

**Decision following the hearing of an application for resource consent under the Resource Management Act 1991 – from Matakana Country Park Limited.**



**To:**

**Establish an Early Childhood Education Centre accommodating 99 children, 24 full time equivalent staff and to vary a consent notice condition to provide for the childcare centre at 1153 Leigh Road, Omaha Flats.**

This resource consents are **GRANTED**. The reasons for this are set out below:

<b>Application numbers:</b>	LUC60403942 & VCN70020860
<b>Site address:</b>	1153 Leigh Road, Omaha Flats
<b>Applicant:</b>	Matakana Country Park Ltd
<b>Hearing commenced:</b>	Thursday, 8 February 2024 – 11 am
<b>Hearing panel:</b>	Greg Hill (Chairperson) Gavin Lister
<b>Parties and Appearances:</b>	<p><u>For the Applicant:</u> Paul Rodgers, Planner; Brendan Coghlan, Owner/Applicant; Kelly Seaburg, Proposed Operator; Dustyn O’Leary, Landscape Architect.</p> <p>Technical Information and evidence was provided from: Andrew Hunter*, Transport Engineer; Nevil Hegley*, Acoustic Engineer; Alexander Ormiston*, Wastewater Engineer; and Ian Hanmore*, Soil and Land Management Specialist.</p> <p>* But did not attend the hearing</p> <p><u>For the Submitters:</u> No submitters attended</p> <p><u>For the Council:</u> Hannah Thomson, reporting planner and section 42A report Author; Gabrielle Howdle, Landscape Architect.</p>

	<p>Lexie Li, Team Leader</p> <p>Technical input was provided from:  July Zhou*, Development Engineer;  Kate Brill*, Transport Engineer; •  Shahriar Tehrani*, Auckland Transport Development Planner;  Gabrielle Howdle, Landscape Architect;  Andrew Gordon*, Contamination, Air and Noise;  Dr Dani Guinto, Land &amp; Soil Scientist*; and  Alison Pye*, Senior Policy Planner.</p> <p>* But did not attend the hearing</p> <p><u>Council's Hearings Advisor</u>  Tylo Schuster</p>
<b>Commissioners' site visit</b>	8 February 2024
<b>Hearing adjourned</b>	8 February 2024 – 1.15 pm
<b>Hearing Closed:</b>	23 February 2024

## Introduction

1. This decision is made on behalf of the Auckland Council (“**the Council**”) by Independent Hearing Commissioners Greg Hill (Chairperson) and Gavin Lister appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (“**the RMA**”).
2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.

## The Proposal

### *Early Childhood Education Centre (ECE)*

3. The proposal is to establish an ECE. It will accommodate 99 children (24 under the age of two years), 24 full time equivalent staff members, including four part time staff members (where staff will work 30 hours a week, and equate to three FTE's).
4. The ECE will operate Monday to Friday from 7:00am to 6pm excluding public holidays. These hours are not proposed to preclude additional staff hours, parent teacher evenings, maintenance and cleaning etc which may occur outside these times.
5. A new purpose-built building is proposed. This will be 728m<sup>2</sup> plus a 231.20m<sup>2</sup> covered deck (959.2m<sup>2</sup> footprint in total). The driveway and related footpaths will create an additional 278m<sup>2</sup> of impermeable area, and the parking and associated

footpaths an additional 316m<sup>2</sup> (totalling over 1553m<sup>2</sup> of area covered<sup>1</sup>, plus the new playground areas). The building will have timber and coloursteel cladding and coloursteel roofing and sit adjacent to the existing community playground.

### *Consent notice*

6. It is proposed to vary consent notice 11288436.1 to allow for the ECE to be located within Lot 1 (Activity Area 1 of the Matakana 2 Precinct). The consent notice condition currently restricts uses on the sites within the Matakana Country Park (MCP) to those specifically listed. An ECE is not listed and so the Applicant is proposing that this activity is added to the list of 'Activity/ies allowed' within Lot 1.
7. The consent notice condition states:

Activities allowed - Each Lot can only be used for the activities shown in the corresponding Activity Area on the Auckland Unitary Plan Matakana 2 precinct (I5222) overlay, Precinct plan 1.
8. ECEs are not one of those activities 'allowed' in Lot 1 – but the following are listed as allowable activities in that Lot:
  - Function Centre<sup>2</sup>;
  - Dance/Exercise Fitness Centre;
  - Café;
  - Playground;
  - Petting Zoo;
  - Aviary;
  - Memorial Garden and Pet Garden; and
  - Staff Accommodation.
9. New Buildings within the Precinct are a controlled activity.

### **Site Description**

10. The subject site is an irregular shaped parcel of land located on the southern side of Leigh Road and which forms part of the Matakana Country Park. It is currently developed in part with a children's community playground, petting zoo and a

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<sup>1</sup> Based on Sheet 4, dated 30/3/2023

<sup>2</sup> The AUP -OP does not define "function centre", but a dictionary definition is - means a premises or place used for the operation or conduct of events, functions, ceremonies, conferences, exhibitions and the like, and includes a function room, convention centre, exhibition centre and reception centre, but does not include an entertainment facility.

commercial building that occupies a range of activities with the wider site containing the balance of the Matakana Country Park.

11. The Matakana Country Park is a privately owned 20-hectare estate which provides a range of family and community activities. These include (but are not limited to) animal experiences, a miniature ride-on train, horse and carriage rides, a craft shop, art gallery, café, restaurant and bar. The Matakana Country Park is also available for hire and events. In addition to the above, the Matakana Country Park has consent to operate 10 outdoor entertainment special events over a five-year period for 5000-10,000 people at each event.
12. The buildings existing are generally of a rustic/rural aesthetic, being of a barn type design with unstained board and batten cladding and red corrugated iron roofing.
13. Vehicle and pedestrian access to the site is via Leigh Road and Omaha Flats Road with the main entrance to the site being off Leigh Road. The carriageway has been widened to accommodate a formal right turn bay for visitors turning right into the site plus a left turn slip lane has been constructed to assist drivers entering the site from the east.
14. The section 42A report sets out<sup>3</sup> that the ECE 'site' forms part of the wider Matakana Country Park which contains a number of different activities, including: - *Restaurant (also used as a wedding venue), Relocated church, Museum, Café, Animal experience/ petting area, Miniature ride on train, Adventure playground/ Ninja Action World, Dressage arena and horse-riding track, Retail, Campervan Park (space for nine campervans), and the Farmers market.*

### **History of the Site (Resource Consents and Precinct)**

15. There are a number of resource consents related to the Matakana Country Park site. These were all detailed in the Application documents and the section 42A report. We do not repeat the consent history here, but acknowledge that a number of resource consents have been granted within the Matakana 2 Precinct area. However, it is useful to set out a brief history to the Matakana 2 Precinct in the AUP-OP, as we find the Precinct has been significant in our granting consent.
16. The Matakana 2 Precinct relates to Scheduled Activity 211 which was part of the legacy Auckland Council District Plan (Rodney Section). This came about as a result of Plan Change 148 to the then Auckland Council District Plan (Rodney Section), and it became operative in May 2016.
17. This plan change introduced a new scheduled activity that permitted the use of the land and buildings as a 'Country Park' acting as a community events venue, and tourist attraction consistent with the land uses on the sites at that time. The plan change also sought to enable some expansion with the introduction of new restricted activities. The plan change sought to restrict subdivision and manage

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<sup>3</sup> Section 42A Report at page 11 and 12.

the long-term overall development of the site (as opposed to the ongoing resource consent applications).

18. The Matakana 2 Precinct was 'incorporated' into the AUP-OP and is (effectively) operative for the purposes of this application and decision.

### **Notification and Submissions**

19. The Application was publicly notified on the 25 September 2023, with the submission period closing on the 20 October 2023. Four submissions were received. Two of those were in support and two were neutral.

20. The section 42A Report provided a summary of issues raised and the relief sought and is set out as follows<sup>4</sup>:

#### *Oakhill Vineyards Ltd/ Clifton Projects Ltd*

- The submitter is supportive of local businesses.
- The submitter's concern is to ensure that the operators of the childcare centre do not object to its operations, including a vineyard. This could include for example the use of guns and sprays to control pests.
- The submitter wishes to ensure that the presence of the Early Learning Centre will not act as a constraint on any of the activities undertaken now or in the future on 38- 40 Omaha Flats Road<sup>5</sup>.

#### *Matakana Tourism Group Limited*

- That while not consistent with the rules of the I522 Matakana 2 precinct, it is consistent with the underlying objectives and policies of enabling new community and economic activities within the area.
- The I522 Matakana 2 precinct permitted land uses are overly restrictive and do not reflect and provide for the changing nature of Matakana.
- The site has good transport links, and the site's size can accommodate a variety of uses without impacting the wider community.
- The site can be serviced.

#### *Fire and Emergency New Zealand*

- Sites without access to reticulated water, such as the application site, pose greater risks for firefighting and so require specific provision of an alternative firefighting water supply (and appropriate access to the supply) for Fire and Emergency to operate effectively and efficiently in an emergency. The

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<sup>4</sup> Section 42A Report at page 28.

<sup>5</sup> The submission is conditional support.

Applicant proposes to defer consideration of firefighting servicing until building consent stage. The submitter outlines a clear preference for this to be considered during resource consenting, in part to avoid future rework or suboptimal solutions being chosen.

- The submitter sought that the applicant amends the current proposal to suitably address firefighting supply, or a consent condition (as worded in the submission) be imposed. This was done, and we address this later.

#### *William Freeth*

- The submission raises concerns with an “acoustic fence” erected as part of the Action Ninja World activity, in that this is not an acoustic fence and is made of second-hand materials, is of poor standard and not maintained. The submission questions if this is the same standard of work that will be implemented as part of the current application.
  - There is a lack of respect for neighbours.
21. The ‘acoustic’ fence associated with the Action Ninja World activity is located near the southern boundary of 1153 Leigh Road, near the common boundary with 1 Takatu Road. The ECE does not rely on an acoustic fence in this location. This was set out by Mr Hegley (as part of the application material) and confirmed by Council’s Senior Specialist Mr Gordon.
22. If there are any issues relating to this fence, this is a compliance matter related to the Action Ninja World consent<sup>6</sup>. We do not address the acoustic fence further in this decision.

### **Written Approvals**

23. The Applicant provided a list of written approvals. These were detailed in the section 42A report – recording 31 approvals<sup>7</sup>. As set out in the section 42A report:

*The written approval forms provided do not reference the current plans, describe the application in sufficient detail or in some cases provide the correct reference. While there does appear to be a level of understanding of what is proposed, the information referred to is brief and does not reflect the application as it is proposed now. Taking into account the High Court’s decision “Innova Tan Ltd v Auckland Council [2021] NZHC 3263” relating to the judicial review proceedings with respect to the initial consent granted to allow the “Matakana Action Ninja World” to operate it is considered these written approval forms do not include sufficient description to confirm the person signing the form does understand the nature of the proposed activity. The applicant has been made aware of these issues previously. It is therefore*

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<sup>6</sup> Noting that the section 42A report records that the matters raised in the submission have been passed onto Council’s Compliance Team.

<sup>7</sup> Section 42A report – from page 24.

*concluded that adverse effect on these persons cannot be disregarded (s104(3)(b)).*

24. Brendan and Kim Coghlan addressed this issue (among other things) in some detail in their statement of evidence - *Council Concerns and Clarifications, Page 24 Witten Approvals*. We quote two extracts from that below:

*“...it is very obvious that ALL who signed, approve and support an Early Learning Centre for 99 Children being built on Lot 1 1153 Leigh Rd Matakana. The location, elevations, dimensions and perspective have not changed since plans were signed.*

*I did not make the same mistake twice and all those who signed written submissions had the opportunity to read the AEE and all signed plans showing the location and size of the building including perspectives”.*

25. Mr Rodgers also addressed this matter in this evidence<sup>8</sup>.
26. We have some sympathy for the Applicant’s position on this matter. While we have no legal submissions on this point, we accept the section 42A assessment above; that legally adverse effects on these persons cannot be disregarded. Notwithstanding this, Ms Thomson accepted that *“there does appear to be a level of understanding of what is proposed”*<sup>9</sup> and as Mr Rodgers and Mr Coghlan pointed out, none of those people who provided their written approval opposed the application via a submission. Given the significant number of written approvals, and lack of opposing submissions from them, there appears to us to be a significant level support for this proposal from the local/nearby community.

### **Consent Activity Status**

27. The Application and the section 42A Report<sup>10</sup> provided a detailed analysis of the consent requirements under the AUP-OP. When bundled, the activity and the change to the consent notice comprise a discretionary activity.
28. No party disagreed with this – and we accept that overall, the proposal is to be assessed and determined as a Discretionary Activity.

### **Statutory Considerations**

29. As set out above, the applications, when bundled, are a Discretionary activity. Accordingly, in considering these applications we are required to consider the applications in terms of the matters set out in section 104 of the RMA, which requires us to, subject to Part 2, have regard to:

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<sup>8</sup> Paragraphs 38 and 39 of Mr Rodgers’ evidence

<sup>9</sup> Page 29 of the section 42A report

<sup>10</sup> Section 42A Report at Section 10

- (a) any actual and potential effects on the environment of allowing the activity; and
  - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
  - (b) any relevant provisions of—
    - (i) a national environmental standard:
    - (ii) other regulations:
    - (iii) a national policy statement:
    - (iv) a New Zealand coastal policy statement:
    - (v) a regional policy statement or proposed regional policy statement:
    - (vi) a plan or proposed plan; and
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
30. With respect to section 104, despite its considerations being “subject to Part 2”, the Court of Appeal in the RJ Davidson case stated, among other things<sup>11</sup>:
- "Having regard to the foregoing discussion we agree with Cull J's conclusion that it would be inconsistent with the scheme of the Act to allow regional or district plans to be "rendered ineffective" by general recourse to pt 2 in deciding resource consent applications, providing the plans have been properly prepared in accordance with pt 2. We do not consider however that King Salmon prevents recourse to pt 2 in the case of applications for resource consent. Its implications in this context are rather that genuine consideration and application of relevant plan considerations may leave little room for pt 2 to influence the outcome".*
31. In our view that judgment says (in summary) that notwithstanding the Supreme Court's *King Salmon* decision, decision makers must consider Part 2 when making decisions on resource consents. However, where the relevant plan provisions have clearly given effect to Part 2, there may be no need to give further consideration to Part 2 as it would not add anything to the evaluative exercise.
32. The application sought to vary a consent notice under s221(3) RMA. This is a discretionary activity. We have assessed this aspect of the proposal along with the land use considerations.

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<sup>11</sup> *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, paragraph 83

33. In relation to this proposal, we have been able to rely on the provisions of the AUP-OP to determine this application without recourse to Part 2 or to any 'higher-order' planning documents including any National Policy Statements or the Regional Policy Statement (RPS)<sup>12</sup>. Ms Thomson agreed with this when asked at the hearing.
34. Accordingly, we have relied on the plan provisions of the AUP-OP, and particularly those of the Precinct provisions (discussed in more detail later), to make our decision. Notwithstanding this, we briefly address Part 2 later in this decision.

### **Relevant Standards, Policy Statements and Plan Provisions Considered**

35. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of:
- National Policy Statement for Highly Productive Land;
  - Auckland Unitary Plan - Operative in Part.

### **Summary of the Evidence**

36. Section 113(1) (ad) of the RMA requires us to provide a summary of the evidence we heard at the hearing. We briefly address that here but also address it below when setting out our reasons for granting consent.

#### *Council*

37. Ms Thomson recommendation was that the application be refused stating<sup>13</sup>:

*The applications create adverse environmental effects, in particular in relation to rural character, amenity, landscape and visual amenity, that are more than minor both on an individual and cumulative basis. The development is also located on prime soils, removing this land from productive potential for the medium term at least i.e. at least 50 years taking into account the minimum life of a building of the nature proposed.*

*The applications are also contrary to relevant objectives and policies of the National Policy Statement on Highly Productive land and the Auckland Unitary Plan (Operative in part) (AUP(OP)), including at the regional policy statement level. It is therefore recommended that the consents should be refused.*

38. Ms Thomson maintained this position having heard the Applicant's evidence. In summary, it was her view that the proposal was of an urban scale and inappropriate in this rurally zoned area, including the precinct. She accepted that the site did not contain highly productive land.

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<sup>12</sup> Contained within the AUP-OP

<sup>13</sup> Section 4A Report at section 7 – Executive Summary.

39. Ms Howdle also maintained her position having heard the Applicant's evidence. It was her view that the proposal, as addressed at the hearing, would still have an adverse effect on intrinsic rural character and would not retain the rural character and appearance of the Matakana Country Park intended in the precinct provisions.
40. We address the issues raised by Ms Thomson and Ms Howdle in some detail below, as these were essentially the matters in contention.

#### *Applicant's Evidence*

41. Mr Rodgers provided an "Opening Statement". In it he addressed: the evidence to be called, provided a description of the proposal, set out some factual corrections, changes and "additional relevant information"<sup>14</sup>, the reasons for consent, the key issues (as he saw them), and a "Summary".
42. We raised concerns with Mr Rodgers on aspects of the Opening Statement; notably his Summary, where he clearly sought to 'advocate' for the proposal, as well as separately providing expert planning evidence.
43. As pointed out to Mr Rodgers, he cannot be an advocate and an expert (noting he agreed to comply with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2023 (Code). He understood this and requested that the Opening Statement be set aside. We agreed.
44. Mr and Mrs Coghlan, the Applicant and owner of the Matakana Country Park, provided a joint statement primarily focused on the Country Park, why they proposed to develop the ECE, and how the activity of the ECE fitted within the Country Park and its existing activities.
45. They referred to the submitters' concerns, and how they had been addressed, as well as a number of concerns raised in the Council's section 42A report – including matters addressed by their experts (transport, landscape and visual amenity, highly productive soils, urban vs rural activities, as well as the precinct and its provisions). They also addressed the shortage of ELC facilities and that new families had no chance of getting their children into a local centre.
46. Mr Coghlan spoke at the hearing. He reiterated what was contained in the written statement but stressed that the ECE was not of an urban scale, and would address the need for an ECE in the surrounding rural area as well as a number of the smaller settlements including – Point Wells, Matakana, Omaha and the settlements on the Tāwharanui peninsula including Baddeleys Beach and Buckleton Beach. It was his view that something in the order of 95% of the children attending the ECE would be resident in these areas.

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<sup>14</sup> Relating to civil engineering and assessment of Highly Productive Land.

47. He also set out that the building materials of the ECE building would be the same as those of the main existing building on the site. We address this later in this decision.
48. Mr and Mrs Seaburg (New Shoots Children’s Centre) provided a joint statement focussed primarily on why the Country Park was a desirable location for an ECE, and why the benefits of a new centre would support the rural community. They also set out why an ECE of the scale proposed was necessary and appropriate.
49. They concluded by stating<sup>15</sup>:
- Our architecturally designed, high-quality childcare centre with a rural and locally focussed curriculum will provide significantly positive benefits to the community.*
50. Mrs Seaburg spoke at the hearing. It was her opinion that the ECE would draw students mostly from the rural and surrounding area. In this respect she confirmed what Mr Coghlan told us - that 95% of the students would be from the surrounding area, including some of the smaller settlement, but unlikely to be from Warkworth.
51. She did not consider that the ECE was of a large and urban scale. She said she would characterise an ECE for 99 students as medium scale, with ECE’s up to 200 students being developed. Mr Rodgers confirmed this and said that applications for ECE’s he had recently been involved with typically range between 65 and 200 children. He considered the proposal to be of mid-range size of such facilities.
52. Mr Ormiston’s evidence addressed the site from a wastewater perspective, described the existing wastewater production, treatment, and land disposal at the site, and described the proposed on-site wastewater discharge. He confirmed that wastewater consent had been granted for the proposal and set out the approved conditions of that consent<sup>16</sup>.
53. Given that a wastewater consent had been granted for this proposal, and that this issue was not in contention, we do not address this matter further in this decision.
54. Mr Hunter addressed traffic related matters in his evidence. He set out that<sup>17</sup>:
- *The crash history does not indicate any inherent safety problems with the accesses to this property;*
  - *It is expected that no new traffic safety issues will arise as a result of the proposal;*

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<sup>15</sup> Paragraph 20 of the evidence

<sup>16</sup> Council Ref: DIS60051710-A

<sup>17</sup> Paragraph 3.2 of the evidence

- *The car parking requirements under the Unitary Plan is no minimum and no maximum number of car parking spaces. 21 car parking spaces including two accessible spaces will be provided.*
  - *The car parking spaces comply with the dimensional requirements for casual users as set out in AUP document E27 and all spaces are easily accessible.*
55. There were no matters remaining in contention relating to traffic matters (as confirmed by the Council's reporting officer). On this basis we do not address this matter in any detail in this decision
56. Ms O'Leary's evidence focussed on visual amenity and character, having provided a Landscape Visual Amenity & Character Assessment Report (as well as an update of this). Her evidence covered:
- Identification of Visual Audience (i.e. those subject to potential effects relating to the proposal).
  - Identification of Landscape Issue (i.e. potential landscape effects relating to the proposal).
  - Assessment of Effects (i.e. anticipated effects on the identified visual audience)
57. Ms O'Leary's opinion was that any adverse effects on the landscape character values and amenity of the site, as experienced by the identified visual audience, would be low. We address her evidence in more detail later in this decision.
58. Mr Rodgers set out the proposal, its scale and operating parameters (number of children and staff, and hours of operation etc). He set out that the proposed building would be single level and have similar cladding to other buildings located within the Matakana Country Park; and that car parking for 21 vehicles was provided including two accessible spaces and five bike parking spaces.
59. He also set out that the proposal was to vary consent notice 11288436.1 to allow for the ECE to be located within Lot 1 (Activity Area 1).
60. It was Mr Rodgers' opinion that the proposed ECE would serve an important community activity/function and that the site was ideally located to support the immediate wider rural/rural lifestyle area/environment. Furthermore, that the design of the building complied with the relevant development standards and would maintain an appropriate standard of rural amenity in keeping with the character of the Matakana Country Park and surrounding rural environment.
61. With regards to the potential loss of rural production land, he noted that the subject site was only 1.463 hectares and that it *"has had significant capital investment in activities other than rural production, and therefore could not be practically utilised for rural production as the scale of any activities would likely not*

*be financially feasible*<sup>18</sup>. Given this, it was his opinion that the subject site was an appropriate one to establish an activity other than rural production as it would make efficient use of the site in a manner which services the well-being and functionality of the surrounding community.

62. It was Mr Rodgers' view that the proposal supported many of the outcomes sought by the AUP-OP. On this basis he considered that the proposal could be granted consent subject to appropriate conditions (having provided a recommended suite of conditions). He reiterated this in his verbal Reply.

### **Principal issues in contention (and those that were not)**

#### *Principal issues in contention*

63. The principal issues in contention were those set out in the section 42A report – where Ms Thomson recommended that the application be refused based on:
- The effects, in particular in relation to rural character, amenity, landscape and visual amenity;
  - The urban nature and scale of the proposal;
  - In relation to the two bullet points above the proposal being contrary to AUP-OP Zone provisions of AUP-OP – as well as being contrary to the provisions of the Matakana 2 Precinct.
64. The Applicant disagreed with the opinions and recommendation of Ms Thomson. It was the Applicant's position that the ECE would provide an important community service/activity that would support the surrounding area. Mr Rodgers opined, contrary to the view of Ms Thomson, that any adverse effects had been appropriately avoided, remedied or mitigated subject to the conditions of consent; and that the proposal was not contrary to, nor inconsistent with, the relevant objectives and policies of the AUP-OP – and in many ways supported them.
65. We address these matters further below, but firstly address those matters no longer in contention due to the information and evidence provided by the Applicant before at the hearing. We accept that these matters have been appropriately addressed.

#### *Matters not in contention*

66. Based on the evidence before us, and as agreed between the Applicant and the Council's experts, the following matters were not in contention subject to appropriate consent conditions: - Servicing (wastewater, stormwater and water supply), all engineering matters including earthworks, traffic, noise and reverse sensitivity issues.
67. The only traffic matters raised related to design details of the vehicle entrance, the location of the car park footpath, and number of disabled spaces. The plans were

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<sup>18</sup> Paragraph 22 of Mr Rodgers' evidence

revised to address these matters. No concerns were raised with respect to effects on the road network.

68. With respect to noise Mr Hegley and Mr Gordon both opined that compliance with the AUP-OP could comfortably be complied with. Council's noise specialist, Mr Gordon agreed that taking a conservative approach the 'worst case' cumulative noise would be 50 dB at the nearest notional boundary - 5 dB below the relevant standard.
69. Condition 30<sup>19</sup> as agreed by Ms Thomson and Mr Rodgers sets the noise standard (as set out in the AUP-OP), but Condition 31 proposed by the planners sought that at the request of the Council the consent holder provide a report demonstrating compliance. We have not imposed that condition as it is unnecessary based on the evidence before us. The Council has authority to monitor compliance and act on any complaint without needing such as condition as referred to in the preceding paragraph. As said, there is no evidence of potential noise effects and hence the need for this condition.
70. Fire and Emergency New Zealand (FENZ) tabled a letter that their concerns would be met by their recommended condition. We were advised that the amended plans include an additional water tank to address the fire-fighting requirements. We have imposed a condition of consent to address FENZ's concerns.
71. Potential reverse sensitivity concerns raised by one submitter with respect to a property on Omaha Flats Road were satisfied by a 'no complaints covenant' offered by the Applicant as an Augier condition. We note that this was arranged between the parties, and we did not need to consider any evidence on possible reverse sensitivity effects. We accept the matter has been resolved by the parties.
72. We agree with Ms Thomson and Mr Rodgers that the following adverse effects are not in contention, and any adverse effects arising from these are appropriately avoided, remedied or mitigated, or of a scale that the effects are no more than minor – ecological, earthworks, natural hazards, reverse sensitivity, and cultural and heritage.
73. The issue of the National Policy Statement for Highly Productive Land (NPS- HPL) and the site containing highly productive land was raised in the Section 42A report and subsequently addressed by the Applicant (report from Mr Hanmore) and by the council (report from Dr Dani Guinto). Both experts agreed the site did not contain "highly productive land" as defined in the NPS- HPL. Ms Thomson accepted this and stated this no longer formed part of her rationale for recommending the application be refused consent<sup>20</sup>.

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<sup>19</sup> Agreed set of draft conditions between Ms Thomson and Mr Rodgers – 16 February 2024.

<sup>20</sup> A report, 'Soil and Resource Report for 1153 Leigh Road, Matakana, Ian Hanmore, Hanmore Land Management, 26 January 2024' assessed the site as not comprising Highly Productive Soils, and this was accepted by Council (Dr Dani Guinto).

74. We accept the expert evidence and information on these matters, and other than the conditions of consent, do not need to address these matters further.

## **Findings on the principal issues in contention, and reasons for granting consent**

### *The planning framework relevant to this proposal*

75. Both planners for the Applicant and Council addressed the relevant AUP-OP provisions, including those of the Zone and the Matakana 2 Precinct provisions. Having done so, they came to different opinions about whether the proposal was contrary to or inconsistent with those provisions such that consent should be granted or refused.
76. We accept we need to consider (and weigh) all of the relevant provisions in evaluating and making our decision on this application. However, having considered the relevant AUP-OP provisions, we have placed considerable weight on the Precinct provisions. They are clearly ‘area and site specific’ reflecting what has actually been built and consented; and importantly address the nature and scale of development that is envisaged, including some expansion. This has, in our view, resulted in many of the provisions and outcomes sought by the Mixed Rural Zone being less relevant; notably that rural production is not envisaged and does not occur within the Precinct area. The AUP-OP recognises this, as set out in the following paragraph.
77. Chapter A – Introduction of the AUP -OP, at A1.6.5. Precincts, states:
- Precincts enable local differences to be recognised by providing detailed place-based provisions which can vary the outcomes sought by the zone or Auckland-wide provisions and can be more restrictive or more enabling. In certain limited circumstances the rules in a precinct vary the controls of an overlay, either by being more restrictive or more enabling. However, the general approach is that overlays take precedence over a precinct.*
78. The primary emphasis of the Mixed Rural Zone is rural production activities. Objectives and policies seek to enable this, in particular on higher quality soils, which at least part of this site is (more on this below). For example, Objective H19.2.1(1) states “*Rural areas are where people work, live and recreate and where a range of activities and services are enabled to support these functions.*”
79. As a consequence of the primary emphasis of the zone, a limited range of other (non-productive) activities are provided for. Those that are, are to be of nature and scale that are related to rural production, tourism or the rural environment. However, ‘small scale’<sup>21</sup> “care centres” (eg ECE) are a permitted activity and listed under “Community” in the activity table. Furthermore, in the Definition section of the AUP-OP, the “Community” nesting table includes “care centres”.

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<sup>21</sup> Up to 10 people

80. The zone also has a range of provisions relating to the character and amenity values of rural areas. These are to be maintained or enhanced (H19.2.3(1), H19.4.2). This is, for example, detailed in policy H19.2.4(1):

*Manage the effects of rural activities to achieve a character, scale, intensity and location that is in keeping with rural character, amenity and biodiversity values, including recognising the following characteristics:*

*a) a predominantly working rural environment;*

*b) fewer buildings of an urban scale, nature and design, other than dwellings and their accessory buildings and buildings accessory to farming; and*

*c) a general absence of infrastructure which is of an urban type and scale.*

81. In a similar vein objective H19.2.5(4) states:

*Industries, services and non-residential activities of an urban type and scale unrelated to rural production activities are not located in rural zones.*

82. The Precinct does not have primary emphasis on rural production activities. The purpose of the Matakana 2 Precinct is:

- To enable the ongoing operation and expansion of the Matakana Country Park, by permitting the use of the site for community events and tourist and visitor activities.*
- The precinct limits activities to those with a rural and/or tourist theme to recognise its use as a 'country park'. Subdivision in this precinct is also controlled so that the Matakana Country Park continues to be managed and operated as a single entity, and some expansion of activities is provided for in the precinct.*

83. Objectives and policies for the Precinct provide for a limited number of activities “with a rural and/or tourist theme to recognise its use as a 'country park'” and this is supported by Table I522.4.1 which enables a limited range of activities, in addition to what the zone provides for.

84. Objective I522.2 of the Precinct refers to “community activities” being provided for and enabled. “Community activities” are not defined in the AUP-OP. The activity table refers to “community facilities” which is a defined term. While that definition specifically excludes “care centres” (which includes ECEs), it includes; arts and cultural centres (including art galleries and museums); places of worship; community centres; halls; libraries; marae; Citizens Advice Bureau; community correction facilities; and justice facilities.

85. Ms Pye’s technical input (memo on plan policy) refers to the precinct permitting the use of the site for community events, rural tourist and visitor activities on a limited

basis. Ms Thomson sets out that, in her opinion, having considered the Precinct provisions, and having regard to Ms Pye's assessment that, "*a childcare centre is not considered to be a "community activity". The ECE is to service people who live in a wider area*". The Applicant and Mr Rodgers do not agree as was set out earlier in the summary of evidence section.

86. It is clear to us that the range of permitted activities set out above (community facilities) are likely to "*service people who live in a wider area*" and not just the rural community, and could have the same or greater effects (positive and adverse) than a "care centre" (ECE). On this basis we think Ms Thomson, relying on Ms Pye's statement, has taken a narrow view, implying that any "*community activity/facility*" must only serve the local community (undefined). We take a wider view and accept that, while ECE's are not defined as a "*community facility*", they clearly have, at least partially, a community focus – as does a school or a community hall (often available for hire by anyone). This is the view of the Applicant.
87. Furthermore, following the line of *community activity/facility*, we raised the questions with Ms Thomson and Mr Rodgers - what different effect, and policy implication, is there from an ECE (not provided for) and a Functions Centres and/or Dance/exercise Fitness Centre – which are permitted in Lot 1 of the precinct. We accept Ms Thomson's view that "1522.6.3. Community Facilities" appears to seek to limit the range of "community facilities" but is silent on a Functions Centres which is permitted within Lot 1. This activity could be of the same or larger scale to this ECE in terms of size of building, numbers of people, hours in which it could operate, traffic movements etc – and likely to serve customers/clients from both rural and urban areas, but less likely to service the local community.
88. We address this matter further below in terms of the scale and relationship to the rural community.

#### Scale and relationship to the rural community

89. It was Ms Thomson's opinion that "*The scale of this activity and the built form is, in my opinion, of an urban scale. It is unrelated to rural production activities; it is a standalone activity that does not require a rural location. The applications will not maintain rural character or rural amenity values. At 959m<sup>2</sup> (plus playgrounds and other development areas on the site) the built form is significant, and will be seen in conjunction with other buildings, signs, entryways, car parking areas and structures already on the MCP sites<sup>22</sup>.*"
90. Ms Thomson further considered the centre "*is of a scale designed to service a wide area, and not designed to service the rural community.*" She confirmed that this means it would draw on such urban areas as Matakana, Point Wells, and Omaha. She also noted that the existing childhood education centres within this

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<sup>22</sup> Section 42A report – page 51.

catchment described in the Kindello report<sup>23</sup> were licensed for 23-30 positions each compared to the 99 positions for the proposal. In response, as we have pointed out earlier, Mr Rodgers said that applications for ECEs he had recently been involved with typically range between 65 and 200 children; and that he considers this proposal is of mid-range size of such facilities.

91. Mr Coghlan and Ms Seaburg said they expected most children to come from a rural area that includes the settlements addressed earlier. This was consistent with the 'Focus Area' analysed by the Kindello report.
92. The main catchment for the proposed facility is not in dispute. It comprises a relatively closely settled rural landscape including many activities designed to cater for Aucklanders seeking out-of-town recreational experiences. Within the landscape are a village (Matakana) and several beachside settlements – most of which are small, but Omaha is comparatively larger. While the settlements have urban or rural/coastal settlement zonings, they are discrete settlements in a rural setting rather than part of a contiguous urban area.
93. All roads serving this area converge on the site. The ECE is therefore likely to serve families who live on both the rural properties and in the settlements. For the current purpose we consider it reasonable to consider the area as a whole rather than distinguish between the separate settlements and their rural setting. We consider the most relevant matter in this respect is the effect on rural character and appearance of the Matakana Country Park which we address below. As discussed in that section, the building per se will not be out of scale with the existing buildings in the Country Park, and the potential effects of the building on rural character and appearance will be satisfactorily mitigated by the building design (mainly materials and colours) and planting.
94. Overall, having had regard to our reasoning, it is our view that the ECE activity per se, including its scale (we do not find it is a large-scale urban activity as opined by Ms Thomson), is not contrary to or inconsistent with the relevant provisions of the Zone or the Precinct.

#### *Rural character, appearance and landscape effects*

95. Ms Thomson, and Ms Howdle did not consider that the development, including its built form and site development, is consistent with nor would it maintain rural character (I522.3(4)). Furthermore, Ms Thomson opined that the applications are not consistent with the country park appearance (I522.3(4)) setting out that other buildings within the development have been specifically designed and finished with

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<sup>23</sup> Thei report had been prepared to support a 'network approval application' to the Ministry of Education for a licensed childhood education centre, and was provided as part of the information for this application

a rural aesthetic. This includes the common use of barn- type buildings, board and batten, natural timber and darker colours.

96. We note for context, that all new buildings within the Precinct are a controlled activity (we accept in this case the entire application is Discretionary). The matters of control (I522.7.1) are:

- (1) buildings siting, scale, design and external appearance;
- (2) landscaping and screening;
- (3) access and servicing; and
- (4) traffic, parking, loading and access.

97. The section 42A report provided a detailed section on the character, amenity, visual and landscape effects of the proposal, and set out the RPS provisions and relevant zone objective and policies. We do not repeat this here, but note that Ms Thomson's opinion was that<sup>24</sup>:

*The applications do not maintain or enhance rural character or amenity. For the reasons set out above and in the s95 RMA report, I concluded that adverse rural character, amenity and landscape effects are not avoided, or remedied or mitigated to an acceptable degree and on that basis the scale and nature of the proposed activity will be unacceptable.*

98. We received evidence from two qualified and experienced landscape architects – Ms O'Leary on behalf of Applicant and Ms Howdle on behalf of Council – on landscape and visual effects, and whether the proposal would retain the rural character and appearance of the Matakana 2 Precinct as sought in Objective I522.2.(3) and Policy I522.3.(4).

99. Ms Howdle considered the proposal would have adverse effects on rural character through a combination of factors. She considered it would reduce openness (the ratio of open space to buildings), especially given the proposed building would be at the front of Matakana Country Park near Leigh Road compared to the existing buildings which are set back from the road. She was of the opinion that the facility would have an urban scale and that the building would have an urban appearance compared to the existing buildings which have a rural theme.

100. Ms Howdle considered the factors set out above would be cumulative on a site already "*pressured by clutter*", and that the effects on the surrounding area would be amplified by the site's proximity to a "*gateway intersection*" which is the convergence of roads to Matakana, Leigh, Point Wells/Omaha, and the settlements on the Tāwharanui peninsula such as Buckleton Beach and Baddeleys Beach.

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<sup>24</sup> Page 39 of the section 42A report.

101. Ms O’Leary acknowledged that the reduction in openness near the front of the site would affect rural character but considered the proposed planting would mitigate such effects. She explained that the planting would screen or soften the proposed building. The planting would replace one characteristic of rural character (i.e. open space) with vegetation that is also characteristic of the surrounding countryside.
102. It was her opinion that the planting would merge with vegetation on the neighbouring property to the south and be in keeping with the existing pattern of a more heavily vegetated southern part of the Matakana Country Park, and an open northern part of the site (i.e. the racecourse area).
103. Ms O’Leary also noted that, while the site is strategically located, it is not at the intersection itself and is visible to passersby only on Leigh Road. She also understood that the building would use the same materials and colours as the existing main Matakana Country Park buildings, which was confirmed by Mr Coghlan (it was unclear from the application material). She accepted the scale of the building is “more urban than distinctly rural” but that planting would mitigate such effects. (We addressed scale also above under the heading ‘*Scale and relationship to the rural community*’).
104. Ms O’Leary had prepared a revised planting plan and additional explanation in response to Ms Howdle’s report (which was written with respect to the earlier plans). Ms O’Leary acknowledged what we also observed on our site visit that there were clear views into the site over the top of the bund and beneath the foliage of the magnolia trees on the bund.
105. While she considered this gap would eventually be closed by the camelia hedges planted on the toe of both sides of the bund, she proposed additional fast-growing native species in the space between the bund and the fence. She said this would provide additional depth to the planting and quicker screening; the larger grade plants proposed could achieve 3m in height within 3 years with proper site preparation and maintenance.
106. Ms O’Leary said that the area for such planting varied in width between 2m and 3m, except where it will taper to allow sightlines at the main vehicle entrance to the Matakana Country Park. She clarified that the existing gap in the planting and bund (opposite gates intended to be used during construction) would be closed following construction. She had also added native species to be planted along the watercourse on the south side of the site to address diagonal views along the stream.
107. Ms Howdle considered the revised planting a “good advance” although she remained uncertain over details. She said, if implemented successfully, the planting could be effective in screening the site and would limit the adverse effects from Leigh Road to a “low-moderate” degree. However, she maintained her view that the proposal would still have an adverse effect on intrinsic rural character and would not retain the rural character and appearance of the Matakana Country Park intended in the precinct provisions.

108. The evidence of both landscape architects was clear and reasoned. The differences appeared to be matters of degree. The factors set out in Ms Howdle’s report provided a useful analysis with respect to the application as lodged. On balance, however, we agreed with Ms O’Leary’s conclusions with respect to the revised proposal for the following reasons:
- Successful implementation of the revised planting proposed will effectively mitigate adverse effects on rural character resulting from the additional building and its location near Leigh Road at the front of the Matakana Country Park.
  - The revised planting will fit in with the pattern of openness in the northern part of the Matakana Country Park and the comparatively enclosed and planted southern part of the precinct.
  - Use of the same materials and colours will provide a degree of aesthetic coherence between the proposed building and the main rural-themed buildings of the Matakana Country Park. The ECE will also be integrated with the internal circulation of the Matakana Country Park (i.e. it will use the existing entrances to Matakana Country Park off Leigh Road and Omaha Flats Road). The 40m-long single-storey building will not be out-of-scale with the existing 70m long existing buildings which include some two storey elements. In reaching that conclusion, we acknowledge that the proposed building will be on a different alignment and have different forms compared to the existing buildings.
109. For the reasons set out above, we find that the potential adverse effects on rural character will be appropriately mitigated, and that the Matakana Country Park will maintain its rural character and appearance. In this regard the proposal is consistent with the Matakana 2 Precinct.
110. Moreover, due to our findings set out above, it is appropriate to grant a change to the consent notice pursuant to section 221 of the RMA to list “care centre (childcare)” as an allowable activity in Lot 1.

## **Part 2**

111. As we set out earlier the AUP-OP in relation to this proposal, has already addressed the relevant Part 2 provisions. Accordingly, we have not needed recourse to Part 2 of the Act to provide guidance in determining these applications. Doing so would not have added anything to the evaluative exercise we have undertaken. That said, it is our findings that the proposal satisfies Part 2 of the RMA in that the proposal would enable people and communities to provide for their well-being (social, economic) by providing for an ECE, while avoiding, remedying, or mitigating any adverse effects of the activity on the environment.

## Decision

112. For the reasons set out above, it is our findings that the proposal is consistent with the range of objectives and policies set out in the AUP-OP, including the zone and Precinct. All of the adverse effects have been appropriately avoided, remedied or mitigated, including by the comprehensive suite of conditions. There are also positive effects from granting the consents sought – notably the provisions of an ECE to service the surrounding rural area as well as some of the smaller urban settlements within this rural area.
113. Again, for all of the reasons set out above, in exercising our delegation under section 34A of the RMA, we have determined, having had regard to sections 104, 221 and Part 2 of the RMA that resource consent applications by Matakana Country Park Ltd to establish an Early Childhood Education Centre accommodating 99 children, 24 full time equivalent staff and to vary a consent notice condition to provide for the childcare centre are **granted**.

## Conditions

114. These consents are subject to the conditions attached to this decision as Attachment 1.



Greg Hill  
Chairperson

28 February 2024

## Attachment 1:

### Conditions 1: LUC60403942

#### General conditions

1. These consents must be carried out in accordance with the documents and drawings and all supporting additional information submitted with the applications, detailed below, and all referenced by the Council as resource consent number LUC60403942.
  - Application Form and Assessment of Environmental Effects prepared by Establish ECE Limited, dated June 2022.

Report title and reference	Author	Rev	Dated
On-site Stormwater Disposal Report, job no. 2002	SPL Consultants	-	March 2023
Landscape Character & Visual Effects Assessment	Oleary Landscape Architecture Ltd	-	February 2023
Geotechnical Investigation Report, job number: 12812	Geotech Professionals 2006 Ltd	-	05.08.2022
Acoustic Assessment, report no. 21026	Hegley Acoustic Consultants	-	04.03.2021
Traffic Impact Assessment	Traffic Engineering & Management Ltd	-	23.09.2022
Soil & Resource Report	Hanmore Land Management	-	26.01.2024

Drawing title and reference	Author	Rev	Dated
Sheet 1 – Site Plan	Coastal Properties Orewa Ltd	-	23.01.2024
Sheet 2 – Site Plan	Coastal Properties Orewa Ltd	-	23.01.2024
Sheet 5 – Earthworks Plan	Coastal Properties Orewa Ltd	-	30.03.2023
Sheet 8 – Landscape Plan (refer also OLA plans)	Coastal Properties Orewa Ltd	-	23.01.2024
Sheet 9 – Earthworks Plan	Coastal Properties Orewa Ltd	-	23.01.2024

<b>Drawing title and reference</b>	<b>Author</b>	<b>Rev</b>	<b>Dated</b>
Sheet 10 – Lighting Plan	Coastal Properties Orewa Ltd	-	23.01.2024
Sheet 11 – Floor Plan	Coastal Properties Orewa Ltd	-	21.01.2024
Sheet 12- Elevations	Coastal Properties Orewa Ltd	-	23.01.2024
Sheet 13- Elevations	Coastal Properties Orewa Ltd	-	23.01.2024
Sheet 14- Perspective View	Coastal Properties Orewa Ltd	-	23.01.2024
6302 – Site Plan (1:500)	C & R Surveyors Ltd	-	20.12.2023
6302 – Site Plan - Early Learning Centre (1:250)	C & R Surveyors Ltd	-	20.12.2023
6302- Site Plan (1:1000)	C & R Surveyors Ltd	-	20.12.2023
On- site Stormwater Disposal Plan, Job 2002, Drawing SW01	SPL Consultants	B	Dec 2023
On- site Stormwater Disposal Dual- Purpose Rainwater tanks Cross Section, Job 2002, Drawing SW02	SPL Consultants	B	March 2023
On- site Stormwater Disposal Rain Garden Cross Section, Job 2002, Drawing SW03	SPL Consultants	B	Jan 2024
Landscape Concept Plan, Drawing 01 (in principle, see condition 26 and 27)	OLA	-	16.01.2024
Landscape Planting Plan, Drawing 02 (in principle, see condition 26 and 27)	OLA	-	16.01.2024
Landscape Planting Plan, Drawing 03 (in principle, see condition 26 and 27)	OLA	-	16.01.2024
Landscape Palette, Drawing 04 (in principle, see condition 26 and 27)	OLA	-	16.01.2024

<b>Drawing title and reference</b>	<b>Author</b>	<b>Rev</b>	<b>Dated</b>
Implementation & Maintenance Specifications, Drawing 05 (in principle, see condition 26 and 27)	OLA	-	16.01.2024

<b>Other additional information</b>	<b>Author</b>	<b>Rev</b>	<b>Dated</b>
Letter, ref: 1153 Leigh Road, Omaha Flats	Hegley Acoustics	-	02.06.2021
Letter, ref: Stormwater Discharge design, 2002	SPL Consultants	-	27.05.2021
Letter, S92 Response - Re: Response to a request for further information	Paul Rodgers, Establish	-	29.03.2023
Email, S92 Response (including attached e-mail from Rural Design relating to wetlands, dated 8/11/2022)	Paul Rodgers, Establish	-	08.11.2022
Email, S92 Response - Re: LUC60403942 and VCN70020860- 1153 Leigh Road	Paul Rodgers, Establish	-	14.11.2022
Email, S92 Response - Fwd: Matakana Country Park Tenants and Matakana Museum Written Approvals	Paul Rodgers, Establish	-	05.10.2022
Email, S92 Response - Fwd: Written Approvals. Neighbours	Paul Rodgers, Establish	-	05.10.2022
Email, S92 Response - Matakana Country Park - s 92 response	Paul Rodgers, Establish	-	05.10.2022
Letter, s92 response	B Coghlan	-	05.10.2022
Letter, ref: Staffing numbers	Kelly Seaburg, Director New Shoots Children's Centre	-	08.08.2022
E-mail, ref: 1153 Leigh Road, Omaha Flats	SPL Consultants	-	05.08.2022
Email, S92 Response - Re: LUC60403942, VCN70020860 & DIS60051710- A- Leigh Road (Landscape Assessment)	Paul Rodgers, Establish	-	04.04.2023

Email, S92 Response - Re: LUC60403942, VCN70020860 & DIS60051710- A- Leigh Road	Paul Rodgers, Establish	-	04.04.2023
Email, S92 Response - Re: LUC60403942, VCN70020860 & DIS60051710- A- Leigh Road- s92 Summary (2)	Paul Rodgers, Establish	-	05.07.2023
Letter, S92 Response - Re: Response to s92 Request for Additional Information for the Proposed Residential Development at the Matakana Country Park, ref: 221298	Traffic Engineering & Management Ltd	-	10.02.2023
Network Approval Report	Kindello	-	April 2023
Overland Flowpath Assessment, ref 2002	SPL Consultants	-	15.01.2024

2. Under section 125 of the RMA, these consents lapse five years after the date they are granted unless:
  - a. The consents are given effect to; or
  - b. The Council extends the period after which the consents lapse.
3. The consent holder must pay the Council an initial consent compliance monitoring charge of \$1,116 (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, shall 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.*

4. The childcare activity is restricted to no more than 99 children and 24 full time equivalent staff members.
5. The childcare activity must not operate outside of the hours of 7:00am to 6pm Monday to Friday, and must not operate on public holidays.

*Note: These hours do not preclude additional staff hours, parent teacher evenings, maintenance and cleaning etc which may occur outside these times.*

6. All noise generating activities associated with construction activities on, or in the vicinity of, the subject site (which can include (but is not limited to) any demolition, earthworks and construction activities, and ancillary activities (such as deliveries, loading and unloading goods, transferring tools, etc)) must not exceed the noise limits stipulated within NZS 6803:1999 Acoustics - Construction Noise (or any subsequent revision), and may only be carried out:
  - between the hours of 7:30 am and 18:00 pm, Monday to Saturday; and
  - must not be carried out on any Sunday or public holiday (and any following Monday on which that public holiday is observed)

## Engineering

7. The Council must be notified at least five (5) working days prior to earthwork activities commencing on the subject site.

### **Advice note:**

*This condition requires the consent holder to notify Council of their intention to begin earthworks a minimum of five working days prior to commencement. Such notification should be sent to the Orewa Compliance Administrator at ResourceConsentAdmin@aucklandcouncil.govt.nz or 0800 4265169 to advise of the start of works.*

8. All earthworks must be managed to ensure that no debris, soil, silt, sediment or sediment-laden water is discharged beyond the subject site to either land, stormwater drainage systems, watercourses or receiving waters. In the event that a discharge occurs, works must cease immediately and the discharge must be mitigated and/or rectified to the satisfaction of Council
9. Prior to the commencement of earthworks activity, all required erosion and sediment control measures on the subject site must be constructed and carried out in accordance with Auckland Council's Guidance Document 2016/005 (GD05).
10. Earthworks must be managed to avoid 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.
11. Prior to construction commencing, the Stormwater Disposal Report prepared by SPL Consultant, ref: 2002, dated March 2023 must be updated to be consistent with the impermeable areas detailed on the plans in condition 1 (in particular Sheet 1, dated 23.01.2024). The consent holder must provide this updated report to the Council for certification.
12. Prior to the early childcare centre activity commencing, stormwater management works must be constructed in accordance with the certified Stormwater Disposal Report

detailed in condition 11 and the plans by SPL Consultants detailed in condition 1 and must be retained and maintained in perpetuity.

13. Prior to the early childcare centre activity commencing, the consent holder must demonstrate to the Council that conditions 8, 8a) and 8b) of the wastewater discharge consent reference DIS60051710-A have been complied with.
14. At the time a building consent application is submitted for the proposed childcare building it must be demonstrated that a suitable alternative firefighting water supply will be provided in accordance with the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 and that this water supply is accessible for firefighting purposes. The consent holder must provide confirmation of this to the Council.

### **Transportation**

15. Prior to the commencement of any works on the site, the consent holder must submit to and have certified by the Council, a Construction Traffic Management Plan (CTMP). The CTMP must be prepared in accordance with the Council's requirements for traffic management plans or CTMPs (as applicable) and New Zealand Transport Authority's Code of Practice for Temporary Traffic Management and must address the surrounding environment including pedestrian and bicycle traffic as well as public transport. No construction activity must commence until the CTMP has been certified by the Council and all construction traffic must be managed at all times in accordance with the approved CTMP. The CTMP must be included in the application for a Corridor Access Request.
16. 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 will 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.
17. Prior to the childcare activity commencing, the consent holder must form, seal and mark out 21 car parking spaces, including two accessible parking spaces, form pedestrian areas and footpaths in accordance with the plans and information detailed in condition 1, including the assessments from TEAM dated 23.09.2022, and dimensions and gradients detailed in the Auckland Unitary Plan (Operative in Part). Wheel stops must be provided on all parking spaces to ensure that parked vehicles do not overhang the footpath.
18. The development must provide 2 secure long term bicycle parking spaces and 3 short-stay visitor bicycle parking spaces on site. This must be completed in accordance with the minimum requirements of the Auckland Unitary Plan E27.6.2.5. The bicycle parking spaces must be operational before commencement of the consented childcare activity and must be at the expense of the consent holder.
19. Prior to the childcare activity commencing, the consent holder must undertake the works as described in the letter by TEAM dated 10.2.2023, and in particular the relocation of fencing and removal of vegetation.

20. All loading and unloading of goods and equipment associated with the childcare activity must occur outside peak hours, which are 8am- 9am and 4pm- 5pm.
21. Prior to the childcare activity commencing, the consent holder must provide a lighting plan for certification by the Council, relating to the car park and pedestrian areas, demonstrating compliance with Standard E27.6.3.7 of the Auckland Unitary Plan (Operative in Part). Lighting must not include flood lighting, must be directed away from Leigh Road and adjacent sites, and must have regard to the rural character and amenity of this location. Apart from sensor lights, lighting must not be used outside of the hours of operation.

Once certified, the plan must be implemented prior to the activity commencing, and maintained for the duration of the childcare activity occurring on the site.

22. The boundary fence west of the main entrance to the Matakana Country Park is to be relocated inside the property boundary to improve sightlines for right-turning motorists exiting the site in accordance with “Site Plan Early Learning Centre”, 1:250 scale, dated 20/12/2023, by C&R Surveyors Ltd (the relocation is up to 1.5m at the angle in the property boundary, and tapering in either direction). The area outside the fence must be kept clear to maintain sightlines.

### **Landscape**

23. The building must be finished in materials and colours to match the nearby existing main buildings of Matakana Country Park as detailed on the plans and information detailed in condition 1.
24. Prior to construction commencing, the consent holder must provide to the Council for certification a signage plan that includes details of the finishing, colouring and content of the proposed sign. Once certified, any signage must be in accordance with this plan.
25. No additional free standing or fence mounted signage for the purpose of advertising, identifying or displaying the childcare centre must be erected along the site boundaries, or within the front yard setbacks from Leigh Road. Any signage for the childcare centre along the road front must be incorporated into an existing, consented sign (i.e. within the consented height and width) on site at the time this resource consent is granted. The details (location, dimensions, imagery) of this must be provided to Council for certification at least three months prior to installation.

#### *Finalised Landscape Design Drawings, Specifications and Maintenance Requirements*

26. Prior to the approval of building consent for the childcare centre building, the consent holder must provide to the Council for certification, a finalised set of detailed landscape design drawings and supporting written documentation which have been prepared by a landscape architect with input from the consent holder’s acoustic specialist. The submitted information must be consistent with the consented landscape concept plan(s), including:
  - a) Annotated planting plans which depict the location and extent of all areas of planting including (but not limited to) the existing and infill planting on the bund (specimen

trees, ground cover, hedging), the visual amenity buffer planting with native species between the bund and fence on the Leigh Road frontage, the riparian and visual amenity planting with native species along the watercourse on the southern boundary of the childcare site, and other planting and trees around the childcare facility.

- b) The completion of the 1.5m high earth bund along the Leigh Road frontage of the site that is consistent with the assessment assumptions detailed in the acoustic report by Hegley Acoustics reference 2106 dated 04.03.2021. The landscape plan must be accompanied by written confirmation from Hegley Acoustics (or another suitably qualified acoustic specialist familiar with the acoustic report by Hegley Acoustics reference 2106 dated 04.03.2021) that the completed bund is consistent with the assumptions in the acoustic assessment by Hegley Acoustics as detailed in condition 1.
  - c) The plan must demonstrate compliance with condition 22 including that sightlines will be maintained when the vegetation planted inside the fence reaches maturity.
  - d) Annotated cross-sections and/or design details with key dimensions to illustrate that adequate widths and depths are provided for garden beds including the rain gardens.
  - e) A plant schedule based on the submitted planting plan(s) which details plant species, plant sourcing, the number of plants, height and/or grade (litre) / Pb size at time of planting, and estimated height / canopy spread at maturity.
  - f) Details of draft specification documentation for any specific drainage, soil preparation, tree pits, staking, irrigation and mulching requirements.
  - g) Annotated plans and related specifications detailing the proposed hard landscaping, including:
    - i. finished site levels.
    - ii. location, type, and height of fencing.
    - iii. location, materiality, and widths of pedestrian paths to enable safe movement for prams, parents, and children.
    - iv. lighting consistent with condition 21.
  - h) The finalised landscape design must be consistent with the landscape design intent / objectives identified in the conceptual plans and information referenced at condition 1 and confirm responsibilities for ongoing maintenance requirements.
27. A five-year landscape maintenance plan (report) and related drawings and specifications for all aspects of the finalised landscape design must be submitted to council for certification prior to the childcare activity commencing. The plan is to include:
- i. Temporary and any permanent irrigation required to maintain soil moisture.
  - ii. Any drainage required to provide good growing conditions.
  - iii. Weed and pest control / spraying.

- iv. Replacement of any dead or dying plants including existing bund planting and specimen trees; such replacements to be the same or larger grade as at implementation.
- v. Inspection frequency and times.
- vi. Contractor responsibilities and ongoing maintenance requirements.
- vii. How the landscaping will be maintained to provide the sightlines required by condition 22.

*Implementation of Landscape Treatment*

- 28. The missing section of earth bund detailed in the certified landscape plan must be completed and planted prior to the early childcare centre activity commencing.
- 29. The consent holder must implement the landscape design which has been certified by the Council under condition 26 prior to the childcare activity commencing, and thereafter retain and maintain the landscaping (including the bund, planting, and existing vegetation) in accordance with the approved maintenance plan certified in condition 27 and thereafter for the life of this consent.

**Acoustic**

- 30. Noise from the childcare activity must not exceed the following noise limits when measured within the notional boundary on any site in any rural zone:
  - a) Monday to Saturday 7am-10pm: 55dB  $L_{Aeq}$
  - b) Sunday 9am-6pm: 55dB  $L_{Aeq}$
  - c) All other times: 45dB  $L_{Aeq}$  75dB  $L_{AFmax}$ .

*Advice Note:*

*The consent holder is reminded of their general obligation under section 16 of the Resource Management Act 1991 to adopt the best practicable option to ensure that the emission of noise does not exceed a reasonable level.*

*Noise levels are measured in accordance with the provisions of NZS 6801:2008 Acoustics – Measurement of environmental sound and assessed in accordance with NZS 6802:2008 Acoustics – Environmental noise.*

**No complaints covenant (Augier)**

- 31. Prior to the childcare activity commencing, the consent holder must register a no complaints covenant on the Record of Title for Lot 1 DP 519220. Prior to the registration of the covenant the consent holder must provide the wording of the covenant to the Council for certification that it is consistent with the evidence of Mr Paul Rodgers, in particular paragraph 55, planner for the consent holder - dated 24.01.2024.

The wording must include that the site owner, consent holder and any lessees, tenants or operators of the childcare centre must not complain in relation to permitted rural land

use activities, or other legally established activities existing prior to this consent being granted, occurring on 38-40 Omaha Flats Road.

## 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](mailto: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](http://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](http://www.mfe.govt.nz).*
4. *If you disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to section 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 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.*

## Conditions 2: VCN70020860

Consent notice 11288436.1 is varied as the following amendments (with ~~striketrough~~ for deletion, underline for insertions):

### Variation to consent notice 11288436.1

Changes are represented by ~~striketrough~~ for deletion, underline for insertion. For the avoidance of doubt, all other aspects of the consent notice conditions remain unchanged.

Activities allowed: Each lot can only be used for the activities shown in the corresponding Activity Area of the Auckland Unitary Plan Matakana 2 precinct overlay, Precinct plan 1, specifically:

Lot	Activity Area	Activity/ies allowed
1	Activity Area 1	Function centre, dance/exercise fitness class, café, playground, petting zoo, aviary, memorial garden and pet garden, staff accommodation, adventure playground/ninja course, <u>care centre (childcare)</u> .

*Advice Note: On receipt of a written request by the landowner the Council's Subdivision Team will issue the amended consent notice to enable it to be registered on the relevant record of title.*