

**BEFORE THE HEARING COMMISSIONER**

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

**AND**

**IN THE MATTER** of a subdivision to create 242 residential lots within the C2 Growth Cell, and associated lots for public assets by 3MS OF CAMBRIDGE GP LIMITED (SP/0179/20)

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**STATEMENT OF SUPPLEMENTARY EVIDENCE OF MARK BULPITT CHRISP  
(PLANNING)**

**Dated: 25 May 2021**

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## INTRODUCTION

1. My full name is Mark Bulpitt Chrisp.
2. This Statement of Supplementary Evidence follows my primary Statement of Evidence (**primary evidence**) dated 11 May 2021. It responds to the Statements of Evidence or Supplementary Statements of Evidence filed by:
  - (a) Mr David Phizacklea;
  - (b) Mr Russell Baikie;
  - (c) Mr John Miles; and
  - (d) Mr Mark Batchelor.
3. I also respond to various planning issues raised in the legal submissions of Mr Phil Lang.
4. I reconfirm that I have read the 'Code of Conduct' for expert witnesses contained in the Environment Court Practice Note 2014 and my commitment to adhere to that Code.

## EVIDENCE OF MR PHIZACKLEA

5. In paragraph 4.16 of his evidence, Mr Phizacklea states:

Under section 104D the Hearing Panel may grant resource consent for a non-complying activity only if it is satisfied that either the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor, or the application is for an activity that will not be contrary to the objectives and policies of the Operative District Plan and the regional planning instruments. If the application passes either of the thresholds in section 104D, the application can then be assessed under section 104.(emphasis added)

6. And at paragraph 4.22 Mr Phizacklea states:

... I draw on some of the objectives and policies identified in the AEE and identify further policy guidance from the RPS. This review of policy guidance is relevant in terms of the second leg of the non-complying activity gateway test, ...

7. The underlined sections of Mr Phizacklea's evidence are incorrect. The regional planning instruments are not relevant in the context of an assessment under s104D(1)(b) in relation to an application to the Waipa District Council (**Council**) for a Subdivision Consent. The only relevant plan for the purposes of s104D(1)(b) is the operative Waipa District Plan, being the only 'plan' in the jurisdiction the application for Subdivision Consent was lodged.

8. In paragraph 2.4 Mr Phizacklea states:

... in order to grant resource consent, the Hearing Panel must be satisfied that it is in 'general accordance' with Rule 15.4.2.69 of the WDP.

9. The position espoused by Mr Phizacklea would mean that no resource consent application could ever be granted unless it complied with the rules of the relevant plan. While not clearly stated in the rule itself, Rule 15.4.2.69 is effectively a 'permitted activity' rule. Where a proposal is in general accordance with the requirements of a Structure Plan then that component of the activity is a permitted activity. Where a proposal is considered not to be "in general accordance" with the requirements of a structure plan, Rule 15.4.2 sets out that such a proposal (or at least that component of a proposal to be considered as a Discretionary Activity. Notwithstanding that, as I describe in my primary evidence, the activity is overall a Non-Complying Activity.

10. Having triggered the need for a resource consent application, there is no requirement anywhere in the RMA (including ss104D and 104) or in the Waipa District Plan that the activity must comply with the rules of the plan, particularly the permitted activity rules. To do so would belie the

purpose of seeking a resource consent, which is to seek authorisation to do something that is not permitted in the relevant plan. The fact that the current application defaults to a Non-complying Activity (simply because of a timing issue as explained in my primary evidence) does not alter this position in any way. The current application simply needs to be considered on its merits in accordance with ss104D and 104 of the Resource Management Act 1991 (**RMA**).

11. At paragraph 4.27 Mr Phizacklea states:

Mr Chrisp views Objective 2 of the NPS-UD as fundamental to the application, and that the 3Ms proposal will make a significant contribution to Waipa District Council being able to meet its obligations under the NPS-UD. That there is a demand for housing in Cambridge and other parts of the Waipa District is not in dispute. The development of the applicant's site will provide much needed housing. However, those houses can only be built if the required infrastructure is in place in a manner which also enables houses to be built within the wider C1 and C2/C3 growth cells.

12. Infrastructure will be in place to service the proposed subdivision. It is not 3Ms' responsibility to provide infrastructure for other development in the C2 Growth Cell that may, or may not, occur in the future (as stated in the legal submissions of Mr Lang, the majority of his clients seek that their properties be retained for the existing equestrian related activities in the medium term). Nevertheless, the 3Ms proposal includes infrastructure connections to the wider C2 Growth Cell in all respects except in relation to the discharge of stormwater (whereby the 3Ms site is self-sufficient). I note that the 3Ms proposal, while self-sufficient in respect of stormwater discharge, the subdivision includes an east/west swale that will convey stormwater from outside of the 3Ms development (the eastern / Kelly Road area) to the main north/south stormwater swale. It is therefore integrated to the wider public stormwater system.

13. At paragraph 4.34 Mr Phizacklea states:

I also agree with Mr Batchelor that some aspects of the subdivision application present effects that may have less than ideal outcomes in

this regard as a result of the proposed layout presenting potential for restraint on continuing release of residential land outside the site boundaries.

14. The 3Ms proposal places no restraint on the release of residential land outside the 3Ms site boundaries. To the extent that Council needs to acquire land for the servicing of the balance of the land in the C1 and C2 Growth Cells, nothing has changed except that it will be dealing with two additional landowners (discussed in more detail later in my evidence). However, as discussed in my primary evidence, the 3Ms Refined Layout has a range of better outcomes and will enable land to be developed for residential purposes. This includes land in the western part of the C2 Growth Cell being able to be developed sooner than would otherwise be the case.

15. In the context of a discussion about Section 6A of the Waikato Regional Policy Statement (**RPS**), at paragraph 4.37 Mr Phizacklea states:

A matter to consider here is whether the application addresses the cumulative effect of uncertain infrastructure necessary to enable integrated development of the C2 structure plan area and wider Deferred zones upon which that infrastructure relies.

16. And at paragraph 4.45 Mr Phizacklea states:

The matter is whether as a non-complying activity the subdivision consent should be granted prior to securing land required to realise the development potential of the C2 growth cell, and the uncertainty with which that creates for future development.

17. The key issue of concern (to both Mr Phizacklea and Mr Batchelor) appears to be the level of uncertainty associated with the ability for Council to acquire land for the public infrastructure from landowners to the west of 3Ms land (some of whom are Mr Phizacklea's clients). The same level of uncertainty applies in relation to securing land from 3Ms. If anything, the track record of communications between Council and 3Ms (presented in the AEE) would suggest that there is a lesser chance of 3Ms' land being secured than anyone else's land. In other words, it is my

opinion that the Structure Plan itself, in the absence of any formal designation, never provided certainty that the infrastructure corridor and sports fields would be located in the 3Ms land. This lack of certainty is demonstrated through this subdivision consent process.

18. While certainty (in planning and all aspects of life) is clearly a desirable outcome, uncertainty is not an adverse effect on the environment for the purposes of the RMA in my view. This is particularly the case in the circumstances whereby Council has the ability to achieve greater levels of certainty (e.g. by way of designating the land required for public infrastructure – as foreshadowed in the C1 and C2/C3 Structure Plan) but has chosen not to pursue that outcome.
19. In the absence of a designation or other planning provision providing any similar level of planning certainty (e.g. zoning), there is no certainty associated with the implementation of the current Structure Plan.
20. It appears to me that the uncertainty claimed by Mr Phizacklea (and by various witnesses for Council – discussed later in my evidence) is being elevated well out of proportion with reality. The 3Ms Refined Layout, if adopted and pursued by Council, only involves land from two additional landowners (Hawthorn and Jiang/Yang) compared with the situation under the provisions of the Structure Plan. While the amount of land required is different in some instances (to a greater or lesser extent), the position in relation to each landowners (to the best of my knowledge at the time of writing this evidence) is as follows:
  - (a) **Alton** – Significantly less land is required from the Alton property for the 3Ms Refined Layout, the area of land to be taken will have less effect on the property and buildings on the property, and none of it will be required for many years (i.e. until after 3Ms has completed its current subdivision, the St Peters land is developed, and other development opportunities to the west of 3Ms land have

been taken up due to the position of the north south corridor). This means that there will be no impediment to the Altons continuing their equestrian activities for years to come (and for as long as they like).

- (b) **Ritchie** – Only a small amount of land is required from the Ritchie property (6,226m<sup>2</sup>) in the short term (as shown on the attached plan - 17001-SK-155-REVC presented as **Attachment A**). More land would be required in the longer term for the collector road to extent north to Racecourse Road, but the need for that connection (and the land) will be many years away. This means that there will be no impediment to the Ritchies continuing their equestrian activities for years to come. The timing of the collector road extending north through the Ritchie property will be largely a matter in the control of the landowners based on when they are prepared to release their land for urban development (at which time it is expected that equestrian activities will cease).
- (c) **Hawthorn** – There is no public infrastructure proposed on the Hawthorn property under the Structure Plan. The 3Ms Refined Layout shows the north south collector road running through the middle of the property (as shown on the attached plan - 17001-SK-155-REVC presented as Attachment A). The Hawthorn property is one of the two new properties from which land would be required to implement the 3Ms Refined Layout.
- (d) **Ross** – Ms Ross has recently purchased the property at 695 Grasslands Drive. The amount of land required from the Ross property for the 3Ms Refined Layout is essentially the same as that required under the Structure Plan layout. I am assisting Mr Ross in relation to her dealings with Council in relation to the purchase of the land required for public infrastructure. Ms Ross is happy to

continue these discussions on a willing seller / willing purchaser basis.

- (e) **Gussey** – The Gussey property has been purchased by 3Ms.
  - (f) **Jiang/Yang** – The Jiang/Yang property is the other one of the two new properties from which land would be required to implement the 3Ms Refined Layout. Only a small amount of land is required for the splays associated with the roundabout on Cambridge Road if the Refined layout is pursued by Council. The situation in relation to the Jiang/Yang property is discussed in more detail later in my evidence (in response to the evidence of Mr Baikie).
  - (g) **Brough** – A significantly greater amount of land is required from the Brough property compared to the relatively small amount of land that would otherwise be required for the splays associated with the roundabout on Cambridge Road under the Structure Plan layout. This is an obvious case for total acquisition of the property.
21. In relation to the Brough property, I note that the proposal by the Cambridge Cohousing Project Society does not form part of the existing environment (in relation to which an assessment of effects needs to be undertaken) and will require a resource consent to establish. There is no certainty that resource consent would be obtained. It is my view that any effects of the 3Ms subdivision on the proposal presented by the Cambridge Cohousing Project Society cannot be considered in a s104(1)(a) context.
22. Mr Phizacklea discusses the provisions of the Waipa District Plan in paragraphs 4.38–4.46 of his evidence. In doing so he refers (at paragraph 4.41) to there being “considerable policy guidance” but does not identify any particular objectives or policies in the Waipa District Plan, including any which the current application is inconsistent with. The provisions of



the Structure Plan are not objectives and policies for the purposes of s104D(1)(b) of the RMA. They are provisions of the Waipa District Plan that can, and should, be considered when assessing the proposal under s104 of the RMA. Furthermore, Rule 15.4.2.69 is a rule (at the risk of stating the obvious), not an objective or policy for the purposes of s104D(1)(b) of the RMA.

23. At paragraph 4.51 Mr Phizacklea states:

I agree with Mr Chrisp that the key matter for consideration in relation to the C1 and C2/C3 Structure Plan is whether the applicant's subdivision frustrates or prevents the outcomes of the structure plan being achieved. In other words what will be the actual or potential effects on the C1 and C2/C3 growth cells.

24. At paragraph 4.55 Mr Phizacklea quotes Objective 15.3.3 of the Waipa District Plan as follows "*Achieving the efficient and cost effective servicing of land by **ensuring** that servicing is provided to areas proposed to be developed.* (emphasis of the word ensuring added by Mr Phizacklea).

25. The 3Ms land is the only land proposed to be developed at this point in time and it can be fully serviced (as described in the evidence of Mr McCaffrey). The 3Ms proposal is entirely consistent with Objective 15.3.3. Furthermore, the 3Ms proposal does not prevent or frustrate the development of the rest of the land in the C1 and C2/C3 Growth Cells. In fact, the 3Ms Refined Layout, if pursued by Council, will provide for a range of better outcomes as explained in my primary evidence and other witnesses for 3Ms.

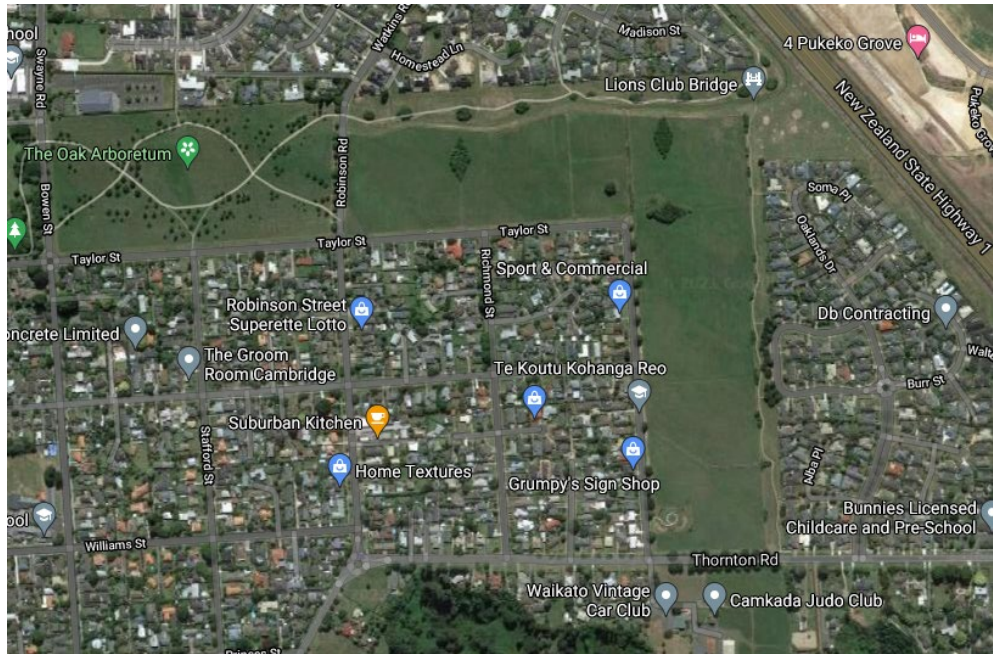
26. At paragraph 4.57 Mr Phizacklea quotes policy 15.3.15.1 as follows:

Policy 15.3.15.1 – "To enable development and subdivision within approved structure plan areas where the development and subdivision is integrated with the development pattern and infrastructure requirements specified in an approved structure plan.

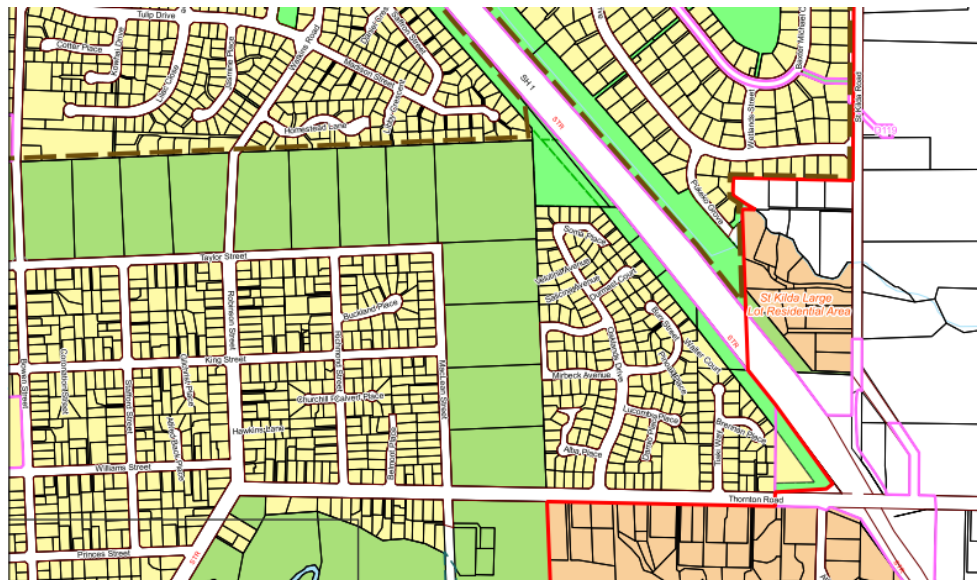
27. This is the enabling policy support for Rule 15.4.2.69. However, as

previously noted, Rule 15.4.2.69 also provides the opportunity to advance proposals that are not in general accordance with a Structure Plan via a resource consent application process. As explained above, the purpose of a resource consent application process is not to simply require compliance with the 'permitted' regime (and thereby undermining the purpose of a resource consent application process).

28. At paragraph 4.66 Mr Phizacklea refers to Policy 14.3.1.7 in the Waipa District Plan. This policy only relates to the Cambridge North Structure Plan Area and the C1 Growth Cell. It has no relevance to the C2 Growth Cell in which the 3Ms subdivision is proposed.
  
29. At paragraph 4.69 Mr Phizacklea sets out some of the key features of the C1 and C2/C3 Structure Plan. The 3Ms Refined Layout provides for all of these features, apart from an active reserve which could be located in numerous alternative locations, either elsewhere within the C2 Growth Cell or further afield. In relation to the latter, I note that Council has large areas of land already zoned Reserve Zone (forming part of the Cambridge Greenbelt) which are only used for agricultural purposes (see an example below).



**Figure 1 – Aerial Photograph of the north-eastern part of the Cambridge Greenbelt used for agricultural purposes (between Robinson Road and Thornton Road)**



**Figure 2 – Waipa District Planning Map showing the Cambridge Greenbelt zoned Reserve Zone (shaded green)**

30. Mr Smith of 3Ms has previously addressed this issue with Council. In an email dated 18 February 2021, he sent the attached plan (17001-SK-122-REVA presented as **Attachment B**) which, he stated, shows:

... there is 10ha of land centrally located to all the schools along already defined walking and cycling paths. The property can be easily accessed too. ... The upside for WDC is this option doesn't result in expensive land acquisition and allows for capital expenditure to be deferred into the future.

31. Another alternative would be to identify land in the C7 Growth Cell and for Council to acquire this land from the Cambridge Jockey Club at rural land values sooner rather than later. The provision of reserves along the southern side of the Waikato Expressway would be a sensible transition and buffer to residential development further south.
32. At paragraph 4.76 Mr Phizacklea quotes Section 1.2 of the C1 and C2/C3 Structure Plan as follows:

These Structure Plans offer details on anticipated land use, necessary infrastructure and establish an associated planning context for how the implementation of the Structure Plan areas are to be managed. The Structure Plans provide a broad framework within which landowners and developers can prepare development proposals in a flexible manner while maintaining an integrated approach to development. Well planned residential areas consistent with the amenity and character expected within Cambridge are sought, together with providing for an adequate provision of services and appropriate walking, cycling and street connections.” (my emphasis added)

33. At paragraph 4.78 Mr Phizacklea states:

In considering the assessments available to me, it appears that the majority of outcomes sought in Appendix S19 of the WDP can be met by an alternative layout such as that shown in 3Ms alternative proposed structure plan.

34. That conclusion is consistent with my evidence. I also note the underlined part of the quote above whereby the Structure Plan is to be seen as a “broad framework within which landowners and developers can prepare development proposals in a flexible manner while maintaining an integrated approach to development”. This supports the conclusions I reach in my primary evidence.
35. In the same paragraph quoted above (4.78), Mr Phizacklea goes on

to say *“However, the effects on development of land external to the applicant’s site may be adverse and unanticipated by the Appendix S19 Structure Plan.”*

36. Just because something might be unanticipated, does not make it an adverse effect. Furthermore, Mr Phizacklea does not actually explain what the alleged effects on his clients’ properties are. If it is the uncertainty about the ability for infrastructure to be provided by Council then, to the extent that might involve the land owned by Mr Phizacklea’s clients, then the solution is a matter within their individual and collective control (i.e. all they need to do is to agree for the Council to purchase their land for that purpose).
37. At paragraph 5.4 Mr Phizacklea states *“... the applicant is seeking to undertake residential development prior to the uplifting of the Deferred Zone.”*
38. This is not correct. While there is some level of risk to 3Ms (which is very low in my opinion), it is expected that the land will be zoned Residential Zone (by way of Plan Change 13) prior to residential development occurring. As explained in the AEE and my primary evidence, 3Ms had been expecting the deferred status of the zone to be “uplifted” via the council resolution process set out in the Waipa District Plan once the stormwater discharge permit was granted by the Waikato Regional Council in early 2020. 3Ms had been planning to lodge a resource consent application in 2020 with full residential zoning, which would have occurred as a result of the uplift of the deferred status. Council has removed the ability to uplift via resolution and was therefore progressing a plan change to rezone the site to full Residential Zone. Given the lack of residential sections available, 3Ms decided to progress with its subdivision consent application with a Deferred Zone.
39. At paragraph 6.9 Mr Phizacklea states:

In my opinion there are adverse environmental effects to other landowners due to the uncertainty created by not meeting the requirements of the C2 structure plan and the application does not meet the requirements of Rule 15.4.2.69 of the WDP.

40. Again, apart from vague claims in relation to alleged uncertainty (which is not an adverse effect on the environment) Mr Phizacklea provides no details as to the nature, extent and/or magnitude of any alleged adverse effects on his clients or their properties arising from the granting of the 3Ms subdivision consent application. The need for public infrastructure such as the north south corridor can be provided to the west of the 3Ms land and the only potential impediment to that outcome will be Mr Phizacklea's clients objecting to such a proposition.
41. At paragraph 7.1 Mr Phizacklea states "*... the integrity of the WDP [is] open to question should consent be granted for the subdivision.*"
42. A proposal that is provided for, and can be advanced, as a Discretionary Activity is not threatening the integrity of the Waipa District Plan (i.e. the activity not being in accordance with an approved Structure Plan). It is merely following the process allowed for by the Plan and needs to be considered on its merits.
43. Again, I note that any subdivision within a Deferred Zone, that is not a boundary relocation, is a Non-Complying Activity irrespective of the nature of that subdivision or compliance with applicable performance standards. In my view, the rationale for that Non-Complying Activity status is to ensure that subdivision within a Deferred Zone do not compromise the future intended use of the zone. As this proposal is a residential activity in a future residential zone, it is my view that this proposal does not frustrate the objective / policy framework in relation to the Deferred Zone.
44. At paragraph 7.3 Mr Phizacklea states "*These 'offsite' effects include the*

*ability for current landowners to realise their own development plans and existing use of the land, including for equine purposes.”*

45. Any future development plans (particularly if they are related to the urbanisation of the C2 Growth Cell) will need to be the subject of a resource consent application (either a subdivision consent application or a land use consent application, or both) and are therefore not part of the existing environment for the purposes of the assessment of 3Ms subdivision consent application (under ss104D and/or 104 of the RMA).
46. Nothing resulting from the granting of the 3Ms subdivision consent application will prevent other landowners continuing to undertake existing land uses such as equestrian activities. However, it needs to be noted that anyone in that category will be one of the reasons why urbanisation of the C2 Growth Cell will be slowed or halted (including, potentially, as a result of public infrastructure not being able to be provided). One could say that such a situation causes some uncertainty, and they would be right. That situation will exist in relation to the land in the C2 Growth Cell beyond the 3Ms land irrespective of whether the north south corridor is located on 3Ms land or elsewhere.
47. Council has experience of this situation in relation the supply of industrial land at Hautapu. It has spent large amounts of ratepayer money preparing a Structure Plan and rezoning land at Hautapu for industrial purposes. However, the person who owns most of the land in the Hautapu Structure Plan Area has (until recently and only to a relatively minor extent) not been willing to cease his rural activities and release his land for industrial development. That has resulted in an ongoing shortage of industrial land supply in Cambridge for many years.
48. At paragraph 8.6 of his evidence, Mr Phizacklea provides a summary of the reasons why he says the application by 3Ms should be declined. Most of those reasons relate to the issue of uncertainty which, as noted, is not

an adverse effect on the environment and therefore not a reason for consent being declined. In my opinion, greater levels of uncertainty exist, and will remain, in relation to the urbanisation of the C2 Growth Cell due to various landowners wishing to continue to pursue their current equestrian activities for years to come, including landowners where the Structure Plan proposes public infrastructure on their land.

#### **EVIDENCE OF MR BAIKIE**

49. I will not respond to all the matters raised in the evidence on Mr Baikie on the basis that they cover many of the same matters raised in Mr Phizacklea's evidence, which I have responded to above (particularly the issue of uncertainty).

50. In paragraph 12 of his evidence, Mr Baikie summarises the concerns of his client as:

... loss of land, amenity and realisable development potential.

51. And at paragraph 33 of his evidence, Mr Baikie states:

The applicant has in effect blighted adjacent landowners land and passed the (opportunity lost) onto them.

52. Mr Baikie seems happy for any "infrastructure burden" to be imposed on 3Ms (and not regard it as an adverse effect), but not for the same situation to apply to his clients (where he does regard it as an adverse effect).

53. I have discussed these matters with Mr Baikie (and subsequently emailed him) and pointed out the following benefits to his clients if the Council adopts and pursues the 3Ms Refined Layout:



- (a) Only a small amount of land is required (along the frontage and the southern end of the eastern boundary) as shown in Plan #18 which would be paid for by Council at market value (therefore any 'effect' in relation to the loss of that land would be fully compensated for – the same applies to other landowners whose land is required for public infrastructure);
- (b) The taking of this small amount of land has little effect on the balance of the property (which can be developed or retained in existing uses);
- (c) The Jiang / Yang property is in Stage 2 of the C2 Growth Cell which is intended to be developed after the completion of Stage 1 of the C2/C3 Growth Cell. This could easily be at least 5 – 10 years away and will be dependent on others within Stage 2 developing before the Jiang / Yang property can be developed (because the infrastructure comes from the east towards the west within the boundaries of the C2 Growth Cell);
- (d) The development of the roundabout and the first section of the collector road and stormwater corridor to the north (which would run along the eastern boundary of the Jiang / Yang property within the Brough property) will significantly bring forward the timing of the opportunity to develop the submitter's property on the basis that it provides access to these services a lot sooner (many years) than would otherwise be the case; and
- (e) Finally, having the property now located on a prominent road frontage site adjacent to the roundabout could provide for other opportunities (such as visitor accommodation – subject to consent).

54. Mr Baikie has since advised me that the points above have not altered his

clients' position.

#### **EVIDENCE OF MR JOHN MILES**

55. The evidence of Mr Miles focuses on the perceived difficulties that Council might face in relation to acquiring land to the west of the 3Ms site for the public infrastructure and laments that it creates uncertainty. However, his evidence fails to acknowledge that precisely the same situation has already occurred, and remains, in relation to the 3Ms land. This illustrates the fact that the Structure Plan does not provide the type of certainty the Council is wanting. That level of certainty can only occur if Council utilises one of the planning tools available to it such as a designation (as foreshadowed in the C1 and C2/C3 Structure Plan).
56. Mr Miles is correct (at paragraph 22.4) that the consideration of alternatives is a key aspect of achieving a compulsory acquisition of land under the Public Works Act 1981. The same level of analysis is required to secure a designation under the RMA, however that has not occurred in relation to the routes and methods for achieving the objectives of the Council in relation to the development of the C1 and C2/C3 Growth Cells.
57. Based on the analysis undertaken by 3Ms to date, including a comparison of the relative merits between the proposed location and nature of the north south corridor in the Structure Plan versus the 3Ms Refined Layout, I would have no confidence that the corridor in the Structure Plan would survive an analysis of alternatives that would be required to secure a designation.
58. At paragraph 22.6, Mr Miles states that it could take 18 months to secure an Environment Court decision (in relation to an application for compulsory acquisition of land). That timeframe does not pose any problems in relation to the timing of the need for that infrastructure based on the evidence of Mr McCaffrey and Mr Apeldoorn.

59. At paragraph 22.4 of his evidence, Mr Miles states *“This infrastructure remains critical for servicing not only the proposed subdivision, but growth cells C1, C7, C2 and C3 in their entirety.”*
60. As correctly noted in the evidence of Mr Bax (at paragraph 12(c) of his evidence), the north south collector road and stormwater swale within the C2 Growth Cell are required for the C1 and C7 Growth Cells and for the balance of the C2 Growth Cell (i.e. the land beyond the 3Ms property). However, the unchallenged evidence of Mr McCaffrey concludes that the collector road and stormwater swale are not required for the 3Ms subdivision. Furthermore, this infrastructure is not required for the development of the C3 Growth Cell.

#### **EVIDENCE OF MR MARK BATCHELOR**

61. It is unfortunate that, in numerous instances, the approach Mr Bachelor has taken in drafting his supplementary evidence is to (a) make an incorrect claim or provide an analysis based on a misinterpretation of my primary evidence, and then (b) providing an analysis as to why this incorrect claim is a ‘black mark’ against the 3Ms proposal. Examples of that situation will be discussed as part of the following.

62. At paragraph 4 of his evidence, Mr Batchelor states:

The nature and scale of the facilities and services removed and not replaced in another location results in effects being significant. Even if not determined to be significant, the effects are certainly ‘more than minor’. Removal of these infrastructure components from the structure plan entirely removes the means by which the structure plans are proposed to be developed and removes a significant part of their purpose. The change is a change of such an extent to be an effective change to the district plan.

63. And at paragraph 7 of his evidence, in relation to various components of infrastructure, Mr Batchelor states *“They have been removed from the C2 structure plan and not replaced or provided with an alternative*

*location.”*

64. There are numerous other instances in his evidence where Mr Batchelor refers to infrastructure being “removed from the structure plan”. These statements are all incorrect. Nothing has been removed from the Structure Plan by virtue of the application by 3Ms and no change is proposed to any aspect of the Waipa District Plan. Furthermore, there is no ability for an application for a Subdivision Consent to change a Structure Plan (or any other aspect of a District Plan). The latter can only occur by way of a change to the Waipa District Plan in accordance with the First Schedule to the RMA.
65. In contrast to the inaccurate portrayal of the 3Ms application by Mr Batchelor, the 3Ms proposal just does not include various components of the proposed public infrastructure on its land. That is a perfectly valid approach that can be proposed by a developer and, as explained in by primary evidence, the Waipa District Plan provides the opportunity for that to occur by way of a resource consent application process (wherein any such proposal that is regarded as not in general accordance with a Structure Plan is classified as a Discretionary Activity).
66. At paragraph 13, Mr Batchelor states:
- Change 13 is not operative and the outcome is not certain, particularly when considered with regard to the difficulties the Council is experiencing with this proposal, consideration of the proposed change may include responses to resolve these.
67. That is somewhat unusual statement to make (to say the least). No submissions on Plan Change 13 opposes the ‘live zoning’ of the various Deferred Residential Zones, including the C2 Growth Cell in which the 3Ms proposal is located.<sup>1</sup> Furthermore, Council has no jurisdiction to make changes in the context of Plan Change 13 to address perceived

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<sup>1</sup> In my opinion, the one submission noted by Mr Lang (at paragraph 11 of his legal submissions) is a ‘stretch’ in this regard, and has no chance of prevailing to the extent that it will prevent Plan Change 13 being approved.

'difficulties' in relation to the 3Ms proposal. Finally, any attempt to delay or not approve Plan Change 13 would have significant adverse consequences in relation to the supply of land for residential purposes in Cambridge. Such an outcome would exacerbate the current housing crisis, prevent Council achieving its obligations under the NPS-UD, and prevent the economic and social benefits that will arise from residential development being able to occur. A search for residential sections for sale in Cambridge on Trademe Property reveals that there is a only one section for sale at present (see **Attachment C**).

68. I also note that my analysis in relation to PC13 was in response to Mr Batchelor providing an assessment in the section 42A report setting out that the proposed Reserve Zone land on the 3Ms site created some expectation (or certainty). In Mr Batchelor's supplementary statement of evidence he now concludes that the outcome of PC13 is not certain (which my primary evidence states in relation to the Reserve Zone land on the 3Ms site).

69. From paragraphs 19 – 24 of his evidence, Mr Batchelor discusses the RPS and the issue of 'integration'. As paragraph 24 he states:

The question arising from this is whether the proposal achieves an integrated outcome and the effect this will have on the wider infrastructure network and its need for integrated design. Advice from Mr. Chrisp that the proposal makes the site practically independent is not integration.

70. Self-sufficiency in one respect (i.e. the discharge of stormwater) does not make the proposal by 3Ms contrary to the Objective 3.12 of the RPS. This is particularly the case when the 3Ms proposal will have less effect on the environment, particularly the Waikato River, due to no discharges of stormwater being diverted in that direction. In doing so, the 3Ms proposal is more in accordance with the Vision and Strategy for the Waikato River which prevails over all other statutory instruments prepared under the RMA in the Waikato Region.

71. At paragraph 25 onwards, Mr Bachelor discusses the RMA status of the 3Ms application and falsely claims that my advice is that the application is a Discretionary Activity. Right up front, at paragraph 4 of my primary evidence (and repeated elsewhere in my primary evidence), I state:

The proposal is to be assessed as a Non-complying Activity.

72. My references to Discretionary Activity status throughout my primary evidence are in relation to the RMA status of an activity that is determined to be not in general accordance with a Structure Plan as specified in Rule 15.4.2.69. I provide this analysis to demonstrate that the Waipa District Plan provides a consenting pathway for activities not in “general accordance” with a structure plan, and to demonstrate that the Waipa District Plan does not prohibit activities not in “general accordance” with a structure plan (i.e. it provides a pathway to assess activities not in accordance with a structure plan).

73. At paragraph 33 of his evidence, Mr Bachelor states:

The proposal is not in general accordance with the structure plan. Particularly as it removes significant components from it and does not provide alternative locations in mitigation of this. The structure plan also provides certainty of outcome and requirement and have regulatory status in this instance and are recent and reliably reflect existing conditions and were contributed to by the applicant.

74. As previously noted, the 3Ms proposal does not remove components from the Structure Plan. It simply results in them needing to be provided slightly to the west (in relation to the corridor) or elsewhere in relation to the sports fields. To that extent, possible alternative locations for this infrastructure have been identified. As previously discussed, the Structure Plan provides little or no certainty in the absence of the Council designating and/or purchasing the land required for infrastructure. The expressed desire by several of the submitters that they wish to continue undertaking equestrian activities for years to come is further evidence

that the outcomes of the Structure Plan are in the hands of private landowners, not the Council, and claims of certainty associated with the Structure Plan are, in my opinion, completely unfounded.

75. At paragraph 40 of his evidence, Mr Batchelor states:

Further the structure plan provisions specify that the collector roading is “generally fixed” in position. To me this means flexibility is limited to minor adjustments of say metres, not complete movement to another site or as proposed in this application, removal all together. (emphasis added)

76. Based on the above, Mr Batchelor appears to be of the view that infrastructure cannot be moved to another site. That is precisely what Council has been proposing in relation to the relocation of the western extension of Norfolk Drive onto an adjoining property within the C1 Growth Cell and the subject of the same Structure Plan as the 3Ms proposal (this be one of the examples I noted in my primary evidence<sup>2</sup>). As previously noted, there is no proposal to remove the collector road altogether. On the contrary, 3Ms has gone to great effort (including discussions with neighbours) to demonstrate that there are alternatives available and has shown that the 3Ms Refined Layout has some significant benefits over the scenario presented in the Structure Plan.

77. Mr Lang (at paragraph 16 of his legal submissions) refers to the statement in the Structure Plan that collector roads “are generally in fixed location, subject to the outcomes of detailed design”. He then says that “To suggest that the exclusion of the collector road altogether from the 3Ms development proposal is simply the outcome of detailed design considerations would be absurd.” No one has said that the relocation of the collector road is an outcome of detailed design (that has yet to occur). Rather, the relocation of the collector road to the west is to achieve a range of better outcomes as described in the evidence on behalf of 3Ms (including significantly reduced property and construction costs to

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<sup>2</sup> At paragraph 108(b).

Council) and it remains centrally located generally in accordance with, and achieving all the intended outcomes of, the Structure Plan.

78. At paragraph 45, Mr Batchelor states:

... the structure plans for the Waipa District Plan are part of the district plan, have been introduced as part of the regulatory regime of the district plan, have rules, objectives and policies, ... (emphasis added)

79. The underlined section of the quote above is incorrect. The C1 and C2/C3 does not contain any rules, objectives or policies. The absence of objectives and policies is particularly relevant in relation to any assessment of the application by 3Ms in relation to s104D(1)(a) of the RMA (and subsequently in relation to s104 of the RMA).

80. At paragraph 46, Mr Batchelor states *“The structure plan also has specificity by identifying the location of various components in its maps, that are essentially part of the district plan planning maps.”*

81. The underlined section of the quote above is incorrect. Planning maps in a District Plan are a form of regulation forming an integral part of the rule framework within the Plan. In contrast, the maps and plans in the Structure Plan are specifically referred to in less certain terms, including references to being, for example, a “broad framework” and in relation to which there is “flexibility”.

82. At paragraph 58, Mr Bachelor states:

Regarding context, Rule 14.4.1.9(c) (which it is noted is a land use rule), provides context relevant to this proposal, being that infrastructure is “either in place or there is a solution that can be delivered to provide the necessary infrastructure”. This is a fundamental principal of my assessment that is necessary to give confidence in being able to support this application. (emphasis added)

83. While Rule 14.4.1.9(c) is a land use rule (as noted by Mr Batchelor) and therefore not relevant to the current application, I note that the evidence



presented on behalf of 3Ms (including my evidence) is that a solution can be delivered to provide the necessary infrastructure in the C1 and C2/C3 Growth Cells. The 3Ms Refined Layout demonstrates that is the case and Council has the tools available to it to overcome any perceived uncertainty in relation to that situation.

#### **PLANNING ISSUES ADDRESSED IN THE LEGAL SUBMISSIONS OF MR PHIL LANG**

84. At paragraph 13 of his legal submissions, Mr Lang states:

The objectives and policies in District Plan Section 14 Deferred Zones refer to land use, but it would be artificial and contrary to the purpose of the deferred zoning technique to pretend that those provisions are not relevant to subdivision to enable particular land uses.

85. I disagree with the above statement. As Mr Lang correctly notes, the objectives and policies in Section 14 of the Waipa District Plan (including Objective 14.3.1) relate to land use, not subdivision. Furthermore, if granted, the application by 3Ms does not enable particular land uses. The latter remain subject to the land use rules in the Waipa District Plan. Unless and until Plan Change 13 is approved, the Rural Zone rules apply to 3Ms' land whereby residential land uses are not possible without a resource consent. If, and when, Plan Change 13 is approved, then the 3Ms site will be regulated by the rules within the Residential Zone (whereby residential activities will be permitted activities subject to compliance with all relevant performance standards). At that point, the objectives and policies in Section 14 of the Waipa District Plan will no longer be applicable to the 3Ms land. On that basis, the land use provisions in Section 14 of the Waipa District Plan are not applicable now and nor will they be applicable in the future.

86. Despite the above, if and to the extent any weight is placed on Objective 14.3.1 and the policies that follow it, I set out those provisions below and comment as follows.

#### **Objective - Deferred Zoning**

14.3.1 Land intended for conversion from its current land use to an alternative land use in order to respond to growth demands is clearly identified, occurs in a planned manner, and its resources are protected for its anticipated future use.

**Policy - Land subject to deferred zoning**

14.3.1.2 Land subject to deferred zoning will only accommodate land uses which do not compromise the ability for the area's natural and physical resources to be used for the purpose of the deferred zoning.

Advice Note: The intended future land use of the Deferred Zone is identified on the Planning Maps and includes land to be used for Residential Zone, Large Lot Residential Zone, Industrial Zone, Commercial Zone, and Reserves Zone.

**Policy - Structure planning**

14.3.1.3 To provide a framework for new growth areas through a comprehensive and integrated structure planning process.

87. When interpreting the objective and policies above, it is important to apply the correct scale of analysis, which is at the level of each individual growth cell or the overall area that is the subject of a Structure Plan (in this case three growth cells combined as an integrated package). This is reinforced by the Advice Note in relation to Policy 14.3.1.2 which refers to the intended future land use being those identified on the Planning Maps. In the case of the C2 Growth Cell, the relevant Planning Maps just show the whole area being earmarked for future residential use – that being the anticipated future use referred to in Objective 14.3.1. As noted in the Advice Note, the reference is to the Residential Zone, not to specific features (including infrastructure) that might occur within the zone. It does not involve, nor require a more granular analysis at a property by property level. Even the plans in the Structure Plan do not show property boundaries. That is because the Structure Plan is intended to provide a “broad framework” rather than a rigid blueprint. That position is the subject of, and reinforced by, Policy 14.3.1.3 above whereby Structure Plans are to “provide a framework for new growth areas” (emphasis added). That position is further reinforced by the language throughout the Structure Plan (and references to it in the body of the Waipa District Plan) which include words and phrases such as “broad framework”, “flexibility”, “guidelines”, and being “in general accordance”.

88. From paragraph 36 onwards, Mr Lang advances the view that all consents (including land use consents) should be sought together. The reasons for the approach taken by 3Ms has been explained in the AEE. It is pointless seeking to consent a residential development in relation to the rules of the Rural Zone which are currently applicable. Furthermore, as previously discussed, I am of the opinion that there is little in way of any risk that Plan Change 13 will not be approved (at least insofar as the C2 Growth Cell will become a Residential Zone). I also note that if 3Ms waited for Plan Change 13 to become operative before advancing its subdivision consent application, that would delay the much-needed supply of sections by up to a year (due to missing a construction season).
89. The development of residential land uses in the C2 Growth Cell follows the development of the Waipa 2050 Growth Strategy, Plan Change 7 and Plan Change 13. Unlike the establishment of a new abattoir in a greenfields location (as an example), the future residential use of the land in the C2 Growth Cell has been foreshadowed and planned for many years and there is no need for the subdivision and any land use consents to be considered together. By way of example, the Summerset Retirement Village was consented after the Cambridge North area was subdivided.

## **CONCLUSION**

90. In conclusion, and in light of the above, I would like to conclude by referring to a proposal in the neighbouring Waikato District.
91. On Monday this week, the Waikato District Council Hearing Panel in relation to the Proposed Waikato District Plan released its decision on the proposed development at Ohinewai known as the Sleepyhead Estate being advanced by Ambury Properties Limited (**APL**). Sleepyhead Estate is a proposal that is beyond relevant policy and planning documents prepared under the RMA to a far greater extent than any similar comparison could be sensibly made in relation to the 3Ms proposal. The

conclusion of that decision is set in full as follows:

393. In our decision we have set out at length our reasons for accepting all three parts (industrial, business and residential) to the APL Proposal at Ohinewai. We have done so in order to respond to a range of issues raised by submitters, particularly from the Waikato Regional Council and Waka Kotahi who both opposed the rezoning proposal for a multitude of reasons, none of which have persuaded us to reject the APL Proposal.
394. Central to their opposition were concerns that this proposal was not anticipated by strategic planning documents and would not achieve integrated land use development and infrastructure planning in conformity with existing planning documents.
395. Without wishing to be unduly critical, we consider those agencies have taken a narrow doctrinaire interpretation of the relevant strategic planning documents and have given little weight to the strong directions in the NPS-UD for decision makers to be responsive to development opportunities unanticipated by RMA planning documents. The need for flexibility in the planning context to accommodate unplanned development is also recognised in the alternative land release provisions in the RPS. We are disappointed the two public agencies took such entrenched positions to oppose the Ohinewai development proposal when a more constructive approach was called for when taking into account the significant benefits that could arise to the local area and the region if the rezoning proposal were to be approved.
396. Having considered carefully all the evidence and competing submissions on the effects and consequences if this zoning proposal is approved, we are left in no doubt that the APL Proposal should provide significant economic, social and employment benefits to the Huntly/Ohinewai area and the wider Waikato region. There is the potential to provide over 2600 jobs to the Waikato region, to provide affordable housing to the local workforce and to contribute an estimated \$200 million per annum into the local economy. We are also satisfied the effects of this development within and outside the zone and its impact on infrastructure services can be appropriately managed through the prescriptive set of planning provisions we have approved as explained earlier in this decision.

92. The statements above have strong parallels with situation 3Ms faces in relation to its application for a Subdivision Consent. In this regard:
- (a) Mr Smith has quantified the significant economic benefits associated with the 3Ms proposal;
- (b) Apart from a comparatively modest contribution from the Chartwell

Investments subdivision on Cambridge Road, there is no other source of residential sections on the horizon within the Cambridge urban area. This is reinforced by the fact that the 3Ms proposal needs to be advanced before any other significant level of development can occur elsewhere in the C1 and C2/C3 Growth Cells;

- (c) Declining the 3Ms application would mean that demand for sections in Cambridge cannot be met for years to come (exacerbating the housing crisis) and the requirements of the NPS-UD not being achieved;
- (d) Taking a narrow doctrinaire interpretation of the relevant planning documents is not appropriate;
- (e) Significant weight should be placed on the high order planning documents such as the NPS-UD and the Vision and Strategy for the Waikato River, and these should prevail over unfounded concerns about the level of certainty in relation to the achievement of the outcomes sought in a Structure Plan, which at the end of the day (in its own words, as previously quoted above) is intended to “provide a broad framework within which landowners and developers can prepare development proposals in a flexible manner while maintaining an integrated approach to development”. The 3Ms proposal is entirely in line with that overarching approach and, based on the evidence of Mr Smith, will deliver significant benefits to Cambridge and the Waipa District if consent is granted.









**Mark Chrisp**  
**25 May 2021**

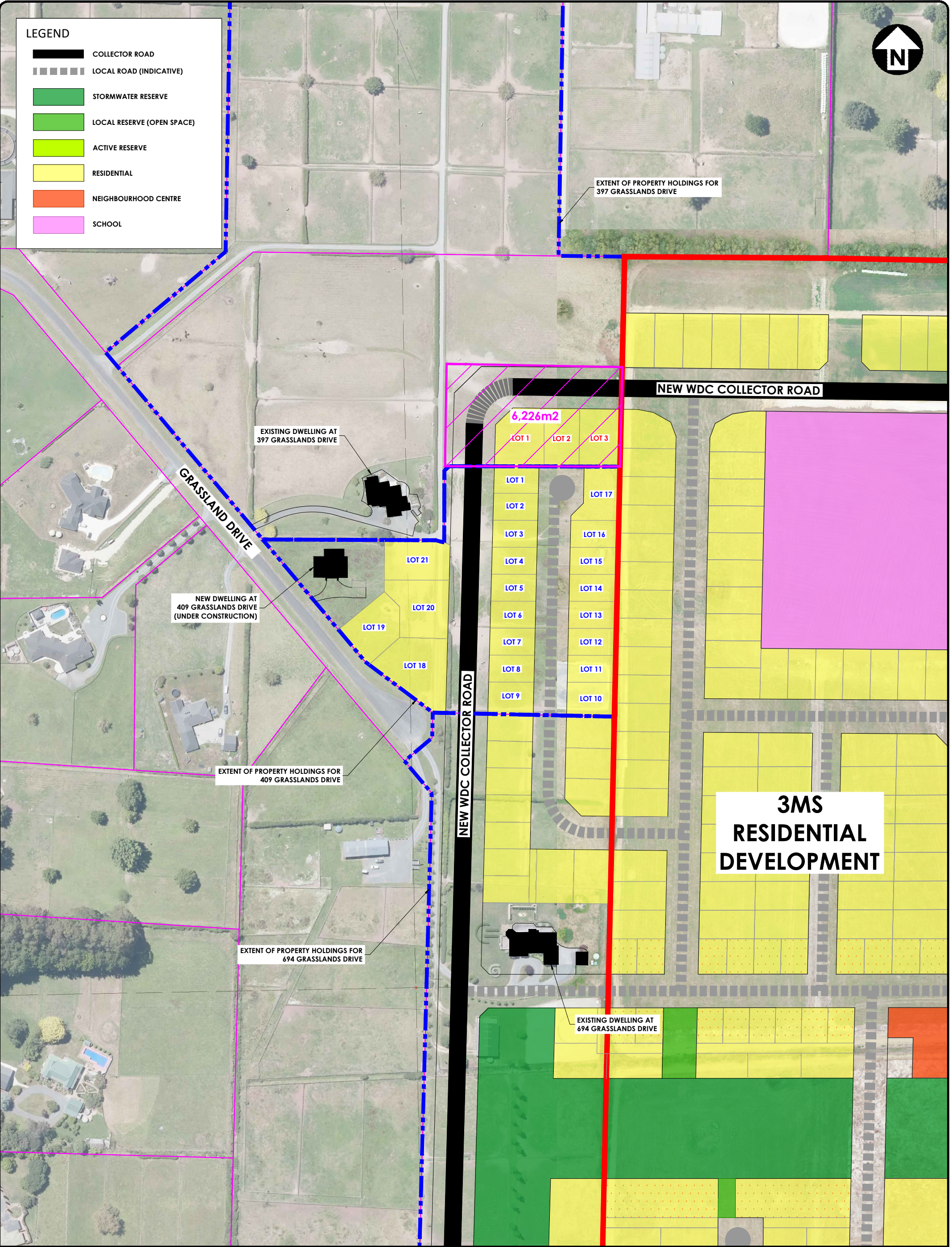
**Attachment A – Plan 17001-SK-155-REVC**





**LEGEND**

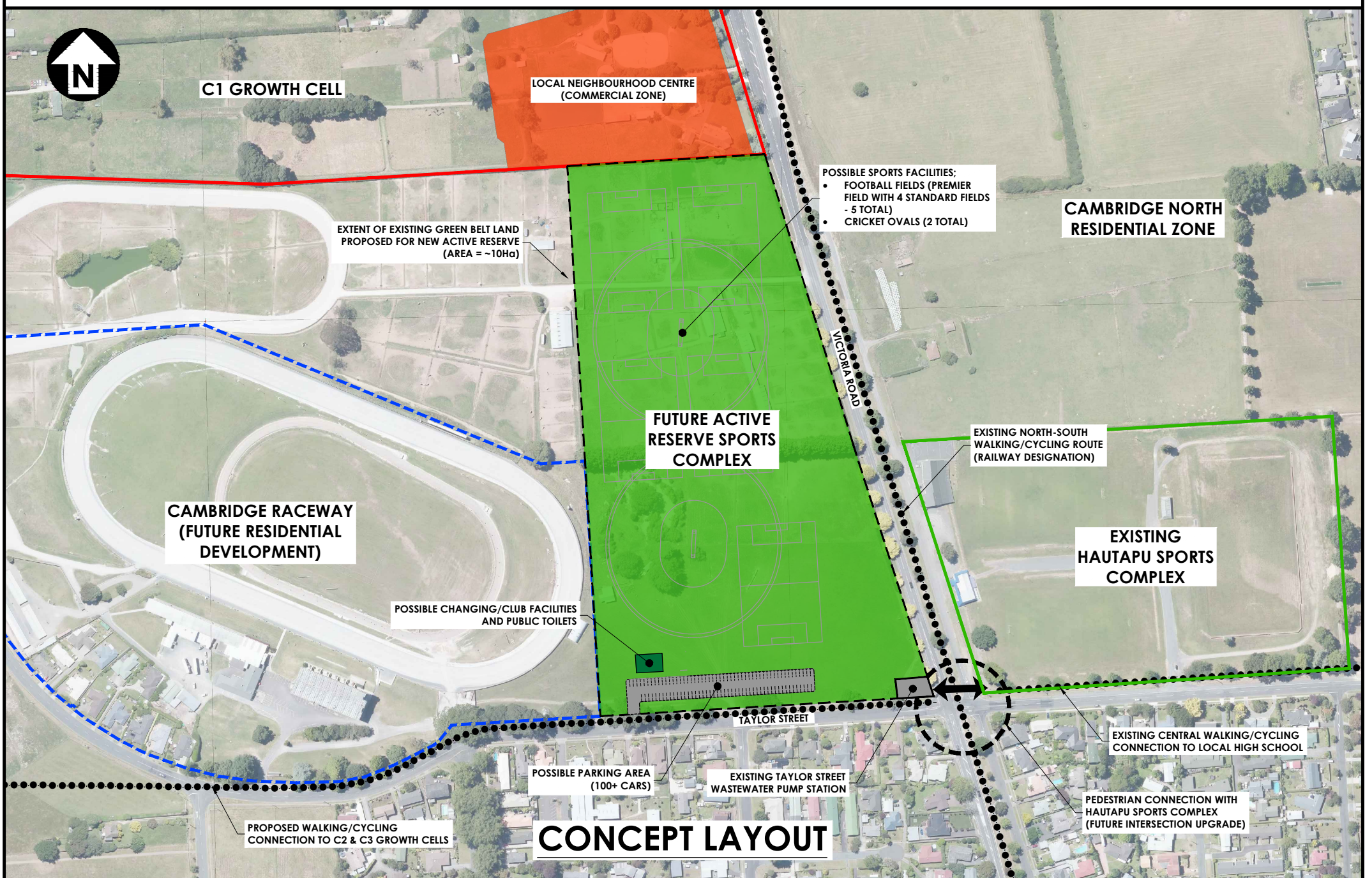
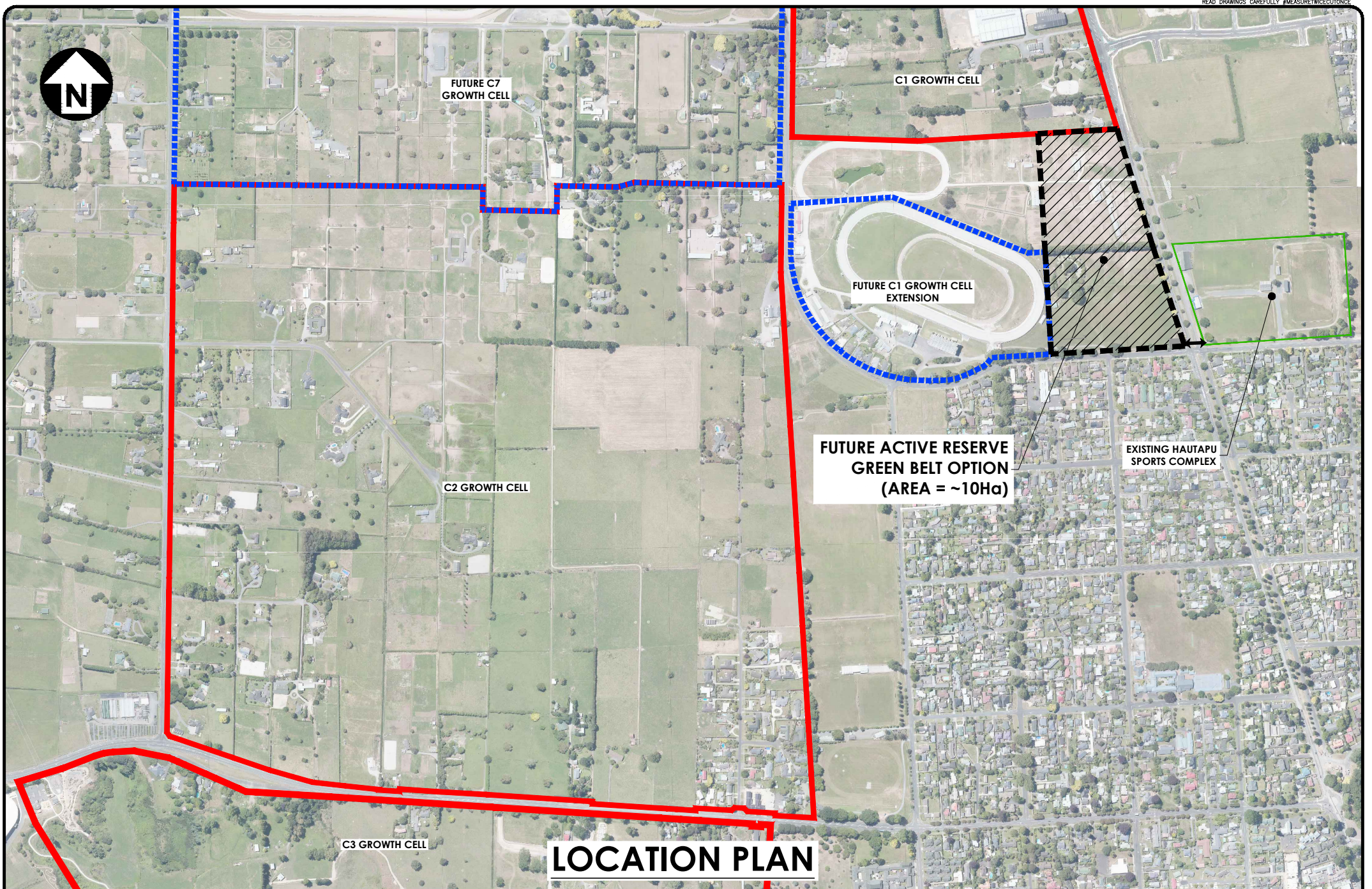
-  COLLECTOR ROAD
-  LOCAL ROAD (INDICATIVE)
-  STORMWATER RESERVE
-  LOCAL RESERVE (OPEN SPACE)
-  ACTIVE RESERVE
-  RESIDENTIAL
-  NEIGHBOURHOOD CENTRE
-  SCHOOL





**Attachment B – Plan 17001-SK-122-REVA**







**Attachment C – Trademe Listing re Sections for Sale in Cambridge**

Home / Property / Residential / Sale / Waikato / Waipa / Cambridge

## Houses and properties for sale in Cambridge

Q Add keywords e.g. pool, garage, income

Save this search

Refine Category: Sale Cambridge Price: Any Bedrooms: Any Bathrooms: Any Property type: Section X

Showing 1 result

Sort: Featured first Map view

Image of property

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Section Under Offer  
Cambridge, Waipa

419 m<sup>2</sup>

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