

IN THE MATTER OF the Resource Management Act 1991
AND

IN THE MATTER OF an application by G & S Singleton Heritage Limited to Waikato District Council under section 88 of the Resource Management Act 1991 for resource consent to undertake an additional 8-lot Rural Zone subdivision at 635 Whatawhata Road, Dinsdale (Lot 1 DPS 12627 contained in RT SA10B/682 comprising 4.0494 ha, and Lot 2 DPS 12627 contained in RT SA10B/683 comprising 41.6194 ha).

Decision following the hearing of a non-complying activity application by G & S Singleton Heritage Limited to Waikato District Council for resource consent under the Resource Management Act 1991.

Proposal

To undertake an additional 8-lot Rural Zone subdivision at 635 Whatawhata Road, Dinsdale.
Council reference: SUB0165/19 – Subdivision (NCA).

The application was heard at Council's Ngaruawahia offices on Monday 6 July 2020.

The resource consent sought is **Granted with conditions**. The reasons are set out below.

Hearing Commissioners:	Mr David Hill
Application numbers:	SUB0165/19
Applicant:	G & S Singleton Heritage Ltd
Site addresses:	635 Whatawhata Road, Dinsdale
Legal descriptions:	Lot 1 DPS 12627 (RT SA10B/682) and Lot 2 DPS 12627 (RT SA10B/683)
Site area:	45.6688 ha
Zoning:	Rural Zone – Waikato Section ODP Rural Zone – proposed DP
Lodgement:	31 May 2019
S92 request:	10 June 2019

Received:	27 September 2019
Second s92 request:	6 January 2020
Received:	15 January 2020
S37 extension:	21 January 2020
Public Notification:	9 March 2020
Submissions closed:	6 April 2020
Hearing commenced:	6 July 2020
Hearing closed:	13 July 2020
Appearances:	<p><u>The Applicant:</u> Graham Singleton – Applicant Sharon Singleton - Applicant Philip Barrett – Planner, Cheal Consultants Ltd</p> <p><u>Submitters:</u> Greg Ryan – Waikato Regional Council Megan Woods - Waikato Regional Council Jen Baird – Hamilton City Council (Tabled) Carolyn McAlley – HNZPT (Tabled) Robert Bruce – Te Akau South Farms (Late Tabled)</p> <p><u>Council:</u> Bridget Parham – Counsel Ellie McNicholas – Counsel Cameron Aplin – Planner / Reporting Officer – BCD Group Iain Smith – Environmental Engineer - BECA</p> <p><u>Attending:</u> Wade Hill – Consents Team Leader Kirsty Ridling – Senior Solicitor David Bastion – Land Development Engineer Malcolm Brown - Land Development Engineer Lynette Wainwright - Hearing Secretary</p>

Summary Decision:

1. Pursuant to sections 104 and 104D, and Part 2 of the Resource Management Act 1991 (RMA), the non-complying activity subdivision consent is granted with conditions.

Introduction

2. This decision is made on behalf of the Waikato District Council (Council) by Independent Hearing Commissioner Mr David Hill, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (the RMA).

3. This decision contains the findings from my deliberation on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
4. The application was publicly notified by Council by decision dated 9 March 2020 with submissions closing on 6 April 2020. Five submissions were received, three in opposition and two neutral.
5. A summary of submissions is provided in section 4.2 of the Mr Aplin's s42A report. That summary was not disputed and is adopted for present purposes.
6. No late submissions were received.
7. Written approvals were provided as follows:
 - Chris John and Melissa Gibbs, 44 Wallace Road, Dinsdale.
 - Nigel Liddicoat, 14 Stonebridge Road, Dinsdale.

Both properties are adjacent to the subject site on its eastern boundary¹. Effects of the application on those two persons have, accordingly, been disregarded per s104(3)(a)(ii) RMA.

8. The s42A RMA hearing report was prepared by consultant planner Mr Cameron Aplin for Council and made available to parties on or about 25 May 2020. The s42A report recommended that consent be granted, noting that the recommendation was "finely balanced".
9. Mr Aplin's report was informed by technical reviews from Mr Malcolm Brown (land development engineering), Mr Iain Smith, BECA (flooding and stormwater), and Ms Rebecca Ryder, Boffa Miskell Ltd (landscape and visual effects). The latter two also filed statement of evidence. Ms Ryder was not required to attend the hearing but was available, as needed, remotely.
10. The matter was heard at Ngaruawahia 6 July 2020 and closed on 13 July 2020 following receipt of a revised draft set of conditions and specific case authorities from Counsel.

Proposal and site description

11. The s42A report summarises² the proposal as follows:

The site is made up of two parcels of land legally described as Lot 1 DPS 12627 contained in RT SA10B/682 comprising 4.0494 ha, issued in 1969 and Lot 2 DPS 12627 contained in RT SA10B/683 comprising 41.6194 ha, issued in 1969.

The proposal seeks to create eight additional lots from the two existing titles (10 new lots) using the subdivision general provisions under the ODP which is classified as a Non- Complying Activity.

¹ S42A report, Figure 26, page 41.

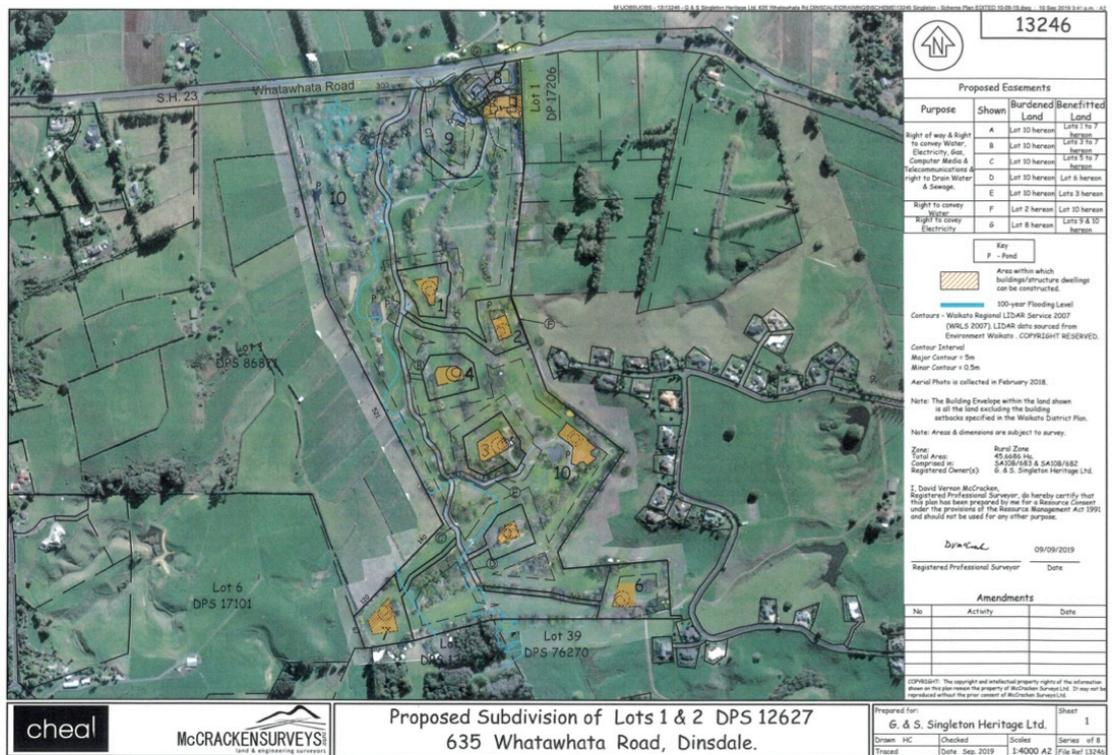
² S42A Report, para 1.1

The application states that the applicant's vision behind the proposal is to create a park like environment with dwellings and planting selectively placed interspersed through the site to attract birdlife. The lot sizes of the proposed subdivision are listed below.

Lots Sizes

- Lot 1 – 0.8530 ha;
- Lot 2 – 1.04 ha;
- Lot 3 – 1.01 ha;
- Lot 4 – 0.8165 ha;
- Lot 5 – 0.8 ha;
- Lot 6 – 1.75 ha;
- Lot 7 – 1.22 ha;
- Lot 8 – 0.9620 ha;
- Lot 9 – 1.80 ha;
- Lot 10 – 35.41 ha (Balance Lot).

12. The general figuration is shown below:



- 13. Restricted building areas have been identified on Lots 1-7 and 10, and consent notices to that effect are proposed. In addition, a covenant is proposed over existing and proposed vegetated areas, which are shown on a Vegetated Areas Plan.
- 14. The subject site is well described in the s42A report³, taken from Ms Ryder's landscape assessment, as follows:

³ S42A Report, page 20

The site comprises the old Westlands Country Club and Golf Course and forms a linear site extending from SH23 (Whatawhata Road) to the south, meeting rural properties and the Taitua Arboretum at its southern boundary.

The site sits on the cusp of a rolling hillside with the eastern edge of the site sitting on the mid to lower slopes of the hillside. The mid to western portion of the sites falls to the lower rural plains landform with knolls and mounds sited throughout from the remnant golf course

Drains extend through the site from the south to north both along the boundary and within the site, collecting water from the internal and surrounding gully networks. Vegetation cover on the site is largely mature canopy vegetation and remnant of the golf course. New wetland, pond and shelter planting has been installed by the applicant to strengthen the natural features and framework planting around the site. Large areas of Redwood trees have been installed along the western boundary and along parts of the eastern boundary.

15. The golf club operated from the early 1970s to the mid 2010s. The property includes the old clubroom (currently occupied as a dwelling) and an accommodation facility (consented in 2005 for up to 36 golf students plus staff) on proposed Lot 8; the old golf pro shop and café and a utility shed on proposed Lot 9; an existing dwelling, woodshed and storage / utility shed on proposed Lot 10; and an existing shed on proposed Lot 3.
16. The applicant purchased the site in 2015 and has undertaken extensive specimen tree planting (some 70,000 plants is indicated).
17. A 2018 consent for a storage shed on proposed Lot 10 has yet to be implemented.
18. The surrounding area is zoned Rural in the ODP and consists of land parcels ranging from 1,495m² to over 100ha. Predominantly rural productive activities occur to the west and north of the site, with Hamilton City Council's 20ha Taitua Arboretum to the south, and rural lifestyle properties along the roads to the west and the 34 lot Stonebridge Road residential farm park (1,495m²- 2,171m²) to the east.
19. Gazette Notice H159200, registered on both existing titles, declares SH23, which fronts the land, a limited access road. The applicant has consulted with NZTA and provided formal correspondence of NZTA's agreement to the application, subject to proposed conditions (which the applicant accepts).

Consents required and Activity Status

20. A Preliminary Site Investigation has not revealed any activity requiring consent under the 2011 NES - Contaminants in Soil.
21. The s42A report records that land use consent is required under the Operative Waikato District Plan for the following reasons:

Subdivision rules:

- (a) For a **non-complying activity** under general subdivision rule 25.70A because it seeks to create 8 additional titles from 2 existing viable certificate/record of titles, which is 7 more than anticipated under these provisions;
- (b) For a **non-complying activity** (rule 25.74.2) under allotment size rule 25.74 because:
 - (i) One of the existing titles fails to meet the minimum 20ha requirement;

- (ii) Lot 6 and Lot 9 have a net site area of 1.75ha and 1.80ha respectively, which exceeds the maximum net site area of 1.6ha.
 - (iii) Three titles (Lots 6, 9 and 10) are proposed to be greater than 1.6 ha, which exceeds the one title anticipated.
- (c) For a **discretionary activity** under allotment boundary / building setback rule 25.72 because:
- (i) Lot 3 - The existing shed is located 5m from the eastern boundary shared with Lot 10 whereas 12m is required under this rule for an adjoining allotment 6ha or more for a building which does not accommodate a residential activity.
 - (ii) Lot 8 – The existing clubroom / academy building currently used as a dwelling is setback 10m from the proposed common boundary between Lots 8 and 10, which does not comply with the 25m permitted activity setback.
 - (iii) Lot 10 – Existing greenkeeper’s dwelling is setback 9m from the proposed common boundary between Lots 8 and 10, which does not comply with the 25m permitted activity setback.
 - (iv) Lot 10 – Consented shed subject to LUC0192/19 is setback 5m from the proposed common boundary between Lots 8 and 10, which does not comply with the 25m permitted activity setback.
 - (v) Lot 10 – Consented shed subject to LUC0192/19 is setback 14m from the eastern boundary of the site and Lot 10, which does not comply with the 25m permitted activity setback.
 - (vi) Lot 10 – Existing storage building/utility shed is setback 13m from the eastern boundary of the site and Lot 10, which does not comply with the 25m permitted activity setback.
 - (vii) Lot 10 – Existing woodshed is setback approximately 0.5m from the eastern boundary of the site and Lot 10, which does not comply with the 25m permitted activity setback.
- (d) For a **discretionary activity** under frontage rule 25.75 because Lot 9, with a frontage of 50m, does not comply with the minimum frontage of 60m required.
- (e) For a **restricted discretionary activity** under road access rule 25.76 the proposal does not comply with Appendix A (Traffic).

Land use rules:

- (f) For a **non-complying activity** under building setback rule 25.54 for allotments greater than 1.6ha because:
- (i) Lot 10 – Existing dwelling with a setback of 9m from the proposed common boundary between Lot 8 and 10, which does not comply with the 25m permitted activity setback.

- (ii) Lot 10 – Consented shed subject to LUC0192/19 is setback 5m from the proposed common boundary between Lot 8 and 10, which does not comply with the 25m permitted activity setback.
 - (iii) Lot 10 – Existing storage building/utility shed is setback 13m from the eastern boundary, which does not comply with the 25m permitted activity setback.
 - (iv) Lot 10 – Existing woodshed is setback approximately 0.5m from the eastern boundary, which does not comply with the 25m permitted activity setback.
- (g) For a **non-complying activity** under building setback rule 25.55 for allotments of 5,000m² - 1.6ha because:
- (i) Lot 3 – The existing shed is located 5m from the eastern boundary, which fails to comply with the 12m required under this rule for an adjoining allotment for a building that does not accommodate a residential activity.
 - (ii) Lot 8 – The existing clubroom / academy building currently used as a dwelling is setback 10m from the proposed common boundary between Lot 8 and 10, which does not comply with the 25m permitted activity setback.
- (h) For a **discretionary activity** under building coverage rule 25.51 because, as a result of the creation of Lot 8, the site coverage of 725m² exceeds the 500m² permitted.

Appendix A (Traffic) – Access rules:

- (i) For a **non-complying activity** under access and entrances rule A21 because:
 - (i) The proposed right of way serves eight allotments, which exceeds the requirement of four allotments and, with a width of 10m, is less than the required 20m width.
 - (ii) Access for Lot 8 runs parallel to State Highway 23 along the northern boundary of Lot 8 and is within the required 30m.
- (j) For a **restricted discretionary activity** under road network – safety and functions rule A21A because the proposal results in an increase of car movements per day to/from the existing vehicle entrance.

22. No relevant rule of the Proposed District Plan has legal effect.

23. The application was therefore determined overall by Council to be a non-complying activity. That activity status was not disputed.

Permitted Baseline and Existing Environment

24. With respect to any “permitted baseline”, Mr Aplin concluded⁴ that the subdivision’s consequential visual effects of three dwellings could be disregarded under the permitted activity land use provisions, along with the bulk, location and 500m² building coverage controls. That was not disputed and I accept that conclusion.
25. With respect to the existing environment, there are multiple buildings across the subject site (as noted above), and the overall site was, until relatively recently, regularly trafficked and used by golfers and function patrons. In other words, this land has not been used for rural production purposes for many decades, and the regular movement of people has been part and parcel of its activities.

Procedural and other matters

26. Mr Robert Bruce, Te Akau South Farms, was scheduled to appear but failed to appear. Later that day he advised that an urgent medical consultation had intervened and sought leave to table a statement - despite the hearing having been adjourned post-reply.
27. I referred Mr Bruce’s statement to the applicant for comment. In response Mr Barrett noted that the statement provided no guidance on the matter raised in submission – seemingly more concerned with the sustainable catchment management approach being considered through the current proposed district plan review. He submitted that I should (indeed, could not) draw no conclusions from the statement.
28. While on its face the content of the statement appears to have no direct relevance to the application, I am reluctant to strike it out per s41D(1)(b) RMA since Mr Bruce was, with good reason, unable to appear and speak to and clarify its relevance. While, for that reason, I can afford little weight to the statement, I am prepared to admit it.
29. No other procedural matters were raised for consideration.

Relevant statutory provisions considered

30. In accordance with section 104 of the RMA I have had regard to the relevant statutory provisions, including the relevant sections of Part 2, sections 104 and 104D, and sections 108 and 108AA with respect to conditions.

Relevant standards, policy statements and plan provisions considered

31. In accordance with section 104(1)(b)(i)-(vi) of the RMA, I have had regard to the relevant policy statement and plan provisions of the documents noted below – the relevant provisions of which are identified variously in the Application (pages 34 – 37), and more comprehensively in section 9 of the s42A report.
32. I note that those provisions and their application were not in dispute (albeit respective weightings were not agreed). Accordingly, as no party disputed these matters, in the interest of brevity they are not specifically discussed further or the details repeated in this decision – but are adopted and cross-referenced per section 113(3) of the RMA. Those provisions are contained in the following statutory documents:

⁴ s42A report, section 5.1, page 39.

- Waikato Regional Policy Statement 2016;
 - Waikato Regional Plan 2007;
 - Waikato District Plan – Waikato Section 2013; and
 - Proposed Waikato District Plan 2018.
33. Mr Aplin also considered a number of other matters to be relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the RMA, including:
- Waikato Tainui Environmental Plan;
 - Ngati Haua Environmental Management Plan;
 - Waikato 2070 - Waikato District Council's Draft Growth & Economic Development Strategy; and
 - Updated (Future Proof) Growth Strategy and Implementation Plan (2017).
34. I accept those other documents as having some relevance, and agree with Mr Aplin's conclusion that they do not weigh against a grant of consent.

Summary of evidence / representations / submissions heard

Council

35. The Council's s42A RMA Hearing report by reporting officer Mr Cameron Aplin was circulated prior to the hearing and taken as read. Mr Aplin recommended a grant of consent with proposed conditions. He reconfirmed that recommendation at the hearing.

The Applicant

36. **Mr Graham Singleton**, applicant, provided background to the family's 2015 purchase and the extensive planting and other works conducted on the site since. He also outlined the rationale for the intended off-grid subdivision.
37. **Mr Philip Barrett**, consultant planner for the applicant, had prepared the application with appended technical reports - including on agricultural suitability, floodplain and hazards assessments, soil contamination, tree vegetation, and landscape viewshafts. His statement of evidence was pre-circulated and taken as read. His evidence focussed on what he considered the 4 key issues of:
- (a) Land fragmentation and rural character;
 - (b) Land use capability of the site's soils and productive potential;
 - (c) Floodplain and site suitability;
 - (d) Mitigation planting; and
 - (e) Plan policy.
38. Those matters are discussed later in this decision

39. Mr Barrett concluded, that overall the adverse effects were less than minor. Similarly, that while some matters were inconsistent with the plan's objectives and policies, overall the proposal was not. Therefore, consent could be granted and a broadly agreed (with Council) set of draft conditions was tabled.

Submitters

40. **Mr Greg Ryan**, Manager Lower Waikato and Central Waikato, Integrated Catchment Management Directorate, noted that the Waikato Regional Council (WRC) submission was only concerned with land drainage district matters. He confirmed that WRC was now satisfied on the questions of the potential for inundation and the management of overland flow paths. Mr Ryan maintained WRC's position with respect to seeking an easement or other formal condition requiring access to the Westland drain for maintenance purposes along the entire length of the property (not just the southern part as proposed by the applicant).
41. I note that agreement had been reached with Waka Kotahi New Zealand Transport Agency, Heritage New Zealand Pouhere Taonga and Fire and Emergency New Zealand on the matters raised in their respective submissions, subject to proposed conditions that are accepted by the applicant.

Principal issues in contention

42. Section 104D RMA, the non-complying activity gateway tests, requires that either the overall adverse effects are minor (s104D(1)(a)) or the activity will not be contrary to the objectives and policies of the respective plans (s104D(1)(b)).
43. The s42A report concluded that, with the exception of the land fragmentation issue, the adverse effects were minor or less, but that a number of matters resulted in the proposal being contrary to the objectives and policies of the Plan(s). However, when considered overall and in the round, Mr Aplin concluded that the proposal passes the gateway test of s104D RMA (albeit he noted that his recommendation was finely balanced). Mr Barrett agreed with that assessment. For completeness the issue of land fragmentation is discussed further below as it remained at the heart of Hamilton City Council's submission and tabled statement in opposition.
44. For the record I note that the adverse effects comprehensively considered by Mr Aplin included:
- Landscape and visual effects;
 - Rural character effects;
 - Land fragmentation effects;
 - Reverse sensitivity effects;
 - Traffic safety effects;
 - Wastewater and water supply effects;
 - Stormwater effects;
 - Flooding effects;

- Archaeological effects; and
 - Cumulative effects.
45. As those matters were effectively agreed between the applicant⁵, Council and WRC, and having reviewed and accepted the analysis and conclusions (except as discussed below), I simply refer the reader to section 8 of the s42A report. In particular I note that the land has not been used for a rural productive purpose for decades, its agricultural potential is limited, and the proposed subdivision is to lots of a size significantly larger than either the adjacent residential farm park or the minimum 5,000m² lot size required for countryside living.
46. In terms of section 104(1)(a) of the RMA regarding the actual and potential effects of allowing the activity on the environment, the principal issues remaining were:
- (a) The extent to which the activity constitutes land fragmentation and whether that is a relevant s104D(1)(a) RMA matter;
 - (b) Whether an easement or other formal condition enabling WRC access to the western drain for maintenance purposes is appropriate;
 - (c) Whether granting consent would establish an adverse precedent; and
 - (d) Final conditions.
47. As noted above, I am unable to place any weight on the submission and statement from Mr Bruce as it is unclear as to how his concerns regarding comprehensive, sustainable catchment management and landscape protection relate to the present application, and what relief might therefore be considered. Mr Bruce's alternate relief sought in his original submission, to "*reserve the decision until such time as the incentive based sub-division issue is resolved by Waikato District Council*" is simply not available. I am required to make a decision on the matter in front of me without undue delay.
48. The question of connected power supply – the proposal is for an off-grid subdivision - was disputed by Mr Aplin on the ground that specific exemption from the relevant ODP rule 25.79 was not made. Mr Singleton submitted that, notwithstanding, this was evident in the overall application correspondence provided. I accept that as a technical oversight but, since an acceptable condition providing for that option has been proposed, I am satisfied the matter can proceed without prejudice to any person and agree to impose the two conditions (12 and 22).
49. I now consider the principal issues in contention identified above.

Land Fragmentation

50. The issue of rural land fragmentation was considered a key matter because of the apparently strong directive in the relevant operative and proposed District Plans – noting that Mr Aplin had concluded that "*The land fragmentation outcomes sought by both plans are entirely consistent with each other*"⁶. Furthermore, Mr Aplin concluded

⁵ Barrett, Statement of evidence, paras 15-16.

⁶ S42A Report, section 8.4, page 48.

that this particular aspect was adversely affected to more than a minor extent (although not so significant as to affect his overall adverse effects assessment).

51. The ODP Chapter 3 *Natural features and landscapes* reasons and explanation section 3.5.9 - Rural Landscapes states the following with respect to rural land fragmentation:
- Land fragmentation and development can have a significant impact on the rural landscape, particularly over time as the cumulative effects of more intensive non-rural development becomes evident. It is important to control the overall level of subdivision in rural areas and to regulate the size of allotments being created to protect rural landscapes. In particular, it is important to ensure that, in any given rural area, rural land uses continue to predominate because these land uses are fundamental to providing the rural landscape. Rural land uses, which may or may not be productive rural activities in economic terms, require allotments that are large enough to support them. The creation of new allotments too small to support rural land uses, such as livestock grazing and horticulture can detract from rural landscapes and visual amenity values and need to be appropriately regulated in the Rural and Coastal zones. Development that is predominantly residential in nature and which has little or no rural land use component is provided for in the Country Living zone and to a limited degree in the Rural Zone.*
52. It is evident from that explanation that it is less the specific uses of land that is at issue but, rather, the resultant look and feel of the use and the land's general availability for rural purposes – at a landscape scale. I note that Mr Aplin stresses the allotment size / density element of the latter part of the above explanation – but noting that the landscape and visual effects assessment undertaken for Council had concluded that those effects would be low to moderate (i.e. minor adverse effect in his terms⁷) – in concluding that the adverse land fragmentation effect would be more than minor.
53. Therein lies the opaqueness of the concept – if it relates the landscape and visual effects, then those aspects are already counted (and assessed) in terms of plan provisions relating to rural character; if it relates to density then that aspect is similarly already counted (and assessed) in terms of plan provisions relating to minimum lot size and zone-specific controls (among others).
54. Notwithstanding the helpful advice from Ms Parham relating to the 2004 Marlborough case of Calapashi Holdings Ltd⁸ (in which the EC accepted that land fragmentation was an effect in the context of that council's relevant planning framework, and the HC accepted that finding was open to the EC), in this instance the explanatory text – which is the only place this aspect seems to be referred to - appears circular and not to disclose an effect that is not otherwise managed elsewhere under the Plan. Indeed, it appears to double count those other effects and fall into the same basket of aggregated effects the Court has repeatedly refused to accept as a relevant distinct effect, such as depreciated property value.
55. As an objective or policy, land fragmentation makes sense as a convenient overarching construct, rolling together elements including character, landscape, soil classification, amenity, use and density. However, having said that, I note that the term *land fragmentation* is not used in the ODP in any of the extensive objectives and policies

⁷ S42A Report, section 8.4, page 49.

⁸ Calapashi Holdings Ltd v Marlborough District Council, W45/2004; CIV-2004-485-1419 NZHC

cited by Mr Aplin⁹ - and the PDP only refers to it once and requires in one policy (5.2.3(a)) minimising the fragmentation of productive rural land, *particularly where high quality soils are located*. Furthermore, there are no rules that relate directly to *land fragmentation*.

56. If the district plan(s) considered land fragmentation to be the important issue contended, then surely an explicit hierarchy of land fragmentation provisions should be evident – and they are not (or, at least, were not revealed in evidence).

Finding

57. I am not persuaded that land fragmentation is a relevant and distinctly identifiable adverse *effect* under the ODP – and the only explicit PDP policy appears focussed on high quality soils (which do not exist on the subject site). As such I do not consider this a matter for s104D(1)(a) RMA. All the individual elements that appear to constitute land fragmentation as that term is explained in the ODP are separately identified for assessment in the Plans, and their adverse effects have been assessed in this application as being minor or less. To be more than the sum of its parts requires an explicitly directive policy at least one would have thought.
58. I therefore disagree that this construct can constitute a separately identifiable material effect that is more than minor over and above the individual elements that appear to make it up – and which are agreed to be minor or less.
59. Furthermore, I am satisfied that the adverse effects otherwise summarised by Mr Aplin and Mr Barrett are minor.
60. With respect to the nascent PDP policy, I note that the agricultural report provided by the applicant clearly articulates the conclusion that not only are there no high quality soils on the subject site, there is, in fact, little in the way of rural commercial potential. As that report observes¹⁰:

The soil types provide significant obstacles to profitable farming practices and the land development costs to remove the trees and establish a reasonable sized farming block would be prohibitive.

Westland drain access

61. As noted above, by the time of the hearing the WRC concerns were reduced to the question of land drainage and unhindered access to the Westland drain (which runs along the western perimeter of the site) for management purposes, the subject site being within WRC's Rotokauri drainage subdivision. Mr Ryan sought an easement over proposed Lots 7 and 10 in order to secure access to the Westland drain.
62. Mr Barrett advised that he had conversed with the owner of the adjacent property who had indicated that he would continue to provide unhindered access to WRC for drain management purposes, and had indicated a willingness to formally agree to that. Accordingly, Mr Barrett submitted that access from the application site side was unnecessary. Furthermore, Mr Singleton indicated that while he had no issue with

⁹ S42A Report – sections 9.4.1 – 9.4.6.

¹⁰ Miller, Agricultural suitability, 2018, section 1 (AEE Appendix 8).

WRC having access to the drain from the southern part of his site, he was opposed to an easement over the northern part because of the extensive tree and vegetation planting undertaken, which he was unwilling to see removed for unhindered access (and especially so as access from the property on the other side of the drain had been offered by his neighbour).

63. Finally, Mr Barrett submitted that as WRC had no existing formal right of access to the drain from the subject property, and had not required such access in recent memory, that this was an unreasonable requirement and one that the applicant strongly opposed.
64. At the close of the hearing that difference of position remained.

Finding

65. I sought, from Mr Ryan, an understanding as to what provision or power he considered was available to me to impose the easement condition he sought – in the sense that a reasonable nexus needed to be established between the subdivision application and the need for drain maintenance, in order to impose that as a valid condition in the absence of an Augier agreement (and therefore satisfy s108AA RMA). Mr Ryan was not able to satisfy me on that point.
66. I also note that Mr Barrett pointed out that, post-development, it was unlikely that any material quantum of sediment would be generated and discharged to the drain from the activities occurring on the subdivision – indeed, certainly less than if that land was in rural production. Any future siltation of the drain was, therefore, unlikely to originate from the site. Additionally, as the stated primary purpose¹¹ of a land drainage system was to manage groundwater tables for grass growth for pastoral farming, this was not an activity that has or would occur on the site (with the possible exception of Lot 10).
67. While clearly the management of rural drains is an important activity in the rural zone, I find insufficient nexus (or need) with the effects of the subdivision application that would justify imposing an easement over the strong objection of the applicant landowner. This is not a case where access to the drain for management purposes is not practical and needs to be made available. I have no reason to doubt the advice given that the neighbouring landowner consents to access for that purpose – and the drain, as I was told by Mr Ryan, is but a few metres wide.
68. I therefore decline to impose the easement condition sought by WRC on this subdivision consent. Whether such might be considered should regional consents be required for development in due course is a matter left for that eventuality.

Precedent

69. Hamilton City Council (HCC) expressed concern that as this subdivision does not, in its opinion, meet the anticipated growth pattern set down in the various regional, sub-regional and district strategic planning documents, the risk of establishing an unacceptable precedent is raised if granted. HCC disagreed with the applicant's analysis of "unique factors" noting, among other things, that proposed Lot 10 could be

¹¹ Ryan, WRC Submission, page 7

further subdivided, as could the adjacent land. HCC asked that “*the fragmentation of land is considered in the context of the anticipated outcomes set through the WDODP and WDPDP policy framework*”.

70. Mr Aplin had identified¹² the following key “unique factors”, which he maintained were distinguishable and lowered the risk of precedence:
- (a) The site has previously been used for non-rural production commercial purposes;
 - (b) The site does not contain either high quality or high class soils; and
 - (c) Previous comparable non-complying activity small-scale subdivisions have been granted by Council with no evidence of precedent effect.
71. Mr Barrett also observed that the scale of proposed development (8 lots including the additional one that is anticipated) does not reach the threshold of regional concern and that the growth policy framework does not prohibit rural land development for other purposes – being essentially concerned with the appropriate and timely provision of infrastructure, services and funding. Those latter elements are neither extended nor compromised by the proposed subdivision.

Finding

72. I am satisfied that granting the application is highly unlikely to create an adverse precedent in the context of the policy framework identified by HCC and the particular circumstance of the subject site. While I accept that the lot sizes proposed could lend themselves to further future subdivision, should application subsequently be made that is a matter for consideration under whatever growth policy framework is operative at that time. At the present time that, itself, would attract a non-complying activity status requiring detailed consideration.
73. Since I find no reasonable ground for a precedent effect, the question of plan integrity discussed by Mr Aplin¹³ needs no further discussion.

Conditions

74. By the close of the hearing, a set of draft agreed conditions between the applicant and Council (including Council’s technical reviewers Mr Smith and Ms Ryder) were filed. As noted, those conditions do not require the easement sought by WRC. I accept those conditions as appropriate.

Finding

75. I find that the amended conditions that are imposed are appropriate.

Section 106 RMA

76. The s42A report, and Mr Brown for Council, agree with the applicant that the circumstances of concern under s106 RMA – natural hazard risk and allotment access - are satisfied (including through appropriate proposed conditions of consent).

¹² S42A Report, section 10.6.

¹³ S42A Report, Section 10.7

77. I accept that conclusion and therefore the discretion to refuse consent is not engaged.

Sections 104D, 104 and Part 2 RMA

78. There is sufficient inconsistency with the key objectives and policies of the ODP such that the proposed activity fails the test of not being contrary under s104D(1)(b) RMA.
79. However, I have found the adverse effects to be minor under s104D(1)(a) RMA and therefore the gateway is passed.
80. I confirm that I have considered the matters required under s104 of the RMA. As discussed above I have concluded that the actual and potential effects on the environment of allowing the activity are minor and can be managed appropriately, and there are additional positive effects from the proposed subdivision and the overall landscaping that will be enabled.
81. No s6 RMA matters of national importance were identified as being directly engaged by this application - arguably other than s6(h), the flooding risk having been satisfactorily addressed.
82. No s8 RMA Treaty of Waitangi principles were identified as being directly engaged by this application.
83. Of the s7 RMA other matters to which particular regard is to be had, I consider the following relevant:
- (b) the efficient use and development of ... physical resources;
 - (c) the maintenance and enhancement of amenity values; and
 - (f) maintenance and enhancement of the quality of the environment.
84. Those matters were rehearsed in the respective documentation, submissions and evidence and regard to them has been had in this decision. In summary, the proposal constitutes an efficient use of the land resource and will enhance both its amenity value and the quality of the environment.
85. When put into the wider context of the Part 2 sustainable management purpose of the RMA and the functions of territorial authorities, I am satisfied that, with the conditions imposed, the application will promote the sustainable management purpose of the RMA, will not adversely affect the health and safety and/or wellbeing of neighbours, but will enable the land to be used for a reasonable purpose while continuing to provide an appropriately rural backdrop.

Decision

86. In exercising delegated authority under sections 34 and 34A of the RMA, and having regard to the foregoing matters, sections 104, 104D, 106 and Part 2 of the RMA, the subdivision application by G & S Singleton Heritage Limited to undertake an additional 8-lot Rural Zone subdivision at 635 Whatawhata Road, Dinsdale (Lot 1 DPS 12627 contained in RT SA10B/682 comprising 4.0494 ha, and Lot 2 DPS 12627 contained in RT SA10B/683 comprising 41.6194 ha) is granted for the reasons discussed in this

Decision (and as summarised below) and, per sections 220, 221 and 108 RMA, subject to the conditions attached as Schedule 1.

Summary reasons for the decision

87. After having regard to the actual and potential effects on the environment of allowing the proposed activity and taking into account the relevant statutory and statutory plan provisions, I find that consent for the proposed activity should be granted for the reasons discussed throughout this decision and, in summary, because:
- (a) The adverse effects of the proposed activity on the environment are minor in the context of the zone rules that apply, the general unsuitability of the soils for rural production, the relatively large lot sizes proposed (significantly larger than the 5,000m² minimum lot size for country living), the immediate surrounding neighbourhood, and the conditions to be implemented;
 - (b) While elements of the proposal are not entirely consistent with (indeed some are contrary to) all relevant provisions of the district plans, overall, given the nature of the land and its location, large lot subdivision is not inimical to those plans.
 - (c) The positive effects include enhanced landscaping, stormwater control and, by implication, long-term sediment discharge reduction; and
 - (d) Granting consent is consistent with promoting the sustainable management purpose and principles of Part 2 of the RMA, and the relevant provisions of the statutory plans.



David Hill
Independent Hearing Commissioner

Date: 27 July 2020

Schedule 1

Waikato District Council

Consent Conditions

Resource Consent No: SUB0165/19

General Conditions

- 1 The Land Transfer Plan to give effect to this resource consent must be in general accordance with the approved plans prepared by McCracken Surveys / Cheal as follows:
 - (a) Scheme Plan – Proposed Subdivision of Lots 1 and 2 DPS 12627 635 Whatawhata Road, Dinsdale, October 2018, Reference: 13246 – Sheet 1.
 - (b) Scheme Plan – Proposed Subdivision of Lots 1 and 2 DPS 12627 635 Whatawhata Road, Dinsdale, September 2019, Reference: 13246 – Sheet 2.
 - (c) Scheme Plan – Proposed Subdivision of Lots 1 and 2 DPS 12627 635 Whatawhata Road, Dinsdale, October 2018, Reference: 13246 – Sheet 3.
 - (d) Scheme Plan – Proposed Subdivision of Lots 1 and 2 DPS 12627 635 Whatawhata Road, Dinsdale, October 2018, Reference: 13246 – Sheet 4.
 - (e) Scheme Plan – Proposed Subdivision of Lots 1 and 2 DPS 12627 635 Whatawhata Road, Dinsdale, October 2018, Reference: 13246 – Sheet 5.
 - (f) Scheme Plan – Proposed Subdivision of Lots 1 and 2 DPS 12627 635 Whatawhata Road, Dinsdale, October 2018, Reference: 13246 – Sheet 6.
 - (g) Scheme Plan – Proposed Subdivision of Lots 1 and 2 DPS 12627 635 Whatawhata Road, Dinsdale, October 2018, Reference: 13246 – Sheet 7.
 - (h) Restricted Building Area Plan – Proposed Subdivision of Lots 1 and 2 DPS 12627 635 Whatawhata Road, Dinsdale, September 2019, Reference: 13246 – Sheet 1.
 - (i) Covenant Vegetative Area Plan – Visual Mitigation - 635 Whatawhata Road, Dinsdale, September 2019, Reference: 13246 – Sheet 1.
- 2 Pursuant to Section 36 of the Resource Management Act 1991 the Consent Holder must pay the actual and reasonable costs incurred by the Waikato District Council when monitoring the conditions of this consent.
- 3 Waikato District Council's processing fees are to be paid in accordance with the Council's processing fees and charges prior to the signing of the s224 certificate.
- 4 Prior to commencing any engineering design or construction works, the Consent Holder shall appoint an appropriately qualified and competent Developer's Representative/s, acceptable to the Waikato District Council's Land Development Engineer in accordance with the requirements of the Regional Infrastructure Technical Specifications.
- 5 The Consent Holder shall notify Waikato District Council's Land Development Engineer, in writing, of their intention to commence works, a minimum of 10 working days prior to commencement of works. Notification shall include the following details:
 - (a) Name/s and telephone number/s of the Developers Representative/s.
 - (b) Site Address to which the consent relates.
 - (c) The Waikato District Council subdivision reference number

- (d) Work to be undertaken.
- (e) Expected duration of the works.

Advice Note: The preferred means of notification is via email to subdivisions@waidc.govt.nz

- 6 Prior to s223 and s224 approval, all buildings must comply with the permitted activity rules relating to building coverage, setbacks, daylight angles relative to the new boundaries and number of dwellings, with the following exceptions:
- (a) Building coverage on Lot 8 shall not exceed 750m²;
 - (b) Existing dwelling on Lot 10 shall be allowed to be within the minimum building setback from the boundary of Lot 8;
 - (c) Consented shed approved under land use consent referenced LUC0192/19 on Lot 10 shall be allowed to be within the minimum building setback from the boundary of Lot 8;
 - (d) Consented shed approved under land use consent referenced LUC0192/19 on Lot 10 shall be setback a minimum of 14m from the eastern boundary of Lot 10;
 - (e) Existing storage building/utility shed on Lot 10 shall be allowed to be within the minimum building setback from the boundary of Lot 10; and
 - (f) Existing woodshed on Lot 10 shall be allowed to be within the minimum building setback from the eastern boundary of Lot 10.

Prior to application for approval of the survey plan (s223), the Consent Holder shall comply with the following conditions:

Design Plans

- 7 Prior to commencing any construction works on the property, the Consent Holder must submit for the approval of the Waikato District Council's Land Development Engineer, engineering design details and plans, prepared by a suitably qualified and experienced Engineer, including but not limited to the following:
- (a) 10m wide Right of Way "A", "B", "C", "D" and "E" to a sealed standard in accordance with the requirements of Part 3 - Appendices A, Traffic, of the Operative Waikato District Plan (Waikato Section), including long and cross sections of right-of-ways, including flood levels, and locations and details of passing bays;
 - (b) All physical works including the Right of Way design must take into account the requirements and recommendations contained in section 3 and 4 of the Stormwater Management Plan from Cheal Consultants Limited – Ref M13246AP2 – Final Dated 20 December 2019 and attached appendices, and be in accordance with Part 3, Appendices B5 of the of the Operative Waikato District Plan (Waikato Section);
 - (c) Right of Way design must take into account the requirements for hard surfaces contained within Section 6 of the Landscape Visual Assessment prepared by Boffa Miskell dated 9 July 2020. These requirements are reproduced below.
 - *Raised kerb and channels shall be avoided.*
 - *Providing asphaltic concrete, dark coloured concrete or exposed aggregate concrete surfaces.*
 - (d) Vehicle entrances off the proposed Right-of-Way's to Lots 1, 2, 4, 5, 6, and 7 including stormwater controls;
 - (e) Identification of any overland flow paths; and
 - (f) Identification of any additional easements for infrastructure such as existing water supplies or overland flowpaths not shown on the approved scheme plans.

The design details and plans must be in accordance with the Regional Infrastructure Technical Specifications (RITS).

Easements

- 8 Easements for Right of Way and Right to Drain Water shall be set out on the Land Transfer Plan and included in a memorandum.
- 9 Any additional easements, including overland flowpaths, identified in the approved engineering plans required by this consent must be set out on the Land Transfer Plan and included in a memorandum. Easements must be as required by the Regional Infrastructure Technical Specifications and the Waikato District Council's Easement Policy.

Planting

- 10 Covenant Areas, in accordance with the approved Covenant Vegetative Area Plan referred to in condition 1(i) showing visual mitigation planting shall be set out on the Land Transfer Plan.

Landscape Management Plan

- 11 A Landscape Management Plan (LMP) prepared by a suitably qualified and experienced Landscape Architect shall be submitted to Council's Monitoring Team for approval. The objective of the LMP is to mitigate landscape visual and rural character effects within and beyond the site.

The LMP must include, as a minimum, all of the measures recommended in section 6 (recommendations) of the Landscape Visual Assessment (LVA) prepared by Boffa Miskell dated 9 July 2020, relating to the following matters.

- i. Identification of locations of the planting schedule as listed as Table 1 in the above referenced LVA;
- ii. Requirements for Buildings & Structures & Form;
- iii. Requirements for Materials and Colours;
- iv. Requirements for Earthworks;
- v. Requirements for Hard Surfaces;
- vi. Requirements for Fencing;
- vii. Requirements for Lighting & Utilities.

Advice note: The purpose of the Landscape Management Plan is to have a standalone document which a consent notice required by this consent can refer to, for current and future owners of the Lots 1 – 7 and 10.

Prior to the application for s224 approval the Consent Holder shall comply with the following Conditions:

Power Supply

- 12 Written Confirmation must be provided from a network utility operator for power supply confirming that connections and reticulations have been placed to the boundary of Lots 1 – 7 and Lot 10.

OR

Where hardwire energy/power supply is not proposed to be installed to the boundary of Lot 1, 2, 3, 4, 5, 6, 7 and/or Lot 10, written confirmation must be provided to Council from an appropriate solar energy provider demonstrating that the provision of an off-grid solar system is available to service the relevant Lot/s. Written confirmation must include the following information for information purposes only:

- (a) a cost estimate for an off-grid solar system for the relevant lots. These costs must include all costs including the cost of the system, freight and installation of the system.
- (b) The kilowatt of power the system will produce per day.

Telecommunications

- 13 Written Confirmation shall be provided from a network utility operator for telecommunications confirming that connections and reticulations have been placed to the boundaries of Lot 1 – 7.

Planting

- 14 Mitigation planting shall be undertaken in accordance with the approved Landscape Management Plan required by Condition 11 of this consent and the Covenant Vegetative Area Plan approved under Condition 1 (i) of this consent. Confirmation of the planting undertaken in accordance with these plans shall be provided to Council by way of a compliance assessment undertaken by a suitably qualified and experienced Landscape Architect

Physical Works

- 15 The Consent Holder must undertake engineering works in accordance with the engineering design plans approved under Condition 7 of this consent.

Erosion and Sediment Controls

- 16 Prior to, and during physical works on the property, the consent holder shall install and maintain erosion and sediment control measures in accordance with the Waikato Regional Council's Erosion and Sediment Control Guidelines for Soil Disturbing Activities: January 2009.

NZTA Conditions

- 17 Confirmation shall be provided to Waikato District Council's Consent Team, that New Zealand Transport Agency is satisfied that the property is screened to mitigate the risk of internal headlight glare causing distraction to State Highway 23 users.

Advice Note: As agreed by the applicant, a screening design shall be submitted to and approved by the New Zealand Transport Agency prior to installation.

- 18 Confirmation shall be provided to Waikato District Council Consent Team, that New Zealand Transport Agency is satisfied that the existing boulders that currently surround the (Westlands) sign shall be removed from State Highway 23 legal road and the signage posts shall be replaced with frangible posts.

Advice note: As agreed by the applicant, any alterations to the sign including wording or design, will require further approval from the New Zealand Transport Agency.

As-Built Information and Certification

- 19 A 'Contractors Certificate – Construction', for each separate work undertaken by each individual contractor as part of the consented subdivision, must be provided for certification by the Land Development Engineer, Waikato District Council.

Advice Note: An acceptable format for certification upon completion of works can be found in the NZS4404-2010 Schedule 1B (Contractor's certificate upon completion of land development/subdivision).

- 20 A 'Certificate of Completion of Development Works' prepared and signed by the Developer's Representative or a suitably qualified professional, must be provided for certification by the Land Development Engineer, Waikato District Council, to confirm that all works have been carried out in accordance with the approved plans as required by condition 7 of this consent and appropriate standards contained within the Operative District Plan (Waikato Section) and the Regional Infrastructure Technical Specifications (RITS).

Advice Note: An acceptable format for a 'Certificate of Completion of Development Works' can be found NZS4404-2010 Schedule 1C (Certification upon completion of land development/subdivision).

Consent Notices – General

- 21 The following conditions must be complied with on an ongoing basis and shall therefore be the subject of a consent notice registered against the relevant title(s) in accordance with Section 221 of the Resource Management Act 1991:

- (a) A design report prepared by a suitably qualified and experienced landscape architect must be submitted to the Waikato District Councils Consent Team demonstrating compliance with the following requirements for all buildings and structures on Lots 1, 2, 3, 4, 5, 6, 7 and 10.

Buildings & Structures

- *Placement: All buildings above ground must be located within the Building Areas as shown on the Restricted Building Area plan prepared by McCracken Surveys / Cheal titled Proposed Subdivision of Lots 1 and 2 DPS 12627 635 Whatawhata Road, Dinsdale, September 2019, Reference: 13246 – Sheet 1; including ancillary buildings, garden sheds and above ground water tanks.*
- *Height: All buildings shall be single storey and a maximum height of 5m from natural ground level.*
- *Water tanks: All water tanks shall be screened from view in a manner and/or with screening and materials/colours harmonious with the dwelling and should be installed on each respective lot.*

Form:

- *Design roofs that integrate buildings into the landscape.*
- *Roofing: Roof materials shall be coloured in recessive colours no greater than a reflectance value of 20%. Grass or green roofing consistent with the surrounding vegetation patterns and colours is acceptable.*
- *Use building modulation to break the length of a building facade by changing direction, stepping in and out of the main facade, balconies, eaves, pergolas and other structures.*
- *Recess large areas of glazing below wide eaves and dividing glazing with walls, pergolas and the like.*
- *Use of dark tinted glass, but not mirror glazing, is required.*
- *Use window joinery, doors and balustrades that have a reflectance value of less than 30% and are dark or naturally coloured.*
- *Design buildings that use natural materials including natural stone, timber and concrete and cladding that has a reflectance value of less than 30% for walls and 25% for roofs.*
- *Ancillary Buildings: Garages, boat storage, and other ancillary buildings associated with the house shall be contained within the house site and shall be a comparable quality to that of the main building on the site.*

Materials and Colour:

- *Select materials that respond to the natural landscape and native vegetation immediately surrounding the subject site.*
- *Select colour palettes that have a reflectance value of less than 20% for roofs and 30% for walls (Refer to the Resene British Standard 5252 Range as a guide only. All colours and materials must be approved at building consent).*
- *Use natural material finishes such as stone and timber which will weather naturally.*
- *Apply dark oxide colouring to concrete materials to reduce reflectivity of the material.*
- *Timber cladding and other natural elements (stone) naturally weathered or stained dark.*
- *Painted timber, blockwork or other materials may be used and must contribute to receding the building into the landscape.*
- *The reflectance value of surfaces, including joinery, gutters, downpipes, cladding and roofing materials shall be no greater than 30% for walls and 25% for roofs.*

- (b) All earthworks, hard surfaces, fencing, lighting and utilities on Lots 1, 2, 3, 4, 5, 6, 7 and 10 shall be in accordance with all of the following requirements.

Earthworks:

- *No earthworks or grading other than the minimum required for driveways or underground*

services is permitted outside the house site area.

- Re-contouring all embankments surrounding driveways and building platforms into the natural landform to avoid visually exposed cut banks greater than 1.5m in height.
- All cut embankments, between 0.5m and 1.5m in height, shall be planted against to visually screen the exposed soil. Planting shall be organic in shape and form and avoid emphasising straight unnatural lines within the landscape.

Hard Surfaces:

- Raised kerb and channels shall be avoided.
- Providing asphaltic concrete, dark coloured concrete or exposed aggregate concrete driveway surfaces.
- Impervious outdoor areas, including patio, outdoor entertainment areas and turning areas (within the driveway), all located within the Building Areas.

Fencing:

- Using post and 3 - 5 timber rail or post and wire fencing and vegetation to demarcate boundaries of properties to reflect the rural character of the wider area. Urban style post and panel and solid wall style fencing shall be avoided.
- Providing front gate fencing that is visually permeable including post and rail, stone pillars, brick or wrought iron.

Lighting and Utilities

- All exterior lighting shall be contained within the Building Areas and shall be down lights only.
- All utilities and services shall be located below ground. No above ground wiring will be permitted. Aerials, satellite dishes and other utilities shall be maintained within the 6.0m building height plane.
- Downward facing bollard lighting is acceptable along the accessway corridor and to demarcate driveway entrances.
- Street lighting shall be avoided.
- Illuminated signage shall be avoided.

- (c) All planting on Lots 1, 2, 3, 4, 5, 6, 7 and 10 subject to the approved Covenant Vegetative Area Plan referenced in condition 1(i) of this consent decision shall be maintained in accordance with the approved Landscape Management Plan, required by condition 11 of this consent. As a minimum, vegetation cover shall be managed in perpetuity and shall be allowed to grow to a natural height and form.
- (d) Any earthworks, minimum floor levels, foundation design, wastewater and stormwater management for a building consent application on Lot 1, 2, 4, 5, 6, 7 and 10 shall be undertaken in accordance with the restrictions and recommendations of the following reports:
 - (i) Section 6 and 7 of the Preliminary Geotechnical Investigation Report for Proposed Residential Development 635 Whatawhata Road, from CMW Geosciences Ref: HAM2018-0112AB Rev 2, Dated 15 August 2019.
 - (ii) Section 3 and 4 Stormwater Management Plan from Cheal Consultants Limited – Ref MI3246AP2 – Final Dated 20 December 2019”.
 - (iii) Floodplain Analysis, 635 Whatawhata Road, Hamilton from Dr Steven Joynes, Version 4 dated October 2019.

Unless alternative reports, prepared by suitably qualified and experienced Professional Engineers, are approved in writing by the Waikato District Councils Land Development Engineering Team.

- (e) Stormwater management for a building consent application on Lots 1, 2, 4, 5, 6, 7 and 10 shall ensure to the satisfaction of the Waikato District Council Building Team; that the

stormwater management system must be capable of providing a means of managing and disposing of stormwater in accordance with Section 4, Stormwater of the Regional Infrastructure Technical Specifications (RITS).

- (f) A minimum of 45,000L of water storage shall be located on Lots 1 - 10 within 90m of each dwelling in accordance with the New Zealand Fire Service Water Supplies Code of Practice.

Consent notices shall be prepared by Waikato District Council's Solicitor. Please request your consent notice be prepared prior to requesting 224 approval.

Consent Notices – Solar

- 22 If hardwire energy/power supply reticulation is not installed to the boundary of Lots 1, 2, 3, 4, 5, 6, 7 and/or Lot 10, the following condition shall be complied with on an ongoing basis and shall therefore be the subject of a consent notice registered against the relevant title(s) in accordance with section 221 of the Resource Management Act 1991:

- (a) No hardwire energy supply reticulation is available to the boundary of this lot as confirmation was obtained from a solar energy provider advising that provision for "off the grid" energy supply is available to the lot.

Details of a "off the grid" method is available within the subdivision consent file SUB0165/19 held at Waikato District Council Offices. This includes the following information:

- (i) cost estimate for an off-grid solar system for the relevant lots, including the cost of the system, freight and installation of the system.
- (ii) The kilowatt of power the system will produce per day.

Consent notices shall be prepared by Waikato District Council's Solicitor. Please request your consent notice be prepared prior to requesting 224 approval.

Consent Notices – NZTA

- 23 The following conditions relating to potential reverse sensitivity effects resulting from the normal operation of State Highway 23 must be complied with on an ongoing basis and shall therefore be the subject of a consent notice registered against the relevant title(s) in accordance with Section 221 of the Resource Management Act 1991:

- 1) Any new dwelling or other new noise sensitive location* on Lot 8, 9 and 10 in, or partly within 100m of the edge of State Highway 23 carriageway must be designed, constructed and maintained to achieve:
- (a) Road-traffic vibration levels complying with class C of NS 8176E: 2005; and
- (b) An indoor design noise level of 40 dB $L_{Aeq(24hr)}$ inside all habitable spaces.
- 2) If windows must be closed to achieve the design noise levels in condition 1(b), the building must be designed, constructed and maintained with ventilation and cooling system. For habitable spaces the system must achieve the following:
- (a) Ventilation must be provided to meet clause G4 of the New Zealand Building Code. At the same time, the sound of the system must not exceed 30 dB $L_{Aeq(30s)}$ when measured 1m away from any grille or diffuser.
- (b) The occupant must be able to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour. At the same time, the sound of the system must not exceed 35 dB $L_{Aeq(30s)}$ when measured 1m away from any grille or diffuser.
- (c) The system must provide cooling that is controllable by the occupant and can maintain the temperature at no greater than 25°C. At the same time, the sound of

the system must not exceed 35 dB $L_{Aeq(30s)}$ when measured 1m away from any grille or diffuser.

- 3) A design report prepared by a suitably qualified and experienced acoustics specialist must be submitted to the Waikato District Council Building Consent Team demonstrating compliance with consent notice conditions 1 and 2 prior to construction or alteration of a dwelling or noise sensitive location. The design must take into account the future permitted use of the state highway; for existing roads this is achieved by the addition of 3 dB to existing measured or predicted noise levels.

*Noise sensitive locations means buildings or parts of buildings used for, or intended to be used for the following purposes: residential activity (including visitor accommodation and retirement accommodation); education; healthcare; and/or places of worship/marae.

Consent notices shall be prepared by Waikato District Council's Solicitor. Please request your consent notice be prepared prior to requesting 224 approval.

Advisory Notes:

Lapse Date

- 1 This Resource Consent for land use lapses five years after the commencement of the consent, unless:
- (a) the Consent is given effect to prior to that date.
 - or
 - (b) an application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account
 - (i) whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and
 - (ii) whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and
 - (iii) the effect of the extension on the policies and objectives of any plan or proposed plan.

Corridor Access Request

- 2 Prior to undertaking any works within the Council road reserve, a Corridor Access Request (CAR), including traffic management plan, for the works to be carried out in the road reserve, should be submitted to the Waikato District Council for approval not less than fifteen (15) working days before starting these works.

New Zealand Transport Agency Requirements

- 3 The consent holder is required to seek authorisation pursuant to Section 91 of the Government Roadway Powers Act 1989 (GRPA) for the proposed access arrangements from the New Zealand Transport Agency enclosing a copy of the following:
- (a) A copy of the resource consent decision and all approved plans;
 - (b) The underlying records of titles;
 - (c) The LT plan including the number; and
 - (d) The number of the allocated titles.

A copy of this authorisation should be provided to Waikato District Council for information purposes.