

**IN THE MATTER** of the Resource Management Act 1991

**AND** applications to the Far North District Council

**BY** Kerikeri Falls Investments Ltd

**FOR** Proposed Private Plan Change 3 to the Far North District Plan for a new zone in the Far North District Plan for the “Quail Ridge Country Club” zone at 6 Karaka Drive, Kerikeri

**AND** resource consent for the construction of a bridge, primarily for pedestrian use, across the Kerikeri River, along with vegetation clearance and earthworks for the bridge foundations and the connecting walkways and, for vegetation clearance and earthworks associated with the construction and upgrading of stormwater drains and outlets leading to the Kerikeri River.

**DECISIONS REPORT:**

**WITH RECOMMENDATIONS TO THE FAR NORTH DISTRICT COUNCIL ON THE PROPOSED PLAN CHANGE AND THE SUBMISSIONS TO IT AND THE DECISION ON THE RESOURCE CONSENT APPLICATION**

**1.0 INTRODUCTION AND SUMMARY OF RECOMMENDATIONS AND DECISIONS**

This decisions report identifies the recommendations and the decisions that the appointed Hearings Commissioners (“**the Commissioners**”) have made on behalf of the Far North District Council (“**the Council**”) in relation to the private request for a plan change (“**the plan change**”) to the Far North District Plan (“**the District Plan**”) by Kerikeri Falls Investments Ltd (“**the applicant**”) in accordance with the Resource Management Act 1991 (“**the RMA**” or “**the Act**”) and in relation to the resource consent application (“**the consent application**”) for the pedestrian bridge and the associated vegetation clearance and earthworks and for vegetation clearance and earthworks associated with the stormwater drains and outlets.

This decisions report provides an account of the process leading through to the recommendation to the Council on the plan change; the recommendations to the Council on decisions on the submissions to the plan change; the modifications to the plan change; and, the decision on the consent application.

Our recommendation is that the plan change be approved, with some modifications, and that the submissions be accepted, accepted in part, or rejected in line with that recommendation. Further, our decision is that the consent application be granted consent, with conditions.

## **2.0 BACKGROUND**

Applications were lodged conjointly with Council on 23 April 2008 for a private plan change request and for resource consent to give effect to a proposed retirement village development on Lot 1 DP 311575 and Lot 4 DP 78387. The area of the site is 16.8961ha. The resource consent application was in three parts being for the development proposal; for the bridge and associated vegetation clearance and earthworks; and, for the vegetation clearance and earthworks associated with the upgrading of stormwater drains and outlets leading to the Kerikeri River. The first part of this consent application was later put on hold by the applicant. Land also affected by the second and third parts of the application is Lot 2 DP 86015, being a Department of Conservation (“**DOC**”) managed reserve along the northern side of the Kerikeri River, and Lot 79 DP 106277, being a Council managed local purpose reserve along the southern bank of the Kerikeri River. These areas are affected by the proposal to locate the bridge abutments or support structures on this land.

Further information was requested by the Council and provided by the applicant prior to a report going to Council to determine whether or not Council would accept the plan change application and allow it to be publicly notified. The Council rejected the plan change application outright and that decision was appealed to the Environment Court. The Environment Court decision instructed the Council to accept the plan change application and to proceed with the notification of it. Subsequent to the Environment Court decision the Council notified the plan change request with submissions closing on 2 November 2009 and further submissions on 18 December 2009. The resource consent application was notified prior to the plan change with the closing date for submissions being 10 November 2008.

The applicant has chosen to continue with the application for the plan change and the second and third parts of the consent application. Those parts are for the bridge and associated vegetation clearance and earthworks and for the vegetation clearance and earthworks associated with the stormwater drains and outlets. The applicant has decided to put on hold the first part of the consent application that had been lodged for the development proposal because that does not, according to the legal submissions for the applicant at the hearing, need to be determined at this time; the plan change and the consent application would be sufficient to enable the proposed development to be established, operated and maintained on the site.

A report addressing details of the plan change and the consent application, and the submissions to the application, was prepared for the Council by an independent planning consultant, Burnette O’Connor, in accordance with Section 42A of the RMA. That report is hereinafter referred to as “**the planning report**”. The recommendation in the report is that the plan change be approved, with some modifications, principally

a restricted discretionary approach to development in the proposed zone rather than a mainly permitted activity approach. The bridge component of the consent application is recommended to be refused. The component relating to vegetation clearance and earthworks for stormwater purposes is recommended to be approved with conditions.

Associated with the plan change and the consent application to the Council is a resource consent application to the Northland Regional Council (“**NRC**”) seeking seven consents for:

- To discharge up to 87 cubic metres of treated sewage to land following treatment.
- To discharge contaminants (odour) to air from a communal sewage treatment and disposal system.
- To place and use a sewer pipeline attached to the proposed pedestrian bridge over the Kerikeri River.
- To discharge stormwater from roofed and paved areas to land and the Kerikeri River.
- To undertake earthworks for site development.
- To divert stormwater from land disturbance activities.
- To discharge stormwater to land from land disturbance activities.

This application was reported on by officers of the NRC and heard together with the applications to the Far North District Council. We considered that application and we have prepared a separate decisions report on it as was sought by the NRC.

### **3.0 THE APPLICATIONS**

#### **3.1 The Plan Change**

The plan change seeks a special zone to be known as ‘Quail Ridge Country Club’ be included in the District Plan. A concept master plan has been prepared to show the nature and layout of the proposed development. Specific elements of the plan change as it was notified are as follows:

- It is proposed to establish a full range of living, care and recreational facilities for people approaching or in retirement.
- A residential intensity limit over the entire land holding of 273 residential units, including the proposed care facility.
- The development is to be staged over a 10 – 15 year time period, involving five individual stages.
- Rainbow Falls Road is proposed to be widened.
- A pedestrian footbridge is proposed to be constructed from the site across the Kerikeri River to provide access to Tuatahi Place. (Note: this is part of a separate application to the plan change).
- Water supply is to be provided from the public supply.

- Wastewater treatment and disposal is to be provided on site until the connection is available to the public system, reported to be in approximately 3 – 5 years.
- Stormwater is to be collected in a network of piped and open swale drains and after treatment expected to be discharged into four existing drains, three of which lead through DOC land to the Kerikeri River. (Note: the details for this arrangement are part of a separate application to the plan change).
- The plan change sets out a number of permitted activities. In order to comply as a permitted activity a proposal needs to be:
  - Shown on the Concept Master Plan;
  - In compliance with the permitted activity standards stated in the plan change; and
  - In compliance with the relevant standards for permitted activities set out in Part 3 of the District Plan – District Wide Provisions.
- Various development controls relating to building height, set backs from boundaries, sunlight, building design and appearance, impermeable surfaces, earthworks, fencing and landscaping, signs, access, parking and loading, noise and the keeping of animals are specified. The provisions generally follow existing provisions in the District Plan for the Residential or Rural Living zones, however there are provisions that are altered from what exists in the District Plan or are additional to existing rules in the District Plan.
- A permitted activity standard is proposed that will enable, in the case of any house, duplex or townhouse shown on the Concept Master Plan, the relocation anywhere within the site and an increase in the footprint area by up to 10%.
- A controlled activity standard is proposed to enable the clubhouse, buildings used for recreational purposes and accessory buildings shown on the Concept Master Plan to be relocated and for a 10% increase in the building footprint.
- Provisions are also stated for discretionary activities. Any activity that does not comply with the standards for a discretionary activity will be assessed as a non-complying activity. There are no prohibited activities.
- There is no provision for subdivision.

The proposed rezoning requires amendments to the District Plan maps (Map 83 and Map 28) and also to Chapter 18 – ‘Special Areas’ and Appendix 6 – ‘Special Areas’ to include the proposed ‘Concept Master Plan’.

At the hearing we were advised by legal Counsel for the applicant that one significant change was proposed. It was explained that the change responds to the reporting planner’s concern that certain aspects of the development are difficult to leave as permitted activity standards and that a restricted discretionary activity should be introduced. The applicant acknowledged the concern but does not favour a restricted discretionary activity approach but rather greater use of the controlled activity approach to development.

We have no difficulty receiving that change to the application which is in response to the concern that there is additional control over development in the proposed zone.

Mr Dunn also explained in evidence that the applicant was arranging to transfer an area of approximately 1,020m<sup>2</sup> to the Crown as an addition, or “top up”, to the adjacent scenic reserve. This area is located at the south-west corner of the site and covers a sloping area of land where the adjacent reserve is less than 20m in width. It will result in the reserve being the usual 20m width for such reserves from the river bank.

### **3.2 The Resource Consent Application**

The resource consent application seeks consent for:

- Construction of a bridge, primarily for pedestrian use, from the site across the Kerikeri River, along with vegetation clearance and earthworks for the bridge foundations and the connecting walkways.
- Vegetation clearance and earthworks associated with construction and upgrading of stormwater drains and outlets leading to the Kerikeri River.

The applicant has sought resource consent for an unlimited term.

### **3.3 Preparation of Applications**

The applications were prepared by consultants Connell Wagner and included a number of specialist reports and other information provided as part of responses to Section 92 RMA further information requests from the Council. Andrew Stewart Ltd is now the address for service for the applications.

## **4.0 APPOINTMENT**

The Council appointed us (Ms Miria Pomare and Messrs William Smith and Alan Watson) as independent Hearings Commissioners to hear the applications and to make a recommendation on the plan change, recommendations on the decisions to the submissions to the plan change and to decide the consent application. We are all experienced in that role and are familiar with the Northland region.

Prior to the hearing we had the opportunity to consider the details of the plan change and the consent application and the submissions (including the further submissions received to submissions on the plan change) and, the Council's planning report. We visited the site and locality the day before the hearing. That included a visit to Tuatahi Place and the adjacent Council reserve area.

## **5.0 THIS DECISIONS REPORT**

In this decisions report we provide commentary on the matters we are to have regard to in terms of the RMA in assessing the plan change and the consent application. We record the views we reached on each matter as the basis for our recommendations relating to the plan change and the decision on the consent application from the information provided and the evidence presented at the hearing. The approach of the decisions report generally follows that of the planning report in addressing the effects and plan considerations for both the plan change and the consent application.

## **6.0 THE HEARING**

The hearing was on 2 and 3 March 2010 in the Council's chambers at Kaikohe. Appearances were from:

### **6.1 Applicant**

Kitt Littlejohn, Legal Counsel

Max Dunn, Planner

David Penberthy, Project Consultant

Richard Hale, Architectural Designer

Peter Geddes, Civil Engineer

Steve Gibson, Road and Traffic Engineer

Mark Poynter, Ecologist

Christine Hawthorn, Landscape Architect

### **6.2 Submitters**

Jill Smith for Vision Kerikeri

Andrew Riddell, Resource Management Planner for DOC

Myles Taylor, Programme Manager of Visitor and Historic Places for the Bay of Islands for DOC

Tim Bingham of Tuatahi Place for self and residents from Tuatahi Place

Leonard Thompson of Rainbow Falls Road for self and residents of Rainbow Falls Road, Awhitu Road, Karaka Drive and Tuatahi Place

Scott Alexander for self and the Kerikeri District Business Association

David Skinner

### **6.3 Council Officers**

Burnette O'Connor, Reporting Planner

Rex Shand, Engineer

Patrick Killalea, Principal Planner

Raewyn Smythe, Senior RMA Support Officer.

Following the right of reply by Mr Littlejohn on 3 March 2010 the hearing was adjourned because we sought additional information from the applicant that

addressed the matter of climate change in relation to the design of the bridge and to also allow for the applicant to arrange for the right of reply to be provided in writing. We issued a Memorandum accordingly. The additional information was received in the form of a statement of evidence from the applicant's engineer on 12 March 2010. We accepted that additional information, arranged for it to be circulated to the parties attending the hearing and decided we did not require any responses or comments from any of the parties upon it. The written right of reply was received on 23 March 2010 and the hearing was closed on 24 March 2010.

We do not provide a summary of the evidence presented at the hearing. The discussion below on the issues raised in the submissions, and the matters we need to have regard to, covers the main points that were taken into account and those that contributed to the recommendations we have made on the plan change and the submissions and the decision on the consent application. In addition, the Council has Minutes of the hearing.

## **7.0 SUBMISSIONS**

### **7.1 Plan Change**

There were 23 submissions to the plan change. There were 8 submissions received in full support of the plan change and 13 submissions in full opposition. The submissions from DOC and Vision Kerikeri were in support and opposition to aspects of the plan change. There were 23 further submissions received, both in support and opposition of various primary submissions. We include the late submission, that we accepted, in this analysis.

The submissions address the following matters:

#### Support:

- Best to handle this type of development.
- Removes need for a large amount of unnecessary problems now and in the future.
- The site is secluded and does not detract from the surrounding Rural Living zone.
- The conditions to be applied should be kept to a minimum to enable flexibility, allowing for future needs and to produce this outstanding development in the Far North.
- Would like to retire there.
- The principal industry of Kerikeri is no longer fruit growing. Instead Kerikeri and the Bay of Islands area is seen as a desirable place to live for many people particularly those beyond middle age.
- Development of this nature is urgently needed.
- The nature and quality of the proposed development can only enhance the town and district.
- The plan change and development are consistent with the Kerikeri / Waipapa Structure Plan.
- Full development by one entity will offer more protection to the surrounding environment than ad hoc development which could take place in the future.

### Oppose:

- This is a significant high density development that will affect the relative low density rural living environs on the northern side of Kerikeri River.
- The plan change will have a detrimental effect on ecological values and the environmental nature of the Rainbow Falls reserve area and surrounding environs.
- Residents will be affected by long term development and roading effects. Conditions are requested by some submitters in relation to restricting the hours and days upon which construction activities may occur.
- The effects of the density of development on the hydrological catchment i.e. water runoff and the amount of impermeable surfaces.
- The effects of the development on other services such as telecommunications and water.
- The District Plan with the present zoning was just finalised. Rezoning would defy the purposes of the District Plan.
- Will create a precedent.
- Concerned river bank will be eroded by bridge struts and that Tuatahi Place will become a thoroughfare.
- Oppose basis of plan change as premature.
- Oppose the intensity of the proposed development. The intensity is 7.6 times more than the permitted standard, and 5.75 times greater than the discretionary standard limits for the site.
- Inadequate section.32 RMA analysis.
- The plan change promotes a development that will adversely affect the existing rural character, visual and amenity values of the surrounding area.
- Traffic effects will be adverse and more than minor.
- The site is not sufficiently unique to be treated as a special zone.
- The plan change is inconsistent with some of the objectives and policies of the District Plan.
- The plan change is contrary to Sections 5 and 7 in Part 2 of the Act.
- The proposal is for a gated community therefore the recreational facilities will be of no benefit to existing residents.
- Seek that plan change provide for greater use of renewable energy and energy efficiency.
- Adverse effects resulting from uncontrolled access to the adjoining scenic reserve.
- No 'top up' proposed to the existing scenic reserve.
- Appropriate to not include the footbridge as part of the proposal.
- Adverse effects on kiwi population.

## **7.2 Consent Application**

There were 37 submissions to the consent application. It is stated in the planning report that there were 13 submissions received in opposition and 20 submissions received in support of the resource consent application. The submission from Vision Kerikeri is in conditional support and a further 4 submissions are stated as being neutral. We note, from our perusal of the submissions, that two are neutral (Northland District Area Health Board and Kerikeri Irrigation Co Ltd) and that the other two (David and Lesley Stewart Jones and Sheena Johnson) do not state opposition or support but clearly have concerns for the proposal. We include the late submissions, that we accepted, in this analysis. We have also taken account of the submission from the Kerikeri RSA being referred to twice in some of the documentation as being from that group or from David Newton Keen as the signatory to it.



The submissions in support included statements that:

- Proposal will bring business to the town and will provide employment.
- The area needs positive and progressive businesses.
- In keeping with progressive growth of Kerikeri.
- Will create wealth and jobs.
- Great accommodation for elderly.

The issues addressed in the opposing submissions were summarised in the planning report as:

- The pedestrian bridge would be a visual barrier and have an adverse visual impact.
- The proposed bridge across the Kerikeri River will negatively impact upon the natural vista and degrade scenic beauty of the walkway.
- The pedestrian bridge would have an impact for amenity and privacy of existing residential properties.
- Allowing access from a residential area to the heart of a DOC reserve is not appropriate. Cats and dogs will be able to have passage across to the kiwis and other fauna which would affect the ecology of the area.
- A significant structure built across the river will destroy the natural outlook.
- The proposal (earthworks) would create adverse noise, dust and nuisance impacts.
- The size and extent of the proposal and the length of time sought for these consents will expose existing residents to unacceptable levels of noise, dust and other contaminants.
- Impact of construction traffic on existing road network.
- General concern about the length of consent / timeframes.
- Filling a small but significant floodplain will cause flooding.

### **7.3 Withdrawal of Submissions**

We received advice in a letter dated 24 February 2010 from the Kerikeri RSA, signed by Secretary Frank Lewis, that it did not support a submission to the consent applications that had been lodged by its previous Manager, Mr Dave Keen. We accepted that advice as withdrawal of that submission.

We received a copy of correspondence between Ngati Rehia (letter of 18 May 2009) and Webb Ross Lawyers (letter of 16 April 2009) for the applicant concerning an

agreement between those two parties that the submission from Ngati Rehia to the consent application would be withdrawn conditional on specified matters. That was put before us as representing a withdrawal of the submission. We do not however accept that information as a withdrawal of the submission. That is because it relates to a conditional agreement between the two parties and does not involve the Council as consent authority, and further, it does not explicitly state the submission is withdrawn, that withdrawal is conditional upon certain matters being met by the applicant. We would require correspondence from the submitter directly to the Council and/or ourselves explicitly stating the submission is unconditionally withdrawn. We have accordingly had regard to that submission.

#### **7.4 Late Submissions**

The submission from K Eyles to the plan change was received on 4 November 2009 after the closing date of 2 November 2009 for submissions.

Submissions to the consent applications were received by the Council, after the closing date of 10 November 2008. There are set out in the table below:

<b>Date received</b>	<b>Name of Submitter</b>
17/11/2008	Real Property Centre
17/11/2008	PC & MH Topham
17/11/2008	Kerikeri RSA Inc (David Newton Keen)
11/11/2008	Vision Kerikeri
12/11/2008	Te Runanga O Ngati Rehia (Nora Rameka)
11/11/2008	Mervyn Atkinson
11/11/2008	Anita Murray
30/11/2008	Kevin and Rita Slattery
13/11/2008	Kerikeri Irrigation Ltd
12/11/2008	Sheena Johnson

The reporting planner recommended these late submissions be accepted because they did not raise any new issues and no parties will be disadvantaged by our doing so.

Sections 37 and 37A of the RMA provide for the waiver or extension of time limits and set out the matters that must be taken into account when considering such waivers. We have some reluctance in accepting late submissions without an appearance from the submitters to explain the late nature of their submissions. We are also concerned when submissions are more than a few days late. The Slattery submission is well outside the time period for submissions. However, in this case, from our perusal of the submissions, we formed the view that there is no advantage or disadvantage to the interests of the applicant or to other submitters from our accepting these late submissions.

**Pursuant to Section 37 and Section 37A of the RMA**, we hereby extend the time period for the receipt of submissions to the plan change and to the resource consent application in order to accept as valid submissions the submissions from the above listed submitters because:

- Most of the submissions are not unduly late and there may be some administrative reasons that contributed to the lateness.
- The interests of no persons are in our opinion directly affected by the extension. The submissions include matters that were also raised in other submissions and no parties expressed strong views one way or the other on the matter of accepting late submissions.
- The interests of the community in achieving an adequate assessment of the effects of the proposal are contributed to by the acceptance of the submissions.
- No unreasonable delays have been created by our acceptance of these submissions.

## **8.0 STATUTORY CONTEXT**

### **8.1 The Plan Change**

Section 74 of the RMA sets out the matters to be considered by a territorial authority in preparing or changing its district plan. These matters include doing so in accordance with its functions under Section 31, the provisions of Part 2 and its duty under Section 32. Further, also having regard to other documents, including regional planning documents, management plans and iwi management plans, to the extent that their content has a bearing on resource management issues of the district.

Section 75 of the RMA, in addressing the contents of district plans, requires that a district plan must give effect to any regional policy statement and must not be inconsistent with a regional plan.

Section 31 addresses the functions of territorial authorities under the RMA and includes:

- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;*
- (b) the control of any actual or potential effects of the use, development, or protection of land,...*

Section 32 RMA provides for the consideration of alternatives, benefits, and costs and requires that an evaluation must be carried out and that an evaluation must examine:

- (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*

*(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

For the purposes of this examination, an evaluation must take into account the benefits and costs of policies, rules, or other methods.

Part 2 of the RMA, being the purpose and principles of the statute, is the overarching part of the RMA. Regard is to be given to all matters within it.

Clause 29 of the First Schedule states that after considering a plan change a local authority may decline, approve or approve with modifications that plan change and shall give reasons for its decision. Clause 10 of the First Schedule states a local authority must give a decision on the provisions and matters raised in the submissions and must include the reasons for accepting or rejecting any submissions. In doing so a local authority may address the submissions by grouping them according to the provisions of the plan change to which they relate or the matters to which they relate and, may include matters relating to any consequential alterations necessary to the plan change arising from the submissions. A local authority is not required to give a decision that addresses each submission individually.

## **8.2 The Consent Application**

The bridge component of the application is to be considered for consent in terms of Sections 104D and 104 of the RMA as a non-complying activity on the basis that the bridge abutments are on land that is zoned Conservation and the proposed bridge is not considered to be directly or ancillary to the principal conservation activities on this Conservation zoned land. Rules 9.7.5.1.1 and 9.7.5.3 of the District Plan apply. That consideration includes the associated vegetation clearance and earthworks that would otherwise be discretionary.

The component of the application for vegetation clearance/earthworks for stormwater purposes is to be considered, from the planning report, in terms of Sections 104B and 104 of the RMA as a discretionary activity on the basis of the vegetation clearance being a restricted discretionary activity and the earthworks being a discretionary activity. In this respect the proposed removal of indigenous vegetation from Conservation zoned land is not a permitted activity and is to be treated as a restricted discretionary activity (Rules 12.2.6.1 and 12.2.6.1.2). However the need for a resource consent for the proposed earthworks appears from the planning report to have been based on the earthworks associated with the plan change and future development rather than the proposed stormwater related work. Mr Littlejohn raised this matter in legal submissions and Mr Dunn addressed it in evidence.

In the case of the vegetation clearance and earthworks associated with the construction and upgrading of the stormwater drains and outlets leading to the Kerikeri River, we note that Mr Dunn's evidence is that because, as stated in the engineering report lodged with the applications, the area of works is less than 300m<sup>3</sup> and the cuts and fills will be less than 1.5m high, then the proposed earthworks represent a permitted activity. No specific consent for earthworks is then required for the drain protection and augmentation works, but a restricted discretionary activity

consent for the vegetation clearance is necessary, in terms of Sections 104C and 104 of the RMA.

We concur with the evidence of Mr Dunn in this respect and accordingly only consider that component of the application on the basis of vegetation clearance being needed to be carried out in relation to the alterations proposed to be made to some of the existing drains and outlets. These are described at Section 2.11 of the application and generally comprise two rock-lined storm water swales and upgraded outfalls with the more specific details being provided in the engineering report included with the application. We note further that Mr Dunn's view in this respect was not contested by any of the parties at the hearing. We also observe, that in concurring with Mr Dunn, we maintain the level of earthworks associated with the stormwater works to a degree that fits within the permitted activity category of the District Plan and therefore within what is considered to be within an acceptable level of effects upon the environment.

## **9.0 EFFECTS RELATING TO THE PLAN CHANGE**

### **9.1 Landscape and Visual**

Ms Hawthorn had provided a comprehensive landscape and visual assessment that was included with the application and she also presented evidence at the hearing.

Her analysis indicates that the proposal is located within an area that is experiencing rapidly changing landscape character, from orcharding to a more residential or urban nature; that the site is large and views to it are distant and set amongst existing vegetation; and, that some of the boundary shelter belts would be retained and others removed when new screen and amenity plantings are established. These features will all serve to reduce the potential adverse visual effects of the development and enhance the amenity values of the property. The impact of the development upon users of the Rainbow Falls walkway adjacent to the southern boundary will be minimized by a proposed timber fence and dense screen planting with these details being shown on a comprehensive landscape enhancement plan that Ms Hawthorn produced.

We find her analysis covers most of the concerns in relation to landscape and visual effects. It will be necessary to ensure that the enhancement planting is all carried out and maintained by way of a relevant rule in the plan change. That will require the implementation of the landscape enhancement plan. We do have a concern with the proposed 1.8m fence to be erected around the entire site which, as pointed out in the peer review provided by Littoralis, will appear as an incongruous suburban intrusion into this area, and will have the potential to adversely affect its amenity. We do not agree that landscape planting behind this fence would sufficiently mitigate the impact of it, particularly around a large site, although we acknowledge it would not be necessarily visible from too many view points. As a consequence we require some variation in the location of that fence by way of requiring it to be set back from the site boundaries over at least 25% of the length of the boundaries with amenity planting in

front of it as opposed to behind it. We have included that requirement as a modification to the plan change.

We find with these measures that any adverse effects in respect of landscape and visual considerations from the development that would occur as a consequence of the plan change will be minor.

## 9.2 Ecological

An ecological report prepared by Poynter and Associates was submitted in support of the plan change and the consent applications. It is stated in the report that the only ecologically noteworthy feature on the site is a small area of vegetation which has low botanical value. The site itself is completely modified and has no significant indigenous vegetation, habitats or biota. It is concluded that there will not be any adverse ecological effects arising from the proposed development that would result from the plan change and that some positive effects may result due to weed and pest control as well as the landscape and amenity planting proposed.

A peer review of the ecological report concluded that additional assessment was required in respect of ecological values, given the scale of the proposed development; that no assessment was undertaken in relation to the potential effects on the native freshwater fish species likely to be present downstream of the development; and, that the proposed pet control policy was inadequate.

In response to the matters raised in the peer review Poynter and Associates commented that provided the proposed treatment of sediment and control targets are met then stormwater discharge quality will be maintained. Mr Poynter stated that *"...the effect of sediment losses, and the discharge of small concentrations of other contaminants entrained in the stormwater, will have no more than minor effects on the habitat or biota (including fish) in the Kerikeri River."*<sup>1</sup> In response to questions at the hearing regarding the lack of any assessment of effects on native fish, Mr Poynter said that the appendix to his original report included a list of resident fish species. He also stated that all concerns raised in the peer review were taken seriously and responded to, and the on-site ecological effects will be no more than minor in his view.

We consider that the ecological assessment undertaken by Poynter and Associates could have been more comprehensive in the first instance to cover the water quality issues and impacts on native fish. We are able to reasonably assume that any adverse effects on the Kerikeri River in these respects will be no more than minor provided sediment is treated and stormwater discharged to meet industry standards but that should be a conclusion, rather than an assumption, that is supported by a comprehensive assessment of effects. Nevertheless, we accept Mr Poynter's conclusion and further comments that the ecological effects will be no more than minor, provided that proposed sediment controls are implemented.

It is stated in the planning report that the effects of the plan change on the ecological values of the site and surrounding area will be no more than minor subject to the implementation of five conditions suggested in the peer review. We do not disagree

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<sup>1</sup> Poynter & Associates Environmental letter of 18 May 2009, Section 3.

with the intentions of any of those conditions which we record below so they are highlighted for attention as part of future development of the site.

The conditions are:

1. *A “no pets” policy on the basis that lizards, wetas and birds are vulnerable to predation by cats.*
2. *Signage on the foot bridge to alert people to the fact that no dogs or bikes are allowed on the track or in the Rainbow Falls Reserve.*
3. *The vegetated buffer on the southern boundary of the property be extended to include the whole area down slope of the escarpment (labeled 2A on sheet CO3 R5), or at the very least by 20 metres along the south and south western boundary, and planted with appropriate eco-sourced indigenous species.*
4. *Maintenance of water quality and natural character of the water courses through careful installation, maintenance and monitoring of channels and structures associated with stormwater discharge should be required.*
5. *Mechanism to limit sound and lighting effects to the Reserve and to minimize the effects of tracks for mobility scooters so as to mitigate disturbance to bird life and the natural values of the walking track. These matters should be required to be addressed in the design phase.*

The applicant responded to these suggested conditions in evidence. In relation to the first suggested condition Mr Dunn explained that the applicant did have a pet policy that had regard to the scenic reserve not being a significant habitat for kiwis or other threatened species. We do not accept the first suggested condition for the reasons described in our evaluation of the pets situation below in this decisions report but we are happy to see a policy such as that included in the plan change to provide some control over domestic pets. Mr Dunn pointed out that the second and fourth suggested conditions were better attached to the component parts of the proposal that require resource consent rather than to the plan change. We agree. We have provided for the second in the conditions applying to the resource consent granted to the bridge and the fourth is covered by the associated regional consents granted to the proposal. The third and fifth suggested conditions are matters for the design of the future development. The additional planting sought by the third suggested condition relates partly to the land which is being offered to DOC for incorporation in the scenic reserve. That area can be planted but that would need to be arranged in consultation with DOC.

We accept the position of the applicant in all these respects which will not, in our view, alter the conclusion of the planning report that the ecological effects of the development will be no more than minor.

Mr Poynter recommended in his evidence that a ‘condition’ be attached to the plan change requiring formal protection of the small stand of bush on the site, even though it does not qualify for protection under the District Plan rules. He also recommended that this ‘condition’ include a weed control programme being

instituted, which also falls outside the parameters of the District Plan. His evidence was that could be achieved by including specific rules and policies in the plan change or by amending the overall structure of the plan change to require these matters to be formally dealt with through a land use consent and detailed conditions. The applicant provided for this to be the case in the amended copy of the plan change presented through Mr Dunn at the hearing. We have adopted that amendment which is included in the modified plan change we have approved.

Overall, we find that the ecological effects from the proposed development that would result from the plan change will be no more than minor, subject to the implementation of proposed measures included in the modified plan change provisions.

### **9.3 Ecological – Pets**

The issue is whether residents of the proposed development could have domestic pets given the potential effects such pets could have on the local ecology, particularly in relation to any kiwis or other indigenous fauna in the reserve areas. Ms O'Connor had reported that subject to proposed conditions of consent her opinion was that the ecological effects of having domestic pets on site was no more than minor. This was based on the information with the application, including the ecological report by Poynter and Associates, the peer review of that report and further comments from Poynter and Associates. Although not included in the plan change provisions this information with the application stated there should be a range of mitigation measures which included a specific pet policy.

With respect to the introduction and control of domestic pets, the applicant put forward (in Attachment A to Mr Dunn's evidence) the following zone standard:

#### *“18.9.2.13 CONTROL OF DOMESTICS PETS*

*A mechanism for effectively limiting the number of domestic pets on the site and their possible movement into the adjacent scenic reserve shall be provided to the Council before any residential units are occupied”.*

In his evidence <sup>2</sup> Mr Penberthy stated:

*“ 1.3 The policy is designed for two things:*

*(a) To enable residents who require Guidedogs or service dogs to have those animals with them at the village; and*

*(b) For residents to keep longstanding pets with them for companionship and their mutual well-being.*

*1.4 We intend to place an upper limit on the potential pet population of 100, but I do not anticipate that the village will accommodate that many pets at one time. The exception from the general prohibition on pets is pet specific. If a pet dies (as opposed to a seeing-eye dog), it is not allowed to be replaced.”*

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<sup>2</sup> Additional Evidence of David Penberthy, para's 1.3 and 1.4.



We find that such a policy has regard to providing some control on domestic pets but we doubt it would be effective where there was concern for the protection of kiwis or other indigenous fauna.

Anecdotal evidence was given that kiwi were present on the adjacent reserve. Ms Smith from Vision Kerikeri produced a newspaper article regarding a large, mature brown female kiwi that was found at the site for the Kerikeri Heritage Bypass before construction. Mr Thompson from Rainbow Falls Road stated that he had regularly heard kiwi calling although he did not know how many may be present. No evidence was however given by expert witnesses that kiwi were present on the site or on the adjacent reserve. We had anticipated some advice from the DOC staff who attended the hearing but they did not mention kiwi in their evidence. In response to questions they said that the area was a “low density kiwi area” and that they concentrated their efforts on high density kiwi areas (where there are 7 or more kiwi). The DOC concerns about the proposal related primarily to the adverse effects on the amenity and recreation values of the walking track.

Mr Poynter, as the ecological expert for the applicant, concluded his evidence stating, that with regard to risks on wildlife from domestic pets from the site, “*The proposed formal Pet Policy combined with the limitation on total number of pets and the proposed perimeter fence (if designed and maintained to an ‘animal proof’ standard), should negate significant risks to wildlife from the domestic pets.*”<sup>3</sup> We note however that the proposed fence, being a close boarded 1.8m high fence, would not be to an animal proof standard and further, that in response to questions, Mr Poynter said that to eliminate any risks a ban on the keeping of domestic pets on the site would be the best solution.

During our visit to the site and to the surrounding area it was evident to us that the site and the reserve are situated adjacent to existing houses that have no controls on the keeping of domestic pets/animals. Further, the site and the surrounding area are identified in the Kerikeri-Waipapa Structure Plan adopted by the Council in September 2007 for future urban residential development. The Structure Plan refers to such development as being at a density of 10-12 dwellings per hectare or lot sizes ranging from 600-1000m<sup>2</sup>. There is no mention in the Structure Plan of banning/prohibiting domestic pets/animals from these future urban zones. We also note that there is no ban or prohibition on domestic pets/animals in the existing urban zonings within the general area of the site and within the Kerikeri and Waipapa townships area.

We find, in all the above circumstances, that the potential ecological effects of the development that would result from the plan change with the introduction of domestic pets will be minor. The banning/prohibition of keeping domestic pets/animals on the site cannot be justified on the evidence but we accept the applicant’s offer of a Pet Policy which does provide some acknowledgement of the potential ecological effects and is a better outcome than if the land was to be developed under a conventional ‘urban development/pattern’ with no such controls.

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<sup>3</sup> Evidence of Mark Poynter, para 48.9.

## **9.4 Infrastructure**

The application and the evidence from Mr Geddes addressed relevant details relating to water supply, wastewater treatment and disposal and stormwater management. These details are all able to be satisfactorily arranged. The proposal is for on-site wastewater treatment and disposal until such time as the Council's reticulated system has been upgraded and is able to service the proposed development. The area proposed for Stage 5 of the development, at the southern end of the site, would be used for treatment and disposal in the meantime. Stormwater will similarly be treated on site although some additional structures will need to be constructed on the adjacent DOC reserve. We note that as part of the consideration of the plan change and consent applications to the Council that we also considered consent applications to the NRC in relation to the discharges associated with wastewater and stormwater, and in addition the earthworks for site development. The conditions associated with those consents cover the potential concerns for these components of the future activity on the site.

Mr Geddes addressed the earthworks situation in the application details and again in evidence. He pointed out the soil conditions do not require special constraints for building foundations, that there would be a cut to fill balance achieved in the earthworks and that there are to be no significant earthworks near boundaries common with residential properties. Mr Geddes said the issues associated with the earthworks are essentially limited to the control of silt with appropriate arrangements being made as part of earthworks management with those being confirmed by way of conditions on the NRC consents.

We find from the evidence that all aspects of infrastructure and earthworks can be satisfactorily arranged for the development that would result from the plan change. For clarity in this decisions report we note that our consideration of the earthworks above is in relation to the plan change and not the consent application, which is discussed below.

## **9.5 Cultural and Archaeological**

We heard from the applicant that all tangata whenua groups had been notified of the applications prior to lodgement with the Council. However Ngati Rehia was the only iwi to respond by way of a submission. Ngati Rehia initially supported the proposal but subsequently submitted in opposition to the resource consent applications raising concerns about the intensification of land use for urban and lifestyle living. The applicant advised that consultation with Ngati Rehia had been ongoing throughout the application process and that a number of meetings had taken place with a view to resolving their concerns. The correspondence between those parties, discussed above when considering submissions, confirms that on-going consultation.

We consider it noteworthy that Ngati Rehia's submission made reference to an Iwi Management Plan, yet no consideration of this was provided by the applicant as part of the assessment of cultural effects in the application or in evidence. Section 74 (2A)(a) of the RMA requires the Council to *"take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority..."*.

Mr Dunn confirmed that he was aware of the Plan but did not know whether it had been given any status. Lou-Anne Ballantyne, Team Leader Policy Planning for the Council, was in attendance and advised that the Plan had earlier been lodged with the FNDC and as such it was recognised as having the status of an Iwi Management Plan under the RMA. We gave Mr Dunn the opportunity to review the Plan and he reported later in the hearing that in his assessment it was entirely consistent with the proposal. We accept that as being the case.

There are no recorded or known archaeological sites in the vicinity of the development, and no concerns were raised by any iwi group about areas of cultural and spiritual significance to Maori. However there is always the possibility of unearthing cultural material during the earthworks, so a condition has been imposed to ensure that consultation is undertaken with both the Historic Places Trust and Ngati Rehia in the event of unknown archaeological sites or koiwi (human remains) being uncovered.

An Archaeological Survey of the site was undertaken by Simon Best to try to verify that no archaeological sites exist on site. His assessment was based upon a visual survey of the land and some probing in the vicinity of the area for the proposed bridge abutments. He recommended that *"No further archaeological involvement is required in the areas proposed for this stage of the project."*<sup>4</sup> The reporting planner considered the archaeological investigations to be of a preliminary nature only and suggested that the development should be subject to further procedures to confirm that no archaeological sites are located on site. Mr Dunn disagreed with both propositions. He said that the Historic Places Act protects all archaeological sites and there is specific *'authority to modify'* procedures where any such a site is to be affected. He suggested that this matter is more appropriately dealt with by a simple cross reference statement in the plan change. We agree with this approach and are confident that the Historic Places Act provides sufficient protection for archaeological sites without the need for additional procedures, especially given there has been the visual survey and assessment carried out in this case.

We find that any adverse cultural and archaeological effects arising from the development that would result from the plan change will be no more than minor.

## **9.6 Traffic and Roding**

Information and an assessment on the likely traffic effects associated with the development were provided with the application details and addressed in evidence by Mr Gibson.

As described by Mr Gibson the traffic generated by the proposed development will be primarily that associated with residential and retirement activities and comprise cars and pedestrians after construction activities have been completed. In recognition of the additional traffic the applicant proposes that Rainbow Falls Road be widened to 7m sealed width at the completion of Stage 3 of the development and that work include particularly attention to the corner of that road which was a concern to submitters. The cost of this work would be met by the applicant. Also, following

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<sup>4</sup> Archaeological Survey by Simon Best, March 2006, Section 5.

discussions with Council officers, it was agreed that a 60m left-turn slip lane from Waipapa Road into Rainbow Falls Road was practical to be constructed to gain an additional 2m of width to 30m and then tapered to the existing width for an additional 30m. That work would also see a requirement for the installation of a man-hole for the existing drain and 55m of culvert pipe to allow the drain to be filled to accommodate the widening. The cost of this widening work is estimated at \$21,000. Mr Gibson's recommendation was that the applicant makes a contribution of 55%, being \$11,500, to the Council as its portion of the need for, benefit from, those works. We were given to understand that the Council's engineer had a different view on the cost apportionment, seeing a greater portion lying with the applicant. This is a matter that we do not decide but note it will need to be decided at a later stage between the Council and the applicant on the basis of more accurate calculations and cost estimates.

We find that the issues raised by submitters relating to potential roading and traffic effects are those that would normally be associated with experience in an area that is subject to changes such as is the case here at Kerikeri. The proposed works to Rainbow Falls Road and to the intersection with Waipapa Road would assist in addressing those concerns to a large extent and would result in the traffic effects from the proposal being adequately mitigated to be minor. We did agree with submitters that a footpath should be provided in addition to the widening of Rainbow Falls Road for the safety of pedestrians and we have provided for that in the plan change provisions.

Construction traffic will be no more than that associated with any development proposal, albeit extending over some time given the staged nature (potentially 10 to 15 years) for the development proposal, but this is nonetheless temporary in nature. The internal road or service lane along the eastern side of the site will remain and it is proposed to be sealed once use of it by construction traffic has been completed. Whilst there are some residences in reasonable proximity to that service lane we believe the spatial separation and existing and proposed planting in the intervening area to be sufficient to mitigate any effects to an acceptable degree. Mr Gibson stated that a Construction Management Plan would be prepared for each stage of the development.

We find that the roading and traffic effects associated with the development that will result from the plan change to be minor in nature.

## **9.7 Productive Soils**

The rezoning will result in the loss of its soils for productive purposes from the site. However we have concluded that this needs to be addressed in a strategic manner when balancing the growth requirements of Kerikeri with other needs of the district. The land has been identified in the Kerikeri-Waipapa Structure Plan for future urban purposes, is in proximity to existing and future urban development and can be serviced with urban infrastructure. No concerns were raised regarding the removal of the land from rural production.

We find that the effects of the rezoning in respect of productive soils to be minor.

## **9.8 Amenity**

Amenity values are defined in the RMA in the following manner:

*“...means those natural and physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”*

The existing site has a semi rural character. It is towards the edge of the Kerikeri Township and there is existing residential development adjacent and other land in proximity that will be developed for urban purposes in the future in accordance with the Structure Plan. The effects on amenity were covered by Ms Hawthorn and Mr Dunn in their evidence and Ms O’Connor in her planning report. We find, from that information and from our site visit and visit to the surrounding area, that the amenity values of the area are changing, and will continue to change, as the land already zoned for urban development is developed.

Overall, our view is that the site can be developed, subject to conditions and restrictions in such a way that ensures that the effects on amenity values and the level of amenity enjoyed by neighbouring properties will not be more than minor.

## **10.0 STATUTORY CONSIDERATIONS**

### **10.1 The District Plan**

The Section 74 RMA matters to be considered by a territorial authority when changing its district plan do not specifically require regard to the given to the District Plan. However, we would expect any proposed plan change to be reasonably consistent with the provisions included in an operative district plan.

The plan change seeks to change the zoning from Rural Living to a special zone, the Quail Ridge Country Club zone. In considering that proposed change we note that the current Rural Living zone of the site is described in the District Plan as an area of transition between town and country with that transition being expressed in terms mainly of residential intensity and lot sizes. The District Plan states:

*“As an area of transition, parts of the Rural Living Zone may from time to time be proposed for rezoning to urban purposes. An intermediate step towards urban zoning can be taken through the preparation of a structure plan, such as that proposed for Kerikeri. The structure plan would need to be formalized by way of a Plan Change before an urban zoning could be applied. While Council will be alert to the need for, and may initiate, a structure plan developers and landowners may also prepare and submit structure plans.”*

The current plan change, whilst not advancing a structure plan, is not therefore unexpected given this and other related statements in the District Plan.

## **10.2 Activity Status**

One of the primary considerations at the hearing of the plan change was the activity status for development within the proposed Quail Ridge Country Club Zone.

The plan change as notified provided for a range of permitted activities, such activities being permitted if they were shown on the Concept Master Plan, were in compliance with the permitted activity standards stated in the plan change and, in compliance with any other relevant standards for permitted activities in the district wide provisions of the District Plan. A controlled activity provision allows for a 10% variance over and above the building footprint shown on the Concept Master Plan. A restricted activity provision allows for the larger multi-storey buildings to be slightly relocated and minor increases in floor area made provided the other rules in the zone are met.

Whilst recommending approval to the plan change the reporting planner was of the view that development within the new zone should all be as restricted discretionary activities. The reasons were that activity status provided the Council with greater control over development, particularly it would provide for the Council to decline consent to a restricted discretionary activity application, whereas for a controlled activity application the Council could only impose conditions upon a grant of consent to it. We acknowledge there is some merit in that approach of the reporting planner. For the applicant, Mr Littlejohn expressed concern in legal submissions with that approach submitting that a sufficient level of detail about the project had been provided to warrant permitted/controlled activity status and that a restricted discretionary activity status would create significant problems for the development insofar that if, following disclosure to prospective residents, components of the project were disallowed after an unsuccessful restricted discretionary activity application, then the developer would be in breach of its legal obligations to license holders.

Mr Littlejohn's concerns were reflected in the evidence of Mr Penberthy and in the planning evidence of Mr Dunn. Mr Dunn saw greater merit in the controlled activity approach given the detailed and prescriptive nature of the Concept Master Plan; the risk of refusal of consent in his view being small; and, potential notification of consent applications creating additional delays in the process. He described the controlled activity approach as fitting the current "cascading" structure of the plan change and being consistent with the approach taken in other existing special zones in the District Plan.

In response to the concerns of the reporting planner, the applicant amended the plan change in a manner that moved away from the predominantly permitted activity approach for development to one that sees development in the proposed zone dealt with by way of controlled activities, and a restricted discretionary activity approach being adopted where an activity/development does not comply with the relevant standards.

We formed the view that the amended approach recommended by the applicant was most sensible and practical in the context of a special zone intended to provide for development of a particular form and nature as envisaged by this plan change. This is a special zone intended to provide for the development of the residential village, that being determined largely by the Concept Master Plan and the associated standards included in the plan change. In that context, we would not expect, and do not require, that a full range of proposed activities and development within that special zone be subjected to resource consent applications of a nature that may see elements declined consent when the opportunity to consider that overall concept is now presented to the Council by way of the plan change. We consider that if a special zoning is to be applied to this area for the specific development shown in the Concept Master Plan then that should be able to proceed in a relatively straight-forward manner unless there are reasons indicating that the plan change to provide for that special zoning should not be allowed at this time. That is not the case. The controlled activity approach will require resource consent applications but these are of a nature that the Council may only impose conditions on a grant of consent to those applications. We believe, from the information and evidence put before us, that such an approach is most appropriate for the consideration of future activities and development within the proposed zone.

We accordingly accept the amended provisions tabled by the applicant during the course of the hearing and with some minor modifications, we have adopted those as part of the decision we have recommended to the Council in this matter.

### **10.3 District Plan Objectives and Policies**

The plan change does not propose any alterations to the existing objectives and policies of the District Plan. It can however be assessed against those objectives and policies in order to assess whether it is consistent with the District Plan. The relevant objectives and policies of relevance are included in the following chapters of the District Plan:

- Urban environment (Chapter 7)
- Rural environment (Chapter 8)
- Recreation and conservation (Chapter 9)
- Natural and physical resources (Chapter 12)

These chapters of the District Plan contain objectives and policies for the current Rural Living, Residential and Conservation zones.

In these respects we note that the plan change is consistent with identifying land for urban development that is able to be serviced at some time in the future and which is connected to existing urban development and communities with a view to ensuring that a substantial part of the district will remain available for rural activities including horticulture. The urban environment provisions seek to enable urban activities to establish in areas where their potential effects will not adversely affect the character and amenity of those areas and with considerations for roading and infrastructure. In this case, the site is located in close proximity to established residential land uses and the adverse effects with regard to infrastructure have been assessed as being no more than minor. Some modifications to the proposed zone provisions are made in

relation to this land, as part of the approval of the plan change, that provide for any effects on character and amenity values to similarly be reduced to be minor. The proposed zoning is otherwise appropriate and it is similarly appropriate to move away from the Rural Living zone recognizing that parts of this area may from time to time be rezoned for urban purposes. Whilst the District Plan does not expressly identify the site for urban development, the Structure Plan does identify the area for medium density residential development.

The site is not identified as being a notable landscape but otherwise measures to be included as part of the plan change take account of its location alongside the Rainbow Falls walkway and the public views to the site from the walkway. Whilst it is recognized the plan change will result in the loss of soils for production purposes from the subject site, it is, in the context of the whole range of resource management issues in the District Plan, a better outcome to rezone land that is adjacent to existing urban development in order to minimize impacts upon rural productive land uses. Further, this area is identified for future development in terms of the Kerikeri-Waipapa Structure Plan. The site has been demonstrated as being suitable for development from an engineering perspective.

We find the plan change to be consistent with the relevant objectives and policies of the District Plan.

#### **10.4 District Plan Rules**

It was explained in evidence by Mr Dunn that the intended development for the site had some aspects that did not comply with the development controls of the Rural Living zone of the District Plan. These are the controls relating to residential density, scale of activities, building height, impermeable surfaces and traffic intensity. These would result in the proposal being a non-complying activity in the Rural Living zone which, Mr Dunn explained, was part of the reason for a plan change application. It is not necessary for us to assess those matters given the proposed zone would provide for the intended development. We do however note that the non-compliances largely arise from the type of development that is proposed. That is, a retirement village that includes a “bed care facility” and which is at an intensity and site coverage that is greater than provided for in the current zoning and further, where the traffic intensity would be correspondingly higher. The bed care facility would be 2-storeys high. The two apartment blocks would be 3-storeys with a building height of approximately 11.1m and the clubhouse and care facility/serviced apartment building would be to a height of 9m in lieu of the 8m permitted activity limit and the 10m limit as a restricted discretionary activity. The plan change would provide for these standards and dimensions as either permitted activities or controlled activities.

We have considered the plans of the proposal and in the context of the site we do not consider that these aspects of the future proposal should prevent it being able to proceed. We recognize the particular nature of a retirement village, the large size of the site and also those parts of the site where the higher buildings would be located have been selected because the effects of greater than an 8m height limit would be minor.



We find the plan change acceptable in these respects, recognizing that this becomes a special zone intended for a specific form of development.

### **10.5 District Plan Format**

The plan change can readily be accommodated within the format of the existing District Plan. It does not propose a change to the objectives and policies of the District Plan and in that respect does not conflict with the format or approach adopted in the District Plan.

### **10.6 Kerikeri-Waipapa Structure Plan (“Structure Plan”)**

We recognize the non-statutory nature of the Structure Plan and the norm that we should give limited regard to such non-statutory documents that have not been subject to the scrutiny of public notification in Schedule 1 of the RMA. Structure plans of that nature can, at best, offer some guidance regarding the direction in which a community and its Council may be moving in terms of its planning.

However in this case the evidence was there had been consultation and general acceptance of the Structure Plan. We discuss the Structure Plan below and record that we have given greater regard to it than may otherwise be the case because it does provide a reasonable indication as to what the community’s aspirations are for Kerikeri although it, or parts of it, have not been carried through into the District Plan. The plan change seeks to carry the Structure Plan provisions for the subject land through into the District Plan.

The applicant gains some support to the proposed plan change by way of the Structure Plan. This was approved by the Council in September 2007. It includes the site as being within an “Urban (Medium Intensity) Residential” policy area (UR), and in particular in the UR4 “sub-area” which lies between the Kerikeri River, Waipapa Road and the heritage bypass. The sub-area is one of six such future residential areas in the Structure Plan. All of the land in the UR4 policy area and the other urban residential policy areas on the northern side of the river are shown as being within the “Wastewater Reticulation Area of Benefit (2006 to 2016 LTCCP)”.<sup>5</sup>

It is noted in the Structure Plan <sup>6</sup> that the UR policy area is generally clustered around the commercial and employment nodes of Kerikeri and Waipapa. It identifies four outcomes as:

- To provide for urban development with development patterns of around 10 to 12 dwellings per hectare or lot sizes ranging from 600sqm to 1000sqm;
- To establish connectivity between residential developments to encourage walking non-vehicle transport modes;
- To maintain and enhance the environmental quality of the sensitive waterways these areas adjoin; and
- To provide living choices within these urban areas.

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<sup>5</sup> The LTCCP is the Long Term Council Community Plan that includes Council's allocation of funding to projects

<sup>6</sup> Kerikeri-Waipapa Structure Plan prepared by the Far North District Council and approved by it in September 2007, Section 3.2.17

The Structure Plan then deals with implementation and refers to the possibility of a new zone but that consideration will also be given to the existing Residential zone of the District Plan. The UR4 area is further identified as having a “medium priority” for rezoning<sup>7</sup>. This current request to change the zoning of the land can therefore be considered to be consistent with the Structure Plan. We note too that the UR4 is subject to “triggers” which are wastewater infrastructure provision and a public accessway linking across the Kerikeri River. The applicant can therefore justifiably gain some support from the Structure Plan although we acknowledge this is a non-statutory document.

We find the plan change to be consistent with the Structure Plan insofar as the land lies within an area identified for future residential growth which is in proximity to the town centre; provision is made for appropriate infrastructure (particularly wastewater treatment and disposal); and, it would not appear to prejudice the continuing or future development of other areas in Kerikeri.

The Structure Plan builds on the District Plan in the manner that is expected of such plans but unfortunately the Council has not advanced the particulars of it, or perhaps the refinement of it, since approving it in 2007 in a manner that provides any sequencing for residential rezonings to take place through the Structure Plan area. Clearly a strategic approach to the sequencing of development would be both sensible and practicable, and better relate to the provision of infrastructure, rather than leaving residential rezoning proposals to be advanced by way of private plan changes on a piecemeal basis. That too, would be more in line with the sustainable management purpose of the RMA. However, in this case, the applicant has advanced a private plan change that has had due regard to all relevant considerations. We are not in a position to regulate the uptake of such land nor do we have any information on the demand for it in any manner to demonstrate that such considerations should be fatal to such an application. Indeed, an effects based consideration of the plan change as required by the RMA demonstrates to us that the plan change is acceptable in RMA terms.

### **10.7 Northland Regional Policy Statement (“RPS”)**

In relation to Section 74 and Section 75 RMA, regard is to be given to the operative RPS and the regional plans administered by the NRC. The RPS provides an overview of resource management issues and includes relevant provisions. We note that given a district plan must give effect to any regional policy statement (Section 75(3) RMA) these are regional planning provisions that have been taken into account in the District Plan and in terms of our evaluation of those associated provisions. There are also the regional plans being the Water and Soil Plan, Air Quality Plan and the Coastal Plan as may be appropriate.

From our consideration of these provisions, and the information and evidence that was put before us, we come to the conclusion that the plan change is not inconsistent with any of the regional planning documents. The plan change does not seek to alter any provisions of the District Plan in any manner that would impact on regional considerations. It is also relevant to note that specific resource consents

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<sup>7</sup> Ibid, Table 3.14.

may be required under these regional plans. That includes the seven regional consents associated with this plan change.

We find, from the information and evidence before us, that the plan change is not inconsistent with the regional planning situation.

### **10.8 Other Management Plans and Acts**

We note there were no relevant management plans under any other Acts. We have discussed the Ngati Rehia Environmental Management Plan (2007) above that is an iwi planning document identified as being of relevance.

### **10.9 Section 31 RMA**

The Section 31 RMA functions include requiring the control of any actual or potential effects of the use, development, or protection of land. The range of actual or potential effects arising from the plan change has been addressed in the plan change documentation and in the Council's planning report. The potential adverse effects have been highlighted by submitters in opposition to the plan change and we have discussed those effects above. We are satisfied that all actual and potential adverse effects associated with the plan change have been taken into account in preparing the plan change provisions and the applicant and ourselves have made modifications to the plan change provisions to specifically address concerns that were expressed by submitters and the reporting planner. We have incorporated those modifications into the approved plan change and which in our view improve it.

### **10.10 Section 32 RMA**

The plan change documentation includes a Section 32 RMA evaluation, which addresses the relevant matters. That is supported by the further information provided in response to the Section 92 RMA request and by the evidence presented at the hearing. We consider that evaluation satisfies this section of the RMA. It includes a consideration of alternative methods and relative benefits and costs of four different options and shows that the plan change requesting a special zoning is the best option for the site rather than the current rural use, a Residential zoning or a resource consent application.

We accept that analysis and the conclusion.

### **10.11 Part 2 RMA**

We find that the plan change is in accordance with the sustainable management purpose of the RMA (Section 5). It will enable people and the community to provide for their social wellbeing and for their health and safety whilst sustaining the potential of the natural and physical resources of the site to meet the reasonably foreseeable needs for future generations; will serve to safeguard the life-supporting capacity of the water and ecosystems relating to the site that are important; and, will avoid, remedy, or mitigate any adverse effects of the proposed activity on the environment.

The Section 6 matters of national importance require us to recognize and provide for the preservation of the natural character of the coastal environment, wetlands, and

lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development. Further, to recognize and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers. Our concern in these respects is for maintaining the existing public access along the Kerikeri River and adjacent to the site. The proposal does not adversely affect that walkway in any more than a minor manner and measures are included to provide some screening of the future development from it.

The Section 7 other matters we are to have particular regard to, and which are of relevance, relate to the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values and the quality of the environment; the intrinsic values of ecosystems; and, any finite characteristics of natural and physical resources. We find the plan change is consistent with these principles. The plan change provides for the land resource to be efficiently used and the provisions include controls that will see any potential adverse effects suitably avoided or mitigated.

We did not receive any information relating to concerns expressed by tangata whenua in the submission from Ngati Rehia in relation to Section 6, 7 and 8 matters. We understand they are working with the applicant to ensure any concerns are addressed.

In all the circumstances we find the plan change to be consistent with the purpose and principles of the RMA.

## **11.0 CONCLUSIONS ON THE PLAN CHANGE**

We have given consideration to all the RMA provisions in relation to the plan change, along with all the information presented by the applicant, the submitters and the reporting planner. We find that the plan change can be approved in accordance with our commentary above in this decisions report.

## **12.0 THE CONSENT APPLICATION**

### **12.1 The Principal Issues that were in Contention**

The principal issues that were in contention in the consideration of the consent application were:

1. The effects on the environment of the proposed bridge.
2. The effects of the bridge, along with the vegetation clearance and earthworks for the bridge foundations and the connecting walkways, upon the Rainbow Falls walkway.
3. The effect of the vegetation clearance and earthworks associated with the construction and upgrading of stormwater drains and outlets leading to the Kerikeri River upon the Rainbow Falls Walkway.

4. In relation to the bridge component of the application which is a non-complying activity, whether the Section 104D threshold test of the RMA can be met in relation to the adverse effects of the activity on the environment being minor and the application being for an activity that will not be contrary to the objectives and policies of the relevant district planning documents.

## **12.2 Consent Application in Two Parts**

The consent application is in two parts. Firstly, it is for the bridge across the Kerikeri River, along with vegetation clearance and earthworks for the bridge foundations and the connecting walkways. Secondly, for vegetation clearance and earthworks associated with the construction and upgrading of stormwater drains and outlets leading to the Kerikeri River. These two parts of the consent application are discussed separately in the following commentary and where that is not the case we make it clear they are being discussed concurrently.

## **12.3 The Bridge**

Ms O'Connor had recommended that the application for the bridge be refused because:

- a) *The adverse effects of the foot bridge on the use and enjoyment of the Rainbows Falls reserve and walkway are more than minor and outweigh any degree of public benefit associated with the linkages that would be provided by the bridge.*
- b) *The construction of the footbridge results in vegetation removal and the introduction of structures into the environment that will detract from the walkway experience."*

In the body of her report Ms O'Connor said, in relation to the bridge:

*"Overall the effects of the proposed resource consent works on the reserve are considered to be more than minor as the works will enable a form of use of the reserve that does not provide any benefit and will also detract from the use and enjoyment of the walkway and adjoining reserve land."*

An engineering report from Peter Geddes of Hawthorn Geddes, Engineers and Architects Ltd was submitted with the application. His report covered:

- The reason for the bridge;
- Why the location for the bridge had been selected;
- An indicative design and the predicted floods that are associated with the bridge
- The 100 year flood predictions for the site based on figures from the heritage by-pass and which have been extrapolated to the site and the effects of those predictions; and

- Comments regarding DOC and the effect of the bridge on the walkway;

We note there were no unfavourable comments received from either the Council or the NRC engineers regarding the actual design and construction of the bridge. Indeed, the Council Engineer had reported:

*“It is expected that the footbridge and the footpaths would provide connectivity to the existing walkways and would be available for use by the general public.”*

A number of submissions were received regarding the bridge and those in opposition to it referred to the potential restriction of the river due to abutments/foundations which will cause flooding and possible erosion. This concern was addressed in the evidence of Mr Geddes who confirmed his previous report and, in relation to the bridge design and the effects on the river, he covered the following matters:

- The bridge is a similar length to the new pedestrian bridge near the Stone Store. The construction is lighter; both in appearance and structural weight, and the foundations are considerably lighter.
- The factors that influenced the proposed location of the bridge were high flow in the Kerikeri River; location relative to public access to both ends of the bridge; safe protection of the sewer pipe to be supported by the bridge; the location of the existing Tuatahi sewage pump-station; the location of the Rainbow Falls walkway; and the DOC requirements to allow unobstructed use of the track.
- The bridge location selected has the following features: it is just above a steeper section of the Kerikeri River and therefore is at a location where effects of flooding are more predictable than at other potential locations; the banks are stable on both sides of the river; the southern end exits directly onto an existing access strip that leads from the southern bank of the Kerikeri River onto Tautahi Place that is already subject to built development; the Tuatahi pump station is immediately east of the southern abutment; there is sufficient room and suitable topography to facilitate foot passage under the bridge and to create a linking walkway access to the track from the bridge with suitable barriers to discourage inappropriate use; there is no impediment to flow in the river even for extreme flood events; and, services associated with the bridge will be protected under the walkway and well protected from potential damage.
- In order to span the river without piers in the waterway, and to facilitate construction without impinging on the waterway by craning from each bank, a steel arch supported bridge is proposed. As there is no proposal to build any supports within the Kerikeri River bed, consents for construction work within the river will not be required.
- The application shows predicted floods that are associated with this bridge. The 100 year flood calculated for the heritage by-pass has been extrapolated to the subject site. This information has then been site verified against the extent of flooding measured after the extreme March 2007 flood. The

prediction and the effects of the March 2007 flood have strong correlation and therefore are seen as reliable measures of the hydrology of the Kerikeri River.

The evidence from Mr Geddes also covered the reasons why alternative locations for the bridge had been rejected. He also stated that the bridge would require a building consent from the Council and a “concession”, or approval, from DOC because part of the support structures for the bridge would be on the DOC reserve.

A landscape and visual assessment had been provided by Hawthorn Landscape Architects Ltd with the application. The report was peer reviewed by Littoralis Landscape Architecture (Littoralis) who noted that:

- *These individuals (located adjacent to the bridge) will notice a significant increase in the level of foot traffic and the bridge will enable users to gain more elevated views to the outdoor living areas of the properties on eastern and western side of the bridge. These effects will be immediate on completion of the bridge, will be difficult to mitigate and will not diminish over time. Short term amenity and visual effects will also be experienced by these viewers in relation to construction of the bridge. These effects are likely to be moderate to high in magnitude.*<sup>8</sup>

At the hearing Ms Hawthorn, a Landscape Architect who lives in Kerikeri and uses the Rainbow Falls walkway, stated in evidence <sup>9</sup> that:

*“The footbridge will initially generate moderate adverse visual and landscape effects upon the residents of Tuatahi Place, particularly the four main residences that front onto the bridge. However, proposed mitigation planting of the bridge access points and filtered planting along the reserve edge will minimize this to minor levels”.*

Ms Hawthorn also referred to the footbridge providing pedestrian and mobility scooter access from the development to the township and golf course; that the bridge will enable the general public to cross the river; and, that the walkway will be used by more members of the community. Her view was that the potential adverse effects of the bridge will be minimised through the appropriate design and colouring of the structure. She was of the view that indigenous planting around the entry/exit points and around the existing walkway will thicken up the existing bush and soften and link the bridge into the landscape, that this will result in the bridge looking like it has been part of the landscape for many years and that the mitigation planting will be carried out in consultation with DOC. In relation to the four houses in Tuatahi Place it is proposed to landscape the area around the bridge to screen the structure from view and provide privacy to the land owners.

Ms Hawthorn was also of the view that the presence of the bridge along the river was not inconsistent with the present walkway experience, and referred to the new footbridge at the Stone Store and the Heritage Bypass bridge which are built elements which are now accepted features of the walkway experience, as would this footbridge become, once installed with the mitigation landscaping established.

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<sup>8</sup> Peer Review letter dated 22 April 2009 by Littoralis, Section 4.1

<sup>9</sup> Evidence of Christine Hawthorn, page 13

Mr Dunn considered that the bridge will have public benefit and is in line with the Kerikeri-Waipapa Structure Plan as it provides a pedestrian linkage across the Kerikeri River. He was of the opinion that the bridge is not contrary to the District Plan's objectives and policies which highlight the need for integrated (and multi use) management of conservation and recreation areas. He considered that little consideration had been given to the wider Kerikeri area, including urban design principles of connectivity. Mr Dunn noted that the new Heritage Bypass bridge and new Stone Store bridge were located on the same or similar Conservation zoned/reserve land. In his view consent could be granted subject to mitigation measures identified being translated into conditions of consent.

Ms Smith, representing Vision Kerikeri, was of the view that the Rainbows Falls walkway had already been compromised by the Kerikeri Heritage bridge and, although the new footbridge would further compromise the walkway, she disagreed with the view that there is no public benefit as the establishment of the bridge represents an important public opportunity to connect Rainbows Falls track on the north side of the river with the south side. Ms Smith said that it would permit linkage to defunct but old tracks on the south bank; that there is a shortage of loop tracks; and, that a walking track downstream and a bridge connection across the river were envisaged in the Council's Draft Walking and Cycling Strategy 2007. She said that Vision Kerikeri considered the public benefits of the bridge exceed the negative aspects of another intrusion on the track.

Messrs Taylor and Riddell from DOC presented written evidence stating that the bridge would have a negative impact on the track experience and that there was no real benefit to current track users from the bridge which will only benefit the residents of the proposed retirement village. Mr Riddell considered that a new constructed element to the track would result in a loss of amenity values and adversely affect the track experience of a riparian bush walk and that consent for the bridge should be refused. In response to questions Mr Riddell accepted the Section 6(d) RMA matter of national importance regarding public access to the river margin was relevant but he was not satisfied that all alternatives had been addressed. The DOC officers confirmed that no concession for the bridge on DOC land had been applied for or granted, that different conclusions may have been reached if the bridge was from Rainbow Falls Road, that they had not investigated alternatives and that DOC had no plans at this stage to do so.

Mr Bingham presented evidence as a resident from Tuatahi Place representing a number of residents who opposed the building of the bridge. He stated that he had owned one of the properties adjacent to the location for the bridge for about 7 years and lived there for about 2 and a half years and during that time had seen the water up the bank about three times. He covered the following:

- The bridge's inappropriate location and problems that will be caused by parking during the summer.
- Flooding and the effects the bridge will have on the river due to the supporting legs being under about 3 metres of water at certain times. That they were "*bottlenecking the river at one of its faster stretches.*"



- Debris which he has seen floating down the river which will become trapped at the bridge.
- Dogs and cats, bikes and mobility scooters, which will have free access across the bridge.
- That if the pumping station was not there he did not think the applicant would want the bridge and was only putting it in to get to the pump station.
- The beauty of the river and why he did not think the location was the best location for the bridge and alternative locations that should be considered

In response to questions Mr Bingham did say that he would use a bridge if it was installed but just not there as it is the wrong location.

Mr Alexander representing both himself and the Kerikeri Districts Business Association provided written evidence in support of the proposal. We note he was a submitter to the resource consent application and a further submitter to the plan change application but there was no submission from the Business Association. He said that they were not consulted over the social and economic benefits to the townships that the bridge would provide; that the bridge will have the opposite effect to that stated by the reporting planner; the adverse effects of the bridge could be mitigated; the track is not that significant that the bridge would alter its amenity value; that if you look at the outcomes sought in the Kerikeri-Waipapa Structure Plan the bridge should be approved; and, potential effects on occupants of dwellings located adjacent to the bridge are a natural consequence of urban living.

Mr Skinner spoke in support of the bridge. He said that it would provide easy access to central Kerikeri and is an important part of the proposal, just as the bridge adjacent to the Stone Store and he could not understand how the ecological effects would be any different from that recent structure.

During questioning of those giving evidence it was apparent to us that although the further access across the river had been identified as a future facility, no specific locations had been identified and no work to identify the most appropriate location(s) had been carried out. The applicant's evidence was that the proposed location was most appropriate and that other alternatives had been dismissed in the investigation it had carried out.

During our site visit and visit to the surrounding area it was evident to us that the Rainbow Falls walkway is within a rapidly growing urban area, is not a walkway without any man made structures in place and has already been compromised or improved (depending on your viewpoint) by some of the structures. For instance:

- At the Rainbows Falls Road end there is an extensive developed area including a carpark, toilet, concrete footpaths/walkway, boardwalks, viewing platforms for the falls, seats and signs.

- At the new Heritage Bypass bridge there is a large concrete bridge and roading network, man made stormwater retention ponds, a concrete footpath under the bridge to the entrance to the bush part of the walkway, signs along the walkway, seats along the walkway and also a number of manmade drains and boardwalks.
- At the Stone Store there is a new pedestrian footbridge, new concrete footpaths, signs and seats.

Further, the existing houses in Tuatahi Place are also readily visible from the walkway which reduces the element of being in a remote location as does the traffic noise that can sometimes be heard. We acknowledge the concerns of those residents and that the effects of the bridge will initially be of some significance but these will be mitigated by the landscape planting proposed and included in the conditions of consent. The bridge also needs to be considered in the context of the Council reserve area on the southern bank. We do not accept that residents residing alongside reserve areas can expect those areas to be exempt from any public facilities and development such as the bridge.

We find from the evidence and the site visit that whilst clearly the bridge is intended as an amenity for the residents of the proposed development it would also provide a convenient point of access to the reserve walkway, other than travelling north to the Rainbow Falls or otherwise from the Heritage Bypass bridge. It is located at the southern end of the walkway adjacent to the developed part of Kerikeri and would serve those residents accordingly. In all of these respects we acknowledge the evidence of Mr Riddell regarding the desire to not interrupt the experience of the walkway but we find the option to enter the walkway from this location to be a useful public amenity and we do not find the walkway to be in such a pristine state or location that the bridge would detract from it in any more than a minor manner.

As part of the resource consent, landscape and other mitigation measures are proposed to reduce the effects of the bridge and with these conditions imposed on consent we find the landscape and visual effects of the proposed bridge to be minor. We have added into those conditions the need for the landscape planting at the bridge ends to be arranged with the specific needs of the residents close to the bridge in mind given the landscape planting proposals we received were necessarily generalised at this stage, although sufficient to demonstrate that this could be satisfactorily arranged.

We acknowledge that the applicant will still have to apply to both the Council and DOC for various other concessions before the bridge could be built. Also, the vegetation clearance and other works in both the DOC and Council reserves will require formal concessions under the Reserves Act 1977.

Residents of Tuatahi Place were concerned about additional on street car parking in the cul de sac. This is a matter that can be readily addressed by the Council in limiting car parking within that street completely or to a residents only scheme. This is included as an advice note to the consent granted for the bridge.

We note further that the bridge is in accord with national and regional transport initiatives, as reflected in the Northland Regional Land Transport Strategy as well as district initiatives that include the Kerikeri /Paihia Track Strategy. These documents all seek to achieve walkway linkages in the community.

After the evidence was given and before the right of reply from the applicant Council officers did, as is normal practice, present their reports and during this period Mr Shand, Council's Engineer expressed a concern that the level of the proposed bridge over the Kerikeri River may not have been determined with sufficient regard to the potential consequences of climate change. He explained that those consequences relate to an anticipated greater frequency of storm events and high intensity rainfall with associated impacts on the flood levels in the river. The flood levels could accordingly be higher if these consequences were not taken into account.

Mr Geddes was not in attendance at the hearing to confirm whether or not he had taken account of potential climate change effects. From the reports and evidence given by Mr Geddes it appeared that this matter may not have been addressed. Accordingly, we gave notice at the conclusion of the presentations at the hearing on 3 March 2010 that we needed to adjourn the hearing pending receipt of additional information from the applicant to address the matter of climate change in relation to the design of the bridge.

That information was received in the form of a supplementary statement of evidence from the applicant's engineer, Mr Geddes, on 12 March 2010. Mr Geddes acknowledges in that evidence the concern and that the indicative design drawings for the bridge do not expressly identify how or whether the effects of climate change were taken into account in the design. He addresses the predicted rainfall from a 100 year flood event and the associated increase in peak river flow and the conservative approach he has adopted in the bridge design. He concludes from the analysis that there is sufficient freeboard below the bridge to accommodate an increase of up to 5% of rainfall volume over the life of the bridge and that provides ample freeboard to allow for the predicted effects of climate change on local rainfall. In fact, he states, it will accommodate more flow than current predictions have estimated.

We accept that expert evidence. We note too that it was not contested by any of the parties to the hearing.

In relation to the bridge component of the application we find that the effects upon the environment can all be satisfactorily managed to be minor, that view being supported in the expert evidence produced on behalf of the applicant. The bridge, and the associated vegetation clearance and earthworks for the bridge foundations and the connecting walkways, will not affect the Rainbow Falls walkway in any more than a minor manner.

#### **12.4 Effects of the Vegetation Clearance for Stormwater Purposes**

The vegetation clearance is associated with works that are largely modifications of existing arrangements but do have the potential to impact upon the walkway. In this respect Messrs Riddell and Taylor from DOC expressed concerns for the potential

impact of overland flow paths on the condition of the track. Mr Geddes explained in evidence how the three discharges across the track would be improved by a replacement pipe in one case and by upgrading the culverts for the other discharge routes. This work would need to be carried out in consultation with DOC which administers the Reserve area in which the track is situated.

In our consideration of this matter as part of the suite of consents required from the NRC, we concurred with the evidence from the DOC representatives that when this work is carried out it should not only be in consultation with DOC but the effectiveness of that work could be improved by there being related conditions on the consent for the stormwater discharge as granted by NRC. In recognition of the limitations of imposing conditions that affect the third party's land we included the concerns expressed by DOC representatives at the hearing as an advice note to the NRC's stormwater consents, that condition referring to the need for the energy of the storm water discharges to be effectively dissipated. In this manner, we have recognised the concerns of DOC and have endeavoured to see those concerns are satisfactorily addressed by the applicant and leave those matters for the regional consents.

We find with those measures in place that the effects of the vegetation clearance are minor.

### **12.5 District Plan Objectives and Policies and Other Provisions**

We have had regard to the objectives and policies of the District Plan in our considerations of both the components of the consent application. We find the proposed works are consistent with those objectives and policies subject to measures that are included as part of those proposed activities and conditions that are imposed upon the consent to them. Those measures and conditions relate to landscape planting around the bridge abutments in order to mitigate potential adverse effects upon local residents; replanting of cleared areas; sediment control measures associated with the vegetation clearance and earthworks; and, regard to the existing walkway in order to ensure its surface and construction is satisfactorily maintained.

We have also had regard to the assessment criteria in the District Plan relating to buildings, vegetation clearance and earthworks in considering the consent application.

### **12.6 Other Relevant Plans and Matters**

Whilst we acknowledge the non-statutory nature of the Kerikeri-Waipapa Structure Plan we note that a further link across the Kerikeri River is included within the matters sought to be achieved within that plan and that the proposed bridge would serve to meet that aspiration.

### **12.7 Northland Regional Planning Documents**

The two components of the consent application do not conflict with any of the regional planning documents. Principal concerns arising out of those regional

documents are water and soil related matters. We note the proposed pedestrian bridge is a permitted activity according to Rule 29.1.4 of the Regional Water and Soil Plan but otherwise the diversion and discharge of stormwater associated with these proposed activities can all be satisfactorily arranged following standard procedures for doing so.

We find the consent application to be consistent with the regional planning documents.

### **12.8 Sufficient Circumstances**

We find that the proposal for a bridge across the Kerikeri River is somewhat exceptional and, together with the existing bridges at the Stone Store and Heritage Bypass, a proposal that is unlikely to be replicated in the near future. We find further, from the evidence, that this is an appropriate location for such a bridge to be located, subject to satisfactory mitigation being put in place in relation to neighbouring residents. It is able to be arranged in a manner whereby the adverse effects of the bridge on the environment are minor and it is part of an application for an activity that will not be contrary to the objectives and policies of the District Plan. We find that these are circumstances sufficient to distinguish the proposal from other applications that may be advanced to the Council and that justify the granting of resource consent to it as an exception to the District Plan.

### **12.9 Section 104 RMA**

We are satisfied that the provisions included in Section 104 are satisfactorily met.

Section 104 allows us to consider the positive or beneficial effects of the proposal and in these respects we find the bridge provides for additional connectivity in the area for the benefit of the community; an additional access into the reserve area; facilitates recreation and wellbeing; and, is in accord with national and regional transport initiatives and district planning initiatives included in the Structure Plan.

### **12.10 Part 2 RMA**

We find that the purpose of the Act is met by the proposed bridge and the associated vegetation clearance and earthworks to provide for it and also by the vegetation clearance associated with the stormwater disposal arrangements for the site. These proposals will serve to promote the sustainable management of natural and physical resources. In this context they serve to sustain the potential of the natural and physical resources of the land to meet the reasonably foreseeable needs of future generations; safeguard the life-supporting capacity of air, water, soil, and ecosystems; and, avoid, remedy or mitigate any adverse effects arising from it upon the environment (Section 5).

The Section 6 matters of national importance require us to recognize and provide for the preservation of the natural character of the river and its margins, and the protection of them from inappropriate subdivision, use, and development. Further, to recognize and provide for the maintenance and enhancement of public access to and along the river. The proposals cannot be considered to be inappropriate use and

development and maintain and enhance the opportunities for public access along the river margin by introducing the bridge at this location. We did not receive any information relating to concerns by tangata whenua in relation to Section 6, 7 and 8, RMA matters.

In relation to Section 7, we have given particular regard to:

- The efficient use and development of natural and physical resources
- The maintenance and enhancement of amenity values
- Maintenance and enhancement of the quality of the environment
- Any finite characteristics of natural and physical resources

and are of the view that these are all satisfied by the nature of the proposals in the consent application and the conditions that apply to the consent granted to them. The natural and physical resources and amenity values represented by the access along the Kerikeri River is of importance in relation to both the subject land and the connectivity that is able, or potentially able, to be provided for the public enjoyment of the riparian margins.

### **13.0 CONCLUSIONS ON THE CONSENT APPLICATION**

We have given consideration to all the RMA provisions in relation to the consent application along with all the information and evidence presented by the applicant, the submitters and the reporting planner. We find that the application can be granted consent, subject to conditions, in accordance with our commentary above in this decisions report. Our reasons are included with the decision below.

We see no reason for lapsing period for the consent to be for other than the standard period of 5 years from the date of the consent as provided for at Section 125 RMA.

### **14.0 THE COMMISSIONERS' RECOMMENDATION ON THE PLAN CHANGE**

Having had regard to the provisions of the Resource Management Act 1991 and in particular to Section 74, Section 75, Section 31 and Section 32; and

Having considered the actual and potential effects on the environment of the proposed plan change and the avoiding, remedying and mitigating of those effects; and

Having heard from the applicant for the proposed plan change, and having considered the submissions, the further submissions, the evidence in support of those submissions and further submissions, and the Section 42A RMA report at the hearing of the proposed plan change and submissions; and

Acting under a delegation from the Far North District Council to hear and recommend to it decisions on the proposed plan change and the submissions and further submissions; and

For the reasons set out in the text of this decisions report, as above and as below, our recommendations are as follows:

**That pursuant to Clauses 29 and 10 of Schedule 1 of the Resource Management Act 1991,**

- a. The Proposed Plan Change 2 to the Far North District Plan is approved with modifications; and**
- b. Those submissions and further submissions which support the Proposed Plan Change are accepted to the extent that the Plan Change is approved with modifications; and**
- c. Those submissions and further submissions which seek further changes to the Proposed Plan Change are accepted to the extent that the Plan Change is approved with modifications; and**
- d. Except to the extent provided above, all other submissions and further submissions are rejected.**

**Reasons:**

1. In a strategic sense the proposed plan change provides an environmentally sound option for providing for urban growth in the Far North District as indicated in the Kerikeri – Waipapa Structure Plan.
2. The plan change will not be inconsistent with the Northland Regional Policy Statement in that it represents a better outcome than the existing zoning in respect of efficient growth management.
3. Overall the adverse effects of the proposed development on the environment will not be more than minor and will be able to be effectively managed by way of the provisions in the plan change that will be required to give effect to the proposed development, those being in accordance with the modifications to the plan change as a consequence of this decision.

**15.0 THE COMMISSIONERS' RECOMMENDATIONS ON THE INDIVIDUAL SUBMISSIONS TO THE PLAN CHANGE**

The decisions in respect of each submission, on an issues basis, and the further submissions, are set out in the attachments along with the consequential modifications to the text of the District Plan as a result of the plan change being approved.

## **16.0 THE COMMISSIONERS' DECISION ON THE RESOURCE CONSENT APPLICATION**

**Pursuant to Sections 104, 104B and 104D of the Resource Management Act 1991**, consent is **granted** to the application (being RC 2080821) by Kerikeri Investments Limited for construction of a bridge primarily for pedestrian use, across the Kerikeri River, along with vegetation clearance for the bridge foundations and connecting walkways and for vegetation clearance and earthworks associated with the construction and upgrading of stormwater drains and outlets leading to the Kerikeri River subject to conditions and for the following reasons. We record that it was found from the evidence that no earthworks consent was needed for the proposed vegetation clearance and earthworks associated with the construction and upgrading of stormwater drains and outlets. Further, we record that this consent does not include that part of the application that seeks consent to the *“construction and use of a ‘country club’ or residential village...”* because that part of the application was put on hold by the applicant.

**Pursuant to Section 108 of the Resource Management Act 1991, this consent is subject to the following conditions:**

### **1. In Relation to the Bridge and Associated Works**

The consent holder shall submit to the Council's Manager, Resource Management for approval, plans of, and information on, the proposed pedestrian bridge and associated vegetation clearance, earthworks and landscaping before any construction works are undertaken. The plans shall be generally in accordance with the site engineering and landscape concept plans included in the application.

The plans and information shall contain the following:

- (a) A record of the consultation undertaken with the Department of Conservation, landowners and occupiers in Tuatahi Place and with the District Council (as owner of the southern riverbank reserve).
- (b) A description of the Reserves Act 1977 Concession and any processes expected to be undertaken and their timing.
- (c) Plans and specifications of the vegetation affected, including species age, height and values, along with earthworks cut and fill details and volumes.
- (d) Reports from an ecologist and from a landscape architect on the affected vegetation, along with proposed effects avoidance and mitigation measures.
- (e) Plans and specifications of the bridge, including construction materials and colour.
- (f) Prior to construction of the footbridge the consent holder shall provide evidence to the Council that the plans have been approved by the Director –



General of Conservation or appropriately delegated person in respect of the Department of Conservation administered land, and from the Far North District Council Operations Manager: Infrastructure and Asset Management or other appropriately delegated person in terms of their respective landholdings. The consent holder will also need to provide evidence that a building consent has been obtained.

- (g) Reports by an architect, engineer and landscape architect on the bridge design and its relationship to the Department of Conservation managed walkway on the northern bank and existing and proposed walkways on the southern bank.
- (h) The consent holder shall provide the Council with a peer review report of the final bridge design, to be completed by a suitably qualified hydrologist, confirming that the bridge abutments and structure will not exacerbate flooding in Tuatahi Place or on properties in Tuatahi Place.
- (i) Plans and specifications of the landscaping and other measures to mitigate the effects of the bridge abutments and associated facilities on the amenities of the Department of Conservation managed walkway, existing and proposed Council managed walkways and nearby residential dwellings, along with a monitoring and maintenance programme.
- (j) In relation to the proposed landscaping and other measures to mitigate the effects of the bridge abutments and associated facilities on the owners/occupiers of the nearby residential dwellings the plans, specifications and other measures to be provided to the Council shall contain an account of the consultation with those owners/occupiers from which agreement on the measures to be carried out have endeavoured to be reached. The intention of this condition is to ensure that the best interests of those owners/occupiers are borne in mind in the formulation of the landscaping measures. It is not intended that this consultation provides any right of veto to the owners/occupiers but that they can be confident their best interests are borne in mind and they have the opportunity to input to the details of those measures.
- (k) Signage on the bridge to alert people to the fact that no dogs or bikes are allowed on the Rainbow Falls walking track or in the Rainbow Falls Reserve.
- (l) Information on the future ownership of the bridge.
- (m) Following approval of the plans and selection of the contractor the consent holder shall provide to the Council:

- Details of the successful contractor.
  - Details of the planned date and duration of contract.
  - Details of the supervising engineer.
  - A Construction Management Plan to be implemented during construction.
- (n) The consent holder shall submit plans and details of all stormwater works for the approval of the Far North District Council prior to commencing construction. Such works are to be designed in accordance with Council's "Engineering Standards and Guidelines: 2009" and NZS4404:2004. In particular the plans shall show:
- Proposed erosion and sediment control measures in place during construction.
  - Details of any fill disposal areas where they are off site, along with measures proposed to avoid tracking debris onto public roads.
- (o) The vegetation clearance, earthworks, pedestrian bridge, walkway linkages and landscaping shall be undertaken in accordance with the approved plans and specifications and monitored and maintained by the consent holder in accordance with the approved monitoring and maintenance program.
- (p) The consent holder shall ensure that all land areas disturbed by earthworks are reinstated by regrassing or other appropriate land cover as soon as is reasonably practicable following the completion of earthworks and to the satisfaction of the Council's Resource Consents Manager.
- (q) Upon completion of all the works above, the consent holder shall provide the Council with certification of the work from a Chartered Professional Engineer that all work has been completed in accordance with the approved plans.
- (r) The consent holder shall enter into a bond with the Council prior to the commencement of construction on the site in order to ensure that the landscaping and walkway connection works are carried out successfully. The value of the bond shall be equivalent to 1.5 times the estimated cost of the landscaping and walkway connection works and shall either be in cash or guaranteed by a registered trading bank in accordance with the Council's Bonds policy. The bond shall be held for a minimum period of 24 months from the date of planting. The bond shall be released when in the opinion of Council's Manager, Resource Management the landscaping and walkway connection work has been successfully established. The bond document shall be prepared by the consent holder at his/her expense and submitted to the Council's Resource Consents Manager for approval. Any costs incurred

by the Council in preparing, checking, assessing and release of this bond shall be met by the consent holder.

2. In relation to the Vegetation Clearance Associated With Construction and Upgrading of Stormwater Drains and Outlets Leading to Kerikeri River

- (s) The consent holder shall submit plans and details of all stormwater works for the approval of the Far North District Council prior to commencing construction. Such works are to be designed in accordance with Council's "Engineering Standards and Guidelines: 2009" and NZS4404:2004. In particular the plans shall show:
- Proposed erosion and sediment control measures in place during construction.
  - Details of fill disposal areas where they are off site, along with measures proposed to avoid tracking debris onto public roads.
- (t) The consent holder shall ensure that all land areas disturbed by vegetation clearance are reinstated by regrassing or other appropriate land cover as soon as is reasonably practicable following the completion of the works and to the satisfaction of the Council' Resource Consents Manager.

**Pursuant to Section 113 of the Resource Management Act 1991, the reasons for this decision are outlined above and can be stated as:**

- (a) The footbridge provides an additional and alternative pedestrian walkway link across the Kerikeri River that would be a convenient route into the township, reduces the need for car usage and provides some additional options for recreational access of the reserve land in this location. These are benefits for both the residents of the village on the subject site and for the public.
- (b) The adverse effects of these activities will be no more than minor, subject to the above conditions imposed on the consent that directly address any potential adverse effects and avoidance and/or mitigation of those effects. These potential effects have been addressed in expert reports and evidence and the appropriate measures carried through into conditions of consent. It is noted that the footbridge supports are located on reserve land administered by the Council and by the Department of Conservation. Those bodies will need to separately approve these works and will further consider any associated impacts.
- (c) The proposed bridge construction and also the proposed work relating to the stormwater outlets can be undertaken with minimal vegetation removal and will result in only minor effects.
- (d) The proposed activities do not conflict with any provisions in the District Plan. The proposed activities do not conflict with any provisions in the regional planning documents and are also subject to a separate regional consent process.

- (e) Overall the proposed activities are consistent with the purpose and principles of the RMA in facilitating enhanced public access to the river margin; ensuring that any adverse effects will be avoided, remedied or mitigated; and, the outcomes will provide for the health and wellbeing of people and the community whilst maintaining and enhancing the quality of the local environment and amenity values.

## **STATUTORY INFORMATION AND ADVICE NOTES**

The following matters are noted as being relevant to the land, and possibly requiring additional action for statutory or code compliance. The consent holder and any prospective purchasers should be aware of these matters; and hence the information will be placed on the property file and will be cited in any related Project or Land Information Memorandum that may be issued by the Council.

- (1) Pursuant to Section 102 of the Local Government Act 2002, the Far North District Council has prepared and adopted a Development Contributions Policy. Under this policy, the activity to which this consent relates may be subject to Development Contributions.

The consent holder will be advised of the assessment of any Development Contributions payable under separate cover in the near future.

It is important to note that any Development Contributions must be paid prior to commencement of the work or activity to which this consent relates or, in the case of a subdivision, prior to the issue of a Section 224 (c) RMA Certificate.

Further information regarding the Council's Development Contributions Policy may be obtained from the Long Term Council Community Plan (LTCCP) or the Council's web-site at [www.fndc.govt.nz](http://www.fndc.govt.nz).

- (2) If during the course of undertaking the site works there is a discovery made of any archaeological find, or suspected find, the work on that portion of the site should cease immediately and the NZ Historic Places Trust and a representative of the Ngati Rehia contacted. Compliance will need to be achieved in all respects with the requirements and provisions of the Historic Places Act 1993.
- (3) The bridge supports are to be constructed on land administered by the Department of Conservation and the Far North District Council. Landowner approval from these organisations will be required prior to any construction works.
- (4) Building consent from the Far North District Council is required for the bridge construction.
- (5) Residents of Tuatahi Place were concerned about additional on street car parking in the cul de sac. This is a matter that the consent holder is encouraged to address in conjunction with the Council in limiting car parking within that street completely or to a "residents only" parking scheme.
- (6) Construction noise will need to comply with the standard specified in Rule 9.7.5.1.8 of the District Plan.

## **ATTACHMENTS**

- Attachment 1            The decisions in respect of each submission, on an issues basis, and the further submissions.
- Attachment 2            The plan change, with modifications resulting from this decision, and the consequential modifications to the text of the District Plan as a result of the plan change being approved with the modifications.

A handwritten signature in black ink, appearing to read 'Alan Watson', written in a cursive style.

AR Watson

Chair, for Hearings Commissioners Miria Pomare, William Smith and Alan Watson

Date: 30 April 2010