reporting specialist.
82. In relation to stormwater Ms Paice advised that the retirement village would increase the amount of stormwater generated from the site in comparison to the existing situation. To cater for this additional run-off, the existing public network downstream of the village would be upgraded from the point of connection to the point of discharge into Ngataringa Bay. The outfall would also be upgraded to provide for erosion protection. Stormwater filters will be installed within the site to treat run-off from the new roads and carparks. These filters will remove 75% of TSS on a long-term average basis, the typical standard for stormwater treatment in Auckland. Ms Paice indicated that the steepness of the site and proximity to the sea meant that there were no

significant existing flooding issues likely to be encountered. The site grading, roads and building levels have been designed so that overland flow paths are directed away from buildings and that there is freeboard to meet the anticipated 1% annual exceedance probability storm event and the overland flow paths and building floor levels meet local and national flood protection standards. No downstream properties would be affected by run-off from the village.

83. As to services, Ms Paice confirmed that the village would be serviced by new internal reticulation networks for stormwater, water supply, sanitary sewer, power, gas and communication. The networks will connect into the existing public networks in the surrounding streets, which we are advised have sufficient capacity for the additional demand created by the village.
84. **Mr Pierre Malan** provided geotechnical evidence for the applicant. His advice to us was that the site is generally suitable in geotechnical terms for the proposal, provided the recommendations in his initial GIR were considered and implemented during detailed design. In that regard, Mr Malan indicated that the proposed conditions satisfied those matters appropriately.
85. Mr Malan advised us that in geotechnical terms the site was a low risk. The geotechnical risks however that could give rise to adverse effects relate to the effect of building basements on ground water, the potential presence of fill on parts of the site and the proximity of structures to the coastal edge. After completing additional work, which was provided via a s92 response, Mr Malan concluded that effects from the basements encountering ground water would be negligible. In terms of design and structures adjacent to coastal edges Mr Malan advised that the proposed buildings would be set back sufficiently from the sloped edge to mitigate any potential risk. In any event, he assessed the coastal boundary as having a low risk of instability and was generally stable with little to no evidence of significant active regression.
86. **Dr Gary Bramley** provided ecological evidence for the applicant. He confirmed to us that there were no notable ecological values within the site itself that would be impacted upon by the development of the retirement village as proposed. Dr Bramley confirmed that the coastal boundary of the site had been identified as a significant ecological area on both sides of mean high water springs and that the proposal would require the disturbance of an area of mangroves in Ngataringa Bay and some minor disturbance to the terrestrial vegetation along the coastal margin as part of the upgrade of the existing stormwater pipe and outlet. These disturbance works would occur within the SEA area. However, in Dr Bramley's opinion if the upgrade of the stormwater pipe and outlet works were undertaken in accordance with appropriate conditions, then his advice was that they could be managed in such a way to minimise the spatial and temporal extent of any adverse effects on terrestrial and marine ecology etc.
87. **Dr Phil Mitchell** provided planning evidence for the applicant. His evidence addressed relevant district and regional planning provisions, summarised the actual and potential environmental effects of the proposed village (relying on other experts' evidence), discussed matters raised in submissions and the Council officer's section 42A report. His evidence also addressed relevant statutory matters for consideration and discussed recommended consent conditions.

88. Overall, Dr Mitchell's opinion was that the proposed retirement village offered an opportunity to develop a high-quality, purpose built, secure, comprehensive care retirement village on a large site within the well-established residential community of Devonport that is close to existing infrastructure and amenities. In his view the proposal has been designed to integrate with the surrounding residential environment and to comply with the relevant yard setbacks and height plan angles as they relate to permitted activities in the OAUP as far as practicable. Effects on residential amenity values, the transportation network, earthworks, stormwater management, geotechnical considerations, ecology and effects associated with construction had been investigated thoroughly by a number of specialists in his view and he was unable to identify any issues arising which could not otherwise be avoided, remedied or mitigated through conditions of consent. Dr Mitchell summarised to us the significant positive effects of the proposed village and opined that it would be consistent with the outcomes sought in the relevant objectives and policies of the OAUP.
89. Dr Mitchell helpfully referred us to the NESSC and its relevancy in respect of the site and the proposed earthworks. He also discussed the New Zealand Coastal Policy Statement, the Hauraki Gulf Marine Park Act and the recently promulgated NPS on Urban Development Capacity. In respect of that latter document, which came into effect on 1 December 2016, Dr Mitchell reminded us that it directed decision makers making "planning decisions" that affect the way and the rate at which development capacity is provided, shall provide that the social, cultural and environmental wellbeing of people and communities and in doing so to have particular regard to the need to provide choices that will meet the needs of people in communities for a range of dwelling types and locations and promote the efficient use of urban land and development infrastructure. Dr Mitchell opined that if the current proposal was seen as giving effect to the objectives and policies of the OAUP, then that too would satisfy the requirements of the NPSUDC.

#### **Submitter's Evidence**

90. Taking into account the late submissions, that were formally accepted by resolution of the Commissioners, the application drew a total of 421 submissions, 330 in opposition, 16 neutral and 75 in support.
91. The Commissioners heard from 40 submitters over the course of the hearing. The section 42A report groups consideration of these submissions in terms of the issues raised and we adopt a similar approach in the summary that follows. We do not refer to each submission individually; however, we do note specific submissions where the matter was more substantively covered in the submission.

#### Use of the Site for a Retirement Village

92. Even amongst those persons who submitted against the proposal there was virtually unanimous support for the use of the site as a retirement village. Such support was often based on the recognition of the growing needs of an aging population for a smaller home and for medical and support facilities, and the lack of such facilities generally and in this part of the North Shore in particular. To the extent that the future occupants of the retirement village might come from the Devonport peninsula, it was

also recognised that their occupation would free up family homes in the area for occupation by younger persons.

### Traffic and Transport

93. Approximately 70% of submitters identified the operational traffic effects of the proposed village on Lake Road as being a cause for concern. Their concern was mainly focused on the addition of Ryman generated traffic to an existing traffic situation on Lake Road that is characterised by long periods of congestion during both weekdays and weekends. The submitters identified the following causes for this congestion:
- Morning and evening commuters travelling from Devonport to workplaces in the wider metropolitan area;
  - Workers travelling to and from Devonport for work, in particular New Zealand Navy personnel;
  - Local school-related traffic movements at the beginning and end of the school day;
  - Weekend sport and recreational travel to and from Devonport; and
  - Special sports and community events, such as the Devonport Wine and Food festival.
94. The submitters stressed the fact that Devonport was served by only a two lane road and, being a peninsula, that the area had no alternative road access.
95. During the Council officer's presentation Mr Shumane provided some quantification of the congestion on Lake Road, advising that the two lane road had a carrying capacity of approximately 900 vehicles/hour in each direction. Auckland Transport 2013 data for the road was as follows:

<b>Time Period</b>	<b>Two-Way Movements</b>
Weekday morning (peak hour)	1575
Weekday evening (peak hour)	1515
Weekday inter-peak (highest hour)	1475
Weekday total	18600
Weekend total	17300

96. These weekday and weekend totals, which we understood to apply to Lake Road near to Ngataranga Road, suggest that times during which congestion exists (i.e., Lake Road is beyond its carrying capacity) extends well outside the peak hour. Many submitters attested to this being the case and provided us with information and photos of personal experiences of being in 'gridlock' on Lake Road.<sup>6</sup>

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<sup>6</sup> For example submissions by Paul Cornish, Rixt Brownlow, and Susan Claridge

97. A number of submitters stated that the applicant's and Council's data was out of date. One submitter referred us to Average Daily Traffic (ADT) data counts for Lake Road indicating that ADT5 (weekday) was 32,050 movements and ADT7 (full week) was 31,076 movements.<sup>7</sup> This data appears to derive from Auckland Transport Traffic Count Data<sup>8</sup>, which we note provides traffic counts at a number of different locations along Lake Road. These higher traffic counts are for a section of Lake Road near Hauraki Corner and demonstrate that the congestion can be extreme at times and places. A number of submitters acknowledged that Auckland Transport had prepared the Lake Road Corridor Management Plan 2014, but noted that funding for this plan was not currently available.<sup>9</sup>
98. In addition to the wider network concerns, some submitters expressed concern about more localised traffic effects, in particular the right turn out of Ngataranga Road into Lake Road.<sup>10</sup> They considered that this movement was already dangerous and that elderly drivers from the retirement village would find this movement difficult in terms of finding a gap in the traffic in which to make the turn. Other localised traffic effects about which concern was expressed included additional traffic on Aramoana Avenue, Kawerau Avenue and Regent Street accessing the retirement village.<sup>11</sup> The concern was based on the potential for persons travelling to and from the retirement village choosing to leave Lake Road at an alternative point to Ngataranga Road, and using these local streets instead. Submitters noted that there are families with young children on these streets and a day care centre and that additional through traffic would increase the hazard from traffic for children.
99. Transport effects related to the accessibility and proximity of public transport and the need for a footpath along the Ngataranga Road frontage of the proposed retirement village. Many submitters advised us of the proposed changes to the bus services in the vicinity, which would see Route 815 no longer timetabled to pass along Ngataranga Road during the morning and evening commuter peak. The changes would place the nearest bus stop near the corner of Old Lake Road and Lake Road, approximately 660m from the mid-point of the retirement village. The walk to the bus stop is also uphill, which the submitters considered was not conducive to elderly persons accessing the bus service.
100. Finally, many submitters identified the lack of a public footpath along the Ngataranga Road frontage of the proposed retirement village as being an adverse effect on the ability of persons, including future occupants of the village, to move around the local area. The width of this footpath also was a matter for submission, with the suggested width being 2.7m in order to provide for passing mobility scooters.<sup>12</sup> We were told that the formation of this footpath also has some relevance to the enhancement of the 'Green Route', being the shared walking/cycling pathway that traverses Shoal Bay and western parts of the peninsula between Takapuna and Devonport, which we refer to again below.

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<sup>7</sup> For example submission by Stephen and Vanessa Finnemore

<sup>8</sup> <https://at.govt.nz/media/1971765/october-2016-tc-data.xlsx>

<sup>9</sup> For example statement by Jonathan Cutler, para. 33

<sup>10</sup> For example submission by Susan Davis

<sup>11</sup> For example submission by Daniel Skelton

<sup>12</sup> For example submission by Gay Richards

### Construction Effects

101. Construction effects were identified by approximately 20% of submitters, most of whom reside in close proximity to the proposed activity. Potential construction effects include traffic and parking, noise, and vibration. We shall review the submissions on each of these in turn. The effect of potential sediment discharges from the site is addressed below in the context of effects on Mary Barrett Glade walkway and the natural values of the coastal margin and Ngataranga Bay.
102. The traffic effects of construction include congestion effects on Lake Road and surrounding streets which raised similar concerns as addressed above in terms of operational traffic. However, as much construction traffic would be heavy vehicles, there were additional concerns expressed about the passage of heavy vehicles along local residential streets.<sup>13</sup> Some submitters suggested the access point to the construction site should be limited to one point on Ngataranga Road close to Lake Road so as to minimise overall effects of construction traffic on the local area.<sup>14</sup> Many submitters drew attention to the need to transport 85,000m<sup>3</sup> of soil from the site, which increases the total construction traffic significantly.<sup>15</sup>
103. The parking of construction, staff and contractor vehicles on local streets was a concern expressed by a number of submitters.<sup>16</sup> These submitters considered that Ryman should be able to organise construction so that all such vehicles were located on the site at all times.
104. Construction noise and vibration were also a concern of many submitters who live in close proximity to the proposed activity, particularly the potential for this effect to extend over a three-year period.<sup>17</sup> In order to mitigate these construction effects some submitters suggested that the construction hours each day should be limited.<sup>18</sup>
105. Overall on construction related effects, several submitters sought that the applicant be required to keep residents up to date on construction progress.

### Effects on the Natural and Amenity Values of Mary Barrett Glade Walkway and Ngataranga Bay

106. Approximately 34% of submitters expressed concern about adverse effects on the ecological values of the coastal margin and Ngataranga Bay. To this number must be added the many submitters who expressed concern at potential effects on Mary Barrett Glade walkway and Polly's Park in terms of its natural values and local amenity.
107. It was apparent to us at the outset that many submitters were unclear about the extent of the proposal in terms of its interface with the coastal margin. Many submitters appeared to assume that the proposal required the clearance of some or all of the natural vegetation along the bay edge and that no public access was to be retained. Some submitters sought not only the retention of the existing vegetation, but also the addition of a further 20m 'buffer zone' of native plantings to protect the natural coastal

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<sup>13</sup> See again submission by Daniel Skelton

<sup>14</sup> For example submission by Marinka Teague

<sup>15</sup> For example submission by Chris Thomas

<sup>16</sup> For example submission by Alison Burford

<sup>17</sup> For example submission by Andrew Skokandich

<sup>18</sup> For example submission by Marinka Teague

edge.<sup>19</sup> In his statement of evidence on behalf of submitter Jacqueline Goldingham, John Duder identified that the Ryman earthworks stage plans appeared to show encroachment into the 20m coastal strip of vegetation. The legal position on this matter is that the title for the site is subject to Part 4A of the Conservation Act, which places a marginal strip over the land and this strip is in Crown ownership. The applicant requires the permission of the Crown to undertake works in the marginal strip. The applicant responded to Mr Duder's evidence during the hearing, amending the relevant plans to make it clear that no encroachment into the 20m coastal strip was proposed (apart from the works needed to pipe stormwater to the bay).

108. Submitter's were also concerned about the discharge of stormwater into the bay, both during the construction period and also once the retirement village was operative. Noting the very large amount of earthworks and land disturbance over each of the earthworks stages the submitters were concerned that this aspect of the activity had the potential for significant amounts of sediment laden stormwater to enter the bay.<sup>20</sup> While many submitters recognised the need for stormwater discharges, they wanted to ensure that sediment-laden discharges were avoided, if at all possible, and that treatment of stormwater was to the highest standards. A number of submitters provided evidence of the diversity and abundance of flora and fauna within Polly's Park and Ngataringa Bay.<sup>21</sup>
109. The important amenity values of Mary Barrett Glade walkway were emphasised by a number of submitters. The walkway provides access through an area of largely indigenous vegetation that is quite rare in the Takapuna-Devonport area, it is a link between the northern end of Wesley Street and Lake Road, and it also allows an appreciation of the bay shoreline and some remnants of the historic Duder Brickworks. Submitters sought that not only should the walkway be retained but that it should be upgraded. In this context some submitters referred us to the 'Green Route' between Takapuna and Devonport. We were referred to the plan for improving this route in the vicinity of the site, and noted the options for improvement included a route through the site or a boardwalk link across Ngataringa Bay to Ngataringa Park. Some submitters suggested that the applicant should contribute to the formation of this latter link.<sup>22</sup> Mary Barrett Glade walkway itself did not feature on the plan. We understood that this was due to the steepness of the walkway at its western end, and the fact that the Green Route was a shared pathway, needing to be suitable for cycling as well as walking.

#### Design and External Appearance, Bulk and Height, and Visual Effects of Proposed Buildings

110. Approximately 70% of submissions and the majority of hearing time on submissions was focused on matters relating to the effects of the proposed buildings. The height of the proposed buildings was a key concern for submitters. As noted above, during the processing of the application the rules of the Legacy Plan had been largely superseded by the OAUP. The development controls had been replaced and this had implications for a number of development parameters, the most significant of these being height.

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<sup>19</sup> For example submission by Jean Day

<sup>20</sup> For example submissions by Alan McNatty, Avril Welsh, Forest and Bird and Iain Rea

<sup>21</sup> For example Forest and Bird and George Rea-Bucknall

<sup>22</sup> For example submission by Gay Richards

The significance of this change was that the written submissions had been expressed in terms of the old rules. Submitters attending the hearing generally took account of this change, but many nevertheless considered that the proposed development should largely comply with the 8m height limit that applied to the MHS zone. While concerns about the height of the proposed buildings was expressed by most submitters, concerns about design and appearance were expressed in a variety of ways including:

- The scale of the development permits a density of development that is out of character with the area.
- The appearance of the external cladding materials is not appropriate for the area.<sup>23</sup>
- While acknowledging the retention of the trees along the front boundary area on Ngataringa Road, this had resulted in the buildings being disengaged from the street.<sup>24</sup>
- The lack of connection with Ngataringa Road, in contrast with the typical suburban interface on the northern side of the road.<sup>25</sup>
- While acknowledging the higher height limits in the OAUP, there should be more variation across the site, as viewed from the south.<sup>26</sup>
- The materials used for the development do not reflect the character of the buildings in the surrounding area.<sup>27</sup>
- The development could increase the interface with the community by enabling community access more, and the provision of a café and children’s play area.<sup>28</sup>
- The spaces between buildings do not reflect the ‘porosity’ of the surrounding residential area<sup>29</sup> and that building width should be limited.
- The buildings will create a situation where there could be adverse effects on privacy.<sup>30</sup>
- A number of submitters drew connections between what they saw as the ‘institutional’ appearance of the proposed buildings (submitters used various critical descriptors in this regard), and the ‘connectedness’ of the retirement village with the local community. They considered that the “neighbourly and open” culture of the existing area would change as a result of the development.<sup>31</sup>
- The dominance of the buildings cannot be mitigated by additional landscaping.<sup>32</sup>

111. Submitters provided various measures of visual dominance. These included:

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<sup>23</sup> For example submission by Stephen and Vanessa Finnemore

<sup>24</sup> For example submission by Ken Davis

<sup>25</sup> For example submission by Ken Davis

<sup>26</sup> For example submission by Ken Davis

<sup>27</sup> For example submission by Geoff Richards

<sup>28</sup> For example submission by Ken Davis and Lucy Bucknall

<sup>29</sup> For example submission by Geoff Richards

<sup>30</sup> For example submission by Andrew Skokandich

<sup>31</sup> For example submission by Suzanne Stickney

<sup>32</sup> For example statement by Jonathan Cutler, para. 22

- Not being able to see any of the houses on the north side of Ngataringa Road from Ngataringa Park.<sup>33</sup>
  - Loss of views to the south from houses on Ngataringa Road.<sup>34</sup>
112. There was a significant amount of commentary from submitters on the accuracy of the visual montages that had been prepared by the applicant's experts. The set of visual montages presented by the applicant to us at the hearing was compliant with the New Zealand Institute of Architects Best Practice Guide: Visual Simulations BP10.2 (dated 2.11.2010). Nevertheless, some submitters considered that these montages were unrealistic or unhelpful.<sup>35</sup> Ian Goldingham, provided evidence based on his lifetime experience in film and television for submitter Iain Rea on this matter. He advised that it is "vitally important that when [you] step onto the location, what [you] see with [your] eyes, matches closely the image of the photos [you] have been shown." Mr Coombs, the Council's consultant landscape architect, also advised us to ground-truth the montages. Accordingly, we conducted a second site visit taking in VP02 (Mt Victoria) and VP07 and VP08 at Ngataringa Park, an VP17 on Lake Road in particular, comparing the montages prepared for these viewpoints with the actual environment as viewed with the naked eye.
113. We heard submissions from a number of submitters who were architects, or had a related design profession (the 'architect submitters')<sup>36</sup> and also from Richard Reid, who provided a statement of evidence as an independent expert for Ngataringa Bay Action Group. The architect submitters acknowledged that they were not providing evidence as independent expert witnesses in accordance with the Environment Court Code of Conduct for Expert Witnesses. We distinguish these submitters as their submissions applied their professional knowledge to the proposal and also provided us with alternative design solutions to demonstrate their case.
114. Geoff Richard's view was that the proposal introduced a "level of bulk and height that cannot be successfully integrated into its surrounding environment". He considered that "no cues have been taken for the design from the surrounding built fabric" and did not belong within a residential environment. However, when questioned on what these were, Mr Richards stated that the housing materials in the local area were quite diverse and that the proposal "did not have to look like what is there already". Mr Richards was critical of the porosity of the proposal and provided an alternative design that increased this. In relation to a question from the Commissioners on views of the proposal from the south, Mr Richards considered that the skyline should be visible.
115. Ken Davis also provided an alternative design that had some basis in a design for multi-unit development of the site he had undertaken in 2012. He had adapted this design for retirement village purposes. A key feature of Mr Davis' alternative was a network of open spaces within the site that were accessible by the public. Mr Davis was critical of the lack of sunlight in the proposal's outdoor spaces and his design featured lower buildings along Ngataringa Road, higher buildings along the southern edge of the site, and none of his buildings had large floor plates. Mr Davis also

<sup>33</sup> For example submission by Iain Rea

<sup>34</sup> For example submission by Andrew Skokandich

<sup>35</sup> For example submission by Iain Rea

<sup>36</sup> We heard submissions from Geoff Richards, Ken Davis, and Guy Davies at the hearing.

provided information on exemplars of private campus type developments that incorporated public access.

116. Like many other submitters, Guy Davies supported the higher density development of the site. However, he considered that an “articulation in building height would help to break up the apparent continuity of building scale across the site” especially on the southern elevation. Mr Davies noted the precinct height limits and considered that the proposal should be completely compliant with these.
117. As noted above, we heard expert evidence on design matters from Richard Reid. Mr Reid provided a statement of evidence before the hearing and a summary and supplementary statement at the hearing, which he read. The key points of his evidence are as follows:
- The site has a number of distinct areas, which in his view should shape the proposal;
  - Mr Reid was critical of the viewpoint analysis undertaken by Assoc Prof Clinton Bird on behalf of the applicant, both in terms of the production of montages and the conclusions arrived at about visual and dominance effects from the viewpoints, particularly those viewpoints from the south;
  - The development of the site should be viewed in the context of other intensification on the Devonport peninsula;
  - Regent Street should be continued through the site as a viewshaft (thus connecting with Victoria Road on the southern side of Ngataringa Bay);
  - The orientation, height and width of buildings create excessive shading and poor on-site amenity;
  - While critical of the uninterrupted length and mass of Building 1, he considered that this building, and Building 5, being lower on the site, would not create adverse visual effects when viewed from the south;
  - Both Building 2 and Building 3 should be reduced in height (if Building 2 was not to be removed altogether).

#### Heritage and Archaeological Effects

118. Heritage and archaeological effects were a significant concern for a number of submitters (16%). This concern focused mainly on the adverse effects of the development on the remnant Duder Brickworks, however some concerns were also expressed about effects on artefacts of Maori occupation of the site during pre-European times. Submitter concerns about the Duder Brickworks were most comprehensively presented to us by Trish Deans, the spokesperson for the Ngataringa Action Group on heritage matters.<sup>37</sup> Whilst acknowledging that she was not a heritage expert, Ms Deans had been involved in a number of heritage matters in Devonport, including submissions to the Unitary Plan on these matters. Ms Deans submission was that the loss and destruction of the remnant brickworks, a Category B listed site in the

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<sup>37</sup> See also submission by Petra Heemskerck

Unitary Plan (PAUP ID 831), would be a significant adverse heritage effect that could not be mitigated by the proposals to record information during excavation and provide for the exhibits that informed people of the former brickworks. Ms Deans considered that we should defer any decision on the application until the application under the Heritage New Zealand Pouhere Taonga Act 2014 had been decided (this application being a separate application to the RMA proceedings, also providing for appeal rights).

119. On the matter of the brickworks, we also heard from John Duder, whose great-uncles had owned and operated the works for 40 years from the 1880s. Mr Duder sought that any encroachment of the coastal strip, which contained remnants of the works, be avoided, and that thorough investigation and recording of remnant works within the site be undertaken and for exposed features to be incorporated into landscaping where possible.

#### Infrastructure effects

120. In addition to effects on traffic infrastructure, addressed above, a number of submitters expressed concerns about the adequacy of other infrastructure, such as stormwater, water and wastewater services. These submitters referred to capacity issues generally in the local area, and questioned whether the services could cope with the addition of such a large development.

#### Water Bore Effects

121. A small number of submitters identified the potential for the extraction of water by the applicant from a proposed water bore to lead to subsidence effects beyond the boundary of the site.<sup>38</sup>

#### Council Staff

122. The Council reporting officer was assisted by a number of specialists, but in relation to the issues that were considered most unresolved at the hearing, was accompanied only by experts in the areas of traffic, heritage, urban design and landscape/visual effects.
123. At the conclusion of the submitters' evidence Council staff summarised their recommendations to us following the hearing of evidence.
124. **Mr Quentin Budd**, Senior Project Manager, confirmed to us that the appropriate design standard for sediment and erosion control devices was Technical Publication 90 and that under that document sediment ponds are to be designed to an area equal to 2% of the catchment area of the proposed earthworks. He advised that in cases of sloping land, the standard promotes the upsizing of such devices so that they are equivalent to 3% of the catchment area.
125. **Ms Myfanwy Eaves**, specialist heritage adviser, confirmed to us that under the OAUP the Duder Brickworks and jetty site (R11/1795), is identified as a Category B heritage place with listed heritage values of 'Historical' and 'Knowledge'.
126. Ms Eaves confirmed that the extent of place of the heritage area was reduced in size on the site as a consequence of a submission on the notified PAUP by Ngati Whatua o

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<sup>38</sup> For example submission by Lindsay Brock

Orakei. Ms Eaves confirmed her agreement with Dr Clough to the proposed conditions of consent relating to mitigating the effects of the works on the heritage area and the protocols to be followed during the construction of Building B05 in the event that items of interest were discovered.

127. Finally, Ms Eaves advised that, in her view, as a consequence of the works, the extent of place of the heritage area may require redefinition in future, implying that the construction of Building B05 would diminish the reasons for which the area had been identified for protection.
128. **Mr Sam Shumane**, specialist transportation consultant, advised that, following hearing the evidence of submitters and the applicant, his opinion as to the traffic and transportation effects of the proposal (as detailed in his initial Memorandum) were unchanged. He confirmed that in his view construction traffic could be adequately managed through conditions and endorsed any proposals within the construction traffic management plan process for regular community updates on development works and traffic. As noted above, he provided further data on 5 day ADT and 7 day ADT for Lake Road.
129. In relation to contractor parking, Mr Shumane's view was that that Stages 1 and 2 will easily be able to accommodate contractor parking on site, given its size, but that this may become more challenging for Stage 3. He also considered that there would be sufficient parking provided for residents and visitors on site.
130. In relation to concerns about the capacity of the existing transport network, in particular Lake Road, he agreed with the applicant's traffic and transportation engineer that a 'normal' development of the site would generate similar traffic flows in the locality. Mr Shumane's view was that it was the Council's responsibility to accommodate the reasonably anticipated traffic generated from land used in accordance with the relevant planning rules. Consequently, no particular development should be required to mitigate its traffic effects unless its intensity is greater than what is anticipated by the district plan. As noted, Mr Shumane was of the view that that would not be the case with the proposed retirement village and on that basis, even though he accepted that any additional traffic on Lake Road would cumulatively adversely add to current congestion on the road, that additional traffic was a legitimate expectation within the roading network, given the undeveloped nature of the Ngataranga Road land.
131. In relation to questions as to whether a Staff Travel Management Plan ought to be required, Mr Shumane's view was that this was a "small operation" and that although a plan would be useful, his expectation was that Ryman would manage its staffing requirements to meet its available on-site parking.
132. **Mr Chris Butler**, specialist urban designer, provided further written material in which he summarised his position and re-evaluated his urban design assessment of the application by specific reference to the OAUP and Devonport Peninsula Precinct provisions. While Mr Butler indicated support for the proposed use of the site as a retirement village, he noted a number of outstanding concerns principally arising from the infringements to building height, the general bulk and lengths of buildings when viewed from Ngataranga Road and the lack of variety in materials and colours. He considered that the effects of the current proposal would be "more than minor".

133. Mr Butler's recommendations for amendments to the design of the village included removing the 6<sup>th</sup> floor from Building B02, removing the eastern portion of Building B01, removing the third floor of Building B04 where this extends into Area 4 of Precinct Plan 6. He also considered that the applicant should incorporate a broader range of external cladding materials and colours to introduce more variety and contrast to building elevations to be more sympathetic to the existing character and diversity of built form found in Ngataranga Road and to help in breaking down the visible and perceived lengths and bulk of buildings. Furthermore, he considered that a revised landscape tree planting plan which significantly increased framework planting (native trees and vegetation) around site boundaries and along the Ngataranga Bay coastal edge would be beneficial.
134. **Mr Brad Coombs**, specialist landscape consultant, affirmed his opinion that the proposal was acceptable and appropriate from a visual effects point of view. He did not support any opening up of "view shafts" through the site that would result in the removal of mature vegetation along Ngataranga Road. He was critical of Mr Reid's analysis of such views to expansive open water arising from the layout of local streets.
135. Mr Coombs considered that having a higher "crest" height through Building B02 provided visual interest and in his view did not introduce any additional dominance or visual effects to views from the south side of Ngataranga Bay beyond those that were already presented by the proposal. He saw no reason from a visual effects point of view to remove the 6<sup>th</sup> level of Building B02 or other upper storey levels. Mr Coombs also opined that due to the orientation and contour of the site, multi-level buildings (even as few as two or three levels), in a roughly east-west orientation across the site will present a lineup of something close to 5 to 6 visible levels, when viewed from the south. This was evident from a number of the alternative proposals that were presented during the hearing of the site in his view.
136. In summary, Mr Coombs confirmed the conclusions of his initial assessment and advised that his opinion remained that the adverse landscape and visual effects of the proposal could be appropriately managed through additional landscape planting, to the extent that the proposal would be appropriate in this location. He confirmed that his assessment was essentially "looking from the outside" and that it was not his role to assess internal configuration of buildings and spaces. He candidly accepted that he was "not here to fix architecture". He confirmed that the difference of approach between himself and Mr Butler was the reason for their different opinions about the proposal overall.
137. Finally, **Mr Brooke Dales**, the reporting officer, confirmed that his recommendation that consent could be granted to the proposal remained unchanged after hearing all of the evidence that had been presented to the hearing. He made final comments in respect of statutory matters and conditions of consent.

#### Applicant's Reply

138. Counsel for the applicant presented an oral reply on the last day of the hearing and supplemented that with a written reply which was received on 12 December 2016. The written reply comprehensively addressed a number of matters that had been raised throughout the hearing both by Council officers, the Commissioners and submitters. It

also set out reply submissions on a variety of legal issues that had been raised and on the submitter presentations.

139. The written reply then summarised the key effects issues addressed during the hearing and set out options considered to be available to the Commissioners in making our decision, which included approving either the application presented to the hearing or either of two alternative proposals involving reductions in the height of buildings B02 and/or B04.

## Issues for determination

140. After:

- a. analysis of the application (including proposed conditions of consent);
- b. reviewing the submissions received and the Council planning officer's report and recommendation (including specialist reports);
- c. receiving and considering detailed evidence and submissions at the hearing;
- d. undertaking two site visits; and
- e. deliberating as a panel,

we find that the retirement village proposal raises a number of issues for consideration, principally arising from its scale (influencing construction related effects, intensity of site use and traffic impacts), and the bulk, location and design of its proposed built elements on the residential character and amenity of the surrounding locality. For the most part, all of these issues were in contention as between the applicant and submitters, although the extent of qualified expert evidence on most of them was confined to evidence from the applicant and Council specialists and in those cases, substantially in agreement.

141. We propose to consider and make findings on the following contentious matters put before us, namely:

- a. Construction effects;
- b. Effects on the Duder Brickworks;
- c. Effects on the coastal edge;
- d. Traffic and transport effects;
- e. Built form (external appearance, height, bulk and location) and related landscape, visual and urban design effects.

142. In making on our findings on these matters we will also discuss (as required) relevant policy and plan related matters.

143. Where we have not expressly identified and discussed a matter raised at the hearing (or in submissions) it is because we have found that it is not a matter relevant to our determinations under the RMA, or we have been satisfied on the evidence before us, or from the applicant's response in reply, that it has been, or will be, satisfactorily addressed in the course of implementing any consent. In this regard, we express our

gratitude to the applicant for the comprehensive and detailed written response provided to the issues that were raised during the hearing. It has made our deliberative tasks much simpler. Except where we comment on specific matters in our discussion of issues in contention below, we accept the applicant's reply submissions on the vast majority of issues it addressed and do not propose to lengthen this decision by repeating them here.

144. After discussing the principal issues in contention, we will then address the key issue, being whether the actual and potential adverse effects of the proposed retirement village are able to be avoided, remedied or mitigated to an appropriate level. Consequently, depending on our findings in relation to that matter, we then consider whether allowing the application would be consistent with the applicable objective and policy framework, so as to achieve the purpose of the RMA.
145. Before we look at the specific matters in contention, we propose to set out the approach we are required (or have determined) to follow when considering the effects of the proposal. This requires us to consider the applicability of a permitted baseline (per section 104(2) of the RMA), or some other form of 'anticipated effects baseline'.

#### **Permitted and Anticipated Development effects baselines**

146. The applicant's case relied on both a permitted baseline proposition (in terms of section 104(2) of the RMA), as well as what it called an "anticipated development" baseline (by reference to section 104(1)(b) or section 104(1)(c)). Both these effects baselines were important features of its case to rebut submissions that its retirement village development would have adverse effects on the environment that were more than minor. At law the adverse effects of a 'permitted baseline' can be discounted from the adverse effects of an application for consent because permitted adverse effects are able to be disregarded. The applicant's anticipated development baseline is a slightly different concept and we deal with that separately below.
147. The reporting officer did not apply a permitted baseline to his assessment of the effects of the proposal, preferring instead to refer to a 'complying' development scenario for the site. In that regard, there was general agreement with the applicant's advisers as to the complying extent of building, bulk and location on the site from a standard residential housing development on the site, particularly when viewed from the south side of Ngataringa Road, which was enabled by the MHS zone in the OAUP (and in the former Residential 4 Zone of the Legacy Plan). From the section 42A report we understand the reporting officer to have accepted that the bulk and location effects of the proposed retirement village buildings as seen from Ngataringa Road would be only marginally greater (in terms of visual extent) than standard development along Ngataringa Road of residential dwellings, built to the bulk and location controls in the relevant plans.
148. For its part, and despite the reporting officer's reluctance to apply it, the applicant maintained that there was a section 104(2) permitted baseline for the site and that we should exercise our discretion to consider it. However, we prefer the view expressed by the reporting officer and find that there is a limited permitted baseline of bulk and location effects along Ngataringa Road that we can discount from our assessment of the effects of the retirement village in the manner contemplated by section 104(2) of

the RMA. We have come to this view for a number of reasons. First, comprised as it is in one title, three or more dwellings on the site require a restricted discretionary resource consent under the MHS zone Activity Table. Second, subdivision of the title to create vacant lots in order to subsequently construct one house per lot (as a permitted activity) would also require a restricted discretionary consent. Third, a portion of the site is affected by a heritage area overlay within which any earthworks or building activity is wholly discretionary and, as is evidenced by the current proposal, alterations to the surface of the land including by way of earthworks and the creation of impervious surfaces and diversion and discharge of stormwater also require a variety of different resource consents.

149. As the site currently sits therefore, the permitted baseline of activity on the property appears to be two additional dwellings built away from the heritage area and not requiring any extensive earthworks or other land modification. We decline to exercise the discretion in section 104(2) of the RMA to disregard the adverse effects of permitted activities on the site to any greater extent than this.
150. However, we do accept that the applicant's "anticipated development" baseline (or the reporting officer's 'complying development' concept) is something that we should have due regard to as a relevant matter under section 104(1)(b) or section 104(1)(c) of the RMA. Our finding in relation to this is reinforced by OAUP Rule C1.8(2) which advises:
- When considering an application for resource consent for an activity that is classed as a discretionary or non-complying activity, the Council will have regard to the standards for permitted activities on the same site as part of the context of the assessment of effects on the environment.*
151. While the approach directed here is not a strict, section 104(2) permitted baseline approach, it is an approach that acknowledges the effect of plan prescribed development standards in the real world. This is a particularly important feature of the current proposal because of the way in which the development opportunities for the site have been crafted.
152. In combination, the MHS zone and DPP rules classify an integrated residential development on this site that complies with the varied height and other related bulk and location standards in the DPP as a wholly restricted discretionary activity. Under the DPP provisions such an activity can be considered without public or limited notification, or the need to obtain written approval from affected parties, except in special circumstances (Rule I508.5 Notification).
153. We find that this is an important indicator as to the OAUP's approach to the management of effects on the environment at this location and the extent to which it has enabled development at this (and other) DPP locations. Put simply, subject to the specific assessment matters, we find that building development of the scale anticipated by the rules and standards must be considered to be consistent with the policy and objective framework of the DPP; after all, the former methods only exist to achieve the later provisions (in a plan hierarchy sense). The existence of a non-notification rule within the OAUP for such an activity also indicates that the effects of such a development complying with these standards is considered to be sustainable and

allowing decision making about it to proceed without public input is an appropriate way to achieve the objectives of the OAUP as they apply to this site and more generally.<sup>39</sup>

154. The approach to the section 104(1) matters is well established. The directive “*must have regard to*” does not mean “*must give effect to*”. Rather the decision-maker must give genuine attention and thought to the matters set out.<sup>40</sup> The directive preserves a discretion to the decision maker: the specified matters must be considered, but any or all of them may be rejected or given whatever weight the decision-maker considers appropriate.<sup>41</sup>
155. Accordingly, in summary, we give weight to the effects on the environment that might result from development of the site in accordance with the applicant’s anticipated development scenario, which is based on a ‘compliant’ restricted discretionary (as far as land use is concerned) proposal, albeit one which avoids the extent of place of the *Duder Brickworks*. Even with that exclusion, we have no trouble in finding that the scale of the anticipated buildings and their enabled height on the site is considerable and that the differences between that anticipated scale of buildings and the scale of buildings for which consent is sought are comparatively small. We will bear these differences in mind when we look at the specific assessment matters that the OAUP provides us with when looking in particular at the design and external appearance of the proposed buildings.

## Findings in relation to principal matters in contention

### Construction Effects

156. We have carefully considered the technical evidence relating to construction works for the village buildings and in particular the works to upgrade the stormwater outfall. In reviewing that evidence we have also analysed the relevant assessment criteria and objectives and policies that relate to the rules for which consents in relation to construction activities are required (see above). We are satisfied on the basis of that evidence and our assessment that the land disturbance works can be undertaken in an acceptable manner, subject to appropriate conditions of consent. We have recommended an amendment to the condition in relation to sediment control to ensure that any in-line stormwater pond to collect sediment from run-off during construction be upsized to a minimum of 3% of the area of the catchment, such an upsizing being acceptable to the applicant, and a matter that gives due precautionary recognition to the potential adverse effects of sediment discharges into the sensitive coastal marine area.
157. We acknowledge that construction of the stormwater outlet will disturb vegetation within an SEA and the marine environment, but overall we are satisfied that the scale of the

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<sup>39</sup> Section 77D RMA allows a plan to include rules as to notification. In making such a rule, the plan drafters were obliged to consider the effects on the environment of activities to be controlled by the rule (section 76(3)), and had to be satisfied that the rule was an appropriate method to achieve the objectives of the plan (section 32(b)).

<sup>40</sup> *Foodstuffs (South Island) Ltd v Christchurch CC* (1999) 5 ELRNZ 308; [1999] NZRMA 481 (HC).

<sup>41</sup> In *The Warehouse Ltd v Dunedin CC* EnvC C101/01, the Court adopted the approach taken in *R v CD* [1976] 1 NZLR 436.

works is small and that the construction methodologies will employ best practice to properly manage the impact of these works.

158. We accept the technical evidence of Ms Paice and Ms Hannah that stormwater can be managed appropriately on the property by means of a reticulated network and overland flow paths.
159. The most visible aspect of construction will be construction traffic, particularly during site earthworks and then during construction of buildings on site. We have carefully considered the additional matters suggested for inclusion by way of construction conditions by submitters<sup>42</sup> and have made some (but not all) changes to the conditions to incorporate those matters we were satisfied would further manage the effects of construction-related traffic. These have included additional items for inclusion within the Construction Traffic Management Plan in relation to contractor parking and utilising residential streets for access to the site and providing regular newsletter and public announcements of progress of the works.
160. Overall, we find that potential adverse effects arising from its construction of the village in the staged manner proposed will be appropriately avoided, remedied or mitigated by conditions of consent to an acceptable level. This is not to say that the works will not disturb or inconvenience surrounding residents from time to time during the construction programme – clearly they may – but rather, that such disturbance, managed to an appropriate level bearing in mind the size of the site and the scale of the development, is a reasonably anticipated one in any urban environment.
161. We also find that for the longer term, the effects of additional stormwater run-off from the development will be appropriately managed in an acceptable manner.

#### **Effects on the Duder Brickworks**

162. By the close of the hearing we were helpfully presented with a statement of agreement in relation to heritage effects (and appropriate conditions) by Dr Clough and Ms Eaves. We accept the agreed evidence of these qualified experts in relation to this aspect of the application.
163. Although not purporting to give specialist heritage expert evidence, Ms Deans is well-known and experienced in such matters. Her evidence contended that no works should be undertaken that would impinge in any way upon the heritage area as doing so would simply legitimise ongoing loss of heritage values within the Devonport area and undermine the very purpose of scheduling and protecting such features.
164. Our findings in relation to this matter have been guided by the matters for which the Duder Brickworks were scheduled and the policies that relate to the proposals to undertake earthworks and construct buildings within the identified Extent of Place. We refer here in particular to policies D17.3.3, 8-10, 13 and 14. While we accept Ms Deans argument that any impact on a heritage area represents a cumulative loss of a heritage resource, we consider that a more fine-grained approach is now required by the OAUP.

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<sup>42</sup> For example, Marinka Teague.

165. In this case the site has been scheduled for Historic and Information purposes – there being no buildings or other surface remains accessible to or visible on the development site itself (as distinct from the marginal strip area). The site will always be known as the location of the Duder Brickworks, just as it will no doubt be historically remembered as ancestral land of Ngati Whatua, as a base during World War II and, more recently, naval housing. We do not think that the overall purposes of scheduling will be diminished by the partial demolition of the area (by earthworks etc) and the adaptation of the site to another and more modern land use with substantial public benefits. Nor do we find that the Information category for listing will be diminished, but rather it will potentially be enhanced. The proposed condition suite in respect of heritage matters will enable more information to be discovered as to historic items associated with the brickworks.
166. Dr Clough considered that the site would still remain worthy of scheduling even after construction and development of the retirement village; Ms Eaves similarly agreed, but qualified her agreement by saying that the extent of place might need to be modified where the new buildings had been constructed. As such Policy D17.3.13 would not be infringed and the scheduling would still remain viable and relevant for a portion of the site.
167. Added to our analysis on this was the unqualified, but nonetheless important view of Mr John Duder, a relative of the original Duder Brickworks' founders, that the site was acceptable for development and that if any historic items or features were found they could be utilised within the retirement village itself – an outcome, we note, endorsed by the proposed conditions of consent in relation to this matter.

### **Effects on the coastal edge**

168. As noted above, the Mary Barrett Glade Walkway and Polly's Park is wholly located within Crown land, within a marginal strip which is reserved in the name of the Crown by virtue of Part 4A of the Conservation Act 1987. As discussed at the hearing, the applicant has no authority to undertake works in this area without the consent of the Minister of Conservation. Plans initially showing construction earthworks and other related parts within this area were amended to ensure that they stayed clear of the 20 metre marginal strip. We note that the applicant will need the approval of the Minister in any event for the stormwater outlet upgrade works.
169. With the proposals in relation to construction sediment management and the applicant's offer to upgrade the walkway, we are satisfied on the evidence that the effects of the construction of the village and its future operation on the usability and amenity able to be gained by users of the walkway, will be maintained or enhanced.

### **Traffic and Transportation**

170. We have set out above in summary form the evidence and various opinions we heard in relation to the actual or potential traffic and transportation effects that may arise from the development of the retirement village. Having considered the evidence, giving more weight to the specialist expert evidence we heard, we are satisfied that any adverse traffic and transportation effects of the village will be satisfactorily avoided or mitigated to an appropriate level as a consequence of the design and location of the village, and the fact that its residents are discretionary travellers and more likely than

not to avoid periods of peak congestion or have their transport requirements met in an integrated fashion by the operator of the retirement village.

171. This is not to say that the additional traffic movements arising from operation of the village will not add to those already existing on Lake Road and, in a strict sense, adversely accumulate with them. But we are drawn to find the applicant's case on this matter persuasive for a number of reasons:
- a. Development of the site for residential housing would generate similar, if not more, traffic impacts on the local roading network, potentially at more congested times of the day;
  - b. The permitted standard of vehicle generation for new activities by way of Auckland-wide rules in the OAUP is 100 vehicles in the peak hour, and the proposal does not infringe that standard; and
  - c. The site is undeveloped and its future occupants must have a legitimate expectation to use common access (i.e. roads) and related resources for day-to-day access and egress.
172. Taking these factors into account, we find that the traffic and transport related effects of the proposal will be acceptable.

**Built form (external appearance, height, bulk and location) and related landscape, visual and urban design effects**

173. The aspect of the proposal that was the focus of many at the hearing and also our own deliberations is the bulk, location and external appearance of the proposed retirement village buildings. We have been assisted in our analysis of these matters by the assessment criteria and matters for discretion for integrated residential development found generally in the MHS zone and specifically, for the scale of such development anticipated at this site, in the DPP. We acknowledge that our overall consideration of the application is not limited by section 104C of the RMA, it being a wholly discretionary proposal, but the assessment matters are still provisions of the OAUP to which we must have regard and the matters of discretion are helpful in defining for us the scope of discretion that would apply in the context of a wholly restricted discretionary (and potentially non-notified) proposal at this site.
174. In the MHS zone the relevant matters of discretion are:
- (3) *For integrated residential development:*
    - (a) *the effects on the neighbourhood character, residential amenity, safety, and the surrounding residential area from all of the following:*
      - (i) *building intensity, scale, location, form and appearance;*
      - (ii) *traffic;*
      - (iii) *design and parking and access; and*
      - (iv) *noise, lighting and hours of operation.*
    - (b) *all of the following standards:*  
... [H4.6.8 – 15].

(c) *infrastructure and servicing.*

175. We note that MHS zone matter for discretion (4) is engaged for “buildings that do not comply with Standard H4.6.4 Building height” as well as a variety of other standards. Although the proposed retirement village does not have to comply with Standard H4.6.4 Building height in the MHS zone (as a consequence of the additional height allowed under the Devonport Peninsula Precinct), for completeness we note that the following matters would otherwise be engaged:

- (a) *Any policy which is relevant to the standard;*
- (b) *The purpose of the standard;*
- (c) *The effects of the infringement of the standard;*
- (d) *The effects on the rural and coastal character of the zone;*
- (e) *The effects on the amenity of neighbouring sites;*
- (f) *The effects of any special or unusual characteristic of the site which is relevant of the standard;*
- (g) *The characteristics of the development;*
- (h) *Any other matters specifically listed for the standard; and*
- (i) *(Not applicable).*

176. As for assessment criteria relevant to integrated residential development in the MHS zone, H4.8.2.3 directs the reader to the relevant policies at H4.3 in respect of the various bulk and location standards. In addition, two further matters of assessment (at H4.8.2.3) are:

- (a) *The extent to which or whether the development achieves the purpose outlined in the following standards or what alternatives are provided that result in the same or a better outcome: [various standards cross-referenced]*
- (k) *Infrastructure and servicing:*
  - (i) *Whether there is adequate capacity in the existing stormwater and public reticulated water supply and wastewater network to service the proposed development.*

177. When it comes to the DPP, I508.8.1 advises that:

*The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary activity resource consent application, in addition to the matters specified for the relevant restricted discretionary activities in the zone, Auckland-wide, or over-lay provisions.*

178. I508.8.1.1 “Any land use or development including one or more buildings which infringes the maximum height of the zone but complies with the maximum building heights in I508.6.1” has the following relevant additional matter of discretion:

(i) *Building footprints, profile and height.*

179. Assessment Criteria (I508.8.2.1) for such restricted discretionary activities are:

(1) *Whether building height establishes an integrated built form that is in accordance with Policy I508.3(1)(a), (b) and (c) and also:*

(a) *is in keeping with the form and function of existing and proposed streets, lanes and open space; and*

(b) *ensuring (sic) a mix of building heights and a variation of built form when viewed from streets, public open space and residentially zoned areas and in particular, views of higher buildings should be broken up by buildings of a lesser height to reduce dominance and bulk.*

(2) *...*

(3) *The extent to which the additional intensity of development within the sub-precinct enabled by the additional building height is appropriately serviced by open space, and a high quality living environment provided, including through consideration of the following:*

(a) *locating open space to provide a good standard of amenity, sunlight access and a high level of accessibility;*

(b) *retaining wherever possible and appropriate, the existing mature trees, particularly where it would assist (the appearance of three – five level buildings as viewed from the perimeter of the relevant sub-precinct); and*

(c) *providing for public access along the coast by way of a conservation covenant and/or other similar mechanisms.*

180. We set out below our principal findings in relation to these matters.

181. We find that the bulk, height and location of the proposed buildings establishes a built form on the site that avoids wider dominance or visual effects. Our assessment of the proposal from the most distant viewpoints we were provided is that although it will be noticeable as a large built form, it will still sit comfortably in the urban residential landscape when viewed from those elevated locations. It is assisted in this outcome by the extent of foreground vegetation to be retained, the fact that it does not dominate a ridgeline or the horizon, and that its architectural forms and appearance are not uncommon features in these views.

182. Most of the mitigating factors that apply from the distant elevated views apply equally for views from Ngataringa Park and Lake Road. Naturally, given the closer proximity to the site, from these locations the extent of built form on the site will be more noticeable. But even at this viewing distance, we are satisfied that the development will not

generate adverse dominance or visual effects. In making this finding we place weight on the nature of the activities occurring at these locations (public recreation and transport), and the fact that any development of the site in accordance with its anticipated development scale would have a similar, potentially indistinguishable, visual appearance from these locations.

183. We observe here that the enabled greater building height for the site is the method chosen by the DPP provisions to achieve the policies against which the proposal is then to be assessed. Consequently, a finding that a building of a complying height did not achieve the policy would be illogical. Of course here we are assessing buildings that do not fully comply with the DPP height limits. But in relation to the assessment matter, we are not persuaded that the additional areas of height result, overall, in the development having wider adverse dominance and visual effects. As the montages and elevations of the alternative options offered by the applicant show, it is difficult to discern the difference at first glance.
184. When it comes to building height transition to adjacent residentially zoned areas, we find that this outcome is also sufficiently achieved by compliance (as envisaged by the DPP provisions) with the lower height limits in Areas 3 and 4 (around the existing residential edges of the site). In the locations where the Area 3 and 4 heights are not met, we are satisfied that the significant setbacks from the road boundaries of those areas of additional height, the retained planting, and the absence of any adverse shading effects ensure an appropriate building height transition is achieved and the amenity of the surrounding residential areas is maintained. Although some views across the site will be lost, that is an inevitable outcome from any development on the site, and would occur even if the Area 3 and 4 height limits were fully complied with.
185. We also find that the retirement village at the intensity proposed will be appropriately serviced by open space and a high quality living environment provided on site for residents. Mature trees will be retained and will be supplemented with extensive further landscaping . Open space on site (including access to the Mary Barrett Glade walkway) will provide good amenity for residents and although sun-light access to all areas of the development and accessibility around it will not be as generous as might be achieved with less intensive building activity or a flatter, north-facing site, we are satisfied that they will still be of a good standard for the residents, duly appreciating the characteristics of the site and the nature of the use of it for comprehensive retirement living and aged care.
186. Finally on this topic we turn to the key point of difference between ourselves and Commissioner Serjeant, whose dissenting reasons (set out later) we have had the benefit of reading in draft. We refer here to the assessment criteria which direct us to consider whether the building height establishes “an integrated built form” that ensures a mix of building heights and variation of built form when viewed from streets, public open space and residentially zoned areas with views of higher buildings being broken up by buildings of lesser height, thereby reducing dominance and bulk.
187. We consider that the proposed retirement village buildings do provide a mix of building heights and variation of built form when viewed from the outside in. Undoubtedly, the design of the buildings could have incorporated a greater mix of height and variation of built form. We accept the analysis of Commissioner Serjeant in this regard. However,

we do not wish to be drawn into a debate on architectural design to achieve what are essentially qualitative criteria, particularly in circumstances where we are not satisfied on the evidence that requiring greater variation in height and built form is necessary to avoid or mitigate an adverse effect on the environment of the development. We also observe that the anticipated height and built form of a complying development on the site would not likely bring with it any greater variation than is currently proposed.

188. In the end we return to the assessment criterion of “integrated built form”. Importantly, this criterion echoes DPP Objective I508.2.1 which seeks to achieve integrated high quality housing development on large continuous sites, which incorporate additional building height while complementing building heights at the interface with adjacent residential areas. Notwithstanding Commissioner Serjeant’s criticisms of this aspect of the proposal, we are satisfied that the development as proposed generally achieves that objective, appreciating the intensification opportunity enabled for the site and the built form outcomes envisaged by that. Put another way, we do not consider that Commissioner Serjeant’s criticisms of the design of the proposal are sufficiently strong to support a finding that the proposal is inconsistent with the relevant OAUP objective and policies, or that approving it as proposed would not achieve the sustainable management purpose of the RMA. The plan provisions must be read as enabling a degree of discretion in relation to this aspect, having left it to a matter of assessment, and this approach enables other factors, such as the nature of the site activity proposed to factor in that overall assessment.
189. Overall, we are satisfied that the built form and appearance of the proposal are acceptable from an effects and policy analysis.

### **Assessment of application following findings in relation to principal matters in contention**

190. In relation to the principal effect issues in contention, we have set out our findings above.
191. We have had regard to the statutory, plan and other provisions recorded earlier in this decision.
192. In considering our discretion to grant or refuse consent, we determine to exercise our overall judgment to grant consent. We are satisfied that the proposal does not threaten the life supporting capacity of the natural environment, duly accommodates the reasonably foreseeable needs of future generations, and will appropriately avoid, remedy or mitigate any adverse effects on the environment if undertaken in accordance with the conditions of consent we intend to impose.
193. We also find that the proposal will enable people and communities to provide for their social, cultural and economic well-being, and for their health and safety. Even if we had agreed with Commissioner Serjeant’s factual findings as to built form effects, we would still have exercised our discretion to approve the application on the basis that it fundamentally achieves the sustainable management purpose of the RMA.

## Decision of majority of Commissioners

194. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104 and 104B and Part 2 of the RMA, the majority of the Commissioners grant the resource consent subject to the conditions in Appendix 1.
195. The reasons for our decision are set out in our findings and final assessment above.



**K R M Littlejohn**  
Chairperson  
(for the majority of Commissioners)

13 January 2017

## Decision of Commissioner Serjeant

196. The decision above represents the majority view of the three Commissioners. The following section sets out my dissenting view.
197. At the outset, it needs to be clear that the area of dissention lies only in relation to the bulk, location and design of the buildings, and even then only Buildings 2, 3 and 4. I consider that the adverse effects of these buildings and their inconsistency with the objectives and policies for the Devonport Peninsula Precinct are such that the application should be declined. The Precinct objectives, policies and related assessment criteria focus on both intensification and a quality built environment, and I consider that to fail in either of these matters is to fail overall.
198. If a partial consent was an option (i.e. consent only to Stage 1, comprising Buildings 1 and 5, and to Building 6), then I would have granted that consent. However, as such a partial consent is not an option, my decision is to decline the application in total.
199. The reasons for my alternative view are set out below.

### The Planning Provisions

200. The Mixed Housing Suburban zone and Devonport Peninsula Precinct provisions must give effect to the objectives and policies in Regional Policy Statement (RPS) Chapter B2.2 Urban growth and form, B2.3 A quality built environment, and B2.4 Residential growth, as referred to us by Dr Mitchell and Mr Dales. The RPS chapters refer to optimising “the efficient use of the urban area”, enabling “the efficient supply of land for residential ... and social facilities”, providing “choices that meet the needs of people and communities for a range of housing types”. The intensity of the proposed development achieves all of these outcomes, as enabled by the Devonport Peninsula Precinct provisions, and is supported. The RPS chapters also refer to a “higher-quality urban environment”, with objectives that development responds “to the intrinsic qualities and physical characteristics of the site and area, including its setting”,

encourages “innovative design to address environmental effects”, promotes the “health and safety of people and communities”.

201. Further, “residential intensification [that] supports a quality compact urban form”, “residential areas [that] are attractive, healthy and safe with quality development that is in keeping with the planned built character of the area”. These objectives are to be achieved by managing “the form and design of ... development so that it ... supports the planned future environment, including its shape, landform, outlook, location and relationship to its surroundings, including landscape and heritage” and “meets the functional, and operational needs of the intended use”. Specific reference to the precinct approach is found in the policy to “recognise and provide for existing and planned neighbourhood character through the use of place-based planning tools” and managing “built form, design and development” to achieve the descriptions set out in those placed-base plan provisions.
202. The relevant provisions of the MHS zone and DPP against which to assess the application are set out above. We received very little in the way of analysis from the parties of the place-based DPP provisions and the ‘description’ of what the “built form, design and development” is to achieve. However, I508.1 Precinct description states that the precinct enables additional building height and increased intensity as a consequence, however “provisions are designed to ensure that the effects generated as a result of the additional height [up to five storeys] and intensity are mitigated”. This achieved in a number of ways:
- By providing for variability in building height across each sub-precinct, responding to the unique characteristics of each site and surrounds;
  - By ensuring a mix of building heights across Areas 1 and 2 (the Wakakura Sub-precinct only has Area 1 within it, being the 16m/17m height maximum area);
  - By specifying that development that exceeds the MHS zone height limits, but not the DPP height limits, is a restricted discretionary activity, to be processed by way of non-notification;
  - Including assessment criteria for such a restricted discretionary activity.
203. We did not receive any analysis from the parties on these criteria, despite their relevance to a full discretionary application. The assessment criteria (I508.8.2.1.1 to 3) provide guidance as to the manner in which the additional height and intensity within the site is to be mitigated. As set out at the beginning of this dissenting view, the focus is on the bulk and location and design of buildings, so criteria I508.8.2.1.2 on transport matters is not considered further. In relation to I508.8.2.1.3, it is considered that the proposal performs acceptably in relation to open space, tree retention and access along the coast, despite criticism in relation to sunlight access to some of the buildings. However, the critical issue in this dissenting view is the performance of the application against the matters raised in I508.8.2.1.1. In particular:
- Wider dominance and visual effects;
  - The mix of building heights across Area 1 such that views of higher buildings should be broken up by buildings of lesser height to reduce dominance and bulk;

- The variation of built form when viewed from streets, public open space and residentially zoned areas.

### **The Evidence**

204. The evidence on these matters is recorded above. The applicant's design and visual assessment evidence was provided by Mr Allison and Assoc Prof Bird. As the planning and design of the proposal had commenced well before the relevant criteria were known, and had not changed in any significant way, by reason of simple chronology, it had not specifically responded to it. In any event, Mr Allison did not refer to the criteria as guiding principles in the design and Assoc Prof Bird did not refer to them as components of his assessment methodology (for example, his 19 key design objectives).
205. Mr Allison is clearly very experienced in designing Ryman villages. He also considered that the design blended in with the existing architecture of the area and adjacent sites. However, in response to a question from the Commissioners he did not identify any specific ways in which the design had responded to the locality, beyond a general compliance with the height limits within the three areas of the sub-precinct and large building setbacks. Whereas the criteria in I508.8.2.1.1(b) envisage a mix of building heights within Area 1, and some building heights being lesser than the 16m height limit so as to reduce dominance and bulk, the entire development (Building 6 excepted) is contained within five large buildings which have little variation in built form.
206. At this point it must be acknowledged that Building 1 contains the administration, communal facilities, hospital, dementia unit, rest home and assisted living suites, all of which support the integrated levels of care needed for increased levels of dependency amongst the occupants. Whilst many submitters, and the expert evidence of Richard Reid is critical of the size of Building 1, my view is that for Building 1, 'function' needs to determine 'form' and all these facilities need to be in one building. However, that argument does not stand for the buildings containing independent apartments, where Ryman's choice of large buildings must be seen as driven mainly by cost, at the expense of responding to the precinct 'description'. It is also noted, as it was during the hearing, that the Narrow Neck buildings are the same as those for the proposed Ryman retirement village in Blockhouse Bay. Consequently, the extent to which the design responds to the locality, and the criteria, must be doubted.
207. Assoc Prof Bird was engaged as an independent urban design and visual assessment expert following the design process. His assessment utilised photo montages of the proposed development, and illustrations of "buildings built to the Proposed Auckland Unitary Plan decision [representing] the additional height permitted, enabled by the Devonport Peninsula Precinct". The applicant's evidence was that the proposed development had similar effects as to 'permitted' buildings. My view is that the images of the PAUP buildings cannot be relied on for a comparative assessment as the only buildings that are permitted on the site are those complying with the MHS height limit, with all buildings taking advantage of the DPP height limits requiring assessment under the criteria. As such it is not realistic to suggest that 'complying' buildings would look anything like what was depicted in terms of probable bulk and location (see for example the higher buildings in Drawing RC40A).

208. In terms of the visual effects of the proposed buildings in the wider landscape, Assoc Prof Bird came to the overall conclusion that the visual effects were no more than minor. I accept that such an overall conclusion is necessarily a combination of assessments from the various viewpoints, and in relation to the more distant viewpoints from North Head and Mount Victoria, it is agreed that the proposed development, although clearly visible and differentiated from the residential areas surrounding the site, is a small part of a large view. That is not the case with closer views from the south, in particular from Ngataranga Park. As noted previously in the decision, the Commissioners conducted a second site visit, taking in Viewpoints 7 and 8 at the park. Irrespective of the confirmation that the visual montages prepared according to the NZILA Best Practice Guide: Visual Simulations were to be taken as an accurate representation of the buildings in the landscape, it was the view of all Commissioners that these did not match the human eye. In terms of Viewpoints 7 and 8, it is the 'close up' versions of these viewpoints as shown on Drawing RC38 (which are similar to Assoc Prof Bird's base photos in Figures 16 and 17 in his original assessment), not the NZILA montages on Drawings RC38B, that are more real. These viewpoints are particularly important, as viewpoints from public open space are an essential part of the criteria. Assoc Prof Bird came to the conclusion that the proposal will have 'less than minor' adverse visual, dominance or overlooking effects on its various receiving environments. That is clearly not the case from Viewpoints 7 and 8 in particular, and likely other viewpoints from the south such as Viewpoint 17 on Lake Road where the buildings appear as a continuous line of multi-storey buildings, which is not the outcome sought by the criteria.
209. The evidence of Richard Reid, and the statements by other architects referred to above, albeit not appearing as independent experts, came to different conclusions to Assoc Prof Bird on matters of design and visual assessment. My view is confined to the public aspects of this assessment (as opposed to the internal design matters such as shading). Collectively, the aspects of the various evidence and presentations that are preferred as they respond more adequately to the assessment criteria are:
- The development requires greater porosity in order to respond to the surrounding built fabric, a point made by Mr Richards. This need not include the Regent Street 'viewshaft' component favoured by Mr Reid, as I consider this to be unrealistic, but it should include a finer grained approach to the development, apart from Building 1 as noted above. While Assoc Prof Bird emphasised the discrete viewshafts along the Ngataranga Road frontage, I consider that the bulk of buildings prevents the emulation of that aspect of neighbourhood character.
  - The development does not respond to the elevated topography on the western slope, which, unlike the eastern part of the site, does not drop steeply away from Ngataranga Road and so enables smaller scale apartment buildings, as in other Ryman villages, as Mr Reid stated. The design response has instead been to excavate the site in this area, and so enable larger floor plate buildings within the western slope. I consider that the western part of the development should be designed to engage with the neighbourhood in a more graduated way than Buildings 2, 3 and 4 currently do.

- Visual assessment from the southern side of the site is an important aspect of the overall wider dominance and visual assessment, and the criteria. From some of these viewpoints the development has adverse visual and dominance effects that are significant (Mr Reid).
- Elements of visual assessment against which the overall development fail (with reference to Mr Reid's factors) are the bulk and scale of individual buildings in relation to the surrounding built and natural environment, the uninterrupted length of the overall development, the degree of integration with the housing grain of the neighbourhood, and the solidity and massing of the building.

## Conclusion

210. My conclusion is that the application should be declined. Unlike the majority decision, my finding is that the application fails on the facts in terms of its ability to meet the assessment criteria, and this failure is sufficient to decline that application given the strong focus on design issues in order to meet the DPP description. This application is the first to be tested against the provisions of the DPP that provide for the intensification of six areas, beyond that otherwise provided for by the underlying zoning. This intensification will generate significant change in each of these areas, subject to the assessment criteria referred to above (and likely no public input, given the non-notification provision). While acknowledging that this application is for a retirement village, and not a typical apartment development, it would be unfortunate if the interpretation of the DPP provisions were seen to support the proliferation of large bulky buildings that have little or no variation in built form and adopt an undifferentiated 16m height limit within Area 1. While the achievement of greater intensity is supported, this does not have to be at the expense of the existing environment or a quality outcome. As noted at the beginning of this dissenting view, the RPS provisions of the Unitary Plan envisage both increased intensity and a high quality built environment, the two goals are not mutually exclusive, as set out in the Auckland Plan.
211. Finally, to articulate an outcome which I would have supported, this would include Building 1 and potentially Building 5, being lower within the site, as proposed, but the reconfiguration of Buildings 2, 3 and 4 to smaller apartment blocks (with variably 8, 12 or 16 apartments in each) of varying design still achieving the 132 apartments contained by the existing proposed buildings, but with a finer grain and greater porosity, that provided a better transition into the Ngataringa Road neighbourhood, and a differentiated visual effect on the open space to the south.



**Dave Serjeant**  
Commissioner

13 January 2017

## APPENDIX 1 – CONDITIONS OF CONSENT

## General Conditions

These conditions apply to all the resource consents.

1. The retirement village activity (and associated construction works, water takes, coastal permit and stormwater discharges) shall be carried out in accordance with the plans and all information submitted with the application, detailed below, and all referenced by the Council as consent numbers REG-2142199 (Regional Bore Consent), LN-2142200 (District Landuse, Regional Earthworks), REG-2142201 (Regional Stormwater Discharge), REG-2142202 (Regional Groundwater Diversion), REG-2142203 (Groundwater Take), REG-2142204 (Regional Coastal), REG-2142205 (Regional Contaminated Site Discharge), REG-2142199 (Regional Bore Consent) and in terms of the following:
  - Application Forms, and Assessment of Effects prepared by Mitchell Partnerships Limited dated 19 November 2015, including the following:

### VOLUME 2 - APPENDICES

- A: Certificate of Title
- B: Infrastructure Report, Woods (2015)
- C: Transportation Assessment Report, Commute Transportation (2015)
- D: Geotechnical Investigative Report, Tonkin and Taylor (2015)
- E: Tree Health, Andrew Barrell, Consultant Arborist (2015)
- F: Ground Contamination Assessment, Tonkin and Taylor (2015)
- G: Urban Design Review, Clinton Bird Urban Design Limited (2015)
- H: Heritage Impact Assessment, Clough and Associates Limited (2015)

### VOLUME 3 – DRAWINGS

- A: Infrastructure Drawings
- B: Site Plans and Drawings
  - Email from Richard Turner of Mitchell Partnerships Limited dated 24 November 2015, confirming that the bore application seeks an actual volume of 90m<sup>3</sup> per day across 4 bores (not 25m<sup>3</sup> in the AEE) and includes the completed Bore application forms;
  - Email from Richard Turner of Mitchell Partnerships Limited dated 3 December 2015, with section 92 response from Woods to the requests regarding the Regional Stormwater (Arsini Hanna);
  - Email from Richard Turner of Mitchell Partnerships Limited dated 3 December 2015, with section 92 response to the requests regarding the Regional Coastal Permit (Kala Sivaguru);

- Email from Richard Turner of Mitchell Partnerships Limited dated 4 December 2015, with section 92 response from Woods to the requests regarding the Regional Earthworks (Matt Byrne);
- Email from Richard Turner of Mitchell Partnerships Limited dated 3 December 2015, with section 92 response (including section 92 response letter from Tonkin & Taylor) to the requests regarding the Regional Contamination Discharge (Andrew Kalbarczyk);
- Letter from Tonkin & Taylor) responding to section 92 requests regarding the Regional Groundwater Diversion (Richard Simonds);
- Email from Richard Turner of Mitchell Partnerships Limited dated 15 December 2015, with attached map showing location of Mary Barrett Glade Loop Track and to reaffirm the applicant's position that as the site is subject to Part 4A of the Conservation Act, the 20 m wide strip is essentially Crown land and an esplanade reserve is not required;
- Email from Richard Turner of Mitchell Partnerships Limited dated 17 December 2015, with section 92 response (including section 92 response letter from Tonkin & Taylor) to the requests regarding the Regional Groundwater Take and Bore (Therese Malcon);
- Email from Richard Turner of Mitchell Partnerships Limited dated 17 December 2015, with updated design for the stormwater outfall into Ngataringa Bay agreed with NRSI Coastal team;
- Email from Richard Turner of Mitchell Partnerships Limited dated 17 December 2015, with section 92 response (including section 92 response letter from Commute) to the requests regarding the Traffic, Transportation & Parking (Sam Shumane, SCON);
- Email from Richard Turner of Mitchell Partnerships Limited dated 17 December 2015, with signage details and dimensions;
- Email from Richard Turner of Mitchell Partnerships Limited dated 1 March 2016, with the Clinton Bird Urban Design Response report dated 1 March 2016 and updated photomontages;
- Email from Richard Turner of Mitchell Partnerships Limited date 2 March 2016, with the addendum report by Rod Clough to the Heritage Impact Assessment dated 26 February 2016 and the attached Rod Clough 'Interim Report On Exploratory Archaeological Investigation' dated 26 February 2016;
- Email from Phil Mitchell of Mitchell Partnerships Limited dated 17 May 2016, with various visual assessment maps; a short paper explaining the challenges associated with using conventional photographic methods at the site boundary.
- Memorandum from Phil Mitchell of Mitchell Partnerships Limited dated 24 June 2016 that addresses archaeological matters.
- Memorandum from Phil Mitchell of Mitchell Partnerships Limited dated 5 August 2016 that addresses the Council Urban Design Review.

2. The consent holder shall pay the Council an initial consent compliance monitoring charge of \$5,000.00 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs that have been incurred to ensure compliance with the conditions attached to this consent.

**Advice Note:**

*The initial monitoring charge is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc, all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, inspections, in excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge or charges as they fall due. Such further charges are to be paid within one month of the date of invoice. Only after all conditions of the resource consent have been met, will Council issue a letter confirming compliance on request of the consent holder.*

**Construction Management Plan**

3. Prior to the commencement of any works on the site, the consent holder shall submit a Construction Management Plan to the satisfaction of the Team Leader, Compliance Monitoring. The Construction Management Plan shall include specific details relating to the excavation of the site, or parts thereof, and the construction and management of all works associated with the redevelopment including:
  - (i) Details of the site or project manager, Including their contact details (phone, facsimile, postal address) for 7 day a week 24 hours a day contact;
  - (ii) The location of large notice boards that clearly identify the name, telephone number and address for service of the site or project manager;
  - (iii) Any means, such as a restriction on the size of construction vehicles and machinery, required to ensure that no damage occurs to street trees throughout the construction period;
  - (iv) Any means of protection of services such as pipes and water mains within the road reserve;
  - (v) Measures to be adopted to ensure all materials for the works are stored on the site;
  - (vi) Measures to be adopted to minimise impacts on visual amenity, including any screening proposed, and to maintain the site in a tidy condition In terms of disposal/storage of rubbish, storage and unloading of building materials and similar construction activities;
  - (vii) Measures to be adopted to ensure that pedestrian access past the works is provided where practicable and that such access is safe;
  - (viii) Location of worker's conveniences (e.g. portaloos);
  - (ix) Ingress and egress to the construction site for construction, trade and worker vehicles and machinery during the construction period;

- (x) Numbers and timing of daily truck movements for each stage of the construction process (site clearance, excavation, construction of buildings and fit out) and the proposed routes (including a plan to avoid the use of residential streets to the extent reasonably;
- (xi) Measures to limit the disturbance caused by the delivery of materials to the site on neighbouring residents;
- (xii) Procedures for controlling sediment runoff, dust and the removal of soil, debris and demolition and construction materials from public roads or places. Dust mitigation should include use of water sprays to control dust nuisance on dry or windy days. Dust mitigation should also include the washing of the exterior of houses as determined by the consent holder following consultation with neighbours, to the satisfaction of the Council (Resource Consents Monitoring Leader);
- (xiii) Means of ensuring the safety of the general public;
- (xiv) Procedures to be followed in the event that any koiwi or cultural or historic artefacts are discovered, including the provision of information to the public.
- (xv) Procedures to be followed to ensure residents in the immediate vicinity of the site are consulted and kept informed of proposed construction activities on a regular and ongoing basis, which shall include but not limited to providing a newsletter every three months to residential property owners on Lake Road and westward of Lake Road that are within 1 km of the intersection of Lake Road and Ngataranga Road;

The Construction Management Plan shall be implemented and maintained to the satisfaction of the Team Leader, Compliance Monitoring at the expense of the consent holder.

### **Pre-Start Meeting**

4. Prior to the commencement of the earthworks activity, the consent holder shall hold a pre-start meeting that:
  - a) is located on the subject site
  - b) is scheduled not less than 5 days before the anticipated commencement of earthworks
  - c) includes all relevant Council staff as deemed appropriate by the Team Leader Compliance Monitoring, including NRSI Earthworks & Contaminated Land Officer, NRSI Stormwater Discharge Officer, NRSI Coastal Officer, Council Archaeologist.
  - d) includes representation from the contractors who will undertake the works, the consent holder's Project Appointed Arborist, Project Stormwater Engineer, Project Archaeologist, Project Geotechnical Engineer

The following matters shall be discussed at the meeting:

- Noise and vibration mitigation measures

- Tree Works and Methodologies, (In particular as they relate to the scheduled trees)
- Approved Construction Plans for Stormwater Discharge

The following information shall be made available at the pre-start meeting:

- Resource consent conditions
- Approved Erosion and Sediment Control Plan
- Approved Construction Management Plan
- Approved Construction Noise and Vibration Management Plan

A pre-start meeting shall be held prior to the commencement of the earthworks activity in each period between October 1 and April 30 that this consent is exercised.

### **Earthworks & Sediment Control**

5. Prior to the commencement of works, a finalised, site-specific, scaled Erosion and Sediment Control Plan (ESCP), prepared in accordance with Auckland Council's Technical Publication 90 shall be submitted to the Team Leader, Compliance Monitoring (who will consult with the Team Leader, Earthworks and Contaminated Land). No works shall commence until confirmation is provided from the Team Leader, Compliance Monitoring that the erosion and sediment control plan satisfactorily meets these requirements. The erosion and sediment control plan shall include as a minimum the following items:
  - a. A detailed, scaled erosion and sediment control plan (drawing), in particular showing changes to the proposed plan to include a discharge system incorporating 2 floating t-bars.
  - b. A Dewatering Management Plan.
  - c. A Chemical Treatment Management Plan (as required in a following condition).

The ESCP shall be implemented for the duration of the earthworks activities to the satisfaction of the Team Leader, Compliance Monitoring.

#### **Advice Note:**

*In the event that minor amendments to the erosion and / or sediment controls are required, any such amendments should be limited to the scope of this consent. Any amendments which affect the performance of the controls may require an application to be made in accordance with section 127 of the RMA. Any minor amendments should be provided to the team leader, central resource consenting and compliance, Auckland Council prior to implementation to confirm that they are within the scope of this consent.*

6. Within ten (10) working days following implementation and completion of the specific erosion and sediment control works referred to in Condition 5 and prior to the commencement of earthworks activity on the subject site, a suitably qualified engineering professional shall provide written certification to the Team Leader, Compliance Monitoring (who will consult with the Team Leader, Earthworks and

Contaminated Land), that the erosion and sediment control measures have been constructed and completed in accordance with Auckland Council's Technical Publication 90 (TP90) unless a different standard has been specifically approved by Condition 5. Written certification shall be in the form of a report or any other form acceptable to the Team Leader, Compliance Monitoring. Certification for these measures shall be supplied immediately upon completion of construction of those measures. Information supplied if applicable, shall include:

- a. Contributing catchment area;
  - b. Shape of structure (dimensions of structure);
  - c. Position of inlets/outlets; and
  - d. Stabilisation of the structure.
7. Notice shall be provided to the Team Leader, Compliance Monitoring at least two (2) working days prior to the removal of any erosion and sediment control works specifically required as a condition of resource consent or by the approved Erosion and Sediment Control Plan.
8. Prior to the completion or abandonment of earthworks on the subject site, all areas of bare earth shall be permanently stabilised against erosion to the satisfaction of the Team Leader, Compliance Monitoring (who will consult with the Team Leader, Earthworks and Contaminated Land).

**Advice Note:**

*In accordance with this condition should the earthworks be completed or abandoned, bare areas of earth shall be permanently stabilised against erosion. Measures may include:*

- *the use of mulching*
- *top-soiling, grassing and mulching of otherwise bare areas of earth*
- *aggregate or vegetative cover that has obtained a density of more than 80% of a normal pasture sward*

*The on-going monitoring of these measures is the responsibility of the consent holder.*

*It is recommended that you discuss any potential measures with the Council's monitoring officer who will guide you on the most appropriate approach to take. Please contact the Team Leader, Compliance Monitoring for more details. Alternatively, please refer to (former) Auckland Regional Council, Technical Publication No. 90, Erosion & Sediment Control Guidelines for Land Disturbing Activities in the Auckland.*

9. The site shall be progressively stabilised against erosion at all stages of the earthwork activity and shall be sequenced to minimise the discharge of contaminants to groundwater or surface water in accordance with the approved Erosion and Sediment Control Plan. Site stabilisation shall mean when the site is covered by a permanent erosion proof ground cover such as aggregate and includes vegetative cover which has obtained a density of more than 80% of a normal pasture sward.

**Advice Note:**

*In accordance with the condition above earthworks shall be progressively stabilised against erosion during all stages of the earthwork activity. Interim stabilisation measures may include:*

- *the use of waterproof covers, geotextiles.*
- *aggregate or vegetative cover that has obtained a density of more than 80% of a normal pasture sward*

*It is recommended that you discuss any potential measures with the Council's monitoring officer who may be able to provide further guidance on the most appropriate approach to take. Please contact the Team Leader, Compliance Monitoring for more details. Alternatively, please refer to (former) Auckland Regional Council, Technical Publication No. 90, Erosion & Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region.*

10. Prior to earthworks commencing, a final plan showing the design details of the project's sediment retention pond, shall be submitted to the Team Leader Compliance Monitoring for written approval. Earthworks at the subject site shall not commence until confirmation from the Team Leader Compliance Monitoring has been provided indicating that the design details are within the scope of works authorised by the granting of this consent. The pond design details shall confirm that the structure's decant / outlet dewatering device is in accordance with the design guidelines outlined in TP90, discharging at a rate of 3L/sec/ha.
11. Prior to the commencement of bulk earthworks at the site, a Chemical Treatment Management Plan (CTMP) shall be submitted for the written approval of the Team Leader, Compliance Monitoring (who will consult with the Team Leader, Earthworks and Contaminated Land). The plan shall include as a minimum:
  - a. Specific design details of the chemical treatment system based on a rainfall activated methodology for the site's sediment retention pond;
  - b. Monitoring, maintenance (including post storm) and contingency programme (including a record sheet);
  - c. Details of optimum dosage (including assumptions);
  - d. Results of initial chemical treatment trial;
  - e. A spill contingency plan; and
  - f. Details of the person or bodies that will hold responsibility for operation and maintenance of the chemical treatment system and the organisational structure which will support this system, throughout the duration of the consent.

**Advice Note:**

*In the event that minor amendments to the CTMP are required, any such amendments should be limited to the scope of this consent. Any amendments which affect the performance of the CTMP may require an application to be made in accordance with section 127 of the RMA. Any minor amendments should be*

*provided to the Team Leader Compliance Monitoring prior to implementation to confirm that they are within the scope of this consent.*

12. All perimeter controls shall be operational before earthworks commence. All 'cleanwater' runoff from stabilised surfaces including catchment areas above the site itself shall be diverted away from earthworks areas via a stabilised system, so as to prevent surface erosion.

**Advice Note:**

*Perimeter controls include cleanwater diversions, super silt fences and any other erosion control devices that are appropriate to divert stabilised upper catchment runoff from entering the site, and to prevent sediment-laden water from leaving the site.*

13. There shall be no deposition of earth, mud, dirt or other debris on any public road or footpath resulting from earthworks activity on the subject site. In the event that such deposition does occur, it shall immediately be removed. In no instance shall roads or footpaths be washed down with water without appropriate erosion and sediment control measures in place to prevent contamination of the stormwater drainage system, watercourses or receiving waters.

**Advice Note:**

*In no circumstances should the washing of deposited materials into drains be advised or otherwise condoned.*

14. No sediment laden runoff shall leave the site without prior treatment via an approved sediment control device.
15. The erosion and sediment control measures shall be inspected to ensure effective operation on a daily basis and within 24 hours after a significant storm event during the construction by the contractors. Any maintenance needs identified during the inspections, to ensure the devices continue to operate at full operation capacity shall be carried out as soon as practicable. A record shall be maintained of the date, time and any maintenance undertaken in associated with this condition which shall be forwarded to the Team Leader, Compliance Monitoring (upon request).

16. There shall be no airborne or deposited dust beyond the subject site as a result of the earthworks activity, that in the opinion of the Team Leader, Compliance Monitoring, is objectionable.

**Advice Note:**

*In order to manage dust on the site consideration should be given to adopting the following management techniques:*

- *stopping of works during high winds*
- *watering of haul roads, stockpiles and manoeuvring areas during dry periods*
- *installation and maintenance of wind fences and vegetated strips*
- *grassing or covering of stockpiles*

- *retention of existing shelter belts and vegetation*
- *positioning of haul roads, manoeuvring areas and stockpiles or the staging of works (in relation to sensitive receptors such as dwellings)*
- *In assessing whether the effects are noxious, offensive or objectionable, the following factors will form important considerations:*
- *The frequency of dust nuisance events*
- *The intensity of events, as indicated by dust quantity and the degree of nuisance*
- *The duration of each dust nuisance event*
- *The objectionableness of the discharge of dust, having regard to the nature of the dust*
- *The location of the dust nuisance, having regard to the sensitivity of the receiving environment.*

*It is recommended that potential measures as discussed with the Council's monitoring officer who will guide you on the most appropriate approach to take. Please contact the Team Leader, Compliance Monitoring Central on 3010101 for more details. Alternatively, please refer to the Ministry for the Environment publication "Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions".*

17. To protect the health of workers on the site during excavations, works shall be managed to minimise the generation of dust on the site.

**Advice Note:**

*The following management techniques should be considered:*

- *Having sufficient water available to dampen exposed soils;*
- *Access to dust suppression measures such as coverings.*
- *In addition, all work should comply with to the Ministry for the Environment publication "Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions".*

18. Excess soil or waste materials removed from the subject site shall be deposited at a disposal site that holds a consent to accept the relevant level of contamination.

Where it can be demonstrated that the soil or waste materials have been fully characterised in accordance with the Ministry for the Environment's 'A guide to the management of cleanfills (2002)' and meets the definition of 'cleanfill', the removal to a consented disposal site is not required. In such circumstances, the Team Leader, Compliance Monitoring shall be advised prior its removal from the subject site.

19. There shall be no obstruction of access to public footpaths, berms, private properties, public services/utilities, or public reserves resulting from the construction

and/or earthworks activity. All materials and equipment shall be stored within the subject site's boundaries.

20. No vegetation removal or earthworks on the site shall be undertaken between 30 April and 1 October in any year, without the prior written approval of the Team Leader, Compliance Monitoring at least two weeks prior to 30 April of any year.
21. Re-vegetation / stabilisation is to be completed by 30 April in the year of bulk earthworks in accordance with measures detailed in TP90 and any amendments to this document, unless a later date is approved in writing by the Team Leader, Compliance Monitoring at least two weeks before 30 April.

### **Geotechnical/Stability**

22. All earthworks shall be managed to ensure that they do not lead to any uncontrolled instability or collapse affecting either the site or adversely affecting any neighbouring properties. In the event that such collapse or instability does occur, it shall immediately be rectified.
23. The Consent Holder shall provide verification in writing in accordance with Auckland Council "Code of Practice for Land Development and Subdivision, Section 2 – Earthworks and Geotechnical Requirements" Version 1.6, dated 24 September 2013 (or any updated version) from an engineer to Team Leader, Compliance Monitoring Central, that the recommendations of the T&T report have been implemented on site. This shall take the form of a Geotechnical Completion Report, accompanied by a Statement of Professional Opinion for the earthworks. This shall be provided no later than two weeks after foundation/retaining construction has been completed. All details in the written statement shall be to the satisfaction of the Team Leader, Compliance Monitoring Central.
24. The consent holder shall engage a suitably qualified engineer to supervise all excavations (especially close to boundaries), plus retaining and foundation construction. The supervising engineer's contact details shall be provided in writing to Team Leader, Compliance Monitoring Central at least two weeks prior to earthworks commencing on site.
25. An As-Built drawing from an engineer showing the final contours of the site and areas and levels of fill shall be provided on a CAD plan to Team Leader, Compliance Monitoring Central at the completion of the works.

### **Construction Noise & Vibration**

26. All construction activities on the subject site shall comply with the New Zealand Standard 6803:1999 for Acoustics – Construction Noise at all times.

The use of noise generating tools, motorised equipment, and vehicles that are associated with construction on the subject site shall therefore be restricted to between the following hours to comply with this standard:

- Monday to Saturday: 7:30a.m. to 6.00p.m.
- Sundays or Public Holidays: no works.

These restrictions do not apply to quiet works such as (but not limited to) painting, electrical work and planting.

27. Vibration from construction shall not exceed the guideline vibration values set out in the German Standard DIN 4150-3:1999 Structural vibration – Effects of vibration on structures.
28. At least twenty (20) working days prior to the commencement of construction works, the consent holder shall provide to the Resource Consent Monitoring Team Leader, a Construction Noise and Vibration Management and Monitoring Plan (CNVMMP) for certification. The CNVMMP shall provide the following:
- Construction noise and vibration limits;
  - Project time frames and hours of operation;
  - Activities that are predicted to exceed the limits and which receivers may be affected;
  - Identification of any receivers, where noise and/or vibration levels are predicted to exceed the identified limits;
  - Contact details of the contractor and site manager for the duration of the construction works;
  - Contact details of a liaison officer for neighbour contact for the duration of the construction works;
  - Details of procedures for community liaison and notification of proposed construction activities and handling of noise/vibration complaints;
  - Procedures for monitoring noise, vibration and building condition;
  - Description and duration of the works, anticipated equipment and the processes to be undertaken;
  - Hours of operation, including specific times and days when construction activities causing noise and vibration are expected to occur; and
  - Mitigation options, including alternative strategies where full compliance with the relevant noise criteria cannot be achieved; noise and vibration mitigation measures shall be implemented as required where noise or vibration levels are predicted or demonstrated to approach or exceed the relevant limits.

Construction works shall be undertaken in accordance with the approved CNVMMP throughout the entire period of construction works to the satisfaction of the Resource Consent Monitoring Team Leader at the expense of the consent holder.

**Advice note:**

*The CNVMMP shall be prepared by an appropriately qualified and experienced acoustic and vibration specialist. It shall, address noise and vibration effects throughout the entire period of the construction works and include, as a minimum, provision for the above.*

**Construction Traffic Management Plan (CTMP)**

29. Prior to undertaking construction works on-site, a Construction Traffic Management Plan (CTMP) shall be developed by the consent holder and provided to the Resource Consent Monitoring Team Leader for review and approval. The CTMP shall define the following for example:
- Construction hours of operation,
  - Consider general road users and construction traffic servicing the project,
  - Detail what consultation or notice will be provided to adjacent businesses and residents,
  - Be completed in accordance with the New Zealand Transport Agency's Code of Practice for Temporary Traffic Management,
  - Show how construction traffic shall move to and from the site,
  - Location and form of signage;
  - Loading provisions;
  - Show how pedestrian accesses and neighbouring vehicular accesses will be managed during construction.

The CTMP shall stipulate that no heavy vehicles (8.0 m or longer) shall depart the site between 7:00 AM and 9:00 AM (although they may arrive) and shall not arrive at or depart the site between 4:00 PM and 6:00 PM on business days.

The CTMP shall also set out how the site is managed such that at all times during construction there is sufficient on-site parking for all construction-related vehicles

Construction works shall be undertaken in accordance with the approved CTMP throughout the entire period of construction works to the satisfaction of the Resource Consent Monitoring Team Leader at the expense of the consent holder.

### **Pre and Post Construction Building Condition Surveys**

- 30.
- a. Where a pre-construction building condition survey is proposed by this condition the consent holder shall request in writing the approval of the owners of identified properties to undertake an initial condition and photographic survey.
  - b. The consent holder shall send copies of each of the requests to the Resource Consent Monitoring Team Leader.
  - c. The consent holder shall engage a suitably qualified and experienced expert to undertake a survey of the following properties where the property owner has given their written approval:
    - i. Those properties fronting Ngataranga Road (north and south side) between its intersection with Lake Road and Wesley Street;
    - ii. 31 and 33 Lake Road

- iii. All properties on Wesley Street south of its intersection with Ngataringa Road
- d. If the property owner does not respond within four weeks of the request having been made, the consent holder need not undertake a survey of that property. The survey shall assess the current condition of the exterior and interior of the buildings on the properties listed above (additional properties to be surveyed at the consent holder's discretion). All surveys shall be at the consent holder's cost. The methodology shall be approved by the Resource Consent Monitoring Team Leader. prior to the survey's being undertaken.
- e. A copy of each survey shall be made available to those property owners who participate in the survey and request a copy of the results.
- f. Within twelve weeks of the completion of the construction works a follow up survey of each property and street surveyed shall be carried out (at the consent holder's cost). The purpose of these surveys is to assess any adverse structural effects resulting from excavation and construction activities at the site. Provided the consent of any landowner is obtained, the consent holder shall be responsible for any repairs, reinstatement or other works to surveyed buildings that can be reasonably attributed to construction activity

### **Transportation, Access, Traffic and Parking**

- 31. Three mobility spaces shall be incorporated in the design and provided at different locations of the site. Prior to the approval of Building Consent, the consent holder shall provide a finalised set of Engineering Plans to the Team Leader, Compliance Monitoring for approval in liaison with the urban design team. The plans shall include the designs for a public footpath along the Ngataringa Road site frontage, detailing a 1.8 m footpath extending from the existing footpath (35 m east of the main access point) along the south side of Ngataringa Road to Wesley Street. The approved footpath shall be constructed in accordance with the approved plans at the consent holder's expense.
- 33. The consent holder shall provide at least 6 cycle parking spaces within the site that conveniently located in a safe and secure location for the use of staff.
- 34. The consent holder shall provide a detailed sign and line marking plan (for the proposed access and parking areas) for the approval of the Team Leader, Compliance Monitoring Central and this approved plan shall be implemented and maintained at the consent holder's expense on an ongoing basis.
- 35. The two vehicle crossings (one on Lake Road serving building B06 and one on Wesley Street serving building BB04) shall be designed to ensure the footpath is continuous across the crossing and at the same level as the footpath. The design of the vehicle crossings shall be consistent with Auckland Transport's Code of Practice (ATCOP) GD017 and be 5.5 – 6.0 metres in width. The design is to be approved by Auckland Transport at the detailed design phase.
- 36. The intersections of the main access road with Ngataringa Road and Wesley Street shall be reconstructed to current road design standards, include kerb and channel and allow centre lines of both roads to intersect at right angle taking into account the width of the internal carriageway of 5.5 m. This design shall be provided at the Engineering Approval stage for works within the road reserve.

37. All works required within the road reserve including the upgraded main entrances to the site but excluding the vehicle crossings servicing Buildings B04 and B06 shall be subject to an application for Engineering Approval (EA) to be lodged with Council. The EA design shall include details of any required street lighting along Wesley Street including its cul-de-sac.

**Advice Note:**

*All vehicle access points to public roads require vehicle crossing permits regardless of whether they are included in an application for Engineering Approval.*

38. Any retaining walls required to support the upgrades of Wesley Street shall be located inside the subject site in full.

**Infrastructure and Stormwater Drainage**

39. The consent shall provide an updated private drainage “as-built” drawing signed by a registered certifying drainlayer (with their registration number) showing the completed stormwater drainage for all impervious surfaces including all soakage systems to Team Leader, Compliance Monitoring within one month of practical completion.

Note that the drainlayer’s “as-built” drainage plan required for building consent code compliance certificate may be appropriate if all paved/roof areas and soakholes are shown.

40. All roofing, spouting, cladding and/or other architectural features used on the site must not result in high contaminant-yielding surfaces.

**Advice Note:**

*Final connection points for water supply and wastewater should be dealt with at the building consent stage with input from Watercare Services Ltd.*

**Tree Works**

41. Works within the site shall be carried out in general accordance with the Arboricultural Report by Andrew Barrel Consultant Arborist dated 17 November 2015. Where the following conditions conflict with the Arboricultural Report, the conditions shall take precedence.
42. The consent holder shall employ the services of a competent arborist (works arborist) to direct and supervise all works within the dripline of protected trees within the site.
43. Prior to any works commencing on site, the consent holder shall erect temporary fences to exclude all access to tree protection areas. The tree protection fences shall be self-supporting and at least 1.8m high. The location (and construction methodology) of the temporary protective fences shall be agreed at the pre commencement meeting, prior to any works commencing.
44. The consent holder shall be responsible for ensuring that the protective fence remains intact on site, for the duration of the work.

45. The appointed works arborist shall advise the Team Leader, Compliance Monitoring in writing, of any damage resulting from the works which, in the opinion of the works arborist, is likely to result in any significant adverse effect to any part of the scheduled tree, either immediately or long-term or which has reduced, or will reduce the visual amenity value of the tree. This should be done within twenty-four (24) hours from the time the event occurred. Where in the opinion of the Team Leader, Compliance Monitoring remedial works are required as a result of such damage, all costs associated with the remedial works, including any such works carried out by the Council, shall be met by the consent holder. Tree replacement required due to damage arising from the works, or significant damage that warrants arboricultural remedial work, should be at the discretion and to the satisfaction of the Team Leader, Compliance Monitoring. The consent holder shall meet all costs associated with the replacement, establishment and/or remedial works.

### **Stormwater Outlet / Significant Ecological Area**

46. The consent holder shall to the extent practicable, minimise vegetation clearance undertaken outside the footprint of the new stormwater outfall structure and drainage line.
47. Any clearance of mangroves shall be undertaken by hand or by hand-held tools, and shall as far as practicable be managed from the landward side to minimise compaction of the substrate.
48. All mangrove debris shall be removed from the site for disposal.
49. Where works involve the clearance of vegetation within areas identified as SEA – T8628 or SEA – M2 60b, restoration planting of the affected areas (excluding mangroves) shall:
- Be commenced within three months of the clearance and associated works being completed;
  - Be maintained for at least three years following the planting being undertaken, including provision of appropriate weed control;
  - Use, where practicable, indigenous species sourced from within the Tamaki Ecological District, and which are similar to the plants removed. Where species are sourced from outside the Tamaki Ecological District a suitably qualified and experienced ecologist shall confirm that the alternative source is appropriate; and
  - Use an appropriate mix of trees and sufficiently high planting density of smaller grade trees (at least 1 per square metre).
50. Prior to undertaking any vegetation clearance within SEA – T8628 or SEA – M2 60b the consent holder shall submit a Planting and Weed Control Management Plan (“PWCMP”) to the satisfaction of the Team Leader, Compliance Monitoring, which shows how rehabilitation works will be implemented so as to achieve the outcomes included in condition 49 and
51. Prior to undertaking any vegetation clearance within SEA – T8628 or SEA – M2 60b the consent holder shall submit a Kauri Dieback Management Plan to the satisfaction of the Team Leader, Compliance Monitoring, which shows how the activity will be managed to prevent the introduction and / or spread of Kauri

dieback disease (“PTA”), including appropriate cleaning of equipment before use in these areas.

### **Urban Design and Landscaping**

52. All existing vehicle crossings that will become redundant shall be removed and berm area reinstated at consent holder’s cost.
53. Prior to the relevant building becoming occupied, the consent holder shall provide a finalised set of Landscape and Pavement Plans to the Team Leader, Compliance Monitoring for approval. The Landscape and Pavement Plans may be prepared in stages and shall include:
  - the final landscape concept plan and specifications;
  - planting schedule, detailing the specific planting species, the number of plants provided, locations, heights/Pb sizes;
  - annotated sections with key dimensions to illustrate that adequate widths & depths are provided for tree pits / planter boxes;
  - details of boundary planting to further screen and break-up the larger built elements and demonstrating an increased the use of native species, particularly as viewed from the coastal margin into the development site;
  - A management/maintenance programme.

The proposed planting plan shall be implemented in the first planting season following the approval of the Landscape Plan by Council. All landscaping is to be implemented and maintained thereafter to the satisfaction of the Team Leader, Compliance Monitoring at the consent holder’s expense.

54. At no time between the hours of 2200 and 0700 shall any outdoor lighting be used in a manner that the use of such lighting causes an added luminance in excess of 20 lux measured horizontally or vertically at any point along any residential boundary of the site.

### **Screening**

54. Any air-conditioning plant and equipment on the roof shall be screened in a manner that ensures they are masked from view including when viewed from above, to the satisfaction of the Team Leader, Compliance Monitoring.
55. All service or storage areas shall be screened from public view, to the satisfaction of the Team Leader, Compliance Monitoring.

### **Refuse Disposal**

56. Facilities for the storage, collection and disposal of refuse shall be provided on the site at all times to the satisfaction of the Team Leader, Compliance Monitoring. Prior to the prior to the release of the architectural building consent, a copy of a waste management plan shall be lodged with the Team Leader, Compliance Monitoring by the consent holder, which shall include designated sites for refuse bins for the collection and storage of glass, paper, plastic and metal cans as outlined in the resource consent plans. The required plan shall be prepared to the satisfaction of

the Team Leader, Compliance Monitoring and shall be in accordance with the Council's waste reduction policy and indicate refuse collection times which shall be outside the hours of 7am to 9am and 4pm to 6pm Monday to Friday. Collection times should also avoid night hours so as not to interrupt sleep of occupants of buildings in the vicinity.

## **Heritage and Archaeology**

57. Prior to any development works commencing on the site, a formal archaeological excavation must be undertaken of all heritage features (identified on Figure 38, page 45, of the Clough and Associates November 2015 Heritage Impact Assessment submitted as Appendix H of the application AEE, in the Legend as "Demolished Features relating to Duder Brickworks identified from historic photography\*" and "Features relating to Duder Brickworks shown on 1927 DP"). This excavation must include an area of 20m around these features within the application area. The excavation must occur within one earthworks season.
58. All archaeological investigation will be carried out in accordance with current international best practice for the excavation and recording of industrial archaeological sites.
59. A Written Scheme of Investigation (WSI) shall be prepared prior to the consent being implemented and in consultation with the Auckland Council Heritage Unit and Heritage New Zealand Pouhere Taonga. The WSI shall outline details of known and potential historic heritage features (both pre- and post-1900) within the application area of the site and detail a process for investigating them within a controlled framework. As a minimum, the WSI should include the following:
  - i. Background information and context
  - ii. Detailed proposals for the investigation of the different historic heritage components across the application area
  - iii. Methods of demarcation for all historic heritage sites within the application area which are to be protected from any use or damage
  - iv. Accidental Discovery processes to be followed
  - v. Methods for recording all new and updating existing site record forms on the Auckland Council Cultural Heritage Inventory and New Zealand Archaeological Association ArchSite database
  - vi. Proposals for the analysis and publication of the results of all archaeological investigations
  - vii. Operational matters
  - viii. Provision shall be made, and expected, for regular compliance visits by statutory authorities

The WSI shall be submitted to the Team Leader, Compliance Monitoring and approved (in consultation with the Manager: Heritage Unit) prior to the archaeological excavation commencing.

60. The consent holder shall notify the Team Leader, Compliance Monitoring of its intention to commence the archaeological investigation at least 5 working days' in advance of commencement of the excavation. The Team Leader, Compliance Monitoring will advise the Manager: Heritage Unit immediately of this date and confirm all documentation requirements have been acquitted.
61. The consent holder shall hold one public open day of the archaeological excavation, on a Sunday during the duration of the archaeological excavation, if, in the opinion of the project archaeologist, the findings are sufficient to warrant it, and subject to the approval of the Auckland Council Heritage Unit.
62. All project earthworks outside of the formal archaeological excavation area will be monitored by an archaeologist until the earthworks reach natural stratum or, the archaeologist determines in consultation with the Auckland Council Heritage Unit, and approved by Team Leader, Compliance Monitoring (in consultation with the Manager: Heritage Unit), that the monitoring of earthworks will not provide any information on the historic use and occupation of the application area.
63. A representative sample of excavated features associated with the Duder Brickworks (i.e. flues; kilns) shall be reconstructed with the development. If, following the archaeological excavation, the project archaeologist, in consultation with the Auckland Council Heritage Unit, determines that there is insufficient quantity of material for reconstruction to occur, then intact Duder bricks or other heritage items shall be incorporated into landscaping that is in keeping with the historic heritage function of the site.
64. If a sufficient volume of in-tact Duder bricks or other heritage items of acceptable quality are available the consent holder shall incorporate them into landscaping, and site and building features within the Development in the following ways:
  - a. Landscaping - primarily in garden retaining, paths and edging;
  - b. Brick fencing, or sections of brick fencing, along the street frontage of the site (Ngataranga Road);
  - c. Internal features within the atrium of the village (e.g. entranceways),and shall then maintain them, all to the satisfaction of the Auckland Council Heritage Unit.
65. The consent holder shall provide interpretation panels within the application area and at the Lake Road entrance of the Mary Barrett Glade walkway discussing the archaeological excavation and identifying remains associated with the Duder Brickworks. The interpretation panels must be approved by Team Leader, Compliance Monitoring (in consultation with the Manager: Heritage Unit) prior to installation and then implemented and maintained to their satisfaction
66. The consent holder shall provide for a public interpretation panel identifying remains associated with the Brickworks in the Mary Barrett Glade walkway. The interpretation panel must be approved by Team Leader, Compliance Monitoring (in consultation with the Manager: Heritage Unit) prior to installation and then implemented and maintained to their satisfaction.

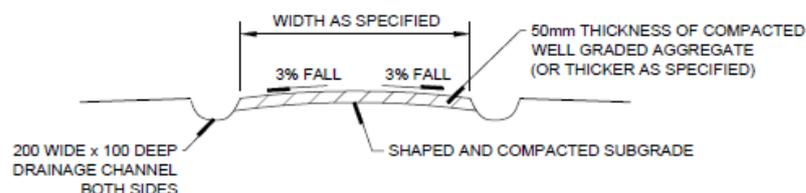
67. Finds/artefacts of public or academic interest that are recovered from investigation of the Duder Brickworks Site R11/1795 shall be offered to the Devonport Museum, to form part of their current display on the site.
68. The consent holder shall deposit a hard copy of the final archaeological investigation report with the Devonport Museum and Devonport Library.
69. Subject to obtaining all necessary statutory approvals, the consent holder shall provide an additional interpretation panel along the street frontage with Ngataringa Road which will provide the same information as the panel for the Mary Barrett Glade walkway (Condition 66). The interpretation panel must be approved by Team Leader, Compliance Monitoring (in consultation with the Manager: Heritage Unit) prior to installation and then implemented and maintained to their satisfaction.
70. The consent holder shall provide a permanent display in the retirement village library to acknowledge the Duder Brickworks.
71. The consent holder shall engage an archaeologist to identify and protect the middens located along the Mary Barrett Glade walkway (R11/2181) and other features associated with the Duder Brickworks site in this area. The archaeologist shall also explore opportunities for enhancement of this area, including allowing for site interpretation, possible public access and improved signage, in addition to investigation and recording of any remains that might be affected within the main development area.

### Mary Barrett Glade Walkway

72. Subject to taking all reasonable steps to obtain all necessary statutory approvals, and then obtaining all such approvals, the consent holder shall upgrade the Mary Barrett Glade walkway between the site and the coastal margin from the Lake Road frontage to Wesley Street. The upgrade shall consist of a 1.5 metre wide track finished in compacted gravel and bordered with treated timber, together with the associated drainage. An indicative cross section is as follows:

NOTES:

1. MAXIMUM WALKING TRACK GRADE TO BE 1:6 UNLESS OTHERWISE STATED
2. ALL TIMBER IN CONTACT WITH GROUND TO BE H5 TREATED PINUS RADIATA
3. FOR RETAINED FORMATION OVER 400mm HIGH, USE SPECIFIC RETAINING WALL DESIGN



### Specific conditions – Contamination LN2142200 (NES Regional Earthworks) & REG-2142205 (Regional Contaminated Site Discharge)

73. Under Section 123 of the RMA, this consent REG-2142205 (Regional Contaminated Site Discharge) expires five (5) years after the date it is commenced, unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the RMA.

74. Prior to earthworks on site the applicant is required to submit to the Team Leader, Compliance Monitoring, a Site Management Plan (SMP), for approval. The SMP prepared in accordance with the Ministry for the Environment's Contaminated Land Management Guidelines (2011) should address, but not be limited to the following:
- Site preparation
  - Excavation works
  - Soil management & disposal
  - Erosion & sediment control
  - Health & safety
  - Contingency plan measures for managing unexpected contamination conditions or accidental discharges
  - The site investigation works on Lot 4
  - Results of investigations within the archaeological exclusion zone on the development site
  - Dewatering of the potential perched groundwater and water pooling within the excavation voids, and disposal procedures, including testing of groundwater or surface run-off water if an option for disposal to the stormwater system is considered
  - Proposed sampling and analysis
  - Proposed Site Validation Reporting.

**Advice Note**

*The above-mentioned reports and plans should be prepared in accordance with the Contaminated Site Management Guidelines No. 1 Guidelines for Reporting on Contaminated Sites in New Zealand, Ministry for the Environment, 2011.*

*The Health and Safety site specific plan for construction work shall include method statement for handling potentially contaminated soil and ground water.*

*All necessary WorkSafe NZ approvals and requirements relating to health and safety of workers should be obtained from WorkSafe NZ and kept on site all the time.*

75. If evidence of new contamination is discovered during removal of paving and/or earthworks the consent holder shall immediately cease the works within a 5 metre radius of the contamination and notify the Team Leader, Compliance Monitoring, and provide a site contamination report to the satisfaction of the Team Leader, Compliance Monitoring.
76. The consent holder shall ensure that the contamination level of any imported soil is below the acceptance criteria for high- density residential human health protection, NES 2011 and provide this evidence to the Team Leader, Compliance Monitoring Central.

77. The consent holder shall dispose of all the excavated contaminated soil to a licensed landfill site, and provide the landfill receipts to the Team Leader, Compliance Monitoring.
78. Stockpiling of contaminated soil shall be avoided if possible and if required, stockpiles shall be placed within the excavation foot print and fully covered with polythene or equivalent impermeable material and anchored at the edges.
79. All disturbance of the contaminated and potentially contaminated soil for the proposed activity shall be carried out in accordance with the Site Management Plan and any changes to the plan shall be approved in writing by the Team Leader, Compliance Monitoring, prior to the change being carried out.
80. All disturbance of potentially contaminated soil shall be supervised by a suitably qualified contaminated land professional, who shall ensure that all soil sampling, contamination management procedures, and contingency measures outlined in the Site Management Plan, and all relevant consent conditions are adhered to. Certification from the suitably qualified and experienced contaminated land specialist responsible for supervising the works shall be provided within the Site Validation Report.
81. All soil disturbance works shall be managed to minimise any discharge of debris, soil, silt, sediment or sediment-laden water from the subject site to either land, stormwater systems or receiving marine environment. Relevant erosion and sediment control measures shall be implemented and maintained for the duration of the works, in accordance with *Technical Publication No. 90, Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region*, Auckland Regional Council (1999).

**Advice Note:**

*Measures such as covering excavations overnight and during heavy rainfall, diverting overland flow around the works area, and appropriate disposal of any water collected in the excavation voids may be required to comply with this condition.*

82. All earthworks shall be managed to avoid the potential for cross-contamination of materials to occur, in particular movement of contaminated soil around the site and/or deposition of contaminated soil on other parts of the site shall be avoided. Where soils are identified for off-site disposal, they shall be loaded directly for removal, where possible, and all material shall be covered during transportation off site.
83. Any perched groundwater, or surface run-off water, encountered within the excavation area requiring removal shall be considered as potentially contaminated, and shall be:
  - a. Allowed to soak into the ground, provided it is free from separate phase hydrocarbons; or
  - b. Removed off site by a licensed liquid waste contractor; or
  - c. pumped to sewer, providing relevant permits are obtained; or
  - d. discharged to the stormwater system or surface waters, provided testing demonstrates compliance with the Australian and New Zealand Environment

Conservation Council (ANZECC) Guidelines for Fresh and Marine Water Quality (2000) for the protection of 95 percent of marine water species, and the discharge is free from separate phase hydrocarbons.

84. All imported fill shall:
- a. Comply with the definition of 'cleanfill' in the Ministry for the Environment publication 'A Guide to the Management of Cleanfills' (2002); and
  - b. Be solid material of an inert nature; and
  - c. Not contain hazardous substances or contaminants above recorded natural background levels of the receiving site.

**Advice Note:**

*Background contamination levels for the site receiving cleanfill can be found in the Technical Publication No. 153, Background concentrations of inorganic elements in soils from the Auckland Region, Auckland Regional Council (2001)*

85. All sampling and testing of contamination on the site shall be overseen by a suitably qualified and experienced contaminated land professional. All sampling shall be undertaken in accordance with Contaminated Land Management Guidelines, No.5: Site Investigation and Analysis of Soils, Ministry for the Environment (revised 2011).

**Advice Note:**

*All testing and analysis should be undertaken in a laboratory with suitable experience and ability to carry out the analysis. For more details on how to confirm the suitability of the laboratory please refer to Part 4: Laboratory Analysis, of Contaminated Land Management Guidelines No.5.*

86. Within three months of the completion of land disturbance activity on the site, a Site Validation Report (SVR) shall be provided to the Team Leader, Compliance Monitoring. The SVR shall be prepared by a suitably qualified and experienced contaminated land professional in accordance with Schedule 13 (A5) of the Auckland Council Regional Plan: Air, Land and Water and Contaminated Land Management Guidelines, No.1 - Reporting on Contaminated Sites in New Zealand, Ministry for the Environment (revised 2011).

**Advice Note:**

*The Site Validation Report should contain sufficient detail to address the following matters as a minimum:*

- i. a summary of the works undertaken, including a statement confirming whether the excavation of the site has been completed in accordance with the Site Management Plan.*
- ii. the location and dimensions of the excavations carried out, including a relevant site plan*
- iii. a summary of testing of soil, perched groundwater, and/or water ponding within the excavation voids undertaken, if applicable, including tabulated analytical results, and interpretation of the results in the context of the Contaminated*

*Land Rules of the Auckland Council Regional Plan: Air, Land and Water, the Proposed Auckland Unitary Plan*

- iv. *copies of the disposal docket for the material removed from the site*
- v. *records of any unexpected contamination encountered during the works and contingency measures undertaken, if applicable*
- vi. *details regarding any complaints and/or breaches of the procedures set out in the Site Management Plan and the conditions of this consent*
- vii. *results of testing of any imported fill material to ensure compliance with the definition of 'cleanfill', as per 'A Guide to the Management of Cleanfills', Ministry for the Environment (2002).*

**Specific conditions – Landuse Consent REG-2142199 (Bores only)**

- 87. This consent shall expire 35 years from the date of commencement of this consent unless it has lapsed, been surrendered or been cancelled at an earlier date, pursuant to the RMA 1991.
- 88. The drilling and construction shall be carried out in accordance with the plans and all information submitted with the application and NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock, and:
  - (i) shall be for irrigation water supply purposes,
  - (ii) constructed to 150 mm diameter, to a depth of 50-250 m, steel casing to a minimum of 25-100m depth and grouted to 25m
  - (iii) to be completed into the Waitemata Sandstone aquifer at:
    - Bore 1: 1759627 mE, 5923902 mN map reference
    - Bore 2: 1759706 mE, 5923930 mN map reference.
    - Bore 3: 1759772 mE, 5923953 mN map reference.
    - Bore 4: 1759852 mE, 5923981 mN map reference.
  - (iv) there shall be no variation due to unforeseen site conditions unless prior written approval of the Team Leader, Water Allocation is obtained.
- 89. The bore shall be completed within 30 days of commencement of the construction of it.
- 90. The bore identification number shall be permanently affixed to the bore head construction and a digital photograph of the constructed bore shall be taken and forwarded to the Team Leader, Water Allocation which clearly demonstrates compliance.

- Bore 1: 29991
- Bore 2: 29993.
- Bore 3: 29994.
- Bore 4: 29995.

91. Confirmation of the final location of the bore in the form an annotated map or aerial photograph\* shall be supplied to the Team Leader, Water Allocation within a month of completion of the bore.

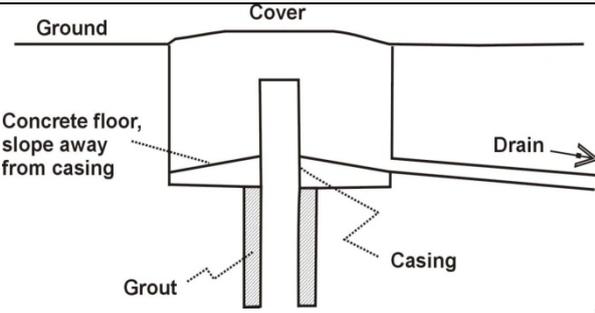
\* can be downloaded from the Auckland Council viewer

92. If, during preparation for or drilling of the bore, archaeological evidence is uncovered (e.g.: shell midden, hangi or ovens, or human bones), work shall cease immediately. The Team Leader Water Allocation and the Team Leader AC Cultural Heritage Implementation shall be notified and contacted to ensure that the appropriate action is undertaken, (see Advice Note 1).

93. A Drilling Log, shall be recorded, as specified in NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock, and shall be supplied to the Team Leader, Water All, within one month of final completion of the bore.

**Advice Notes:**

- The drilling and construction shall be carried out in accordance with the plans and all information submitted with the application and NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock*
- The following bore headworks are considered acceptable to meet the NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock.*

<u>Above ground</u>	<u>below ground</u>
<ul style="list-style-type: none"> <li>• <i>The top of the casing shall extend at least 0.3m above the natural ground level or pump house floor</i></li> <li>• <i>A concrete pad of 0.3m radius and 0.1m thick, graded to drain surface water away from the bore, is to be constructed around the bore head</i></li> </ul>	 <p>The diagram shows a cross-section of the bore headworks. A central vertical pipe is surrounded by grout. This pipe is connected to a larger casing that extends above ground. The casing is supported by a concrete floor that slopes away from the casing. A drain pipe is connected to the concrete floor, leading away from the bore. Labels include: Ground, Cover, Concrete floor, slope away from casing, Grout, Casing, and Drain.</p>

- Regarding access for water level measurement, as required in the NZS 4411:2001 Section 2.5.5.7, the following is considered to meet the standard: the strapping of a 20mm (minimum) tube (polypipe) to the main riser, power and support stay for the pump; the provision of a hole in the headworks of a minimum of 20mm diameter; and a removable, screw-type cap.*

- iv. *Groundwater supplied for human consumption should meet the requirements of the Drinking Water Standards for New Zealand (2005), and any other Ministry of Health requirements, such as those contained in the Health (Drinking Water) Amendment Act 2007.*

### **Specific conditions – Water Permit REG-2142203**

94. Under Section 123 of the RMA, this consent expires 35 years from the date of commencement of this consent, unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the RMA.
95. The take and use shall be in accordance with the plans and information submitted with the application, subject to such amendments as may be required by the following conditions of this consent; and from
96. The take and use of groundwater from the North Shore Waitemata Aquifer, from:
- Bore ID 29991 at NZTM 1759627 mE, 5923902 mN
  - Bore ID 29993 at NZTM 1759706 mE, 5923930 mN
  - Bore ID 29994 at NZTM 1759772 mE, 5923953 mN
  - Bore ID 29995 at NZTM 1759852 mE, 5923981 mN

on land legally described as Lots 4 and 5 DP 20927 to supply water for irrigation on land legally described as Lots 4 and 5 DP 20927, shall be carried out in accordance with the plans and all information submitted with the application, detailed below, and all referenced by the council as consent number REG-2142203.

### **Authorised Quantities**

97. The extraction shall not exceed 90 cubic metres per day. The annual extraction over the 12-month period commencing 1 June every year and ending 31 May of the following year shall not exceed 13,000 cubic metres.

### **Installation of Water Meter**

98. A water meter shall be installed and maintained at the head of each bore to the satisfaction of the Team Leader Consents and Compliance – Water Allocation. The water meter and recording device/system shall:
- Be fit for the purpose and water it is measuring;
  - Measure the volume of water taken, with an accuracy of +/- 5% of the actual volume taken;
  - Be tamper-proof and sealed;
  - Be installed and maintained in accordance to the manufacturer's specifications.

### **Verification of Water Meter/device accuracy**

99. The water meter, and any device or system used to record water take volume, shall be verified insitu as accurate by a suitably qualified professional at the following times:

- Prior to the exercise of this permit
- Within 5 working days of the water meter being serviced or replaced;
- By 30 June of the fifth year, from the commencement of this consent, and thereafter at five yearly intervals

The water meter, its verification and evidence of its accuracy shall be in accordance with the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 (or any equivalent regulations that may replace them) and a copy of verification shall be provided to the Team Leader Consents and Compliance – Water Allocation within 10 working days of the meter/devices being verified as accurate.

### **Bore Construction for Water Level Measurements**

100. Provision at the top of one of the bores for water level measurements shall be made and maintained so that a probe can be lowered vertically into the bore between the riser tube and casing to measure the static water level in the bore.

#### ***Advice Note:***

*Access to the wellhead for water level measurement can be achieved by having an access hole of at least 2 centimetres in diameter at the top of the bore. In order to keep out foreign matter, the hole should be fitted with an easily removed plug.*

### **Bore Construction for Sampling**

101. Provision at the top of one of the bores for water quality sampling shall be made and maintained so that a sample of water can be taken from the bore for water quality analysis. A tap or hand valve shall be fitted as close to the pump outlet as possible and before the water ends any storage tank or filter. The tap or valve should have at least 0.3 metre clearance above ground level or any other obstruction to allow a sample bottle to be filled.

### **Water Meter Readings**

102. Water meter readings shall be taken at weekly intervals consistently at one of these times:

- a) Before pumping starts for the day
- b) At the end of pumping for that day

The time, date and the water meter readings shall be recorded and supplied to the Council in accordance with the reporting condition below.

### **Water Level Readings**

103. Groundwater levels in one of the bores shall be measured and recorded at quarterly intervals from the date on which exercise of this permit commences. The water level

shall be measured from the top of the casing, and shall be recorded to the nearest centimetre. The bore/s should not be pumped for at least 24 hours prior to the water level measurement being taken.

## Monitoring

104. The Consent Holder shall provide to the Team Leader Water Allocation – Consents and Compliance in writing, for the Team Leader’s approval, the consent holders proposed programme to monitor the actual/potential of saltwater intrusion to the aquifer. The saltwater intrusion monitoring programme is to be provided within six months of commencement of consent, and implemented within 12 months of commencement of consent.

## Water Reporting

105. The following information is to be submitted, at the frequency and date specified, to the council’s Water Use Data Management System OR (if telemetered) to the council’s water portal of the Hydrotel Database or to any replacement database identified in writing by the Team Leader Consents and Compliance – Water Allocation.

Information	Frequency of Recording	Due Dates for reporting
Water meter reading and date	Weekly	By the 15 <sup>th</sup> day of March, June, September and December
Water level readings and water quality monitoring	Quarterly	By the 15 <sup>th</sup> day of March, June, September and December

### **Advice Note**

1. You can report your water use online, <http://wdms.arc.govt.nz>.
2. Water quality monitoring records (saline intrusion) is to be reported as per approval.

## Review Condition

106. Pursuant to Section 128 of the RMA, the conditions of this consent may be reviewed by the Team Leader at the Consent Holder’s cost:
- a) In June 2021 and subsequently at intervals of not less than five years thereafter in order to:
    - i. deal with any adverse effect on the environment which may arise or potentially arise from the exercise of this consent and which it is appropriate to deal with at a later stage or
    - ii. vary the quantities, monitoring and reporting requirements and performance standards in order to take account of information, including the results of previous monitoring and changed environmental knowledge, on: water use efficiency; water availability, including alternative water sources; actual and potential water use; water flow and

level regimes; and water quality; the relationship of Maori with water

- iii. In the case of a coastal, water or discharge permit, to provide compliance with rules in any regional plan relating to use of water, water or air quality etc. (refer section 128(1)(b) of the RMA) that have been made operative since the commencement of consent.
- iv. In the case of a coastal, water or discharge permit, to provide compliance with any relevant National Environmental Standard that has been made since the commencement of consent.
- v. At any time, if it is found that the information made available to the council in the application contained inaccuracies which materially influenced the decision and the effects of the exercise of the consent are such that it is necessary to apply more appropriate condition.

**Specific conditions – Stormwater Discharge Permit REG-2142201**

107. Under Section 123 of the RMA, this consent (stormwater discharge permit REG-2142201) expires 35 years from the date of commencement of this consent, unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the RMA.

**Stormwater management works**

108. The following stormwater management works shall be constructed for the following catchment areas and design requirements, and shall be completed prior to construction of further impervious surfaces:

<b>Works to be undertaken</b>	<b>Catchment area impervious</b>	<b>Design requirement(s)</b>
<i>Stormwater 360Stormfilter</i>	4054m <sup>2</sup>	TP10, 75% TSS removal, on a long term average basis.
<i>Outfall structure (Gabion Headwall/rock rip – rap)</i>	All impervious areas	TP10, <u>HEC14, HEC22, AC2013/018 or other recognised guidelines</u>

**Modifications approval**

109. In the event that any modifications to the stormwater management system are required, that will not result in an application pursuant to Section 127 of the RMA, the following information shall be provided:

- Plans and drawings outlining the details of the modifications; and
- Supporting information that details how the proposal does not affect the capacity or performance of the stormwater management system.

All information shall be submitted to, and approved by the Team Leader Compliance Monitoring, prior to implementation.

**Advice Note:**

*All proposed changes must be discussed with the Team Leader Compliance Monitoring, prior to implementation. Any changes to the proposal which will affect the capacity or performance of the stormwater management system will require an application to Council pursuant to Section 127 of the RMA.*

**Post-construction meeting**

110. A post-construction meeting shall be held by the consent holder, within 20 working days of completion of the stormwater management works, that:
- a) is located on the subject area;
  - b) includes representation from the Team Leader Northern Monitoring; and
  - c) includes representation from the site stormwater engineer or contractors who have undertaken the works and any other relevant parties

**Advice Note:**

*To arrange the post-construction meeting required by this consent, please contact the Team Leader Northern Monitoring.*

**Certification of stormwater management works (As-Built Plans)**

111. As-Built certification and plans of the stormwater management works, which are certified (signed) by a suitably qualified registered surveyor as a true record of the stormwater management system, shall be provided to the Team Leader Northern Monitoring for approval.

**Contents of As-Built Plans**

112. As-Built Plans shall be provided to the Team Leader, Compliance Monitoring, 5 working days prior to the post-construction meeting required by this consent. The As-Built plans shall display the entirety of the stormwater management system, and shall include:
- a) the surveyed location (to the nearest 0.1m) and level (to the nearest 0.01m) of the discharge structure, with co-ordinates expressed in terms of NZTM and LINZ datum;
  - b) documentation of any discrepancies between the design plans and the As-Built plans approved by the Modifications Approval condition.

**Operation and Maintenance Plan**

113. Final Operation and Maintenance Plan shall be provided to the Team Leader, Compliance Monitoring, 5 working days prior to the post-construction meeting required by this consent. The Operation and Maintenance Plan shall set out how the stormwater management system is to be operated and maintained to ensure that adverse environmental effects are minimised. The plan shall include:
- a) details of who will hold responsibility for long-term maintenance of the stormwater management system and the organisational structure which will support this process;

- b) a programme for regular maintenance and inspection of the stormwater management system;
- c) a programme for the collection and disposal of debris and sediment collected by the stormwater management devices or practices;
- d) a programme for post storm inspection and maintenance;
- e) general inspection checklists for all aspects of the stormwater management system.

### **Operation and Maintenance Plan Implementation**

114. The stormwater management system shall be managed in accordance with the approved Operation and Maintenance Plan.

### **Amendments to the Operation and Maintenance Plan**

115. Any amendments or alterations to the Operation and Maintenance Plan shall be submitted to, and approved by the Team Leader, Compliance Monitoring, in writing prior to implementation. The Operation and Maintenance Plan shall be updated and submitted to the Team Leader Northern Monitoring for approval, upon request.

### **Maintenance Report**

116. Details of all inspections and maintenance for the stormwater management system, for the preceding three years, shall be retained. A maintenance report shall be provided to the Team Leader, Compliance Monitoring, on request.

### **Contents of Maintenance Report**

117. The maintenance report shall include the following information:
- a) details of who is responsible for maintenance of the stormwater management system and the organisational structure supporting this process;
  - b) details of any maintenance undertaken; and
  - c) details of any inspections completed.

### **Specific conditions – Coastal Permit REG-2142204**

118. Under Section 123 of the RMA, this consent (coastal permit REG-2142204 to occupy the common marine and coastal area with the stormwater outfall and the rip-rap structure, and to use the outfall to discharge stormwater) expires 35 years from the date of commencement of this consent, unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the RMA.

119. The Team Leader, Compliance Monitoring, shall be notified in writing of the date of completion of the works, within one week of the completion date.

120. The consent holder shall, within one week following the completion of the works remove all construction materials from the coastal marine area, to the satisfaction of the Team Leader, Compliance Monitoring.

121. Within one month of the completion of the proposed works, a complete set of “as built” plans shall be supplied to the Team Leader, Compliance Monitoring.
122. A copy of the “as built” plans shall be supplied to the Hydrographic Office (Chief Hydrographer, National Topo/Hydro Authority, Land Information New Zealand, Private Box 5501, Wellington) within one month of the completion of the works.

### **Maintenance Requirements**

123. The structure permitted to occupy the coastal marine area by this consent shall be maintained in a good and sound condition, and any repairs that are necessary shall be made, subject to obtaining any necessary resource consents.

### **Removal**

124. Within forty (40) working days of the expiry, termination or surrender of this consent, or within a period as otherwise agreed in writing by the Team Leader, Compliance Monitoring, the consent holder shall, at their own expense, entirely remove the structure(s) authorised by this consent from the coastal marine area, to the satisfaction of the Team Leader, Compliance Monitoring, unless an application for a replacement consent has been approved before this date.

### **Advice notes**

1. *A copy of this consent shall be held on site at all times during the establishment and construction phase of the activity.*
2. *The scope of this resource consent is defined by the application made to Auckland Council and all documentation supporting that application.*
3. *The consent holder is advised that groundwater supplied for human consumption should meet the requirements of the Drinking Water Standards for New Zealand (2005), and any other Ministry of Health requirements, such as those contained in the Health (Drinking Water) Amendment Act 2007.*
4. *No signs have been approved as part of this application. Any future signs on the subject site shall comply with the Part 27 of the Auckland City Consolidated Bylaw 1998 or will be the subject of a separate application and form part of a comprehensive site signs plan.*
5. *Any administrative charge fixed in accordance with Section 36(1) of the Resource Management Act 1991 and any additional charge required pursuant to Section 36(3) of the Act in respect of this consent shall be paid to Auckland Council*
6. *This resource consent will lapse five years after the date of Council’s decision unless:*
  - a. *It is given effect to before the end of that period. To give effect to this consent, the activity allowed by this consent must be established and the conditions contained in the consent complied with. Please note that there must be compliance with all of the consent conditions once the land use has been established, or*
  - b. *An application is made and granted prior to the expiry of that period for a time extension. The statutory considerations that apply to extensions are set out in Section 125 of the RMA.*

7. Pursuant to Section 126 of the Resource Management Act 1991, which provides for Auckland Council to cancel a resource consent by written notice, if this resource consent has been exercised, but is not subsequently exercised for a continuous period of five years, the consent may be cancelled by the Council unless other criteria contained within Section 126 are met.
8. This consent does not relieve the consent holder of his/her responsibility to apply for any other consents which may be required by Heritage New Zealand. This consent is issued under the Resource Management Act 1991 and does not remove the need to comply with all other applicable Acts (including the Property Law Act), regulations, Bylaws, and rules of law.
9. All archaeological sites are protected under the provisions of the Heritage New Zealand Pouhere Taonga 2014 (HNZPT). It is an offence under this Act to destroy, damage or modify any archaeological site, whether or not the site is recorded or on the New Zealand Heritage List/Rarangi Korero or the Landmarks list. Under sections 44 and 45 of the Act, applications must be made to the Heritage New Zealand for an authority to destroy, damage or modify an archaeological site(s) where avoidance of effect is not practicable. It is the responsibility of the applicant (consent holder) to consult with Heritage New Zealand about the requirements of the HNZPT and to obtain the necessary Authorities under the HNZPT should these become necessary as a result of any activity associated with the proposed development.
10. The consent holder shall obtain all other necessary consents and permits, including those under the Building Act 2004, and Heritage New Zealand Pouhere Taonga 2014 (HNZPT). This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004. Please note that the approval of this resource consent, including consent conditions specified above, may affect a previously issued building consent for the same project, in which case a new building consent may be required. If not all resource consents have been applied for, it remains the responsibility of the consent holder to obtain any and all necessary resource consents required under the relevant requirements of the Resource Management Act 1991.
11. If you disagree with any of the above conditions, or disagree with the additional charges relating to the processing of the application you have a right of objection pursuant to Sections 357A or 357B of the RMA. Any objection must be made in writing to Council within 15 working days of notification of the decision.
12. Compliance with the consent conditions will be monitored by Council in accordance with Section 35(d) of the Resource Management Act. This will typically include site visits to verify compliance (or non compliance) and documentation (site notes and photographs) of the activity established under the Resource Consent. In order to recover actual and reasonable costs, inspections, in excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time.
13. The Heritage New Zealand Pouhere Taonga Act 2014 (hereafter referred to as the Act) provides for the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand. All archaeological sites are protected by the provisions of the Act (section 42). It is unlawful to modify, damage or destroy an archaeological site without prior authority from Heritage New Zealand Pouhere Taonga. An Authority is required whether or not the land on which an archaeological

*site may be present is designated, a resource or building consent has been granted, or the activity is permitted under Unitary, District or Regional Plans.*

*According to the Act (section 6) archaeological site means, subject to section 42(–*

- 1) any place in New Zealand, including any building or structure (or part of a building or structure), that –*
  - I. was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and*
  - II. provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and*
- 2) includes a site for which a declaration is made under section 43(1)*

*It is the responsibility of the consent holder to consult with Heritage New Zealand Pouhere Taonga about the requirements of the Act and to obtain the necessary Authorities under the Act should these become necessary, as a result of any activity associated with the consented proposals.*

*For information please contact the Heritage New Zealand Pouhere Taonga Northern Regional Archaeologist – 09 307 0413 / [archaeologistMN@historic.org.nz](mailto:archaeologistMN@historic.org.nz).*

#### *14. Protected Objects Act 1975*

*Māori artefacts such as carvings, stone adzes, and greenstone objects are considered to be tāonga (treasures). These are taonga tūturu within the meaning of the Protected Objects Act 1975 (hereafter referred to as the Act).*

*According to the Act (section 2) taonga tūturu means an object that –*

- a) relates to Māori culture, history, or society; and*
- b) was, or appears to have been –*
  - i. manufactured or modified in New Zealand by Māori; or*
  - ii. brought into New Zealand by Māori; or*
  - iii. used by Māori; and*
- c) is more than 50 years old*

*The Act is administered by the Ministry of Culture and Heritage. Tāonga may be discovered in isolated contexts, but are generally found within archaeological sites. The provisions of the Heritage New Zealand Pouhere Taonga Act 2014 in relation to the modification of an archaeological site should to be considered by the consent holder if tāonga are found within an archaeological site, as defined by the Heritage New Zealand Pouhere Taonga Act 2014.*

*It is the responsibility of the consent holder to notify either the chief executive of the Ministry of Culture and Heritage or the nearest public museum, which shall notify the*

*chief executive, of the finding of the taonga tūturu, within 28 days of finding the taonga tūturu; alternatively provided that in the case of any taonga tūturu found during the course of any archaeological investigation authorised by Heritage New Zealand Pouhere Taonga under section 48 of the Heritage New Zealand Pouhere Taonga Act 2014, the notification shall be made within 28 days of the completion of the field work undertaken in connection with the investigation.*

*Under section 11 of the Act, newly found tāonga tūturu are in the first instance Crown owned until a determination on ownership is made by the Māori Land Court.*

*For information please contact the Ministry of Culture and Heritage – 04 499 4229 / [protected-objects@mch.govt.nz](mailto:protected-objects@mch.govt.nz).*