

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



Proposal

The subdivision of approximately 3.87ha of land in Avondale to create nine vacant residential superlots (13 lots in total) (which will allow for the future development of 229 new dwellings), 8,191m² of new roading to vest and a 1,478m² park to vest, at 3-40 Bellgrove Place, 1-11/60, 68 & 70 Riversdale Road, and 1-36/32 & 38-42 Wairau Avenue, Avondale; and to discharge stormwater via new infrastructure at Tony Segedin Esplanade Reserve, Canal Road.

The resource consent is **GRANTED** subject to conditions. The reasons are set out below.

Application number:	BUN60364376
Site address:	3-40 Bellgrove Place, 1-11/60, 68 & 70 Riversdale Road, and 1-36/32 & 38-42 Wairau Avenue, Avondale
Applicant:	Kainga Ora – Homes and Communities
Hearing days:	23 & 24 August 2021 by remote access facility
Hearing panel:	David Hill (Chair) Basil Morrison Trevor Mackie
Appearances / On call:	<u>Kāinga Ora (Applicant):</u> Douglas Allan - Ellis Gould (counsel) Giles Tait - Kāinga Ora - Homes and Communities Aaron Sills - Sills van Bohemen (architect) Elliot Richmond - Resilio Studio (landscape) Chris Jennins - Riley Consultants (civil engineering) Todd Langwell - Traffic Planning Consultants (traffic engineering) Matthew Paul - Peers Brown Miller (arboriculture) Mark Delaney - Bioresearches (ecology) Simon Hunt - EHS (contamination) Gerard Thompson - Barker & Associates (planning) <u>Submitters:</u> Kate Hennebry Christine Blake Mark Lockhart (The Tree Council) John Macpherson

	<p>Nina Patel</p> <p><u>For Council:</u></p> <p>Russell Butchers, Principal Project Lead Susie Clemens, Planner Sarishka Gandhi, Traffic Engineer David van Echten, Development Engineer Frank Pierard, Urban Designer Camilla Needham, Healthy Waters Andreas Lilley, Parks Planning Hedre Dednam, Auckland Transport</p> <p><u>Hearings Advisor:</u></p> <p>Prasta Rai</p>
Lodgement:	29 September 2020
Notification:	25 January 2021
Submissions closed:	24 February 2021
Site visit:	13 August 2021
Hearing Closed:	2 September 2021

SUMMARY OF DECISION

1. The consents sought by Kāinga Ora related to the subdivision of approximately 3.87ha of land in Avondale to create nine vacant residential superlots (13 lots in total) (which will allow for the future development of 229 new dwellings), 8,191m² of new roading to vest and a 1,478m² park to vest at Bellgrove PI, Avondale, are granted.

INTRODUCTION

2. This decision is made on behalf of the Auckland Council ("**Council**") by Independent Hearing Commissioners David Hill (Chair), Basil Morrison and Trevor Mackie. It contains the findings of our deliberations following the hearing of the application by Kāinga Ora – Homes and Communities ("**Kāinga Ora**") for land use, subdivision and discharge resource consents to enable the subdivision of approximately 3.87ha of land in Avondale to create nine vacant residential superlots (13 lots in total) (which will allow for the future development of 229 new dwellings), 8,191m² of new roading to vest and a 1,478m² park to vest at Bellgrove PI, Avondale.
3. This decision has been prepared in accordance with s113 of the Resource Management Act 1991

PROCEDURAL MATTERS

4. The application by the Kāinga Ora was publicly notified on 25 January 2021. A total of 17 submissions were received, 3 in support, 13 in opposition, and 1 neutral.
5. The hearing was initially notified for 28 & 29 June 2021 but rescheduled at the applicant's request and re-notified on 10 May 2021 for 23 & 24 August 2021. Key dates for the filing of reports and evidence were notified at the same time.
6. A site visit to the application site and surrounding area was undertaken by the Commissioners on 13 August 2021.
7. The hearing of the application commenced virtually at 9.30am on 23 August 2021. No procedural matters were raised.

MATERIALS CONSIDERED

8. Prior to the commencement of the hearing the following materials were provided to the Commissioners and reviewed:
 - (a) A copy of Kāinga Ora's resource consent application and supporting assessment of environmental effects, including 19 appendices, prepared in accordance with Schedule 4;
 - (b) Further information provided by Kainga Ora in response to the 17 November 2020 s92 requests from Council officers;
 - (c) A copy of the 8 January 2021 s95 Notification report and decision;
 - (d) A copy of all submissions made on the application;
 - (e) A report on the application and submissions under s 42A prepared by Ms Susie Clemens, a Planner employed by the Council;
 - (f) Ten briefs of evidence in support of the application from Kainga Ora and three statements of evidence from submitters.
9. The s 42A report prepared by Ms Clemens analysed all of the information received in relation to the application. The report was informed by a number of technical specialist reviews, prepared by other Council officers – including from Healthy Waters (HW) and Auckland Transport (AT). These reviews were from Maddison Jones (ecology), Zac Woods (earthworks), Sarishka Gandhi (traffic engineering), Fiona Rudsits (soil contamination), Andreas Lilley (parks and reserves), Elizabeth Au (urban design), Camilla Needham (stormwater management - HW), Hedre Dednam (development planning - AT), Paul Hansen (arborist), and David van Echten (development engineering).
10. The s42A report contained a detailed summary of submissions made
11. Although not required by s42A, Ms Clemens also included a recommendation that we exercise our discretion to grant consent to the application, subject to conditions.

12. The s 42A report was taken “as read” at the hearing.
13. Briefs of pre-exchanged evidence were also taken “as read” at the hearing, but witnesses were given the opportunity to lodge summary statements and/or highlight aspects of their written briefs. Three of Kainga Ora’s witnesses also presented supplementary statements of evidence.
14. At the conclusion of hearing from Kainga Ora and submitters, Ms Clemens provided responses on matters that had arisen during the hearing. Ms Clemens confirmed that her s42A recommendation remained unchanged and agreed to seek formal advice from Council’s legal team on the question of imposing a bond as sought in her draft conditions – and which was rejected by Mr Allan on the premise that s163 of the Crown Entities Act 2004 prohibited the giving of guarantees or indemnities, and the exclusions of s160 do not apply.
15. Finally, Mr Allan, counsel for Kāinga Ora, exercised his right of reply orally, reserving a right to respond to the one matter on which further information was sought by us – being confirmation of Council’s position with respect to the imposition of a performance bond.

THE APPLICATION

Background

16. As recorded in the s42A report (and, other than the overall activity status that we discuss below, not contested) Kāinga Ora – Homes and Communities has applied to the council for resource consent for the subdivision of approximately 3.87ha of land in Avondale to create nine vacant residential superlots, 8,191m² of new roading to vest and a 1,478m² pocket park to vest.
17. The works will involve bulk earthworks to clear the sites of the existing buildings and vegetation; contamination remediation; the removal of two existing street trees; planting of 54 new street trees; 43 on-street car parks; construction of new roads, establishment of a pocket park and infrastructure upgrades (including raingardens and a new stormwater outfall in the road reserve near the Canal Road entrance to the Tony Segedin Esplanade Reserve).
18. The subdivision will facilitate the masterplan for the area which foresees the development of approximately 229 new dwellings across the new superlots in a mixture of market and Kāinga Ora social housing tenures (118 social housing and 111 market). However, no new dwellings or buildings are proposed as part of the application.
19. At the time of hearing the applicant had commenced the Reserves Act exchange and Local Government Act road stopping processes to undertake the acquisition of the existing Bellgrove Reserves East and West (630m²) and the road reserve of the Bellgrove Place cul-de-sacs (1,802m²). Mr Thompson¹ told us that both processes were well advanced and while no formal decisions

¹ Thompson, Supplementary statement of evidence, para 6.1.

have been released, no objections had as yet been raised either by the Council or AT respectively. Both processes are anticipated to be completed in the first half of 2022.

Site description

20. The site and surrounding area is described in the AEE and summarised in the s42A report as follows:
- The subject site is made up of 3.87ha of generally flat land at the northern end of Bellgrove Place which is a no exit cul-de-sac street intersecting with Canal Road at its southern end. The wider block is bounded by Riversdale Road to the north, Wairau Avenue to the east, and Canal Road to the south.
 - There are currently 90 existing residential dwellings occupying the site, which are predominantly two-storey, with a mix of terraced and duplex arrangements. The surrounding locality is residential, with predominantly one and two-storey dwellings and can generally be described as 'suburban' in character with a mix of standalone dwellings, infill development, and blocks of flats.
 - Kāinga Ora owns all properties contained within the site except for two small reserves on either side of Bellgrove Place, which are owned by Auckland Council (Bellgrove Reserves East and West (Lot 2 and 5 DP100239 respectively).
 - The applicant is proposing to retain Lots 1, 3, 7 and 10 for their own development and sell Lots 4, 5, 8, 9 and 11 to private developers. Lots 2, 6 and 13 will be divested.
 - Lot 12 entails the creation of a publicly vested pocket park with a pedestrian link of 6m in width (2.4m wide pedestrian path and planting on both sides), connecting Road 2 and Road 3, totalling approximately 1,605m² in area.
21. The lot sizes and their respective purpose were supplied by Mr Thompson² in his evidence as follows:

Lot	Area	Purpose
1	6,994m ²	Residential superlot
2	531m ²	Residual right-of-way (to be amalgamated to Lot 1 until divested in the future)
3	2,099m ²	Residential superlot
4	2,093m ²	Residential superlot
5	1,332m ²	Residential superlot
6	223m ²	Residual right-of-way (to be amalgamated to Lot 7 until divested in the future)
7	4,123m ²	Residential superlot
8	2,210m ²	Residential superlot
9	1,619m ²	Residential superlot

² Thompson, Statement of evidence, para 4.1.

10	2,340m ²	Residential superlot
11	3,961m ²	Residential superlot
12	1,604m ²	Pocket Park to vest as reserve
13	198m ²	Residual right-of-way (to be amalgamated to Lot 7 until divested in the future)
Road	8,185m ²	New road to vest

CONSENT REQUIREMENTS AND ACTIVITY STATUS

Consent requirements

22. The entire site is zoned Mixed Housing Urban (MHU) in the AUP, with the exception of the two small reserves on Bellgrove Place that are zone Open Space - Informal Recreation. All adjoining sites are similarly zoned MHU.
23. Land use, subdivision and discharge consents are required under the AUP and were assessed by Council as follows:

LAND USE CONSENT (S9) – LUC60364378

District land use

General rules – C1

The proposal involves development on a portion of land which is currently zoned as a road (Bellgrove Place) and is an activity not specifically classified in a rule as a permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited activity in any zone or Auckland-wide rule and is therefore an activity not otherwise provided for and is a **discretionary activity** under rule C1.7(1)

Residential – Mixed Housing Urban Zone

The proposal involves use and development that fails to meet the following core standards and is a **restricted discretionary activity** under rule C.1.9(2):

- H5.6.8 Yards: Part of the proposed maximum 0.9m high retaining wall to the west of Road 1 is within 1.5m of Riversdale Road and therefore is a 'building' within the required 2.5m front yard setback.

To develop a park within the Residential – Mixed Housing Urban Zone is an activity not provided for under the zone and is a **non-complying activity** under H5.4.1 (A1).

Transport

The proposal involves access that does not meet the following access standards and is a **restricted discretionary activity** under rule E27.4.1(A2).

- E27.7.6.4.2(1) Number of Vehicle Crossings: Seven vehicle crossings are proposed for Superlot 4 with five permitted; and

- E27.6.4.2(2) Width of Vehicle Crossings: The proposed double vehicle crossings for Superlot 4 have a width of 6m width 3m permitted.

The proposal is for subdivision of land which has capacity to accommodate more than 100 dwellings. Any activity or subdivision which exceeds the trip generation standards set out in standard E27.6.1 is a **restricted discretionary activity** under rule E27.4.1(A3).

The proposal involves five new vehicle crossings and four existing vehicle crossings within 10m of an intersection. Construction or use of a vehicle crossing where a Vehicle Access Restriction applies under standards E27.6.4.1(2) or E27.6.4.1(3) is a **restricted discretionary activity** under rule E27.4.1(A5). These crossings include the following:

- Superlot 1 will have 1 vehicle crossing on Road 1 at its intersection with Road 2;
- Superlot 4 will have 3 vehicle crossings on Road 2 at its intersection with Road 3;
- Superlot 10 will have 1 vehicle crossing opposite the intersection of Bellgrove Place, Road 1 and Road 3.
- The new intersection of Road 1 and Riversdale Road will create a Vehicle Access Restriction for two existing vehicle crossings for 77 Riversdale Road; and
- The new intersection of Road 2 and Wairau Avenue will create a Vehicle Access Restriction for the two existing vehicle crossings for 39 and 41 Wairau Avenue.

Natural hazards and flooding

The site is subject to several overland flow paths which are proposed to be conveyed within the new roads. The existing exit points of the overland flow paths will be modified to exit at Bellgrove Place instead of to adjacent properties and the peak water levels will be reduced by up to 20mm for downstream properties and rise by 2mm and 4mm to 99C Canal Road and 2 Bellgrove Place respectively. To divert the exit point and reduce the capacity of any part of an overland flow path is a **restricted discretionary activity** under rule E36.4.1(A41).

Land Disturbance - District

To undertake general earthworks of approximately 31,275m² and 8,901m³, as the earthworks are greater than 2,500 m² and 2,500m³ in a residential zone, is a **restricted discretionary activity** under rules E12.4.1(A6) and (A10) respectively.

The proposal involves use and development under rules E12.4.1(A6) and (A10) that fails to meet the following core standards and is a **restricted discretionary activity** under rule C.1.9(2):

- Land disturbance within riparian yards will exceed 5m² and 5m³ required under E12.6.2(1)(b) with approximately 10m² and 10m³ proposed.

Vegetation management and Biodiversity

To undertake the removal of 10m² of riparian vegetation within 10m of an urban stream for the construction of a stormwater outfall is a **restricted discretionary activity** under rule E15.4.1(A19).

Trees in Open Space Zones

To undertake works within the protected root zone of a Silver Dollar Gum tree within the Open Space – Informal Recreation Zone of Bellgrove Reserve West that do not comply with standard E16.6.2 are a **restricted discretionary activity** under rule E16.4.1(A8).

Trees in Roads

To remove the Flowering Cherry (*Prunus* 'Kanzan') at 18 Bellgrove Place and a Karamu (*Coprosma lucida*) at 36 Bellgrove Place is a tree removal of any tree greater than 4m in height or 400mm in girth within the road reserve is a **restricted discretionary activity** under rule E17.4.1(A10).

Temporary Activities

The total duration of the construction period is anticipated to take more than 24 months. Specific temporary activities that are not provided as a permitted activity in rules (A12) to (A23) are a **restricted discretionary activity** under rule E40.4.1(A24).

Regional land use

Land Disturbance – Regional

To undertake general earthworks of approximately 31,275m², as the earthworks are greater than 10,000m² in a residential zone where the land has a slope less than 10 degrees outside the Sediment Control Protection Area is a **controlled activity** under rule E11.4.1(A4).

SUBDIVISION CONSENT (S11) – SUB60364377

Subdivision

Subdivision – Urban

To undertake a subdivision of a site with two or more zones (Mixed Housing Urban Zone and Open Space Informal Recreation Zone) which does not meet the permitted, controlled, or restricted discretionary activities standards in E38.7 standards for subdivision for specific purposes is a **discretionary activity** under rule E38.4.1.(A13).

To undertake a vacant sites subdivision involving parent sites of 1ha or greater complying with Standard E38.8.3.1 is a **discretionary activity** under rule E38.4.2(A18).

Any subdivision not otherwise provided for in tables E38.4.1 and E38.4.4 within the Open Space Zones is a **discretionary activity** under rule E38.4.4(A43).

DISCHARGE CONSENT (S15) - DIS60364379

Contaminated Land

Discharges of contaminants into air, or into water, or onto or into land not meeting permitted activity Standard E30.6.1.1; E30.6.1.2; E30.6.1.3; E30.6.1.4; or E30.6.1.5 is a **controlled activity** under rule E30.4.1(A6).

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)

The site contains pieces of land that are or have had an activity or industry identified on the Ministry for the Environment's Hazardous Activities and Industries List (HAIL). It is a **restricted discretionary activity** to disturb more than 25m³ per 500m² and to change the land use where a Detailed Site Investigation (DSI) has been prepared and that DSI states that the soil contamination exceeds the applicable standard in Regulation 7 of the NESCS.

Activity status

24. In her s42A report, Ms Clemens therefore concluded that the consents should be bundled and considered overall as a non-complying activity.
25. This status was disputed by Mr Thompson who argued that as the proposed pocket park would not be vested as such until a later date (i.e. post-subdivision), and may not be accepted as such by Council, its future land use status at this point was not determined and, therefore, it was incorrect to apply rule H5.4.1 (A1). He contended that the overall status was, therefore, as a discretionary activity.
26. In her addendum hearing report Ms Clemens made a slight modification to her consent reasoning on this matter, substituting the term "public amenities" for "park" and noting that such activities were also not listed in the relevant activity table and therefore H5.4.1 similarly applied.

Finding

27. We agree with Mr Thompson that the particular future land use status of the pocket park remains in question, and that while the expressed intention is to vest that as public open space – that may not eventuate if, on proper consideration, Council determines that it does not meet its policy objectives. In that case the park may retain a private open space status.

28. Furthermore, we note that while “park” is not defined in the AUP, and certainly not specifically restricted to publicly owned parks, the Open Space zone (which is typically applied to parks and reserves) background description (H7.1) notes that “*some areas zoned open space are privately owned*”. The issue may not, therefore, be as clear cut as Mr Thompson suggests.
29. On the other hand, “public amenities” is defined in the AUP, and includes such things as landscaping and planting, seating and picnic tables, and playgrounds and playground equipment. However, the facilities must be established *for the convenience and amenity of the public* – which, again may not be the case, strictly, even if the public are able to use the facility.
30. To avoid unnecessary equivocation over a matter that is barely determinative, we find that it would be safer to assume a conservative position on the question and treat the application overall as a non-complying activity. In that regard we note Mr Allan’s submission that, regardless, the application is considered to satisfy the requisite gateway tests of s104D RMA – a conclusion with which Ms Clemens (and subsequently do we) agreed.

RELEVANT STATUTORY PROVISIONS

31. The statutory framework for consideration of the application is in Part 6 of the RMA.

Section 104(1)

32. Section 104(1) sets out the mandatory matters to which we must have regard when considering the application and any submissions received. For this application, the matters comprise: the actual and potential effects on the environment of allowing the activity and the relevant provisions of any applicable national and regional policy statements and plans. Section 104(1)(c) also allows regard to be given to any other matter considered relevant and reasonably necessary to determine the application.

Section 104(2)

33. Section 104(2) gives consent authorities discretion to disregard adverse environmental effects of a proposed activity if the applicable plan permits an activity with that effect. This is the permitted baseline.
34. Ms Clemens noted a number of matters that she considered relevant permitted activities, being demolition of existing buildings and the removal of trees on private land not subject to protection under the Notable Trees overlay.
35. We agree that those are relevant permitted activities and exercise the discretion to disregard those adverse effects accordingly.

Section 104D

36. Section 104D sets out the two gateway tests, one of which must be satisfied in order that an application for a non-complying activity can proceed to be granted.

The tests being that either the adverse environmental effects will be minor (s104D(1)(a)), or that the activity is not contrary to the objectives and policies of the relevant plan(s) (s104D(1)(b)).

37. As we have already noted, and discuss further below with respect to specific issues, the relevant expert witnesses (and particularly the planning witnesses Ms Clemens and Mr Thompson) concluded that the adverse effect of the 13-lot subdivision, the formation of the roads, streetscaping, and the proposed stormwater infrastructure and discharge would be minor, and that the activities were not contrary the relevant plan provisions – noting that *contrary* sets a high bar.
38. While some submitters contended otherwise, a number of the matters raised (for example concern for existing tenants and about future possible tenants, and loss of trees) do not fall within the ambit of matters that we are required to determine.
39. Overall, we find that the application passes through the gateway tests and is therefore able to be considered under s104 more broadly.

Section 106

40. Section 106 restricts the grant of a subdivision consent in defined circumstances, which include significant risk from natural hazard (such as flooding) and insufficient provision for legal and physical access.
41. We find that the risk of or from flooding does not reach the level of “significance”, and sufficient provision is made for legal and physical access to all lots, and therefore s106 is not further engaged.

Section 107

42. Section 107 restricts the grant of a discharge consent in certain circumstances. In the present instance the discharge meets the requirements of the Network Discharge Consent³ held by Auckland Council, will not generate the adverse effects stated, and therefore s107 is satisfied.

Part 2

43. The consideration of applications under s 104(1) is “subject to Part 2”, the meaning of which is now well settled. The extent to which express recourse to Part 2 may be required when considering an application for resource consent will depend on whether the relevant plan(s) have been prepared having regard to Part 2 and include a coherent set of policies designed to achieve clear environmental outcomes. If not, or if in doubt, it will be appropriate and necessary to refer to Part 2.
44. In the case of this application, we accept the currency and comprehensive nature of the AUP as the primary planning document to be considered, and which addresses the necessary matters engaged by this application.

³ Jennins, Statement of evidence, para 4.3.

45. We therefore find that it is not necessary to resort directly to Part 2 to determine the application.

Section 104B

46. Our jurisdiction in respect of the application is set out in s104B: after considering the application we may grant or refuse consent, with or without conditions.

Section 108

47. If we grant consent, we may impose conditions under s108, provided they comply with s 108AA. This latter section prevents a consent authority imposing a condition unless the applicant for the consent agrees to it, or the condition is “directly connected” to an adverse effect of the activity on the environment and/or an applicable district or regional rule or a national environmental standard. Conditions may also be imposed if they relate to administrative matters that are essential for the efficient implementation of the resource consent.

Section 113

48. Section 113 sets out the matters to be included in any decision on a resource consent application. Although we have not structured our decision to follow the format of s113, we confirm that we have addressed and included all of the matters required in this decision.

RELEVANT POLICY STATEMENTS AND PLANS (s104(1)(b))

49. In considering and determining the application, we find that s104(1)(b) requires us to have regard to relevant provisions of the following policy statements and plans:
- The National Policy Statement on Urban Development 2020 (**NPS-UD**);
 - The Auckland Regional Policy Statement 2016 (Chapter B of the AUP) (**RPS**), in particular:
 - B2 Urban growth and form.
 - The AUP, in particular:
 - C1 General rules.
 - H5 Residential – Mixed Housing Urban Zone.
 - H7 Open Space zones.
 - E38 Subdivision - urban.
 - E8 Stormwater – discharge and diversion.
 - E11 & 12 Land disturbance.
 - E17 Trees in roads.
 - E26 Infrastructure.

- E27 Transport.
 - E36 Natural hazards and flooding.
50. The relevance of those provisions was not in material dispute between the expert witnesses and we accept those as the required provisions.
51. On 20 August 2020 the NPS-UDC was replaced with a new NPS, the NPS:UD, which is therefore in play for this application. However, as the land is zoned for the intensity of development sought, and the proposed subdivision meets the requisite standards, we see no need for or benefit from considering that NPS further. Suffice to say that the proposal is consistent with its overall direction – albeit an argument could be made that it is not intensive enough with respect to Policy 3 of the NPS-UD; however, that is a plan provision requirement (not yet implemented) not a landowner development-driven one.

Approach to s104 matters

52. The approach to be taken to the various matters in s 104(1) is well established: the directive “*must have regard to*” does not mean “*must give effect to*”. Rather it simply requires decision-makers to give genuine attention and thought to the matters set out. The relative weight to be given to the matters listed in s 104(1)(a)-(c) is for the decision maker, on the evidence. Flexibility is important when approaching this task, in the sense that the relative importance that various considerations have, and the manner in which they interrelate, will vary according to context.
53. In accordance with this guidance, we record that we have approached our assessment of the policy and plan provisions engaged by the application by giving greatest weight to the most specific relevant provisions, namely those in the MHU zone. We have next considered the more general provisions in chapter E (where necessary). Together, these provisions “give effect to” the RPS.
54. Finally, we have then had regard to the RPS as the most contextually relevant, higher-order policy provisions.

OTHER RELEVANT MATTERS (s104(1)(c))

55. Section 104(1)(c) requires us to have regard to “*any other matter [we] consider relevant and reasonably necessary to determine the application*”. Those “matters”, of course, must be related to the issues contemplated by the purpose of the RMA and which touch and concern the application.
56. The s42A report identified several “matters” as potentially falling within the ambit of s104(1)(c), being:
- Council’s Urban Ngahere (Forest) Strategy (UNS); and
 - the Wildlife Act 1953.
57. While those matters may have some relevance, we are not persuaded that they are reasonably necessary to determine the application. The Strategy does not

“trump” the AUP provisions, and any matter regulated by the Wildlife Act falls within that statute’s jurisdiction not the RMA’s.

58. Other matters raised by submitters that Ms Clemens considered *ultra vires* the RMA included:

- restrictions on the use by the general public of on-street car parks;
- the future of Kāinga Ora’s existing tenants and, in particular, the residents of Wairau village;
- the behaviour and nature of possible future tenants; and
- restrictions on the removal of existing trees on private property.

59. We agree that those matters fall outside the RMA’s jurisdiction in this matter and should be disregarded.

SUMMARY OF THE EVIDENCE

60. The applicant’s evidence was pre-circulated as noted. The following is a brief summary of that evidence:

Giles Tait, development manager Kāinga Ora, described the project and its background; the rationale for the master planning exercise; and provided an overview of Kāinga Ora’s objectives for the development⁴, being to:

- (a) *provide healthy, comfortable, and fit-for-purpose housing to people in need, for the duration of their need;*
- (b) *improve the diversity and effectiveness of social housing to meet the changing needs of our communities and align the state housing portfolio with demographic trends and demand; and*
- (c) *deliver housing that is modern, high quality, makes the most efficient use of land, and fits seamlessly into established communities.*

Mr Tait summarised⁵ the key deliverables as follows:

- (a) *The Proposal optimises the development potential of a valuable site in the heart of an established neighbourhood to enable the delivery of an appropriate residential development profile in future.*
- (b) *The superlots maintain flexibility for the form and tenure of future development on the site. The super lots have been tested to ensure they can accommodate three-storey apartments and carparking. While this yield is less than the original brief, we consider it achieves a layout which will facilitate good urban design outcomes for the site and for the wider locale.*
- (c) *The masterplan has been specifically designed to address anti-social behaviour in the area. The masterplan layout removes cul-de-sacs and provides opportunities for passive surveillance of the roading network and proposed pocket park. An increased number of street frontage boundaries will enhance passive surveillance opportunities.*

⁴ Tait, Statement of evidence, para 3.3.

⁵ Tait, Statement of evidence, para 8.3.

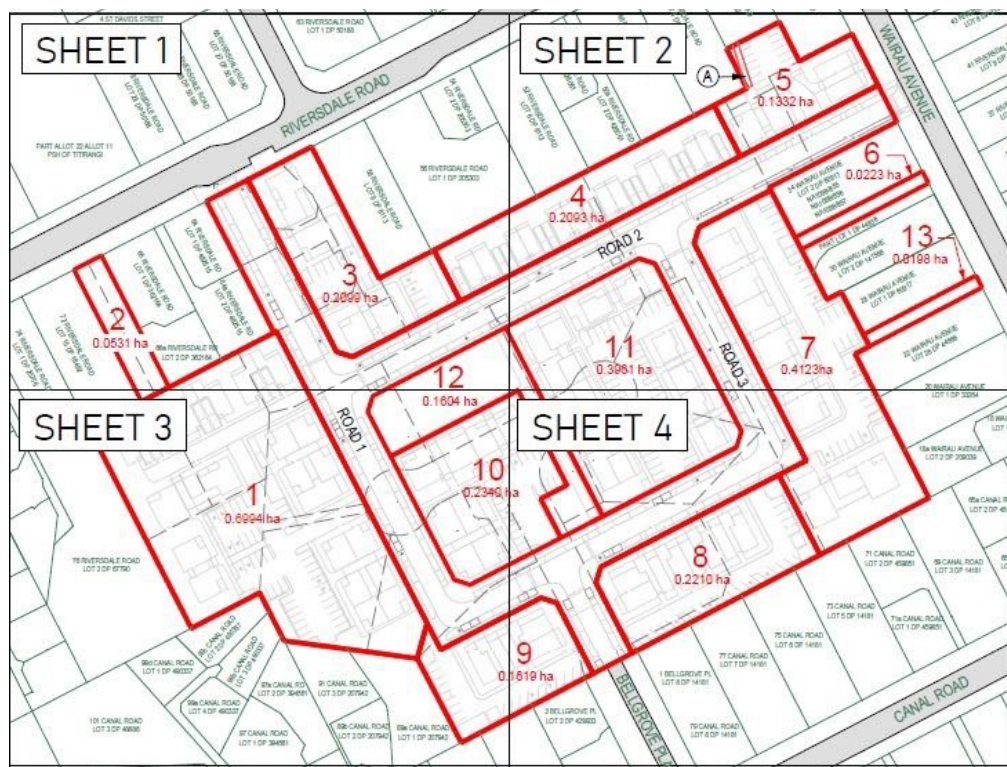
- (d) *The size and amenity of public open space will be improved through creation of the pocket park, landscaping of the streets and park and retention of the large established gum tree. The landscaping strategy is consistent with the urban ngahere strategy that Kāinga Ora is developing which seeks to help re-establish urban ngahere (forest) in areas where Kāinga Ora is a major landholder.*
- (e) *The new roading network improves connectivity for the wider network, and safety for all modes.*

Mr Tait noted two particular matters relating to submissions:

- that Te Ākitai Waiohū had submitted and prepared a Cultural Values Assessment, and its on-going involvement with Kāinga Ora had been agreed; and
- the request for assistance by submitter Mr Waldvogel in the removal of overhanging trees had been agreed and the trees subsequently removed. We were advised that this satisfied the submission.

Mr Tait also noted that the development would eventually provide at least 139 houses and locked in key public realm elements without constraining future built form and tenure options.

Aaron Sills, architect / site masterplanner with Sills van Bohemen Architects Limited), backgrounded his involvement in the project since taking over from the earlier masterplanning work by Urbanismplus. He noted that the brief was to develop a bulk and location masterplan sufficient for defining the superlots (below) and test yield options. Mr Sills described a number of optional arrangements tested (including up to 5 storeys) before settling on the currently preferred 2-3 storey option – with a public/private tenure split of at least 50:50%.



Mr Sills particularly noted the importance of the superlots / road realignment from the Urbanismplus draft and the location of the pocket park as providing both a flexible range and distribution of housing typologies as well as good urban design outcomes.

Elliot Richmond, landscape architect with Resilio Studio Limited, provided evidence about the streetscape and pocket park design (including hardscape strategy, furnishings and amenity planting for the street and stormwater management). He noted⁶ that the overall goal for the streetscape design included:

- (a) *Creation of safe and slow residential streets (30kph maximum speed environment).*
- (b) *Responding to the environmental context of Avondale.*
- (c) *Integration with the existing streetscape context of Avondale.*

Mr Richmond told us⁷ that, following negotiations with Auckland Transport (as owner of the future public roads), the final agreed amenity planting design would deliver:

- (a) *75m of bioswale.*
- (b) *181m² of raingardens.*
- (c) *1,483m² of on-street amenity planting.*
- (d) *54 street trees.*

Mr Richmond also noted that the proposed pocket park at 1,604m² was significantly larger than the two existing reserve areas which totalled 630m² and provided a better and more usable community space (including a community room, open lawn areas, picnic tables and adaptive play equipment) being centrally located with pedestrian linkage. Mr Richmond acknowledged that the details as such would be finalised subsequently when the actual development consents are sought.

Mr Richmond provided a supplementary statement of evidence at the hearing confirming the agreements reached with AT regarding draft conditions and landscape designs affecting the latter's roading interests. Amended landscape plans (Rev F dated 18.08.2021) reflecting those agreements were submitted.

Chris Jennins, civil engineer with Riley Consultants Limited, gave evidence about earthworks and sediment control; stormwater management, flooding and overland flow; and wastewater and water supply. He noted that earthworks over an area of up to 31,275m² and 8,901m³ were required; described the sediment and erosion control and stormwater infrastructure proposed (being a mix of swales, raingardens, overland flow paths and pipes to an upgraded outfall discharge point at Tony Segedin Esplanade Reserve on Canal Road, incorporating hydraulic energy management by way of a bubble-up chamber; and noted that stormwater

⁶ Richmond, Statement of evidence, para 3.2.

⁷ Richmond, Statement of evidence, para 3.12.

attenuation was not practicable because of the site's flat topography. Mr Jennins concluded that the adverse effects of earthworks and construction would be less than minor.

Simon Hunt, contaminated site specialist with EHS Support NZ Limited, had undertaken a soil contamination concentration investigation as the site had historically been used for agricultural pasture and horticulture. Mr Hunt told us that while near surface soil contamination concentrations were above background levels and slightly elevated, the concentrations of key trace elements (arsenic, copper, lead, and zinc) are typical of inner city urban residential soils. Mr Hunt⁸ noted that no discernible contamination was related to the historical farming activities. Furthermore, that redevelopment would likely result in most, if not all, contaminated soil being removed from the site. Following submission of the necessary PSI and DSI reports, a Remedial Action Plan had been prepared.

Todd Langwell, traffic engineer with Traffic Planning Consultants Limited, summarised the key features of the surrounding transport environment and assessed the likely traffic and transportation effects of the subdivision (if developed consistent with the Master plan – noting that none of those subsequent effects arise solely from the act of subdivision per se).

Among other things, Mr Langwell noted that connecting roads, Ash Street and Rosebank Road, are both arterial roads with multiple lanes and high daily vehicle counts; public transport is available by two bus routes (138 and 191) which connect to the Avondale and New Lynn centres; and reviewed the area's intersection crash record. Mr Langwell summarised the SIDRA-9 traffic modelling he had undertaken for the AM/PM peak hours (based on estimated trip generation rates for the Masterplan development of 1,540 vpd and 153 vph during the two peak periods⁹) for the three intersections of Riversdale Road/Rosebank Road; Canal Road/Rosebank Road; and Wairau Avenue/Ash Street. The modelled results indicated no more than a 25 second delay and a queue length of 1 vehicle – which he concluded was well within acceptable limits requiring no further mitigation. Furthermore, he did not identify any detrimental road safety effects – noting the intended lower speed limit (30 kph) and traffic calming measures proposed (and agreed by AT) for the internal roads.

Mr Langwell also noted¹⁰ that new vehicle trips (i.e. discounting those existing trips from the current 90 dwellings to be removed) equated to 955 vpd and 94 vph in the peak periods.

Mr Langwell commented on the s42A report draft conditions, proposing some amendments as well as noting that some conditions related more to the subsequent development stage and should therefore be set aside. His overall conclusion was that the traffic engineering effects of the subdivision could be accommodated.

⁸ Hunt, Statement of evidence, para 4.12.

⁹ Langwell, Statement of evidence, para 4.3.

¹⁰ Langwell, Statement of evidence, para 4.4.

Matthew Paul, arborist with Peers Brown Miller Limited ("**PBM**"), gave evidence in particular about the protected trees, the non-protected trees that are to be retained, and the new street tree plantings proposed. He noted that PBM had conducted a full arboreal assessment of the 99 individual and tree groupings within the Kāinga Ora properties (94) and adjacent public land (5); 79 of which, on private land, are proposed to be removed.

Two protected street trees in Bellgrove Place are to be removed (a Flowering Cherry (*Prunus 'Kanzan'*) and a Karamu (*Coprosma lucida*), and works required within the root zone of a third (a Silver Dollar Gum / Argyle Apple (*Eucalyptus cinerea*)). That activity requires consent.

Fifty-four (54) new native street trees and nine (9) new park trees are to be planted – as agreed with AT as owner of the road reserve.

Mr Paul did not consider the two protected trees notable, either in terms of dimension, species or aesthetic value. He concluded that the replacement trees more than mitigated for that loss. Furthermore, he concluded¹¹ that the replacement plantings, although lesser in number than those existing, constituted a positive amenity and local ecological benefit.

It was also noted during the hearing that further landscape vegetation will also emerge when the superlots are developed (and this may include additional tree species).

Mr Paul provided a supplementary statement of evidence at the hearing noting that a cherry tree within the road reserve proposed for removal had not been included in the original survey, and had therefore not been assessed by him. Accordingly, he had undertaken an assessment, concluding that the tree was a poor specimen, whose removal would have a less than minor adverse effect, appropriately mitigated by the proposed new streetscape plantings.

Mark Delaney, ecologist with Bioresarches Group, gave evidence principally about the receiving environment in the area of the proposed stormwater outfall at Tony Segedin Esplanade Reserve. He also reviewed the arboricultural evidence.

He noted that approximately 12m² of riparian vegetation is to be removed, comprising flax (*Phormium tenax*), Hebe sp., Carex sp., swan plant (*Asclepias Physocarpa*), arum lily (*Zantedeschia aethiopica*) and additional weed species. Mr Delaney assessed that as being of low botanical and terrestrial ecological value and therefore of no more than minor adverse effect – and including on freshwater ecological values. When the additional 24m² of native species riparian enhancement planting is taken into account, Mr Delaney concluded¹² that would "...increase the overall terrestrial and freshwater ecological value".

¹¹ Paul, Statement of evidence, para 3.16 – 3.17.

¹² Delaney, Statement of evidence, para 5.1.

On reviewing the arboricultural assessment, Mr Delaney concluded¹³ that the ecological effects of the proposed tree removal (including their habitat value) would be negligible.

Gerard Thompson, planner and Director with Barker & Associates Limited, gave planning evidence relying on the applicant's expert evidence for his overall assessment. Mr Thompson's evidence also covered the consultation / engagement undertaken; updated information about the road stopping and reserves exchange processes; his planning assessment against the provisions of the AUP; a summary assessment against s104D in the event that we conclude that is required; and detailed amending recommendations on the s42A draft conditions. Mr Thompson concluded that the application met the relevant planning requirements, having provided a detailed assessment of the relevant objectives and policies as an attachment to his evidence.

Mr Thompson provided a supplementary statement of evidence at the hearing noting: changes to the proposed streetscape and pocket park landscaping design; removal of a previously unidentified street tree (cherry tree) within Bellgrove Place; commenting further on conditions; and updating the hearing on progress with the road stopping and reserves exchange processes.

61. Statements of submitter evidence were pre-circulated from:

Mark Lockhart, for The Tree Council, expressed concern that the removal of trees and proposed plantings did not align with Council's Urban Ngāhere strategy – noting that many of the larger trees in Avondale were on private property and therefore not protected. He identified the Tree Council's key concerns as:

1. *The range of trees species proposed will not develop into significant large mature specimens.*
2. *The emphasis on native flora further restricts the opportunity for other more appropriate planting that will provide scale and amenity more effectively. We believe in "right plant, right place". Deciduous trees, having the advantage of allowing more sunlight into homes in winter, could be usefully employed on northern building facades. Many native trees "struggle" in restricted and exposed growing environments.*
3. *Kāinga Ora prioritization of at grade car parking over under-croft or basement parking which restricts the space and opportunity for planting significant specimen trees.*
4. *That while the urban design features that are integrated into the developments are valuable, they compromise the already limited space for more meaningful specimen tree planting, which would provide more visual weight to balance the bulk of the buildings*

Christine Blake, long-standing homeowner and resident of 35 Wairau Avenue, who expressed concern about the number and intensity of dwellings proposed; traffic and access issues on and connecting with Wairau Avenue; future for existing pensioner tenants as key parts of the local community / demographic; and community garden option for lots 6 and 13.

¹³ Delaney, Statement of evidence, para 6.5.

Kate Hennebry, resident of 30 Wairau Avenue since 2002, who expressed concern about the changing nature of Kāinga Ora's tenancies in Wairau Village and remaining pensioners; the loss of trees; the proposed density and worsening traffic issues; and the option for community gardens.

62. The above submitters appeared and spoke to those concerns. Those matters were amplified at the hearing by submitter Nina Patel (who spoke about the importance (but lack) of community development and planning – both existing and with large-scale future developments such as this – for integrating new residents into the area). Mr John Macpherson also addressed us on his particular situation with respect to the tenancy he had held for some considerable time (among the buildings to be demolished) and that had recently been further adapted to his individual needs.
63. Where necessary we discuss evidence directly relevant to issues in contention with the application later in this decision.
64. We record that we have reviewed and considered in detail all the evidence presented to us, as well as the submissions that were made on the application.

PRINCIPAL ISSUES IN CONTENTION

65. Section 113 requires our decision to identify the principal issues that were in contention with the application and set out our findings thereon. As we have already noted, some matters, while contentious, are in fact outside our jurisdiction to consider under the RMA and are not further discussed.
66. In noting that, we do not mean to diminish the importance of those matters, simply their relevance for us. Clearly issues of neighbourhood integration and general tree amenity and value (for instance) are important to established communities. We express the hope and expectation that Kāinga Ora will receive those messages positively and respond appropriately, noting that its statutory objective¹⁴ is as follows:

12 Objective of Kāinga Ora–Homes and Communities

- (1) *The objective of Kāinga Ora–Homes and Communities is to contribute to sustainable, inclusive, and thriving communities that—*
 - (a) *provide people with good quality, affordable housing choices that meet diverse needs; and*
 - (b) *support good access to jobs, amenities, and services; and*
 - (c) *otherwise sustain or enhance the overall economic, social, environmental, and cultural well-being of current and future generations.*
- (2) *When performing its functions or exercising powers under any other legislation, Kāinga Ora–Homes and Communities must act in a way that furthers any relevant objectives or purposes stated in that legislation.*

67. In that regard we note, in particular, the requirement of subsection 12(2).

¹⁴ Kāinga Ora – Homes and Communities Act 2019

Summary of principal issues in contention

68. On the basis of the s42A report and the detailed expert evidence, submissions and representations presented to us, we find the application raised the following principal issues:
- (a) Whether the replacement vegetation is sufficient.
 - (b) Whether the off-site traffic effects can be appropriately managed.
 - (c) Whether the stormwater infrastructure is sufficient.
 - (d) Whether construction effects are appropriately managed.
 - (e) Whether the proposed conditions of consent are sufficient to avoid, remedy or mitigate any adverse effects to an appropriate level.
 - (f) Whether the application should be approved.
69. We address and make findings on these issues below.

VEGETATION

70. The matter of existing, particularly large, tree protection is evidently live in the Avondale community - sparked, it seems, by the recent removal of several significant trees on private property in the area. Submissions were, therefore, focussed on the issue of the removal of most of the trees within the area of the Kāinga Ora landholding and their replacement by fewer and obviously less mature specimens.
71. The fact of the matter is that, by and large, that activity is permitted on private property and the hearing has no jurisdiction to alter that fact. Kainga Ora has reached an agreement with AT regarding the size and distribution of replacement street trees – which fall within AT’s jurisdiction as asset owner and road reserve controlling authority. Again, this hearing has no grounds for disturbing that side agreement. We were told that Kāinga Ora intended more street trees / vegetation but that was unacceptable to AT for various engineering and maintenance reasons – and which it is both entitled and empowered to determine.
72. We are satisfied that the result arrived at will provide more than adequate street tree coverage, albeit one would not expect those trees to grow to full size in a street berm environment. We note that it is an inevitable consequence of higher density development that green areas are reduced -although that remains to be determined under the specific development proposals that will come forward for consenting in due course. We do not think that reaches an unacceptable level with what is now proposed.

TRAFFIC

73. While submitters expressed doubts about the traffic expert opinions regarding access and queues from the development (as it will eventuate) and the main

arterials of Ash Street and Rosedale Road, and also Wairau Avenue and Riversdale Road, their observations were not supported by hard data.

74. The traffic models used by the traffic experts are industry standard best practice. That evidence was that the intersections would, on average, not be significantly affected by the proposed development of some 230 units. Of course there will be times when congestion arises - for all manner of reasons caused by incidents or events on the wider network. However, those incidents are not the basis for drawing conclusions about everyday performance.
75. We note that the internal roads are designed for relatively low-speed passage (30 kph) and manoeuvring – and find that entirely appropriate. Agreement has been reached with AT, we understand, regarding traffic calming measures.
76. We also note that the car parking provision (both on-site and on-street) has been accepted by Council as sufficient at this stage. That matter will likely be revisited at development resource consent stage when the actual building configurations etc are submitted.

STORMWATER INFRASTRUCTURE & FLOODING

77. The wider site is low lying and subject to inundation. That is evident in the flood modelling work undertaken and in the final contours proposed and road profiles agreed with AT to manage stormwater flows through the site by means of swales, pipes and secondary flow paths (the roads themselves). The lot and road layout proposed achieves the 1% AEP standard, and the new infrastructure is appropriately sized for the 10% AEP storm.
78. The piped stormwater will be conveyed to new infrastructure at the discharge point in Tony Segedin Esplanade Reserve. That outfall option and the design proposed is supported by HW even though the water quality treatment devices are not sized to the full GD01 standard – because the level of treatment is appropriately adjusted to reflect the type/use of the internal roads - and sufficient and acceptable revegetation is proposed.
79. Design details will be confirmed at Engineering Plan Approval stage.

CONSTRUCTION

80. While details around earthworks and the demolition of the 90 existing buildings (a permitted activity) were scant, we were told that the earthworks would be conducted as a single stage. Conditions around that activity are proposed – and are reasonably standard.
81. We noted that there was no obvious condition around construction noise and vibration – to provide the neighbours, who will endure a lengthy development cycle all up, with greater certainty and resolution over likely effects – and Kāinga Ora agreed to include a revised draft condition. That is now included.

CONDITIONS

82. A full set of annotated proposed conditions was provided in reply, including revised conditions relating to construction management. The proposed conditions were largely agreed with Ms Clemens (as she identified in her 4 August 2021 Addendum Hearing Report (section 3), including the longer (i.e. 3 year) landscaping maintenance condition that was accepted at the hearing.
83. Two points of disagreement with Council remained:
- Matters to be included in condition 1; and
 - Whether a performance bond, as proposed by Council, should or could be imposed.

Should Condition 1 be streamlined?

84. Mr Allan had submitted that condition 1 as proposed by Council was "... innately problematic as it lacks certainty and is difficult to enforce" and proposed a more streamlined version, omitting many of the referenced documents. Mr Allan's argument was based on the reasonable premise that as things change through the consent process, trawling through documents (including email trains) to identify what was recounted earlier can throw up contradictions in terms of the injunction to be *in accordance with* all those documents. Mr Allen had no issue with condition 1 citing all relevant (i.e. approved) plans and drawings. Mr Allan indicated that the applicant was prepared to modify condition 1 along those lines if the Panel thought that appropriate.
85. Ms Clemens did not agree noting, among other things as we discussed, that in the event of dispute or enforcement, reliance on the Council archive for associated documents (that were fundamental to the decision) rather than having those clearly identified in the consent, entailed some risk.
86. While we are sympathetic to Mr Allan's concern, we are not aware, and were not advised as such, of this being a problem in reality. The condition as proposed identifies the 11 key documents and all the most recent drawings and plans. We think it most unlikely that, in the event of dispute or enforcement, there would be a need to go behind those identified documents / information.
87. We therefore impose condition 1 as provided in the document dated 23 August 2021 supplied by the applicant.

Is a Bond required?

88. Ms Clemens / Council had proposed what we were advised are standard subdivision bond conditions relating to uncompleted works and landscape maintenance. Those two conditions read as follows:

Uncompleted Works Bonds (on-demand)

Prior to the issue of the section 224(c) certificate and in accordance with section 108(2)(b) of the RMA, an unconditional, on demand bond will be entered into where any landscape works required by the conditions of this consent have not been completed in accordance with the approved plans and must be at the Council's discretion. The bond amount must be 1.5 x the contracted rate of any outstanding works and must be agreed in consultation with the Parks Planning Team Leader prior to lodging the bond. The liability of the consent holder must not be limited to the amount of the bond.

Maintenance bond (on-demand)

Prior to the issue of the s224(c) certificate and in accordance with s108(2)(b) of the RMA, the consent holder will enter into an on-demand bond arrangement on the usual Covenant to Perform terms agreed by Kāinga Ora and Auckland Council in respect of the maintenance of the landscaping works required by the conditions of this consent. The on-demand maintenance bond will be valid for a period of two years from the issue of a practical completion certificate. The amount of the on-demand bond will be 1.5x the contracted rate for maintenance and must be agreed in consultation with the Parks Planning Team Leader (at practical completion audit) prior to the lodging of the bond.

89. Mr Allan told us that imposing obligations on Kāinga Ora to enter into bonds was not lawful under s163(1) of the Crown Entities Act 2004 and those conditions should therefore be deleted. Furthermore, we were told that the matter was currently the subject of a live dispute between Council and Kāinga Ora.
90. Having been made aware of that context we sought formal legal advice from Council, via Ms Clemens, on the matter.
91. That advice was conveyed to us by Ms Clemens on 27 August 2021, in which she records the following from Mr Christian Brown, Manager Regulatory & Enforcement, Legal Services:

Mr Allan did not address the relevant provisions of the RMA in his legal submissions as they relate to the Crown and bonds. Section 4 of the RMA states that the Act binds the Crown, except as provided for in that section. None of the specified exemptions relate to consent conditions or the ability of a consent authority to require a bond. Therefore, these provisions of the RMA bind the Crown.

Section 161 of the Crown Entities Act 2004 refers to guarantees or indemnities, not regulatory bonds. Given that the RMA is a code and the provisions relating to consent conditions and bonding bind the Crown, in our view the provisions of the Crown Entities Act can be reconciled with the provisions of the RMA on the basis that a regulatory bond under the RMA is not a guarantee or an indemnity, it is something different. Its purpose is to ensure consent conditions are complied with, not to indemnify or compensate Council for potential loss.

In addition, advice has also been provided by Council's Legal Services Team confirming that a bond instrument can be worded in such a way to ensure that it is not construed as an indemnity or guarantee.

92. In response Mr Allan noted the following (which we cite in full):

Kāinga Ora's position remains that it is not lawfully able to enter into the bonds required by those conditions and that the conditions should be omitted from the consent. In that regard:

- a. *Kāinga Ora is subject to an extensive statutory framework including the Crown Entities Act 2004. It has, at an organisational level, obtained detailed legal advice on its public law obligations and powers.*
- b. *That advice is that, by virtue of section 163 of the Crown Entities Act, Kāinga Ora is not lawfully able to enter to bonds, whether required pursuant to conditions of a resource consent or not. Put simply:*
 - i. *Section 163(1) of the Crown Entities Act states, "A Crown entity must not, with or without security, give a guarantee to, or indemnify, another person, or amend the terms of any such guarantee or indemnity, other than as provided in section 160".*
 - ii. *An indemnity is a promise made by one party (the indemnifier) to another party (the creditor) to compensate that person for loss caused on the occurrence of certain events. The indemnifier assumes direct liability to the creditor, irrespective of whether the loss is caused by the indemnifier. It keeps the creditor harmless against loss.*
 - iii. *A performance bond is a type of indemnity. It places the consequences of non-performance on the party giving the bond, by making liability dependent on a demand and satisfaction of conditions. A bond requested under section 108 RMA would fall into this category. In the event of non-performance of certain consent conditions, Kāinga Ora would assume liability and would compensate the Council for any loss it has suffered.*
 - iv. *Kāinga Ora would be barred under s 163 of the Crown Entities Act from providing a bond unless one of the exceptions listed in section 160 applies. Kāinga Ora's legal advice is that none of the statutory exceptions are applicable.*
- c. *With regard to the legal advice received by Council's officers in paragraph 3(b) of the memorandum:*
 - i. *Kāinga Ora must rely on the detailed legal advice received by it regarding its public law obligations and powers, in preference to the contrary opinion from Council's lawyers.*
 - ii. *Kāinga Ora will not be departing from the legal advice that it has received regarding the limits of its powers, as it understands that to do so would be unlawful. As a consequence, Kāinga Ora cannot and will not provide the bonds required under Council's proposed conditions 87 and 88.*
 - iii. *While the Crown is bound by RMA, the RMA cannot and does not bestow on Kāinga Ora powers beyond the limits set out in the Crown Entities Act. Accordingly, the retention of conditions 87 and 88 would create an unsatisfactory outcome whereby Kāinga Ora is required to comply with conditions that it cannot lawfully satisfy. That reinforces the need for the conditions to be omitted from the consent.*

d. *In any event, for the reasons discussed during the hearing, Kāinga Ora considers that there is no rationale for imposing the bond conditions in this case, even if Kāinga Ora was able to comply with them. The conditions relate to the completion and maintenance of landscaping works which are relatively minor in the context of the Proposal and which Council cannot reasonably have any concern about Kāinga Ora's ability to fund or carry out.*

93. This is clearly a matter of some moment for Kāinga Ora and Council, best left for determination in another and perhaps more appropriate forum.
94. Suffice to say that we do not think a bond is actually required in this instance. We have imposed clear conditions relating to the matters over which Council sought a bond – principally the landscaping and its maintenance - and the roading network must be completed before any lots could be further developed. Furthermore, any works or “furniture” in the proposed pocket park, should Council accept that as a public park, can be negotiated as part of any such agreement and does not need to be bonded at this time.
95. Those are enforceable conditions by Council from which Kāinga Ora cannot resile (and we do not anticipate that being the case). As Mr Allan submitted, Kāinga Ora is a crown entity whose purpose (as noted above) requires it to develop housing in a socially responsible way. There is no doubt that it has the financial and technical ability to accomplish that on this site. It is not a case where non-performance risk is likely to play a significant role. Certainly, Council did not provide any evidence suggestive to the contrary.
96. We find that the two bond conditions are not necessary in light of the applicant's “standing” and we do not, therefore, need to resolve the issue of the Crown Entities Act bar.

CONSENT DURATION

97. A five (5) year duration is proposed for the discharge consent. We agree that is appropriate for the purpose of the earthworks phases.

CONCLUSION

98. Having considered the application and the submissions made on it under s 104 we find, in summary, that:
- (a) Subject to the conditions of consent imposed by us, the application is likely to have positive social effects, and any adverse effects on the environment arising from it will be avoided, remedied or mitigated to an acceptable level;
 - (b) A grant of consent would assist Council to realise the planned intentions for the MHU zone; and
 - (c) A grant of consent would be consistent with the objectives and policies of the AUP, including the RPS.

99. Based on our findings above, we are satisfied that granting consent to Kāinga Ora's application would promote the sustainable management of natural and physical resources. That is, it would allow the use of an existing land resource in a way that will better enable people and communities to provide for their social, economic, and cultural well-being while sustaining the potential for that resource to meet the reasonably foreseeable needs of future generations, safeguard natural resources and avoid, remedy or mitigate adverse effects on the environment.

DECISION

100. By delegated authority and under s104B and s104D Kāinga Ora's application for subdivision / land use and discharge consents to create nine vacant residential superlots (13 lots in total) (which will allow for the future development of 229 new dwellings), 8,191m² of new roading to vest and a 1,478m² park to vest, at 3-40 Bellgrove Place, 1-11/60, 68 & 70 Riversdale Road, and 1-36/32 & 38-42 Wairau Avenue, Avondale, and to discharge stormwater via new infrastructure at Tony Segedin Esplanade Reserve, Canal Road, is granted subject to the conditions included in **Schedule 1**, which we impose in accordance with s108 RMA.



David Hill

Chairperson

and on behalf of Commissioners Basil Morrison and Trevor Mackie

20 September 2021

Schedule 1: Consent Conditions

General conditions

These conditions apply to all resource consents.

1. This consent must be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application detailed below, and all referenced by the Council as resource consent number BUN60364376 (LUC60364378, SUB60364377, DIS60364379):
 - Application Form and Assessment of Environmental Effects prepared by Sarah Rendle of Barker and Associates, dated 17 December 2020.
 - Civil Engineering Assessment 'Proposed Subdivision Bellgrove Place, Avondale', Reference 190069-P (Issue 6.0) prepared by Riley Consultants dated 27 May 2021.
 - Geotechnical Engineering Assessment Proposed Subdivision Bellgrove Place, Avondale', Reference 190069-M, prepared by Riley Consultants dated 21 September 2020.
 - Flood Assessment 'Bellgrove Place, Avondale', Reference 190069-D (Issue 2.0), prepared by Riley Consultants dated 29 September 2020
 - Remedial Action Plan (RAP) prepared by EHS Support dated 21 September 2020.
 - Arboricultural Assessment prepared by Peers Brown Miller, Revision A, dated 11 September 2020.
 - Arboricultural Assessment of an additional Cherry Tree (*Prunus* sp.) proposed for removal prepared by Peers Brown Miller dated 17 August 2021.
 - Traffic Impact Assessment prepared by Traffic Planning Consultants, Issue B, dated 7 September 2020.
 - Ecological Assessment titled 'Kāinga Ora Bellgrove – Stormwater Outfall Assessment of Ecological Effects' prepared by Bioresarches dated 15 September 2020
 - S92 Response prepared by Sarah Rendle of Barker and Associates dated 23 February 2021.
 - Ecology S92 response prepared by Mark Delaney of Bioresarches dated 22 February 2021.

Drawing title and reference	Author	Rev	Dated
Civil			
190069-200 Drawing List and Locality Plan	RILEY Consultants	5	27/05/21
190069-201 Existing Site Plan	RILEY Consultants	1	25/09/20

190069-202 Proposed Site Plan	RILEY Consultants	2	29/09/20
190069-203 Proposed Road Section	RILEY Consultants	2	15/04/21
190069-204 Cut / Fill Plan	RILEY Consultants	2	29/09/20
190069-205 Contaminated Land Remedial Earthworks	RILEY Consultants	2	29/09/20
190069-206 Proposed Erosion and Sediment Control Plan	RILEY Consultants	2	17/02/21
190069-207 Erosion and Sediment Control Details	RILEY Consultants	1	25/09/20
190069-208 Proposed Stormwater Plan	RILEY Consultants	2	15/03/21
190069-209 Proposed Stormwater Network Extension Plan	RILEY Consultants	1	25/09/20
190069-210 Proposed Stormwater Longsections – Sheet 1	RILEY Consultants	1	25/09/20
190069-211 Proposed Stormwater Longsections – Sheet 2	RILEY Consultants	1	25/09/20
190069-212 Proposed Stormwater Longsections – Sheet 3	RILEY Consultants	1	25/09/20
190069-213 Proposed Stormwater Longsections – Sheet 4	RILEY Consultants	1	25/09/20
190069-214 Proposed Stormwater Longsections – Sheet 5	RILEY Consultants	1	15/03/21
190069-215 Proposed Stormwater Longsections – Sheet 6	RILEY Consultants	2	15/03/21
190069-216 Proposed Stormwater Longsections – Sheet 7	RILEY Consultants	2	15/03/21
190069-217 Proposed Stormwater Longsections – Sheet 8	RILEY Consultants	2	15/03/21

190069-218 Proposed Stormwater Longsections – Sheet 9	RILEY Consultants	2	15/03/21
190069-219 Preliminary Construction Details	RILEY Consultants	2	15/03/21
190069-220 Proposed Wastewater Plan	RILEY Consultants	1	25/09/20
190069-221 Proposed Wastewater Longsections – Sheet 1	RILEY Consultants	1	25/09/20
190069-222 Proposed Wastewater Longsections – Sheet 2	RILEY Consultants	1	25/09/20
190069-223 Proposed Wastewater Longsections – Sheet 3	RILEY Consultants	1	25/09/20
190069-224 Proposed Wastewater Longsections – Sheet 4	RILEY Consultants	1	25/09/20
190069-225 Proposed Wastewater Longsections – Sheet 5	RILEY Consultants	1	25/09/20
190069-226 Proposed Wastewater Longsections – Sheet 6	RILEY Consultants	1	25/09/20
190069-227 Proposed Water Supply Plan	RILEY Consultants	1	25/09/20
190069-228 Combined Services Plan	RILEY Consultants	1	25/09/20
20168 - T.C - (8) Revised Traffic Calming	Traffic Planning Consultants		07.04.21
Landscaping			
Contents (page 2)	Resilio Studio	F	18.08.2021
Open Space Context and Analysis (Page 3)	Resilio Studio	F	18.08.2021
Masterplan (Page 5)	Resilio Studio	F	18.08.2021
Connection to Existing Footpaths - Riversdale Road (Page 6)	Resilio Studio	F	18.08.2021
Connection to Existing Footpaths - Riversdale Road (Page 7)	Resilio Studio	F	18.08.2021

Connection to Existing Footpaths - Wairau (Page 8)	Resilio Studio	F	18.08.2021
Hardscape Plan (Page 10)	Resilio Studio	F	18.08.2021
Surfaces (Page 11)	Resilio Studio	F	18.08.2021
Furniture (Page 12)	Resilio Studio	F	18.08.2021
Soft Landscape Plan (Page 14)	Resilio Studio	F	18.08.2021
Soft Landscape Elements (Page 15)	Resilio Studio	F	18.08.2021
Tree Plan (Page 16)	Resilio Studio	F	18.08.2021
Plant Species Trees (Page 17)	Resilio Studio	F	18.08.2021
Amenity Planting + Rain Gardens Plan (Page 18)	Resilio Studio	F	18.08.2021
Amenity Planting (Page 19)	Resilio Studio	F	18.08.2021
Amenity Planting Species (Page 20)	Resilio Studio	F	18.08.2021
Rain Garden (Page 21)	Resilio Studio	F	18.08.2021
Rain Garden Species (Page 22)	Resilio Studio	F	18.08.2021
Auckland Transport Street Design Principles (Page 24)	Resilio Studio	F	18.08.2021
Typical Street Sections - Type 01 (Page 25)	Resilio Studio	F	18.08.2021
Typical Street Sections - Type 02 (Page 26)	Resilio Studio	F	18.08.2021
Typical Street Sections - Type 03 (Page 27)	Resilio Studio	F	18.08.2021
Typical Street Sections - Type 04 (Page 28)	Resilio Studio	F	18.08.2021
Typical Street Sections - Type 05 (Page 29)	Resilio Studio	F	18.08.2021
Traffic Calming Tools (Page 31)	Resilio Studio	F	18.08.2021
Traffic Calming + Street Corner – Intersection (Page 32)	Resilio Studio	F	18.08.2021
Traffic Calming + Street Corner - Street Corner (Page 33)	Resilio Studio	F	18.08.2021

Pocket Park Design Principles (Page 35)	Resilio Studio	F	18.08.2021
Pocket Park + Connection Path Plan (Page 36)	Resilio Studio	F	18.08.2021
Pocket Park Proposed Concept Design (Page 37)	Resilio Studio	F	18.08.2021
Pocket Park Sections (Page 38)	Resilio Studio	F	18.08.2021
Pocket Park Planting Strategy (Page 39)	Resilio Studio	F	18.08.2021
Pedestrian Link Planting Strategy (Page 40)	Resilio Studio	F	18.08.2021
Pocket Park – 3D view (Page 41)	Resilio Studio	F	18.08.2021
Pocket Park – 3D view (Page 42)	Resilio Studio	F	18.08.2021
Pocket Park – 3D view (Page 43)	Resilio Studio	F	18.08.2021
Drawing 12 Pocket Park GA	Resilio Studio	F	18.08.2021
Stormwater Outfall Planting Planting Strategy	Resilio Studio	F	18.08.2021
Stormwater Outfall Planting Planting Strategy	Resilio Studio	F	18.08.2021
Stormwater Outfall Planting Maintenance Specification	Resilio Studio	F	18.08.2021
Scheme			
2020-182 SC PROP DEV R3 Overall Plan	Hall Surveying Limited	3	28/05/2021
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2020-182 SC PROP DEV R3 Sheet 3 of 4	Hall Surveying Limited	3	28/05/2021
2020-182 SC PROP DEV R3 Sheet 4 of 4	Hall Surveying Limited	3	28/05/2021

2. The consent holder must pay the Council an initial consent compliance monitoring charge of \$3,000 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to these consents.

Advice note:

The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent(s). In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, must be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent(s) have been met, will the Council issue a letter confirming compliance on request of the consent holder.

Specific Conditions – Land Use Consent LUC60364378

3. Under section 125 of the RMA, this consent lapses five (5) years after the date granted unless:
 - a. The consent is given effect to; or
 - b. The Council extends the period after which the consent lapse

Pre-development**Finalised Plans**

4. Prior to the commencement of construction of Road 1, the consent holder must provide to the Council for approval, a finalised set of detailed retaining wall design drawings and supporting written documentation which have been prepared by a landscape architect or suitably qualified professional.

The retaining wall proposed along the western side of the entrance of Road 1, adjacent to 64 Riversdale Road, must be of keystone construction or similar.

Advice note:

As part of the approval process, the Council's monitoring team will liaise with landscape architects from the Council's Urban Design Unit to ensure that the submitted drawings and related information are consistent with the originally consented landscape concept plan(s).

5. At Engineering Plan Approval stage, the consent holder must submit detailed streetscape and park landscaping plans for all landscaping for approval by the Council. In particular, the plans must:
 - a. Be prepared by a suitably qualified landscape architect.
 - b. Be in general accordance with the landscape plans 'Bellgrove Place and Riversdale Road Resource Consent s92 Landscape Package' prepared by Resilio Studio, Rev.F, dated 18/08/2021.
 - c. Show all planting including details of intended species, location, plant sizes at time of planting and likely heights on maturity, garden bed and tree pit

specifications, the overall material palette, location of accessway lights and other service access points.

- d. Ensure that selected species can maintain appropriate separation distances from paths, roads, streetlights and vehicle crossings in accordance with the Auckland Transport Code of Practice.
- e. Include planting methodology.
- f. Comply with Council's latest specifications or relevant Code of Practice for green assets and landscaping.
- g. Include pedestrian bollard lighting within the neighbourhood park and pedestrian link.

Advice note:

- *With respect to point g – the preference is for bollard lighting to be provided within the pocket park (rather than on private lots as previously discussed).*
- *The Council monitoring officer will liaise with the Team Leader of Parks Planning and Auckland Transport for the review of this plan.*

Consultation with Te Ākitai Waiohū

6. Prior to submitting the detailed streetscape and park landscaping plans required under Condition 5 above, the consent holder must consult with Te Ākitai Waiohū on all matters of the landscaping design. If the consent holder has not received any comment from Te Ākitai Waiohū within 10 working days of providing the plans to them, the consent holder may consider Te Ākitai Waiohū has no comments. The consent holder must provide evidence of this consultation in the submitted plans to the Council and explain the input of Te Ākitai Waiohū and how this has been responded to in the landscaping design. If any suggestions are not proposed to be implemented, the consent holder must specify the reasons for this

Lighting Plan

7. At Engineering Plan Approval stage, the consent holder must provide a Lighting Plan and Certification/Specifications prepared by a qualified Lighting Engineer, to the Council. The purpose of this condition is to provide adequate lighting for the safety of people. The Lighting Plan for the development (where roading is to be vested) must be designed to the AS/NZS1158 Standard and the lighting Technical Design Manual of AT. Only lights and poles from AT's approved list can be used (for areas to be vested).

Advice note:

With reference to the Landscape Package prepared by Resilio Studios:

- *the street lighting indicative does not comply with AT requirements and they need to be kept clear of any trees by at least 10m;*

- *bollard lighting does not comply with AT requirements, as they don't meet standards and have ongoing high maintenance issues.*

AT can provide a design brief at no charge and a follow-up review of the finished design.

Construction Management Plan

8. The consent holder must provide a Construction Management Plan (CMP) to the Council for certification at least two weeks prior to any works commencing on site. The CMP must be to the satisfaction of the Council and must be certified prior to the works commencing. The CMP shall contain sufficient detail to address the following matters:
 - a. Who the site or project manager is and contact details (phone, email, and physical and postal address).
 - b. The location of notice boards that clearly identify the name, telephone number, email address and physical and postal addresses for service of the site or project manager.
 - c. The location and design of all hoardings and gantries.
 - d. Measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage and unloading of building materials and similar construction activities.
 - e. Control procedures for delivery and removal of construction materials from public roads or places.
 - f. Location of workers conveniences (eg portaloos).
 - g. Ingress and egress to and from the site for construction vehicles.
 - h. Programme of works, including any staging.
 - i. Hours of operation and days of the week for construction activities.
 - j. Measures to control dust deposition and nuisance.

Construction Noise and Vibration Management Plan

9. The consent holder shall submit a Construction Noise and Vibration Management Plan (CNVMP) to the Council for certification a minimum of ten working days before the start of any work authorised by this consent. The objective of the CNVMP is to identify and enable the implementation of the best practicable option to avoid, remedy or mitigate adverse construction noise and vibration effects. The CNVMP shall address the requirements of Annex E of NZS 6803:1999 as a minimum. The CNVMP must be certified prior to commencement of construction works.

Construction Traffic Management Plan

10. Prior to the commencement of construction or demolition works, the consent holder must submit a detailed Construction Traffic Management Plan (CTMP) to Auckland Council for approval. The CTMP must be prepared in accordance the Council's requirements for CTMPs and New Zealand Transport Authority's Code of Practice for Temporary Traffic Management.

No construction activity must commence until confirmation is provided from the Council that the CTMP satisfactorily meets the requirements of the Council's requirements for CTMPs and New Zealand Transport Authority's Code of Practice for Temporary Traffic Management, and all measures identified in that plan as needing to be put in place prior to commencement of works have been.

The CTMP must include the following aspects of the construction process:

- Provide hours of work, staging of the development and construction period.
- Provide a parking management plan for visitors and construction traffic. Parking must be contained within the site.
- Provide the location of loading / working areas.
- Construction loading or unloading from the street is to be permitted only with the approval of Auckland Transport.
- Provide details on number of truck movements and intended routes to and from the site.
- Provide vehicle cleaning facilities within the site to ensure that vehicles are able to be thoroughly cleaned before exiting the site to prevent mud or other excavated material from being deposited on to the road. In the event that material is deposited on the road resources must be available to ensure that the material is removed immediately.
- The CTMP must address the transportation and parking of oversize vehicles.
- Provide a temporary traffic management plan that is in compliance with the latest edition of the NZTA "Code of Practice for Temporary Traffic Management" (COPTTM) document.
- Provide a pedestrian management plan that includes temporary pedestrian routes which must be easily traversable, well-marked and safely separated from moving vehicles.
- The traffic/pedestrian management plans must be approved by the Council prior to the commencement of construction works.
- The site access point must be clearly signposted and ensuring that access to neighbouring properties is not compromised.

Advice notes:

- *The Council will consult with Auckland Transport in relation to any documents submitted under this condition.*
- *A Corridor Access Request (CAR) application is required from Auckland Transport for any works within the road reserve that affects the normal operation of the road, footpath or berm.*
- *Any works done on land affected by an Auckland Transport Designation need written consent from AT before the works can begin.*
- *AT will manage the road network according to its own policies and strategic objectives. The existing parking may become further restricted in the future or reallocated for alternative uses such as bus stops, pedestrian amenity, cycling facilities etc.*
- *Any permanent traffic and parking changes within the road reserve (including the implementation of broken yellow lines, changes to the existing broken yellow lines etc.) as a result of the development will require Traffic Control Committee (TCC) resolutions.*
- *The resolutions, prepared by a qualified traffic engineer, will need to be passed so that the changes to the road reserve can be legally implemented and enforced. The resolution process may require public consultation to be undertaken in accordance with Auckland Transport's standard procedures. It is the responsibility of the consent holder to prepare and submit a permanent Traffic and Parking Changes report to AT TCC for review and approval.*

Contamination

11. The Council must be informed, in writing, at least 10 working days prior to the start date of the works authorised by this consent
12. Earthworks must be undertaken in accordance with the Remedial Action Plan, Bellgrove Development, Avondale, dated 21 September 2020, prepared by EHS Support New Zealand Ltd ('the RAP'). Any variations to the RAP or any subsequent contamination site management plan must be submitted to the council for certification that it appropriately manages actual and potential soil contamination effects and is within the scope of this consent

Advice note:

The Council acknowledges that the RAP or any subsequent contamination site management plan is intended to provide flexibility of the management of the works and contaminant discharges. Accordingly, the management plan may need to be updated. Any updates should be limited to the scope of this consent and be consistent with the conditions of this consent.

If you would like to confirm that any proposed updates are within scope, please contact the Team Leader. The Council's certification of the RAP or any subsequent

contamination site management plan relates only to those aspects of the plans that are relevant under the RMA.

The certification does not amount to an approval or acceptance of suitability by the Council of any elements of the management plan that relate to other legislation, for example, the Building Act 2004 or the Health and Safety at Work Act 2015.

Street tree removal and works within the rootzone of Open Space zone tree

13. Prior to any works starting on site in the vicinity of the street trees and tree in the open space zone (being trees 52, 52A, 65 and 81 as identified in the Arboricultural Assessment) the consent holder must appoint a qualified “works site arborist” to monitor, advise and oversee all tree related matters within the site and road reserve. The arborist must have experience in construction and tree protection methods and be familiar with the arborist report written by Simon Webb, from Peers Brown Miller, dated 11/9/2020 Revision A and the arboricultural assessment written by Matthew Paul from Peers Brown Miller, dated 17/08/2021.

Advice note:

Prior to any works occurring onsite, the applicant will also be required to obtain a signed copy of a granted Tree Asset Owner Approval Form from the Urban Forest Specialist for the area, Community Facilities, Auckland Council, and all terms and conditions therein will need to be adhered to, along with the arboricultural report written by Simon Webb, from Peers Brown Miller, dated 11/9/2020 Revision A and the arboricultural assessment written by Matthew Paul from Peers Brown Miller, dated 17/08/2021 as noted above .

14. Prior to any works starting on site in the vicinity of the street trees and tree in the open space zone (being trees 52, 52A, 65 and 81 as identified in the Arboricultural Assessment), a designated pre-commencement meeting must be held to discuss all issues pertaining to the protection of the trees to be retained and protected.

The meeting must take the form of a site induction to present the standards and expectations of the tree protection within the site. The following persons must be present at the meeting:

- The appropriate site managers and site foremen;
 - The works site arborist; and
 - The Council’s compliance and monitoring officer.
15. Temporary protective fencing must be erected around the reserve tree to be retained (i.e. Tree 81 as identified in the arborist report written by Simon Webb, from Peers Brown Miller, dated 11/9/2020 Revision A). The fence must be located as per instructions provided by the works site arborist to completely enclose the open ground area out to the protected root zone of the tree. In addition:
- a. The fence must not be moved by any contractor or site worker at any stage of the construction activities. Any exception would be where the Site Arborist

determines that the fence may be moved to execute consented construction activities;

- b. The fencing must be constructed of 1.8m chain link panels secured to the ground with pins; and
- c. The protective fence must remain in place until the completion of the project in the vicinity of the tree (some sections of the project may finish well before the overall completion date).

Earthworks

16. Prior to the commencement of earthworks activity on any area of site to which this consent applies, finalised Site-Specific Erosion and Sediment Control Plans (ESCP) must be prepared for that area of site in accordance with Auckland Council 'Guidance Document 2016/005 Erosion and Sediment Control Guideline for Land Disturbing Activities (GD05)' and submitted to the Council for certification. No earthworks activity on any area of site to which this consent applies must commence until the Council has certified that the ESCP satisfactorily meets the requirements of GD05.

The finalised ESCP must contain sufficient detail to address the following matters:

- a. specific erosion and sediment control works including location dimensions of devices;
 - b. identification of earthworks within overland flow paths and floodplain extents including provision of supporting information confirming works will not exacerbate overland flow path or floodplain effects on adjoining property;
 - c. supporting calculations and design drawings;
 - d. catchment boundaries and contour information;
 - e. details of construction methods;
 - f. timing and duration of construction and operation of control works (in relation to the staging and sequencing of earthworks);
 - g. details relating to the management of exposed areas (e.g. grassing, mulching); and
 - h. monitoring and maintenance requirements.
17. Prior to the commencement of earthworks activity on the subject site for the stormwater reticulation, an earthworks construction methodology for the installation of the stormwater reticulation must be provided to Council for certification. The construction methodology must include (but is not limited to):
- a. Methodology and construction details relating to how the earthworks will be managed during the installation of the stormwater reticulation, including any

stockpiling;

- b. Management of water impounded in the trench and any dewatering requirements to ensure that dewatering is undertaken in accordance with the requirements of GD05; and
 - c. Any specific erosion and sediment control measures that may be used.
18. Prior to the commencement of the earthwork activity, the consent holder must hold a pre-start meeting that:
- a. is located on the subject site;
 - b. is scheduled not less than five days before the anticipated commencement of earthworks;
 - c. includes representation from the Council; and
 - d. includes representation from the contractors who will undertake the works.

Representatives of Te Ākitai Waiohū must be given five working days' notice of the meeting and reasonable endeavours must be made to accommodate their attendance.

The meeting must discuss the erosion and sediment control measures, construction methodology for the road construction and must ensure all relevant parties are aware of and familiar with the necessary conditions of this consent.

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

- Timeframes for key stages of the works authorised under this consent;
- Resource consent conditions;
- The Erosion and Sediment Control Plan, listed under Condition 1 and finalised under Condition 16;
- An earthworks construction methodology for the installation of the stormwater reticulation required by Condition 17;
- Relevant cultural induction material as determined by Te Ākitai Waiohū; and
- Provisions must be made for blessings (karakia) before commencement of earthworks in the project area.

Advice note:

To arrange the pre-construction meeting please contact the Council to arrange this meeting on email at monitoring@aucklandcouncil.govt.nz.

19. At least 10 days prior to the commencement of earthworks, the consent holder must undertake consultation with representatives of Te Ākitai Waiohū in respect of their

request to undertake cultural monitoring. A record of consultation in accordance with this condition must be provided to the Council at least two days prior to the commencement of earthworks.

Development in progress

Construction

Construction work times

20. Construction works must be restricted to the hours between 7.30am and 6.00pm, Monday to Saturday. No works are permitted on Sundays or public holidays.

Advice note:

This restriction does not apply to low noise creating activities such as site set up, or planting, which may occur outside of these hours Monday to Saturday only.

Construction noise limits

21. Construction works on the site must be designed and conducted to ensure that noise does not exceed permitted noise standards set out in Table E25.6.27.1 subject to a minus 5 dBA adjustment in accordance with E25.6.27 (4) when measured or assessed at 1m from occupied buildings in accordance with NZS 6803:1999 Acoustics – Construction noise.

Construction vibration limits

22. Vibration levels arising from construction works on the site must not exceed the limits set out in German Industrial Standard DIN 4150-3 (1999) Structural Vibration – Part 3 Effects of Vibration on Structures criteria when measured in accordance with that Standard on any structure not on the same site as specified in AUP (OP) E25.6.30 (1) (a)
23. Vibration levels arising from construction works on the site must not exceed a limit of 2mm/s peak particle velocity for more than 3 days in occupied buildings in any axis when measured in the corner of the floor of the storey of interest for multi-storey buildings, or within 500mm of ground level at the foundation of a single storey building as specified in AUP (OP) Table E25.6.30.1.

Earthworks

24. The earthworks activity must be undertaken in accordance with the finalised Erosion and Sediment Control Plan as approved under condition 16.

Advice note:

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

provided to the Council, prior to implementation to confirm that they are within the scope of this consent

25. Within 10 working days following implementation and completion of the specific erosion and sediment controls required by the Erosion and Sediment Control Plan (approved under condition 16) and prior to commencement of the earthwork activity, the consent holder must provide to Council written certification prepared by a suitably qualified and experienced person confirming that the erosion and sediment control measures have been constructed in accordance with the finalised Erosion and Sediment Control Plan and Auckland Council's Guideline Document 2016/005 '*Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region*' (GD05).

Advice note:

Certification of the sediment and erosion control structures should contain sufficient details to address the following matters:

- *Confirmation of the alignment of all silt fences.*
 - *Confirmation that the silt fences have been installed in accordance with GD05.*
26. The erosion and sediment controls at the site must be constructed and maintained in accordance with Auckland Council Guideline Document 2016/005 '*Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region*' throughout the duration of the earthwork activity, or until the site is permanently stabilised against erosion. A record of any maintenance work must be kept and be supplied to the Council on request.
27. The site must be progressively stabilised against erosion in accordance with Auckland Council Guideline Document 2016/005 '*Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region*', as soon as practicable as earthworks are finished over various areas of the site.
28. Earthworks must be managed to avoid the deposition of earth, mud, dirt or other debris on any public road or footpath resulting from earthworks activity on the subject site. In the event that such deposition does occur, it must immediately be removed. In no instance must roads or footpaths be washed down with water without appropriate erosion and sediment control measures in place to prevent contamination of the stormwater drainage system, watercourses or receiving waters.
29. Unless specifically provided for by this consent approval, there must be no damage to public roads, footpaths, berms, kerbs, drains, reserves or other public asset as a result of the earthworks and construction activity. In the event that such damage does occur, the Council must be notified within 24 hours of its discovery. The costs of rectifying such damage and restoring the asset to its original condition must be met by the consent holder.
30. Immediately upon completion or abandonment of earthworks on the subject site, all areas of bare earth must be permanently stabilised against erosion in accordance

with Auckland Council's Guideline Document 2016/005 'Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region' (GD05).

Advice note:

There must be no airborne or deposited dust beyond the subject site as a result of the earthworks and construction activity, which is in the opinion of the Council's Team Leader Compliance Monitoring Central, is noxious, offensive or objectionable.

It is recommended that you discuss any potential measures with the Council's compliance monitoring officer who may be able to provide further guidance on the most appropriate approach to take.

Accidental Discovery

31. If, at any time during site works, sensitive materials (koiwi/human remains, an archaeology site, a Maori cultural artefact, a protected New Zealand object, contamination, or a lava cave greater than 1m in diameter) are discovered, then the protocol set out in standards E11.6.1 and E12.6.1 of the Auckland Unitary Plan (Operative in Part) must be followed. In summary these are:
- a. All works must cease in the immediate vicinity (at least 20m from the site of the discovery) and the area of the discovery must be secured including a buffer to ensure all sensitive material remains undisturbed.
 - b. The consent holder must immediately advise the Council, Heritage New Zealand Pouhere Taonga, and the Police (if human remains are found) and arrange a site inspection with these parties.
 - c. If the discovery contains koiwi, archaeology or artefacts of Maori origin, representatives from those Iwi groups with mana whenua interest in the area are to be provided information on the nature and location of the discovery. The consent holder must specifically notify Te Ākitai Waiohū,
 - d. The consent holder must not recommence works until the steps set out in the above-mentioned standards have been followed and commencement of works approved by the Council.

Seasonal Restriction

32. Earthworks must not be undertaken between 1 May and 30 September in any year, without the submission of a '*Request for winter works*' for approval to Council. All requests must be renewed annually prior to the approval expiring and no works must occur until written approval has been received from Council. All winter works will be re-assessed monthly or as required to ensure that adverse effects are not occurring in the receiving environment and approval may be revoked by Council upon written notice to the consent holder.

Contamination

33. During earthworks all necessary action must be taken to prevent dust generation and sufficient water must be available to dampen exposed soil, and/or other dust suppressing measures must be available to avoid dust formation. The consent holder must ensure that dust management during the excavation works complies with the *Good Practice Guide for Assessing and Managing Dust* (Ministry for the Environment, 2016).
34. In the event of the unexpected discovery of contamination during earthworks which has not been previously identified, the contingency measures outlined in the RAP or any subsequent contamination site management plan must be implemented. Any unexpected contamination and contingency measures implemented must be documented in the Site Validation Report. In the event that the contamination identified is outside the scope of this consent, the Council must be notified and advised of the remedial actions proposed.
35. Excavated material that exceeds cleanfill criteria and is not re-used on site must be disposed of at an appropriate facility authorised to accept the levels of any identified contamination.
36. The consent holder must ensure that the contamination level of any soil imported to the site complies with the definition of 'Cleanfill material', as set out in the AUP.
37. All sampling and testing of contamination on the site must be overseen by a SQEP and must be undertaken in accordance with the *Contaminated Land Management Guidelines No.5: Site Investigation and Analysis of Soils* (Ministry for the Environment, 2011).

Advice note:

In order to comply with the Contaminated Land Management Guidelines No.5 (Ministry for the Environment, revised 2011), all sample analysis should be undertaken in a laboratory with suitable experience and ability to carry out the analysis.

If you are demolishing any building or structure that may have asbestos containing materials (ACM) in it:

- *You have obligations under the relevant regulations for the management and removal of asbestos, including the need to engage a Competent Asbestos Surveyor to confirm the presence or absence of any ACM.*
- *Work may have to be carried out under the control of person holding a WorkSafe NZ Certificate of Competence (CoC) for restricted works.*
- *If any ACM is found, removal or demolition will have to meet the Health and Safety at Work (Asbestos) Regulations 2016.*
- *Information on asbestos containing materials and your obligations can be found at www.worksafe.govt.nz.*

If ACM is found on site following the demolition or removal of the existing buildings, you may be required to further remediate the site and carry out validation sampling. Dependent on the amount of soil disturbance, a further consent application may be required.

Riparian vegetation removal

38. All vegetation removal must be carried out in accordance with the approved Stormwater Outfall Planting prepared by Resilio Studio, dated 18 August 2021. The approved Stormwater Outfall Planting prepared by Resilio Studio, dated 18 August 2021 must be implemented in all respects, unless the Council agrees in writing to any alteration.

Advice note:

Council's Team Leader Compliance Monitoring Central will liaise with Council's ecologist to determine if changes are acceptable. Any updates should be limited to the scope of this consent and be consistent with the conditions of this consent

39. The consent holder must ensure that all contractors, sub-contractors and workers engaged in all activities covered by this consent are advised of the vegetation protection measures in the conditions of consent and operate in accordance with the conditions. A copy of the conditions of consent must be available at all times on each work site.

Advice note:

The Wildlife Act 1953

- *All native lizards are totally protected under the Wildlife Act 1953 under which it is an offence to disturb, harm, or remove them without a permit from the Minister of Conservation.*
- *For further information on lizards that are protected under the Wildlife Act and determination of a suitable new habitat please contact the council's Ecological Advice team (Team Leader Ecological Advice, on ecologicaladvice@aucklandcouncil.govt.nz)*

Construction Activities Tree Management Plan

40. Construction activities in the vicinity of the street trees and tree in the open space zone (being trees 52, 52A, 65 and 81) as identified in the Arboricultural Assessment must be undertaken in accordance with the following provisions:
- a. All equipment/vehicles must be manoeuvred to/ within the site in a manner that avoids any damage to the root zone and canopy of all trees to be retained, both private and public.
 - b. No machinery or equipment or materials must be stored or deposited within the protected root zone of any tree to be retained (both private and public) (i.e. no products, fluids, machinery, or tools, etc). Special attention must be paid to

any petrol/diesel operated machinery to avoid contaminating the soil in the root zone of the trees.

- c. No tracking or movement of equipment, trucks or machinery is to be undertaken within the rootzone of trees to be retained (both private and public). A mulch accessway or track-mats are to be utilised for the directional drilling machine in order to avoid damage to tree roots if movement is required within any protected rootzone or on the berm.
- d. Prior to approaching the zones which require supervision, the site manager must engage the site works arborist to assist and direct activities.
- e. The initial break of the road or pavement surface within the protected root zone may be done by a concrete saw. Thereafter, the pavement may be back peeled with a small digger operating from the existing hard surface. The excavation by the digger may continue, with the Works Arborist acting as a spotter, in conjunction with hand digging.
- f. For excavation within existing open ground area, the initial cut to define the outside edge of the excavation closest to the street tree must be made by hand (spade) by the Works Arborist prior to full excavation by machine. Utmost care must be taken to minimise root strike.
- g. If any significant roots are encountered during excavation in the dripline of any tree to be retained (both private and public), that root must be accommodated, unless the Works Arborist is satisfied that severance of such a root would not cause a deterioration of the health of the tree. No roots beyond the approved thresholds are to be removed. (Roots up to 80mm for tree to be retained (both private and public) , under the supervision of a suitably qualified arborist). Any roots less than permitted diameter may be severed cleanly to the excavated face. All root severance must be undertaken by the Site Arborist.
- h. Any retained roots must be wrapped in hessian and incorporated into the basecourse once reinstatement occurs. A layer of hessian or white polythene must be securely pinned to the excavated face against retained trees to shade the root ends and minimise desiccation.

Traffic

- 41. All new assets including vehicle crossings and footpaths, must be designed and formed to current Auckland Transport standards. This must be undertaken at the consent holder's expense and to the satisfaction of the Council.

Stormwater

- 42. The consent holder must design and construct a new public stormwater reticulation network and stormwater outfall structure to serve the development in accordance with Civil Engineering Assessment Report Ref: 190069-P (Issue 6.0) dated 27 May 2021 and to the requirements of the stormwater utility service provider.

43. The consent holder must design and install a public stormwater management system. The stormwater management system (SMS) must be completed in accordance with the following specific requirements:
- a. The stormwater management system (SMS) must be completed in accordance with the Stormwater Management Plan Report Ref: 190069-Q dated 29 September 2020 prepared by Riley Consultants Limited.
 - b. The SMS must provide water quality treatment for trafficable paved areas in accordance with the report titled “Civil Engineering Assessment Report Ref: 190069-P (Issue 6.0) dated 27 May 2021 and Stormwater Management Plan Report Ref: 190069-Q dated 29 September 2020” prepared by Riley Consultants Limited generally in compliance with “Guideline Document 2017/001 Version 1 December 2017 Stormwater Management Devices in the Auckland Region”.
 - c. Within 20 working days following completion of these SMS works the consent holder must provide to the satisfaction of Council, evidence that the completed stormwater management system was installed or built in accordance with the design specifications.
44. To meet the maintenance requirements of the Stormwater Management Plan Report Ref: 190069-Q dated 29 September 2020 prepared by Riley Consultants Limited, the consent holder must provide an Operation and Maintenance Plan detailing maintenance requirements for the water quality treatment devices constructed onsite to be implemented in perpetuity.

Post development

Earthworks

45. Certification from a suitably qualified engineering professional responsible for supervising the earthworks must be provided to the Council confirming that the works have been completed in accordance with the Geotechnical Engineering Assessment Report Ref: 190069-M Issue 1.0 dated 21 September 2020 prepared by Riley Consultants Limited. Written certification must be in the form of a geotechnical completion report, or any other form acceptable to the Council.

Advice note:

Earthworks to form the site(s) must be undertaken in accordance with NZS 4431 and NZS 4404 where applicable and the final earthworks methods and standards must be specified/supervised by a suitably qualified geotechnical professional.

Riparian vegetation removal

46. The consent holder must undertake the proposed mitigation planting within the first planting season (1 April to 30 September) following the completion of the works on the site. The planting must be in accordance with Stormwater Outfall Planting prepared by Resilio Studio, dated-18 August 2021. The replacement trees must be

located in a position that takes into consideration their long-term growth and development. Any pest plants present in the revegetation area must be controlled prior to planting.

47. A planting completion report must be provided to the Council within 30 working days of the planting works being completed. This report must confirm that all plantings have been completed in accordance with condition 46.

Advice note:

The planting report will include details of where the trees have been planted/a plan showing the location of revegetation planting, photos of the planted area and an inventory of the specimens planted (species, size & number). This information must be compiled by the applicant.

48. The planting maintenance period must be a minimum of five years and commences once the planting completion report has been certified by Council. Throughout the five-year establishment period the consent holder must ensure that a pest plant free environment is maintained in the revegetation area.

Park landscaping

49. Within the first planting season (1 April to 30 September) following certification of the final Landscape Plan (required by condition 5), the planting and hard landscaping of the pocket park must be fully implemented in accordance with the certified Landscape Plan and must be maintained for a three-year period to the satisfaction of Council.

Contamination

50. Within three months of the completion of earthworks the site, a Site Validation Report (SVR) must be submitted to the Council for certification. The SVR must be prepared by a SQEP in accordance with the Contaminated Land Management Guidelines No. 1: Reporting on Contaminated Sites in New Zealand (Ministry for the Environment, 2011) and contain sufficient detail to address the following matters:
 - a. A summary of the works undertaken, including the location and dimensions of the excavations carried out and the volume of soil excavated;
 - b. Details and results of any testing, including validation testing and/or asbestos air monitoring (if required), and interpretation of the results in the context of the NES:CS and the AUP(OP);
 - c. Records/evidence of the appropriate disposal for any material removed from the site;
 - d. Records of any unexpected contamination encountered during the works and response actions, if applicable;
 - e. Conditions of the final site ground surface and details of any validation sampling undertaken on materials re-used on site or imported to site;

- f. Reports of any complaints, health and safety incidents related to contamination, and/or contingency events during the earthworks; and
- g. A statement certifying that all works have been carried out in accordance with the requirements of the RAP and consent, otherwise providing details of relevant breaches, if applicable.

Flooding / overland flow path(s)

- 51. The consent holder must provide evidence in the form of an as-built plan of finished surface levels (including the formation of new roading network) prepared by a licensed cadastral surveyor, and written certification by a suitably qualified engineer, confirming the finished surface levels and overland flow path(s) meet the flood hazard design requirements set out in the reports titled "Flood Assessment Report Ref: 190069-D dated 25 September 2020, Civil Engineering Assessment Report Ref: 190069-P (Issue 6.0) dated 27 May 2021, and Stormwater Management Plan Report Ref: 190069-Q dated 29 September 2020" prepared by Riley Consultants Limited, to the satisfaction of the Council.

Post-works Tree Management Plan

- 52. Compliance with all conditions of consent relating to tree protection must be monitored by the appointed site works arborist - with the detail of communication and works activities being logged in an end of project memo. The completed log will be provided to the consent holder and the Council within 20 working days of completion of the project.

Specific Conditions – Discharge Permit DIS60364379

- 53. The contamination conditions 33 to 37 in LUC60364378 also apply to this discharge permit.
- 54. All excavation in the work areas must be managed to minimise any discharge of debris, soil, silt, sediment or sediment-laden water from the subject site to either land, stormwater drainage systems, watercourses or receiving waters. Erosion and sediment controls must be installed along the boundaries of the disturbance areas in accordance with the General CSMP and Auckland Council Guidance Document 2016/005: *Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region*. Filter cloths or cover mats must be installed over the stormwater cesspits in the vicinity of the excavation areas. Vehicles must be inspected prior to leaving the works area and wheels brushed/cleaned as required to avoid the potential for sediment to leave the site on vehicle tyres and enter the existing stormwater system.

Advice note: Contaminant discharges

Discharges from the site includes the disposal of water (e.g. perched groundwater or collected surface water) from the remediation area.

55. The soils and/or fill material identified for off-site disposal must primarily be loaded directly into trucks and must be covered during transportation off site. If required, temporary stockpiles of material free from separate phase hydrocarbons or odorous petroleum hydrocarbons must be located on an impermeable surface within an area protected by erosion and sediment controls and be covered with tarpaulins anchored at the edges outside working hours and during periods of heavy rain.
56. Any perched groundwater, or surface run-off water encountered within the excavation area requiring removal must be considered potentially contaminated, and must either be:
- Disposed of by a licenced liquid waste contractor; or
 - Pumped to sewer, providing the relevant permits are obtained; or
 - Discharged to the stormwater system or surface waters provided a SQEP verifies that the contaminant levels are likely to comply with the Australian and New Zealand Environment Conservation Council (ANZECC) *Guidelines for Fresh and Marine Water Quality* (2000) for the protection of 80 percent of freshwater species, with the exception of benzene where the 95 percent protection level must apply.

Consent Duration

57. Consent DIS60364379 will expire five (5) years from the date of commencement unless it has been surrendered or been cancelled at an earlier date pursuant to the RMA.

Specific Conditions – Subdivision Consent SUB60364377

58. The subdivision must be as described in the application form and assessment of environmental effects prepared by Sarah Rendle of Barker & Associates dated 17 December 2020 and must be carried out in accordance with the plans and information listed in condition 1, and all referenced by the Council as consent number SUB60364377 of BUN60364376.

Advice notes:

- This consent has been granted on the basis of all the documents and information provided by the consent holder, demonstrating that the new lot(s) can be appropriately serviced (infrastructure and access).*
- Details and specifications for the provision of infrastructure (e.g. public/ private drainage, location, and types of connections) and access (including drainage of accessways, construction standards etc) are subject to a separate EPA and/or Building Consent approval process.*
- Should it become apparent during the Engineering Plan Approval and/or Building Consent process that a component of the granted resource consent cannot be implemented (e.g. detailed tests for soakage fail to achieve sufficient soakage rates, or sufficient gradients for drainage cannot be*

achieved in accordance with engineering standards/ bylaws etc), changes to the proposal will be required. This may require either a variation to this subdivision consent or a new consent.

- *Similarly, should the detailed design stage demonstrate that additional reasons for consent under the AUP are triggered (e.g. after detailed survey the access gradient increases to now infringe or increase an approved infringement to a standard in the plan), a new or varied resource consent is required.*
- *It is the responsibility of the consent holder to ensure that all information submitted and assessed as part of the subdivision consent is correct and can be implemented as per the subdivision consent (without requiring additional reasons for consent). Any subsequent approval processes (such as the EPA) do not override the necessity to comply with the conditions of this resource consent.*

59. Under section 125 of the RMA, this consent lapses five (5) years after the date it is granted unless:
- a. A survey plan is submitted to Council for approval under section 223 of the RMA before the consent lapses, and that plan is deposited within three years of the approval date in accordance with section 224 of the RMA; or
 - b. An application under section 125 of the RMA is made to the council before the consent lapses to extend the period after which the consent lapses and the council grants an extension.

Survey plan approval (s223) conditions

60. The consent holder must submit a survey plan in accordance with the approved resource consent subdivision scheme plan(s) titled *Plan of Proposed Superlots Bellgrove Place, Avondale*, prepared by Hall Surveying, dated 28 May 2021. The survey plan must show all lots to vest or dedicate to Council (including roads, parks and reserves), all easements, and any amalgamation conditions, required by this subdivision consent.
61. The service easement over parts of Lot 5 must be included in a memorandum of easements endorsed on the survey plan and must be created, granted or reserved as necessary. The consent holder must meet the costs for the preparation, review, and registration of the easement instruments on the relevant computer registers (records of title).
62. All of the proposed roads shown as Road 1, Road 2 and Road 3 on the approved plan(s) *Plan of Proposed Superlots Bellgrove Place, Avondale*, prepared by Hall Surveying, dated 28 May 2021 must vest in the Council as public roads. The consent holder must meet all costs associated with the vesting of the roads. These roads must vest free of easements and encumbrances.

63. The consent holder must vest Lot 12 in Auckland Council as Local Purpose (Recreation) Reserve pursuant to section 239 of the RMA 1991 in accordance with the subdivision plans prepared by Hall Surveying dated 28 May 2021. Lot 12 must vest free of easements and encumbrances and with:
- a. No utility devices or structures on the land (above ground or underground); and
 - b. No above ground utility devices or structures on any of its road frontages or berms, other than lighting poles and traffic safety signage.

Advice note:

The location of lighting poles and signage within the road reserve adjacent to Lot 12 will be reviewed at Engineering Plan Approval stage.

64. Lot 12 must be shown on the survey plan with the purpose of park to be held in Auckland Council as Local Purpose (Recreation) Reserve at no cost to the Council and without development contributions offset if there is an agreement by the time of application for S223 between the consent holder and Council in relation to the gifting of the land. If, however, there is no such agreement prior to the approval of the survey plan under section 223 RMA, Lot 12 will remain as a balance lot.
65. Pursuant to section 220(1)(b)(ii), Lot 1 and Lot 2 must be endorsed on the survey plan to be held together, and one computer register (record of title) must be issued to include both parcels
66. Pursuant to section 220(1)(b)(ii), Lots 6, 7 and 13 must be endorsed on the survey plan to be held together, and one computer register (record of title) must be issued to include those parcels

Section 224(c) conditions

67. The application for a certificate under section 224(c) of the RMA must be accompanied by certification from a professionally qualified surveyor or engineer that all the conditions of subdivision consent SUB60364377 have been complied with, and identify all those conditions that have not been complied with and are subject to the following:
- a. a consent notice to be issued in relation to any conditions of this consent to which section 221 applies;
 - b. a completion certificate has been issued in relation to any conditions to which section 222 applies.

Stormwater

68. The consent holder must design and construct a stormwater outfall structure in accordance with the requirements of the utility service provider. Certification from the utility provider that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

69. The consent holder must design and construct connections to the public stormwater reticulation network to serve Lot(s) 1, 3, 4, 5, 7, 8, 9, 10, 11 & 12 in accordance with the requirements of the stormwater utility service provider. Certification from the utility provider that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

Advice notes:

- *Please be aware of any other conditions and requirements pertaining to this outfall, including regional consenting conditions and requirements.*
- *Acceptable forms of evidence for public stormwater works include Engineering Plan Approval Completion Certificates.*
- *Stormwater utility provider is Auckland Council Healthy Waters Department.*
- *Public connections are to be constructed in accordance with the Stormwater Code of Practice.*
- *Alterations to the public stormwater reticulation network require Engineering Plan Approval.*
- *Plans approved under Resource Consent do not constitute an Engineering Plan Approval and should not be used for the purposes of constructing public reticulation works in the absence of that approval.*

Wastewater

70. The consent holder must design and construct connections to the public wastewater reticulation to serve Lot(s) 1, 3, 4, 5, 7, 8, 9, 10, 11 & 12 in accordance with the requirements of the wastewater utility service provider. Certification from the utility provider that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

Advice notes:

- *Acceptable forms of evidence for the public wastewater works include a Certificate of Acceptance from the wastewater utility provider.*
- *Alterations to the public wastewater reticulation network require Engineering Plan Approval. Additional approval is required from Watercare/Veolia as part of the Engineering Plan Approval Process.*
- *Public connections are to be constructed in accordance with the Water and Wastewater Code of Practice.*
- *Plans approved under Resource Consent do not constitute an Engineering Plan Approval and should not be used for the purposes of constructing public reticulation works in the absence of that approval.*

Water Supply

71. The consent holder must design and construct connections to the public water reticulation to serve Lot(s) 1, 3, 4, 5, 7, 8, 9, 10, 11 & 12 in accordance with the requirements of the water utility provider. Certification from the utility provider that works have been satisfactorily undertaken must be provided when applying for a certificate under the section 224(c) of the RMA.

Advice notes:

- *Acceptable forms of evidence for the public water works include a Certificate of Acceptance from the water utility provider.*
- *Alterations to the public water reticulation network require Engineering Plan Approval. Additional approval is required from Watercare/Veolia as part of the Engineering Plan Approval Process.*
- *Public water supply is required to ensure an acceptable water supply for each lot, including for fire-fighting purposes.*
- *Public connections are to be constructed in accordance with the Water and Wastewater Code of Practice.*
- *Plans approved under Resource Consent do not constitute an Engineering Plan Approval and should not be used for the purposes of constructing public reticulation works in the absence of that approval.*

Telecommunications and Electricity

72. The consent holder must make provision for telecommunications and electricity to serve Lot(s) 1, 3, 4, 5, 7, 8, 9, 10, 11 & 12 in accordance with the requirements of the respective utility operators. These utilities must be underground. Certification from the utility providers that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

Advice note:

The consent holder may also provide gas servicing to the lot(s), but this is not a requirement of the AUP(OP) and no proof is required at time of section 224(c). Any gas lines are required to be installed underground.

Vehicle access

73. The consent holder must design and construct vehicle accessways to serve Lot(s) 1, 3, 4, 5, 7, 8, 9, 10, 11 & 12 in accordance with the approved plans noted in Condition 1 and with the requirements of Auckland Council. Certification from a suitably qualified and experienced engineer that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

Advice Note:

Please contact Auckland Council to obtain the current engineering requirements for the construction of the type of vehicle accessway proposed.

Vehicle Crossing

74. The consent holder must provide a new vehicle crossing to serve Lot(s) 1, 3, 4, 5, 7, 8, 9, 10, 11 & 12. The crossing(s) must be designed and formed in accordance with the requirements of Auckland Transport Code of Practice. The new crossing(s) must maintain an at-grade (level) pedestrian footpath across the length of the crossing, using the same materials, kerbing, pavings, patterns and finish as the footpath on each side of the crossing. Certification that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

Advice Notes:

- *An approval letter and completion certificate from Auckland Transport is required to be submitted to Auckland Council as a verification that Auckland Transport has completed approval and a final vehicle crossing inspection before this condition is considered fulfilled.*
- *Works within the road reserve require prior approval from Auckland Transport. The consent holder should contact Auckland Transport as soon as possible to ensure any required approvals are issued prior to construction.*
- *A vehicle crossing approval permit is required to be obtained from Auckland Transport for these works.*
- *Please note that any redundant vehicle crossings are required to be reinstated.*

Roads

75. The consent holder must design and construct the new public roads, i.e. Road 1, Road 2 and Road 3, in accordance with the requirements of Auckland Transport. Certification from a suitably qualified and experienced engineer that works have been satisfactorily undertaken must be provided when applying for a certificate under section 224(c) of the RMA.

Advice Notes:

- *Acceptable forms of evidence include Engineering Approval Completion Certificates.*
- *Construction of public roading requires an Engineering Plan Approval.*
- *Design of public roads must include (but is not limited to), road pavement, pedestrian footpaths, cycle ways, street lighting, street furniture, road marking,*

traffic calming devices, road stormwater drainage, raingardens, etc. where required.

- *Plans approved under Resource Consent do not constitute an Engineering Plan Approval and should not be used for the purposes of constructing public works in the absence of that approval.*
- *The consent holder is advised that the national Addressing Standard (AS/NZS 4819:2011) requires that all new public roads and extensions to existing roads and any private road (rights of way or common access lots) that serve more than five allotments and created through a subdivision consent will require a road name. All road names must be approved by Council. In order to minimise disruption to construction and survey works, the consent holder is advised to obtain any road name prior to applying for a section 223 certificate. For more details refer to: <https://www.aucklandcouncil.govt.nz/building-and-consents/types-resource-consents/subdivision-of-property/Pages/road-naming.aspx>.*

Flooding

76. The consent holder must provide evidence in the form of an as-built plan of finished surface levels (including the formation of new roading network) prepared by a licensed cadastral surveyor, and written certification by a suitably qualified engineer, confirming the finished surface levels and overland flow path(s) meet the flood hazard design requirements set out in the reports titled “Flood Assessment Report Ref: 190069-D dated 25 September 2020, Civil Engineering Assessment Report Ref: 190069-P (Issue 6.0) dated 27 May 2021, and Stormwater Management Plan Report Ref: 190069-Q dated 29 September 2020” prepared by Riley Consultants Limited, to the satisfaction of the Council.

Consent Notice – Earthworks – Geotechnical / Stability / Soft Soils

77. The consent holder must have registered against the Record of Title of Lot(s) 1, 3, 4, 5, 7, 8, 9, 10, 11 & 12 a Consent Notice pursuant to s221 of the Resource Management Act 1991 detailing the following obligations of any lot owner regarding the consideration of site constraints when undertaking future works on the lot(s). Compliance with these requirements must be on a continuing basis:

The lot owner must ensure that any future development on the lot involving the construction of buildings is undertaken in accordance with the recommendations at sections 3.4 and 3.5 of the Geotechnical Engineering Assessment Ref: 190069-M Issue 1.0 dated: 21 September 2021 prepared by Riley Consultants Limited or any future Council approved Geotechnical Reporting which has reviewed the Geotechnical Engineering Assessment Ref: 190069-M Issue 1.0 dated: 21 September 2021 prepared by Riley Consultants Limited, and attached as Appendix A to this consent notice.

Implementation of park landscape works

78. Prior to lodgement of section 224(c) certification, all hard and soft landscape works within the park must be implemented in accordance with the approved landscape plans to the satisfaction of the Council and landscaped in accordance with Council's latest specifications or relevant Code of Practice for green assets and landscaping, and in particular:
- a. All areas of the reserve that have been grassed must have a 90 percent strike rate, in a mowable condition, and be weed, stone and rubbish free.
 - b. Planted slopes to be a maximum 1:3 grade and grassed slopes to be a maximum 1:5 grade.
 - c. Grassing and planting must be carried out by a suitably qualified landscape contractor in the planting season (April to September) and when the weather is suitable (mild, dull and moist) and when the ground is moist and workable. Where delays occur in the agreed programme which prevents areas being planted, the consent holder must inform the Council immediately.
 - d. At practical completion auditing, a chartered professional engineer engaged by the applicant must provide certificates of compliance and producer statements as relevant and certify that the parks construction works have been carried out in accordance with the approved plans. A written manufacturers guarantee must be supplied for any products where warranties are available or applicable.
 - e. Any defects identified at the practical completion audit are to be remedied by the applicant. The practical completion of the works will be determined by the Council to its satisfaction and this indicates the commencement of the maintenance period.

Advice note:

The consent holder must apply for a practical completion certificate prior to 224(c) application from the Parks Planner to demonstrate reserve development has been satisfactorily implemented and to formalise the commencement of the maintenance period.

Council's Subdivisions team will liaise with the Team Leader Parks Planning to review this condition.

Implementation of streetscape works

79. Prior to lodgement of section 224(c) certification, all street landscaping must be implemented in accordance with the approved streetscape plans and to the satisfaction of the Council and landscaped in accordance with the Auckland Code of Practice for Land Development and Subdivision Chapter 7: Green Assets and Landscaping, and in particular the following:

- a. The street must be cleared of any construction material, rubbish and surplus soil, and must be maintained in a neat and tidy condition.
- b. Should site factors preclude compliance with any of these conditions, the Council must be advised in writing as soon as practicable and, in any case, prior to planting, and an alternative soil improvement methodology proposed to the satisfaction of the Advisor.
- c. Grassing must only be undertaken when the weather is suitable i.e., mild, dull and moist, and when the ground is moist and workable. Where delays occur in the agreed programme which prevents areas being planted, the consent holder must inform Council immediately.

Advice note:

The consent holder must apply for a practical completion certificate prior to 224(c) application from the Parks Planner to demonstrate the streetscape development has been satisfactorily implemented and to formalise the commencement of the maintenance period.

Council's Subdivisions team will liaise with the Team Leader Parks Planning to review this condition.

Maintenance

- 80. Prior to the issue of the section 224(c) certificate, the consent holder must provide for the approval of the Council a Maintenance Plan for all hard and soft landscaping to be established in Lot 12 (Local Purpose Recreation Reserve) and the streetscape. The Maintenance Plan must include:
 - a. Vegetation maintenance policies for the proposed planting, in particular details of maintenance methodology and dates / frequencies.
 - b. Details of watering, weeding, trimming, cultivation, pest and disease control, checking of stakes and ties, pruning and other accepted horticultural operations to ensure normal and healthy plant establishment and growth.
 - c. Vandalism eradication policies.

Advice note:

Council's Subdivisions team will liaise with the Team Leader Parks Planning to review this condition.

- 81. The consent holder must undertake maintenance, in accordance with the approved Maintenance Plan for the hard and soft landscaping within Lot 12 (Local Purpose Recreation Reserve) and the streetscape for a three-year period, commencing on the date that the practical completion certificate is issued. Any maintenance issues deemed unsuitable by the Council during this period must be remedied by the consent holder at their expense.

Advice note:

The maintenance performance required under this condition remains subject to the provisions of s222 (Completion certificates) of the RMA.

82. If any damage / theft to the hard and soft landscaping occurs during the maintenance period, the consent holder must replace the damaged / stolen landscape feature with the same product / species / height as soon as practicable or within the following planting season, and which must be maintained for a period of three years following the replacement of the landscape feature / planting, to the satisfaction of the Council.

As-built plans

83. Prior to the issue of the 224(c) certificate the consent holder will provide to the Development Engineer and Parks Planning Team Leader as built plans for landscape works (hard and soft) within Lot 12 (Local Purpose Recreation Reserve) and the streetscape in CAD (NZTM 2000) and pdf form in accordance with the Development Engineering As-built requirements v1.3, including the following details;
- a. Asset names.
 - b. All finished hard and soft landscape asset locations and type, and any planted areas must be shown to scale with the square metres of planting, species and number of plants.
 - c. All underground services, irrigation and drainage.
 - d. All paint colours, graffiti coatings, pavers and concrete types with names of products to be included on the assets schedule.

Consent notice – boundary treatment

84. The consent holder must have registered against the Record of Title of Lot(s) 10 and 11 a Consent Notice pursuant to s221 of the Resource Management Act 1991 detailing the following obligations of any lot owner regarding the consideration of the boundary interface with Lot 12 (Local Purpose (Recreation) Reserve) when undertaking future works on the lot(s). Compliance with these requirements must be on a continuing basis:

Any fencing or boundary walls on or within 1m of the of the northeastern boundary of Lot 10 and the southwestern boundary of Lot 11 must be a maximum of 1.2m in height.

Contamination

85. Prior to application for section 224(c) approval, the consent holder must provide the Site Validation Report (SVR) associated with the enabling bulk earthworks and remedial works that has been prepared and submitted to Council in accordance with condition 50 LUC60364378 (and condition 53 of DIS60364379).

Advice notes

1. Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.
2. For the purpose of compliance with the conditions of consent, “the Council” refers to the Council’s monitoring officer unless otherwise specified. Please email monitoring@aucklandcouncil.govt.nz to identify your allocated officer.
3. For more information on the resource consent process with Auckland Council see the Council’s website: www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment’s website: www.mfe.govt.nz.
4. If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the Council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).
5. The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.
6. The consent holder is required to submit a Resolution report for approval by Auckland Transport Traffic Control Committee to legalise the proposed traffic control devices (e.g. proposed road markings). This must be done at the consent holder’s expense. A copy of the Resolution from Traffic Control Committee must be submitted to Auckland Council Monitoring prior to the commencement the activity provided for by this consent approval. Further information on the resolution process can be found in the following the link: <https://at.govt.nz/about-us/working-with-at/traffic-and-parking-controls>.
7. All applications for temporary use of the road reserve during construction must be submitted to Auckland Transport as a Corridor Access Request (CAR). Applications are to be submitted electronically via <https://at.govt.nz/about-us/working-on-the-road/corridor-access-requests/step-3-apply-for-corridor-access-request-car> and 15 working days should be allowed for approval.
8. Property owners or developers must apply for Encroachment licences to AT and receive approval before placing any encroaching object on, under or above a legal road. Applications are to be submitted electronically via <https://at.govt.nz/about-us/working-on-the-road/road-processes-for-property-owners/road-encroachment-licences-or-leases>.

9. *AT will manage the road network according to its own policies and strategic objectives. Once vested, the parking may become further restricted in the future or reallocated for alternative uses such as bus stops, pedestrian amenity, cycling facilities etc.*
10. *Lots 10 and 11 will be subject to spilt zoning (part Open Space Zone - Informal Recreation and part Residential – Mixed Housing Urban Zone). If future development consents for works on these Lots are lodged prior to any subsequent plan changes to amend this zoning then the development will be subject to the respective zone rules.*
11. *The consent holder should accurately locate all existing services (including water, drainage, and utility services) affected by the proposed construction work and notify the appropriate authorities of the details of construction prior to the commencement of any work on site.*