

4 May 2023

Notification and s104 report for resource consent(s) under the Resource Management Act 1991(RMA)

Application No:	RM210234
Applicant:	Alex and Sapphire Telford
Site Address:	73 Valley Road, Paraparaumu
Legal Description:	Lot 3 DP 53393 and 1/3 share of Lot 5 DP 53393 held in Record of Title WN22B/971
Site Area:	8,083m ²
Applicant's Address for Service:	C/- Land Matters Limited 20 Addington Road RD 1 Otaki 5581
Proposal:	To undertake earthworks to upgrade an existing access track that do not comply with permitted activity standards
Operative District Plan Zone:	Part General Residential Zone, part Rural Production Zone (Rural Hills Precinct)
Activity Status:	Land Use - Restricted Discretionary

Report prepared by: Megan Barr, Consultant Planner - Contractor
Report peer reviewed by: Ross Goodman, Resource Consents Planner

Date consent deposit received: 7 October 2021
Further information requested: 1 November 2021
Further information received: 11 April 2023

1 EXECUTIVE SUMMARY

This report provides an analysis of the resource management issues relating to notification status and the Council's Section 104 decision for the activity proposed under resource consent application RM210234. The decisions at sections 5 and 10 are to:

- Consider the proposed development on a non-notified basis (section 5); and
- Grant consent to the proposed activity to undertake earthworks to upgrade an existing access track that do not comply with permitted activity standards (section 10), subject to a number of conditions as set out at the end of this report (section 9).

1.1 Application documents (plans and reference documents)

The following information has been provided with the application:

- Application form and Assessment of Environmental Effects (AEE) prepared by Land Matters Limited and dated 7 October 2021. The AEE concludes that the effects on the environment will be less than minor.
- Earthworks Plan prepared by Land Matters Limited and dated 6 October 2021.
- Record of Title WN22B/971 and Easements 900461 & T906911.1.
- Further information prepared by Land Matters Limited and dated 8 February 2022 and 1 July 2022.
- Further information prepared by Land Matters Limited and submitted to Council on 11 April 2023, including:
 - Plans prepared by Land Matters Limited titled '*Project: Valley Road, Paraparaumu*' and dated 27/01/2022:
 - Earthworks Plan, Drawing No. 694-EW-100 Rev 2;
 - Earthworks Plan Cross Sections, Drawing No. 694-EW-101 Rev 2;
 - Site Investigation Plan, Drawing No. 694-EW-102 Rev 1;
 - Earthworks Depth Range Polygon Plan, Drawing No. 694-EW-103 Rev 1;
 - Vehicle Paths Sheet 1, Drawing No. 694-RO-700 Rev 1;
 - Vehicle Paths Sheet 2, Drawing No. 694-RO-701 Rev 1; and
 - Existing Driveway, Drawing No. 694-RO-702 Rev 1.
 - Scala Penetrometer Tests prepared by Land Matters Limited and dated 21/09/2022.

2 THE PROPOSAL

2.1 Description of Proposal

The following description of the proposal is taken from the application and accepted for the purposes of this report:

Introduction

There is no current means of vehicular access from the curtilage area to Valley Road by way of the legal access. There is a graded track up the escarpment face that is easily walked but is not quite wide enough for vehicles. This graded track is the basis of the proposed vehicle track. The property currently relies on physical access Crown Land.

To provide for a legally secure means of access and the on-going, efficient operation of the rural residential activities on site, the Applicant seeks to create a vehicular access track from the site's legal frontage on Valley Road. Additional details of the proposed activity are provided below.

Earthworks

To enable the upgrading of the existing track on the escarpment and construction of the necessary stormwater run-off control, earthworks are required at a gradient suitable for use by vehicles visiting and leaving from (legal) Valley Road.

The proposed areas of earthworks are shown on the drawing at Appendix 2 to this report. No material needs to be imported to, or removed from, the site.

Approximately 205m³ of material will be cut from the uphill side of the existing track, to widen it, at a batter slope of 0.5mH to 1mV. Fill on the downhill side has been deliberately avoided. The surplus material will be used within the curtilage area.

The earthworks will be compacted, graded and levelled to a standard suitable for the construction of the residential driveway. Two retaining walls are required following completion of the earthworks to provide a flat area for turning at the bottom of the track.

Erosion and Sediment Control

The works will be managed in accordance with the principles of the Greater Wellington Regional Council (GWRC) publication 'Small earthworks – Erosion and sediment control for small sites' to ensure sediment is managed and the works do not cause accelerated erosion.

Summary of proposed activity

The proposed works involve earthworks along the existing track within the site to allow for an access driveway between the lower and upper parts of the property to be constructed. The new alignment will be constructed on the line of the existing track with appropriate grades and slope batters.

As such, no material will need to be imported to, or exported from, the site.

Through the further information process, the applicants' agent provided the following additional information about the proposal:

- *The site is located in a rural area. The new track provides access to one dwelling on 73 Valley Road (private driveway).*
- *Earthworks on the site will be completed using a single 8-ton digger. The digger will remain on site until required works are completed. Small trucks will move and grade the aggregate. All works will be completed in the dry season, minimising mud getting tracked elsewhere.*
- *The driveway will be unsealed, finished with metal.*
- *The proposed alignment for driveway follows an existing track which has been in place for some time. The current profiles of batter slopes over the site range from 20° to 60° and in their current form are typically self-supporting with some minor fretting of the slopes. Typical soil parameters for the soil identified are $\gamma=20\text{KN/m}$, $\phi=32^\circ$ and $c=5\text{kPa}$. The proposed cut batter slopes for the driveway are expected to be 35° or less which is a suitable batter slope for the soil profiles of clay and weather greywacke rock which have been identified on site. If greater, timber pole walls will be utilised to minimise cut batter slope profiles. The majority of the proposed driveway alignment is currently formed as a track. Any filling is to be minimised on the downhill slope of the proposed driveway. With a typical proposed fill batter slope profile 26°, the material identified on site is satisfactory for the purpose of filling. Where batter slopes exceed 26° timber pole retaining walls will be utilised to reduce the batter slope angles. Timber pole walls identified are typically below 1.5m in height and will provide a cost effective solution. Walls will be designed for traffic loading where required.*
- *Fill shall be placed in accordance with NZS 4413:1989. At the time of detailed design an earthwork specification will be written to ensure earthworks are undertaken in an appropriate manor in accordance with the standard. The material identified on site is suitable for filling.*

- Stormwater runoff will be managed in the detailed design phase with the utilisation of swales and rubble drains. Soak pits may be utilised for soakage if required. Overland flow paths will remain unchanged post development.
- 3.5m minimum access width. Please note that the property is zoned as rural so passing bay requirements are at 100m distances as per section 3.3.16.1 of NZS 4404 not 50m.
- The steepest part of the driveway is 1V:7H, the remaining part of the driveway varies.

The proposal is shown in **Figures 1 to 4** below.

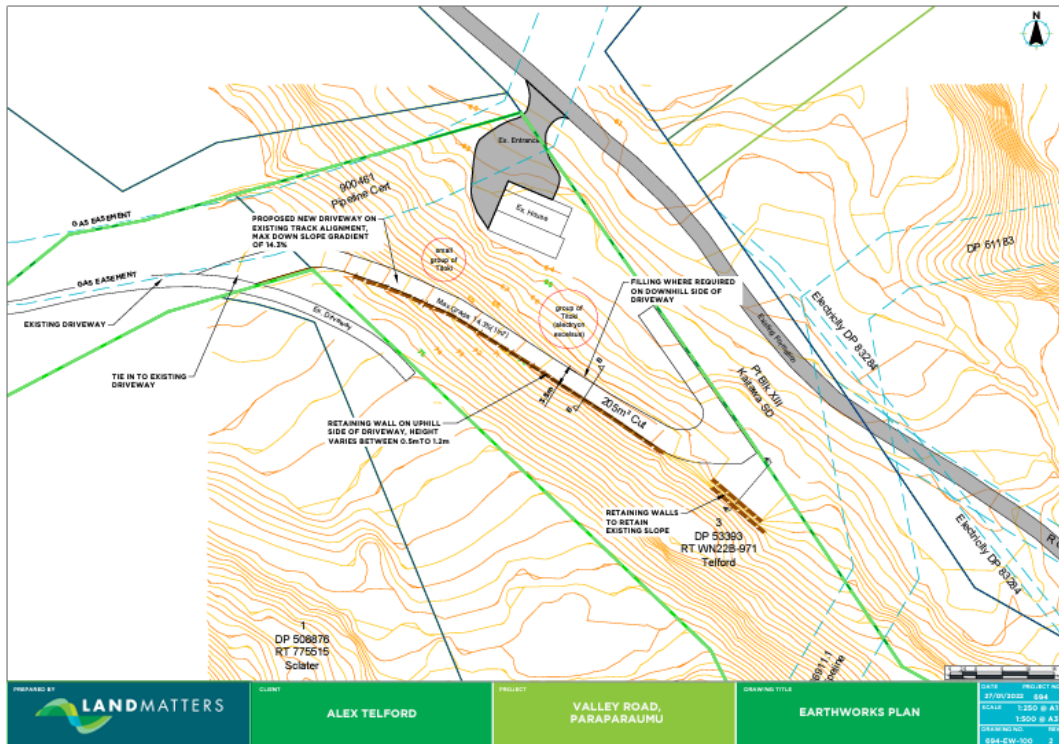


Figure 1: Proposed Earthworks Plan

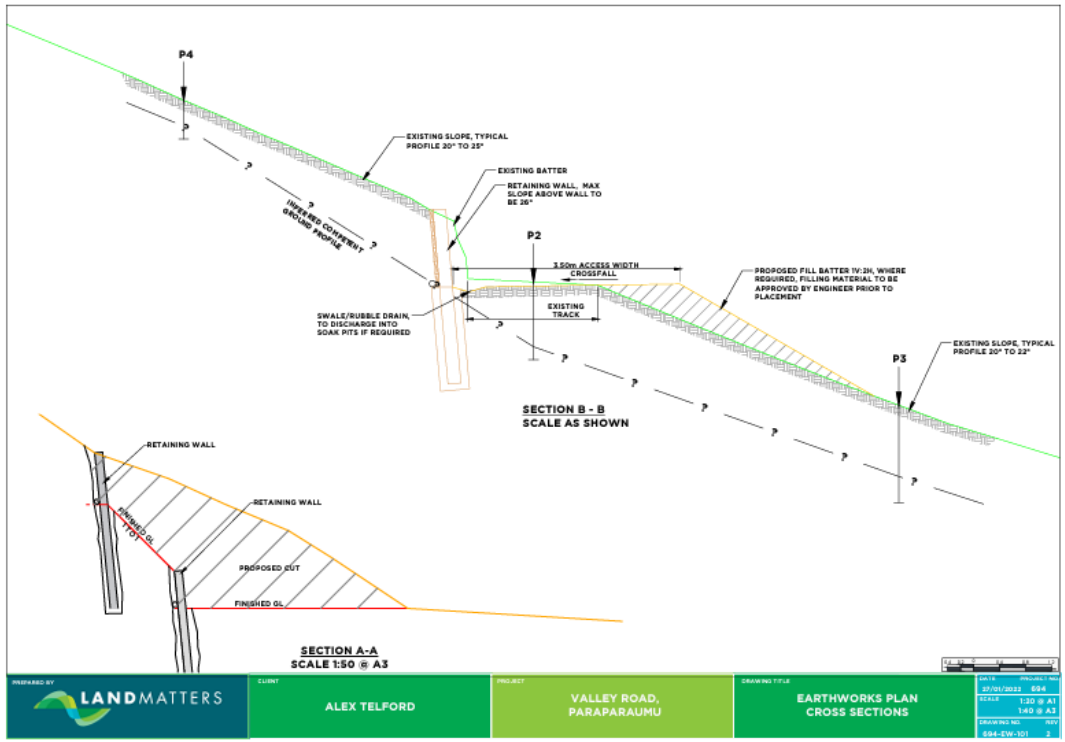


Figure 2: Proposed Earthworks Cross-Sections

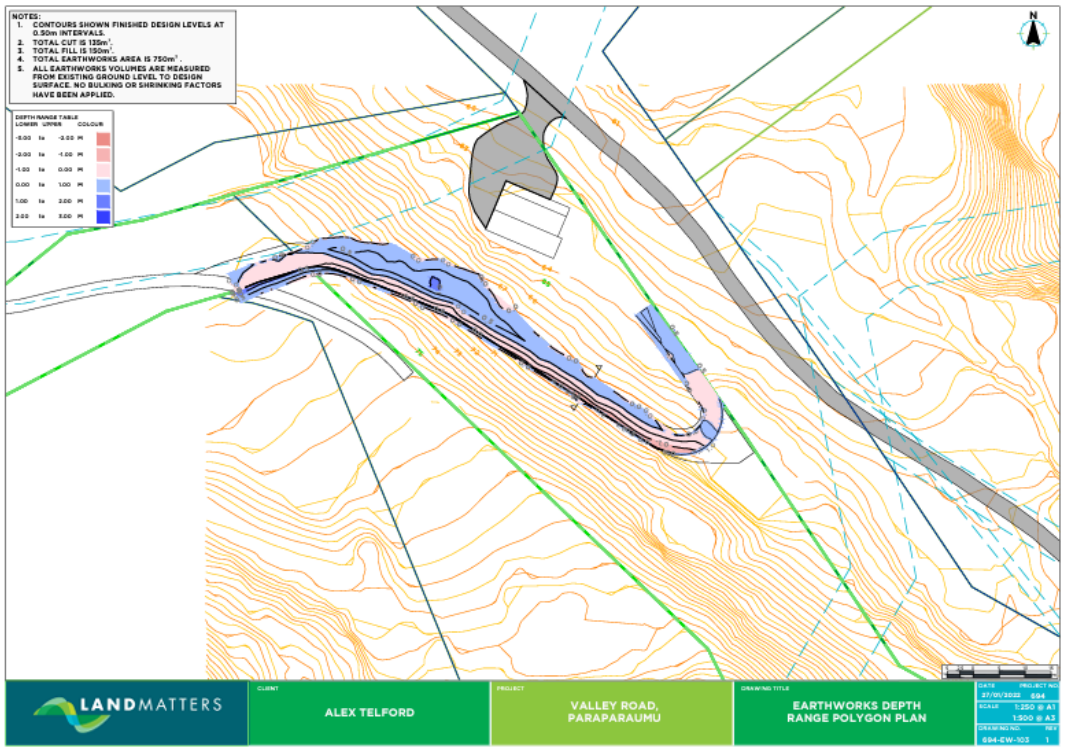


Figure 3: Proposed Earthworks Depth Range



Figure 4: Existing Driveway

3 SITE AND SURROUNDING ENVIRONMENT

3.1 Site Description

The 8,083m² subject site is known as 73 Valley Road, Paraparaumu, and legally described as Lot 3 DP 53393 and 1/3 share of Lot 5 DP 53393 held in Record of Title WN22B/971.

The following Interests are registered on Record of Title WN22B/971:

Interests

Subject to the reservation as to coal, gold and silver as set out in No. 516880

900461 Pipeline Certificate under Section 70 of the Petroleum Act 1937 relating to pipe lines for the passage of gas over parts of the within land in favour of (now) Natural Gas Corporation of New Zealand Limited - 17.12.1971 at 9.03am

Subject to gas pipeline rights (in gross) over part marked I on DP 61184 in favour of Natural Gas Corporation of New Zealand Limited created by Transfer 906911.1 - 3.3.1988 at 2.52 pm

B048079.1 Variation of Pipeline Easement Certificate 900461 - 28.11.1989 at 10.00 am

10819353.5 Mortgage to Westpac New Zealand Limited - 23.6.2017 at 11:42 am

The application addresses these Interests as follows:

A Pipeline Certificate (900461), varied by B048079.1, is registered on the title for the property. The property is subject to gas pipeline rights (in gross) in favour of Natural Gas Corporation of New Zealand Limited created by Transfer 906911.1.

The following description of the subject site is taken from the application and accepted for the purposes of this report:

The application site comprises an 8,083m² rural property (Lot 3 DP 53395) on the southwest side of the Crown Land known locally as Valley Road, and the 3,155m² shared access lot (Lot 5 DP 53393) at 73 Valley Road (legal), Paraparaumu. The existing house is accessed from the Crown Land. There is no vehicular access between the house area (Lot 3) and the access area (Lot 5).

The topography of the site comprises a native and exotic-bush covered escarpment falling north-east at a grade of approximately 2 horizontal to 1 vertical. At the base of the escarpment are the existing house and curtilage areas.

At the top of the escarpment, to the south-west of the house and curtilage area, is a grassed and planted area falling at approximately 7% over approximately 150m to (legal) Valley Road. This area is also the access for 75 and 77 Valley Road. It contains domestic plantings and the physical driveways for 75 and 77.

A high voltage National Grid power line runs north-south off the application site's easternmost boundary. One of the three cables passes overhead just inside the property. According to the KCDC GIS there are currently no council reticulated services to the property.

The subject site is shown in **Figures 5 to 7** below.



Figure 5: Aerial photograph of subject site (outlined in orange)



Figure 6: Photograph of entrance to existing vehicle access over Part Block XIII Kaitawa SD



Figure 7: Photograph of entrance to existing access to be upgraded (Lot 5 DP 53393)

3.2 Surrounding Environment

The subject site is located at the south-eastern edge of Paraparaumu's urban area and the surrounding environment comprises a mixture of residential and rural properties. The properties to the north and west of the subject site are typically residential in size and use, while the properties to the south and east of the site are rural.

The coast at Raumati Beach is approximately 3km to the west of the subject site. The Paraparaumu Railway Station and Paraparaumu town centre are located approximately 1km to the north-west of the subject site. The Kāpiti Golf Club is located approximately 300m to the south-west of the subject site.

The surrounding environment is shown in **Figure 8** below.



Figure 8: Aerial photograph of surrounding environment (subject site outlined in orange)

3.3 Consent History

There are no previous consent applications lodged for the subject site that are relevant to the proposal.

3.4 External Consultation

The following parties have provided comments on the proposal.

Local Iwi

The application was circulated to the Ātiawa ki Whakarongotai Charitable Trust for review and comment. The Trust provided the following comments:

This report provides Ātiawa ki Whakarongotai Charitable Trust's (the **Trust**) response to an application (the **Application**) by Alex and Sapphire Telford (the **Applicant**) for a land use consent to enable physical access to Valley Road through their legal access the Applicant seeks to undertake cut and fill earthworks to provide for a 1 in 8 driveway to their house and curtilage site (the **Proposed Works**) at 73 Valley Road, Paraparaumu (the **Site**).

The Trust notes that the Application site is not immediately near any sites of significance to Ātiawa. The Trust is not opposed to the Application on the basis the following recommendation is adhered to:

- The Trust prefers stringent erosion and sediment control measures during earthworks to ensure that sediment does not enter the local stormwater network. The Applicant has noted some sediment controls however the Trust requests that consent is only granted if sediment control and runoff are addressed to KCDC's satisfaction.

Council's Development Engineer has recommended conditions of consent regarding erosion and sediment control, which are included in section 9 below.

4 OPERATIVE DISTRICT PLAN PROVISIONS

4.1 Kāpiti Coast Operative District Plan

The Kāpiti Coast District Plan sets out the status of the activity within rules, that is whether they are permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited. The Objectives and Policies contained in the District Plan are also important in decision making as they are to be taken into account in the evaluation of the activities.

Plan Change 2 (Intensification) was notified on 18 August 2022. As this application was lodged prior to the 18th of August 2022, both proposed and operative rules are to be considered as part of the application.

In this instance, none of the rules within Plan Change 2 are relevant for consideration in this application and the rules within the Operative District Plan 2021, prior to notification, are the relevant rules for consideration.

The Objectives and Policies of Plan Change 2 do have relevance in the consideration of this application, along with the Objectives and Policies that were in effect at the time the application was lodged.

An assessment of the relevant Objectives and Policies is presented below.

4.2 Operative District Plan Zoning and Overlays

The property is zoned part General Residential Zone and part Rural Production Zone under the Kāpiti Coast District Plan. The subject site is also partially located within the Rural Hills Precinct (PREC24) and is shown to have both high voltage power lines within 50m and Natural gas mains within 25m, as per the District Planning Maps.

I note that the high voltage power lines are located outside and to the east of the subject site, and that natural gas mains are shown as traversing the subject site in two locations.

The subject site is also identified as being located within the Horizontal Surface 50m A.M.S.L of the Airport Plan: Runways Height Surfaces.

There are no other District Plan overlays or features of relevance to the subject site, such as ponding, heritage, significant vegetation, designations etc.



Figure 9: District Plan Zoning map

(yellow shading = General Residential Zone, khaki shading = Rural Production Zone, yellow lines = natural gas mains within 25m, black lines = high voltage power lines within 50m)

4.3 Operative District Plan Rules and Standards

The Rules and Standards that apply to this application are:

Part 2 – District-Wide Matters

General District-Wide Matters

Earthworks

EW-R2 Permitted Activity

Earthworks, excluding those listed in EW-R3, in all areas except areas subject to flood hazards, outstanding natural features and landscapes, ecological sites, geological features, areas of outstanding natural character, areas of high natural character.

Standards

1. *Earthworks must not be undertaken:*
 - a. *on slopes of more than 28 degrees; or*
 - b. *within 20 metres of a waterbody, including wetlands and coastal water.*
2. *In all other areas except as provided for in Standard 3, earthworks must not:*
 - a. *disturb more than 50m³ (volume) of land per subject site in residential zones, working zones, natural open space zones and open space zones (excluding the Private Recreation and Leisure Precinct) within a 5 year period;*
 - b. *disturb more than 100m³ (volume) of land per subject site in rural zones within a 5 year period; and*
 - c. *alter the original ground level by more than 1 metre, measured vertically.*

EW-R5 Restricted Discretionary Activity

Earthworks not complying with one or more of the permitted activity standards in EW-R2 or EW-R3.

Matters of Discretion

1. *The degree of compliance with the Kāpiti Coast District Council Subdivision and Development Principles and Requirements 2012.*
2. *The effects on water collection areas.*
3. *The degree of compliance with any applicable Environmental Management Plan or Structure Plan applicable to the development.*
4. *Ecological effects.*
5. *Visual and amenity effects.*

The proposed earthworks comprise 205m³ of cut earthworks with a maximum depth of 3m and 150m³ of fill earthworks with a maximum height of 3m and will be undertaken over an area of 750m². The proposed earthworks are primarily located within the part of the subject site that is zoned Rural Production Zone, with only a very small amount of earthworks extending into the part of the site zoned General Residential Zone. Therefore, the proposal has been assessed against the standards for the Rural Production Zone.

The application states that the proposal complies with standards 1.a. and 1.b. of Rule Ew-R2 as the proposed earthworks will not be undertaken on slopes of more than 28 degrees or within 20 metres of a waterbody. However, the proposed earthworks involve the disturbance of more 100m³ of land (maximum volume of 355m³) and vertical ground alteration of more than 1m (maximum cut depth of 3m and maximum fill height of 3m).

Therefore, the proposal does not comply with standards 2.b. and 2.c. of Rule EW-R2 and is a **restricted discretionary activity** under Rule EW-R5.

4.4 Activity Status

The activity is a **restricted discretionary activity** under Rule EW-R5. It has this status because it is unable to comply with standards 2.b. and 2.c. of permitted activity Rule EW-R2.

5 NOTIFICATION

In considering whether or not notification is required, Sections 95A to 95E of the Resource Management Act 1991 must be considered. Sections 95F and G are not relevant to this application. Sections 95 to 95E are referenced below:

95 Time limit for public notification or limited notification

95A Public notification of consent applications

95B Limited notification of consent applications

95C Public notification of consent application after request for further information or report

95D Consent authority decides if adverse effects likely to be more than minor

95E Consent authority decides if person is affected person

For the full text of the above provisions, please refer to the Resource Management Act 1991.

5.1 Effects that must be disregarded

Effects on persons who are owners and occupiers of the land in, on or over which the application relates, or of land adjacent to that land must be disregarded with respect to public notification.

The adjacent land includes the following properties:

- 67 Valley Road, Paraparaumu (Lot 4 DP 50470);
- Transpower New Zealand Limited Easement (Part Block XIII Kaitawa SD);
- Valley Road, Paraparaumu (Part Section 11 Block XIII Kaitawa SD);
- 75 Valley Road, Paraparaumu (Lot 2 DP 508876);
- 77 Valley Road, Paraparaumu (Lot 1 DP 508876); and
- 79 Valley Road, Paraparaumu (Lot 2 DP 50470).

Any effect on a person who has given written approval to the application must also be disregarded. No written approvals were provided with the application.

5.2 Effects that may be disregarded – permitted baseline assessment

The permitted baseline refers to the adverse effects of permitted activities on the subject site.

The permitted baseline includes earthworks that disturb up to 100m³ of land per site within a 5 year period and do not alter original ground level by more than 1 metre.

As the proposed earthworks exceed the permitted activity standards in terms of both volume and alteration of ground level, the permitted baseline is not considered relevant to this application.

5.3 Receiving environment

The effects of the activity are also required to be assessed against the “existing environment”. This includes existing use rights, existing activities carried out under existing consents and resource consents which have been granted where it appears those consents will be implemented. The concept of the existing environment refers to a state of affairs which a consent authority must determine and take into account when assessing the effects of allowing an activity; by contrast, the permitted baseline provide the authority with an optional means of measuring – or more appropriately excluding – adverse effects of that activity which would otherwise be inherent in the proposal.

The receiving environment is comprised of other residential, rural-residential and rural development, which is an anticipated form of development within this residentially and rurally zoned area. It includes the existing residential dwelling and accessory building on the site and associated residential landscaping.

This is the reasonably foreseeable environment within which the adverse effects of the proposal are considered.

5.4 Adverse Effects

As the application is for a restricted discretionary activity, Council can only consider those matters of discretion outlined in Rule EW-R5. These matters are:

1. The degree of compliance with the Kāpiti Coast District Council Subdivision and Development Principles and Requirements 2012.
2. The effects on water collection areas.
3. The degree of compliance with any applicable Environmental Management Plan or Structure Plan applicable to the development.

4. Ecological effects.
5. Visual and amenity effects.

These matters are addressed in turn below.

The degree of compliance with the Kāpiti Coast District Council Subdivision and Development Principles and Requirements 2012

The application included the following information about erosion and sediment control:

The works will be managed in accordance with the principles of the Greater Wellington Regional Council (GWRC) publication 'Small earthworks – Erosion and sediment control for small sites' to ensure sediment is managed and the works do not cause accelerated erosion.

Provided the works are managed in accordance with the principles of the GWRC publication 'Small earthworks – Erosion and sediment control for small sites' to ensure sediment is managed and the works do not cause accelerated erosion, we consider the proposal will result in less than minor adverse stormwater and erosion effects.

The application has been reviewed by Council's Development Engineer, who has confirmed that the proposal is consistent with the relevant provisions of Council's Subdivision and Development Principles and Requirements 2012 (SDPR: 2012).

The effects on water collection areas

The subject site is not located in, or in close proximity to, a water collection area.

Ecological effects

The site is not identified in the District Plan as having any particular ecological value. However, the proposal involves vegetation trimming.

The applicants have provided the following assessment of ecological effects:

The vegetation affected is not in Schedules 1 or 3. There are some specimens identified in ECO-Table 1 within the stand of vegetation (Alectryon excelsus – Titoki), however the two areas of Titoki are avoided by the works. The area exceeds 100m².

As the area in question is within the Rural Hills Precinct, neither clause c) or d) apply.

The proposed vegetation trimming is therefore a permitted activity under Permitted Activity Rule ECO-R4.

I agree with the applicants' assessment that the proposed vegetation trimming is a permitted activity and consider that any ecological effects of the proposal will be less than minor.

Visual and amenity effects

The applicants have provided the following assessment of visual effects:

The earthworks to enable the rerouting of the farm track have been kept to the minimum required whilst ensuring a suitable gradient is achieved along the realignment and appropriate batter slopes are provided. The earthworks have also been designed in a manner that eliminates the need for fill on the downward side. The works are all contained within an area of vegetation, both indigenous and exotic, and will be screened from view for the most part.

Other dwellings within the immediate surrounding environment are scattered among vegetation and generally not open to direct view, one to the other. As such, these dwellings will not be adversely affected visually by the proposed earthworks.

The site and surrounding environment, containing a range of established activities and distributed built form, is considered to be capable of accommodating and absorbing the proposed earthworks, both during and post construction.

Based on the above, it is considered the proposed earthworks will result in less than minor adverse visual effects.

I agree with the applicants' assessment that the visual and amenity effects of the proposed earthworks are less than minor for the following reasons:

- The proposed earthworks are relatively minor in scale and will occur over a small area of the site, which is well separated and screened from existing dwellings on adjoining properties; and
- The closest existing dwelling to the proposed earthworks located at 77 Valley Road, Paraparaumu, is elevated above the site of the proposed earthworks and is separated from the earthworks by the existing driveway to 75 Valley Road, Paraparaumu.

5.5 Conclusion on Adverse Effects

The assessment above shows that there are unlikely to be any adverse effects of the activity on any adjoining properties, or the wider public, and any adverse environmental effects will be less than minor.

Overall, I consider that the adverse effects associated with the proposed earthworks are less than minor and there are no affected parties for the following reasons:

- The applicants have proposed appropriate erosion and sediment control measures and the proposal is consistent with the SDPR: 2012.
- The site is not identified in the District Plan as having any particular ecological value.
- The site of the earthworks is a grass and vegetation covered hillside and the applicants are proposing to remove only the vegetation required to enable construction of the upgraded access track.
- Although the ground level will be altered as a result of the earthworks, the topography of the site is such that it will still be lower than the closest existing dwelling on an adjoining property at 77 Valley Road, Paraparaumu.
- Any adverse effects associated with the earthworks will be temporary in nature.

5.6 s95A Public Notification

Recommendation:

That the application **need not be publicly notified** in accordance with Sections 95A and 95C-95D of the Resource Management Act 1991 as, although not precluded from public notification, the effects are considered to be less than minor and there are no special circumstances.



Reported and Recommended by: _____ Megan Barr

Consultant Planner - Contractor

Decision: "That the above recommendation be adopted."



Delegated Officer (Peer Reviewer): _____ Ross Goodman
Resource Consents Planner

5.7 s95B Limited Notification

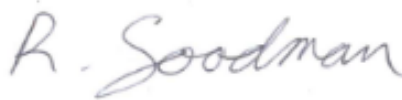
Recommendation:

That the application be processed on a **non-notified** basis in accordance with Sections 95B and 95E of the Resource Management Act 1991.



Reported and Recommended by: _____ Megan Barr
Consultant Planner - Contractor

Decision: "That the above recommendation be adopted."



Delegated Officer (Peer Reviewer): _____ Ross Goodman
Resource Consents Planner

6 SECTION 104 ASSESSMENT

In considering the merits of an application, Section 104 of the Resource Management Act 1991 must be considered. Section 104 is set out below:

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
 - (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard:*
 - (ii) *other regulations:*

- (iii) a national policy statement:
 - (iv) a New Zealand coastal policy statement:
 - (v) a regional policy statement or proposed regional policy statement:
 - (vi) a plan or proposed plan; and
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.
- (2A) When considering an application affected by section 124 [or 165ZH(1)(c)], the consent authority must have regard to the value of the investment of the existing consent holder.
- (2B) When considering a resource consent application for an activity in an area within the scope of a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, a consent authority must have regard to any resource management matters set out in that planning document.
- (2C) Subsection (2B) applies until such time as the regional council, in the case of a consent authority that is a regional council, has completed its obligations in relation to its regional planning documents under section 93 of the Marine and Coastal Area (Takutai Moana) Act 2011.
- (3) A consent authority must not,—
- (a) when considering an application, have regard to—
 - (i) trade competition or the effects of trade competition; or
 - (ii) any effect on a person who has given written approval to the application:
 - (b) [Repealed]
 - (c) grant a resource consent contrary to—
 - (i) section 107, 107A, or 217:
 - (ii) an Order in Council in force under section 152:
 - (iii) any regulations:
 - (iv) wāhi tapu conditions included in a customary marine title order or agreement:
 - (v) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011:
 - (d) grant a resource consent if the application should have been notified and was not.
- (4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.
- (5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.
- (6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.
- (7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.

Sections 104A-104D set out particular restrictions on determining applications for controlled, restricted discretionary, discretionary, or non-complying activities. The relevant provisions are summarised below:

104C Particular restrictions for restricted discretionary activities

Section 104C states:

- (1) *When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which –*
 - (a) *a discretion is restricted in national environmental standards or other regulations;*
 - (b) *it has restricted the exercise of its discretion in its plan or proposed plan.*
- (2) *The consent authority may grant or refuse the application.*
- (3) *However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which –*
 - (a) *A discretion is restricted in national environmental standards or other regulations:*
 - (b) *It has restricted the exercise of its discretion in its plan or proposed plan.*

Section 104(6) allows the consent authority to decline a consent application if it has inadequate information to determine the application.

Adequate information was provided to process the application.

6.1 Internal Consultation

Development Engineer

Council's Development Engineer has reviewed the application and recommended conditions to be imposed to ensure consistency with the Council's Subdivision and Development Principles and Requirements 2012 (SDPR: 2012).

6.2 Actual or potential effects on the environment

Section 104(1)(a) of the RMA requires the council to have regard to any actual and potential effects on the environment of allowing the activity. This includes both the positive and the adverse effects.

Methods of analysis to determine the actual or potential environmental effects of the activity have focused on site visits, studies of Council held data and feedback from other relevant Council departments.

Almost all of the effects related to the proposed development have been discussed in detail above at section 5 of this report. Aspects which have not already been covered are discussed below.

6.3 Positive Effects

The proposal will have positive effects for the consent holders as it will provide physical vehicle access to the site within the site's legal access from Valley Road, Paraparaumu.

6.4 Summary of Actual and Potential Effects

The actual and potential effects of the proposal can be adequately avoided, remedied or mitigated by the imposition of the conditions outlined in the assessment above to ensure they are acceptable.

6.5 National Environmental Standards – s104(1)(b)(i)

There are currently nine operative National Environmental Standards, these relate to air quality, sources of drinking water, telecommunication facilities, freshwater, marine aquaculture, outdoor storage of tyres, electricity transmission activities, contaminants in soil and plantation forestry.

The site is not identified on the Selected Land Use Register (SLUR) and has not contained a previous Hazardous Industries and Industries List Activity (HAIL).

None of these are considered relevant to the proposal.

6.6 National Policy Statements – s104(1)(b)(iii)

There are currently six operative National Policy Statements, these relate to the Coastal Environment, Urban Development, Freshwater Management, Renewable Electricity Generation, Electricity Generation and Highly Productive Land.

None of these are considered relevant to the proposal as it relates to earthworks to upgrade an existing rural access track.

6.7 Wellington Regional Policy Statement – s104(1)(b)(v)

The Wellington Regional Policy Statement (RPS) sets out the strategic framework for managing the use, development and protection of the natural and physical resources of the Wellington region in an integrated and co-ordinated manner.

The RPS provides an overview of the resource management issues for the region (within the regional council's functions under s.30 of the RMA), and states the policies and methods required to achieve the integrated management of the region's natural and physical resources.

I am of the opinion that none of the Policies and Objectives of the RPS are relevant to this proposal.

6.8 Plan or Proposed Plan – s104(1)(b)(vi)

The following Objectives and Policies of the Operative District Plan 2021 are of particular relevance to this application:

Objectives:

DO-01 – Tangata Whenua

DO-02 – Ecology and Biodiversity

DO-03 – Development management

DO-04 – Coastal Environment

DO-06 – Rural Productivity

DO-09 – Landscapes, Features and Landforms

DO-011 – Character and Amenity Values

General Residential Zone Policies:

GRZ-P7 – Development and Landforms

GRZ-P8 – Reverse Sensitivity

GRZ-P10 – Residential Amenity

Rural Production Zone Policies:

RPROZ-P1 – Primary Production

RPROZ-P2 – Rural Character

RPROZ-P11 – Rural Hills Precinct

Earthworks Policies:

EW-P1 - Earthworks

For the full text of the above provisions, reference can be made to the Kāpiti Coast Operative District Plan.

As Proposed Plan Change 2 has been notified (18 August 2022), the following new/additional objectives and policies are also relevant to the consideration of this application:

Objectives:

DO-0x1 – Well Functioning Environments

DO-11 – Character and Amenity Values (amended)

For the full text of the above provisions, reference can be made to Proposed Plan Change 2.

6.8.1 Assessment

Overall, I consider the proposal to be consistent with the relevant Objectives and Policies of the District Plan and Proposed Plan Change 2 (notified 18 August 2022). The proposal will not detract from the character and amenity of the area.

The proposed earthworks are considered to be consistent with the intent of the relevant Objectives and Policies associated with the development of an already modified site in an area characterised by a mixture of residential, rural-residential and rural activities.

The proposed earthworks will improve the ability of the site to be used for rural-residential and rural activities without having a detrimental effect on the environment or any neighbouring properties.

Wellington Regional Proposed Natural Resources Plan

The Proposed Natural Resources Plan for the Wellington Region was notified on 31 July 2015 with decisions released on 31 July 2019. I am of the opinion that, in this particular case, none of the provisions of the plan are relevant because there are no hazards on this site and no other provisions of the plan appear to apply.

6.9 Any Other Matters

Section 104(1)(c) provides that when considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

There are no other matters that are relevant to this application that need to be considered.

7 OTHER RELEVANT RESOURCE MANAGEMENT ACT SECTIONS

7.1 Conditions of Resource Consents – s108 or s220

S.108AA Requirements of conditions of resource consents

(1) A consent authority must not include a condition in a resource consent for an activity unless—

(a) the applicant for the resource consent agrees to the condition; or

(b) the condition is directly connected to 1 or both of the following:

(i) an adverse effect of the activity on the environment:

(ii) an applicable district or regional rule, or a national environmental standard; or

(c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

(2) Subsection (1) does not limit this Act or regulations made under it.

(3) This section does not limit section 77A (power to make rules to apply to classes of activities and specify conditions), 106 (consent authority may refuse subdivision consent in certain circumstances), or 220 (condition of subdivision consents).

(4) For the purpose of this section, a district or regional rule or a national environmental standard is applicable if the application of that rule or standard to the activity is the reason, or one of the reasons, that a resource consent is required for the activity.

(5) Nothing in this section affects section 108(2)(a) (which enables a resource consent to include a condition requiring a financial contribution).

Draft conditions were circulated to the applicant's agent on 24 April 2023. The draft conditions were agreed to by return email on 4 May 2023.

7.2 Review Condition – s128

No review condition is recommended.

7.3 Financial Contribution Conditions

No financial contributions are applicable to this consent.

7.4 Monitoring

No monitoring conditions will be included in this consent.

8 PART 2 MATTERS

Any consideration under Section 104(1) is subject to Part 2 of the Act. Part 2 sets out the purpose and principles of the Act. In addition, Part 2 requires the Council to recognise and provide for matters of national importance (Section 6); have particular regard to other matters (Section 7); and to take into account the principles of the Treaty of Waitangi (Section 8).

8.1 Section 5-Purpose

Section 5(1) states that the purpose of the Act is to promote the sustainable management of natural and physical resources.

The proposal is in accordance with Section 5 of the Act as it enables earthworks to be undertaken to upgrade an existing access track without having a detrimental impact on the rural environment or any neighbouring properties.

8.2 Section 6-Matters of National Importance

Section 6 establishes eight matters which must be recognised and provided for by all persons exercising functions and powers under the Act.

There are no relevant Matters of National Importance.

8.3 Section 7-Other Matters

Section 7 establishes eleven matters which all persons exercising functions and powers under the Act shall have particular regard to.

The proposal allows for the efficient use and development of a finite resource with reference to parts (b), (c) and (f) because this proposal enables earthworks to be undertaken to upgrade an existing access track without having a detrimental impact on the rural environment or any neighbouring properties.

8.4 Section 8-Treaty of Waitangi

The proposal is considered to be in accordance with the principles of te Tiriti o Waitangi as the site is not identified as having cultural significance.

The principles of te Tiriti o Waitangi are partnership, participation and protection. The proposal is considered to be in accordance with these because the application was circulated to allow local iwi to provide comment on the proposal in order to ensure any tāngata whenua values were considered.

8.5 Conclusion on Part 2 matters

Overall, the proposal is consistent with Part 2 matters because this proposal enables earthworks to be undertaken to upgrade an existing access track without having a detrimental impact on the rural environment or any neighbouring properties.

9 RECOMMENDATION

That the undersigned officers, acting under authority delegated from the Council and pursuant to Sections 104 and 104C of the Resource Management Act 1991, hereby **grant** consent to undertake earthworks to upgrade an existing access track that do not comply with permitted activity standards at 73 Valley Road, Paraparaumu (Lot 3 DP 53393 and 1/3 share of Lot 5 DP 53393 held in Record of Title WN22B/971), subject to the following conditions which were imposed under Section 108 of the Resource Management Act 1991.

Conditions:

General

1. The proposed activity shall be completed in general accordance with the plans, information and specifications lodged with the application and the further information supplied by the consent holder and held on the file RM210234, except where modified by conditions of consent, with reference to the following plans stamped as 'Final Approved Plans' on 4 May 2023:
 - Plans prepared by Land Matters Limited titled '*Project: Valley Road, Paraparaumu*' and dated 27/01/2022:
 - Earthworks Plan, Drawing No. 694-EW-100 Rev 2;
 - Earthworks Plan Cross Sections, Drawing No. 694-EW-101 Rev 2;
 - Site Investigation Plan, Drawing No. 694-EW-102 Rev 1;
 - Earthworks Depth Range Polygon Plan, Drawing No. 694-Ew-103 Rev 1;
 - Vehicle Paths Sheet 1, Drawing No. 694-RO-700 Rev 1;
 - Vehicle Paths Sheet 2, Drawing No. 694-RO-701 Rev 1;
 - Existing Driveway, Drawing No. 694-RO-702 Rev 1.
2. Prior to works commencing, the consent holder shall submit copies of the plans and specifications for the engineering development for approval to the satisfaction of the Council's Development Engineer. The engineering development must be in accordance with Paragraphs 1 to 5 of Schedule 1 contained in Part 4 of the Kapiti Coast District Council's (KCDC's) Subdivision and Development Principles and Requirements, 2012 (SDPR: 2012).

Note: *Engineering drawings shall contain sufficient detail to clearly illustrate the proposal to enable assessment of compliance with the Kapiti Coast District Council's Subdivision and Development Principles and Requirements, 2012 and to enable accurate construction.*
3. The consent holder shall undertake earthworks in accordance with Part 3C & Part 4 Schedule 2 of the SDPR: 2012 and Section 2 of NZS4404:2010 unless otherwise agreed with the Council's Development Engineer in writing. Upon completion of the earthworks the consent holder shall provide a certificate in the form of Schedule 2A of NZS4404:2010 by the geo-professional to the Council's Development Engineer.
4. The consent holder shall ensure that all batters are self-supporting.
5. The consent holder must ensure that no nuisance effect, including dust, may be caused by discharge of material beyond the boundary of the subject site. For the avoidance of doubt material includes but is not limited to silt, sediment, vegetation and aggregate.
6. The consent holder shall make adequate provision for the control of stormwater run-off during the construction period and shall apply the appropriate recommendations found in Greater Wellington Regional Council's "*Erosion and Sediment Control Guidelines for the Wellington Region*" and "*Small earthworks – Erosion and sediment control for small sites*". Where required, silt retaining structures or ponding areas shall be constructed and maintained throughout the duration of the works.
7. The consent holder shall ensure that all vehicles exiting the site do not track material onto the road.

8. The consent holder shall ensure that passing places are compliant with NZS4404 in that they must be at least 5.5m wide and 15m long, they must be no more than 100m apart, and visibility must be available from bay to bay.
9. The consent holder shall ensure that the gradient of the access is no steeper than 1 in 7.
10. The consent holder shall ensure that the vehicle crossing is constructed in accordance with standard drawing KCDC RD-017 revision 5.
11. The consent holder shall ensure that the vehicle crossing and a distance of 6m into the site from the boundary must be at least 6m wide to accommodate the additional traffic using the access, and to allow for vehicles waiting to enter and leave the site at the same time to wait off the live traffic lane.

Advice Notes:

- If you disagree with any of the above conditions, or disagree with the additional charges relating to the processing of the application, you have a right of objection pursuant to sections 357A or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of notification of the decision.
- Under Section 125 of the Resource Management Act 1991, this resource consent will lapse in five years, unless it is given effect to within that time.
- It is the consent holder's responsibility to comply with any conditions imposed on this resource consent prior to and during (as applicable) exercising this resource consent.
- All costs arising from any of the above conditions shall be borne by the consent holder, pursuant to section 36 of the Resource Management Act 1991.
- The consent holder shall pay to the Kāpiti Coast District Council the actual and reasonable costs associated with the monitoring of conditions (or review of consent conditions), or supervision of the resource consent as set in accordance with Section 36 of the Resource Management Act 1991. These costs* may include site visits, correspondence and the actual costs of materials or services which may have to be obtained.

*Please refer to Kāpiti Coast District Council's current schedule of Resource Management fees for guidance on the current hourly rate chargeable for Council's staff.
- The consent holder shall notify the Council's RMA Compliance Officer of the start and completion dates of the works in writing 48 hours before the works are carried out. The consent holder shall fill out and return (by email to the duty compliance officer at compliance.dutyofficer@kapiticoast.govt.nz, or by fax to (04) 2964 830 or by post to Private Bag 60601, Paraparaumu) the form that is attached to the decision letter.
- A separate application is required for a building consent if any earth-retaining structure is intended as part of this work and the wall is higher than 1.5 metres or is subject to surcharging.
- Please note that a resource consent is not a consent to build. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004. A building consent must be issued prior to any building work being undertaken.

- The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety in Employment Act 1992), regulations, relevant Bylaws, and rules of law.
- Works within the legal road will only be approved where they comply with Council procedures and processes which are set out below:
 - a. Before undertaking work in the legal road you must make a Corridor Access Request (CAR) and receive a Works Access Permit (WAP) from us. Some examples of activities requiring a permit are:
 - Trenching works;
 - Footpaths and entranceways;
 - Work within the berm or shoulder of the road; and
 - Tree work, scaffolding and crane work.
 - b. Before any excavations are undertaken a "Before U Dig" inquiry must be made to check for locations of any underground services. This is a web based service that you or your contractor use to get plans and information emailed out to you. This also provides the mechanism for you to make a Corridor Access Request and provide us with a Traffic Management Plan to protect your site, contractors, and the public during operations. Corridor Access Requests require 5 working days' notice before work can commence and Traffic Management Plans for road closures and events must be received 42 working days in advance of the closure or event. Please note: The "Before U Dig" service has no information on council's buried water, wastewater or stormwater assets. Our mapping tools show the location of the buried council assets.
 - c. Work must be undertaken in accordance with Councils guides and standard drawings. Examples of forms, guides and standards drawings An information sheet, application form and standard drawings (engineering plans) are available for download or print from the Council website and examples include:
 - Vehicle Installation Information;
 - Vehicle Crossing Application Form;
 - Roding Standard Drawings; and
 - Vehicle Crossing Guidelines.
- Should a waahi tapu or other cultural site be unearthed during earthworks the contractor and/or owner is required under the Heritage New Zealand Pouhere Taonga Act 2014:-
 - Cease operations;
 - Inform local Iwi (Ātiawa ki Whakarongotai);
 - Inform the Heritage New Zealand and apply for an appropriate authority if required;
 - Take appropriate action, after discussion with Heritage New Zealand, Council and Iwi to remedy damage and/or restore the site.

Note: *In accordance with the Heritage New Zealand Pouhere Taonga Act 2014, where an archaeological site is present (or uncovered), an authority from Heritage New Zealand is required if the site is to be modified in any way.*

Reported and recommended by:



Megan Barr

Consultant Planner - Contractor

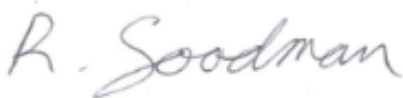
10 DECISION

That the above recommendation be adopted under delegated authority.

Reasons for Decision:

In accordance with Sections 104 and 104C of the Resource Management Act 1991, the actual and potential effects associated with the proposed activity have been assessed and are outlined above.

I consider that the adverse effects of the proposed activity on the environment will be less than minor and that the proposed activity is not contrary to the Objectives and Policies of the Kāpiti Coast Operative District Plan and Proposed Plan Change 2.



Ross Goodman

Resource Consents Planner