

Attachment 2

RMA HEARINGS PANEL DECISION



DECISION OF RESOURCE MANAGEMENT ACT 1991 ('RMA') HEARING PANEL ON A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION BY 3MS OF CAMBRIDGE LIMITED PARTNERSHIP TO A SUBDIVISION TO CREATE 262 LOTS INCLUDING 246 RESIDENTIAL LOTS AND 16 LOTS FOR FUTURE SUBDIVISION FOR RESIDENTIAL, COMMERCIAL AND VARIOUS PUBLIC ASSETS WITHIN THE C2 GROWTH CELL AT 1865, 1863, 1871, 1881 CAMBRIDGE ROAD, CAMBRIDGE.

1 DECISION

This resource consent is **REFUSED**. The reasons are set out below.

- 1.1 This decision is made on behalf of the Waipā District Council ("the Council" or "WDC") by Independent Hearing Commissioners Greg Hill and Tara Hills, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("the RMA").
- 1.2 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.

2 DETAILS OF THE APPLICATION

Application Number	SP/0179/20
Applicant:	3MS Of Cambridge Limited Partnership (“3Ms”)
Property Address:	1865, 1863, 1871, 1881 Cambridge Road, Cambridge
Legal Description:	Lot 2 DP 29023, Lot 1 DPS 75243 and Lot 1 DPS 31006, Pt Lot 1 DP 29023, Lot 1 DPS 85575, Lot 2 DPS 85575
Site Area:	40.8416ha
Activity Status:	Non-Complying Activity
Zoning:	Deferred Residential Zone / C2 Structure Plan
Proposal:	Subdivision to create 262 lots including 246 residential lots and 16 lots for future subdivision for residential, commercial and various public assets within the C2 Growth Cell.

3 THE SITE

- 3.1 The description of the site was fully set out in the application and in the section 42A report. We agree with the descriptions provided in those documents. In summary the site is located on the northern side of Cambridge Road, west of Kelly Road and the Cambridge Town Centre. It is essentially flat, and is currently being earth worked under the Council’s earthworks consent¹.
- 3.2 The surrounding properties are of similar rural residential character as the site. There is a small residential locality adjoining the south eastern boundary of the site accessed by Kelly Road adjoining Cambridge Road.

4 THE PROPOSAL

- 4.1 The proposal was fully set out in the application and in the section 42A report. The subdivision consent application seeks to subdivide four existing lots comprising approximately 40 hectares in single ownership, to create the following:

¹ At the time of the hearing under LU/0166/20.

- a) 246 residential lots;
- b) A super lot for a retirement village (Lot 300);
- c) A lot for a Commercial centre (Lot 301);
- d) Future residential development super lot / balance lot (Lot 306);
- e) Super lot (Lot 307) potentially to be used for high density residential development;
- f) School site (Lot 310);
- g) Roads to vest; and
- h) Local purpose reserves.

5 LIMITED NOTIFICATION

- 5.1 The application was limited notified to a number of affected persons. The details of this were set out at section 5 of the section 42A report, with those notified identified in Figure 7 in that report.
- 5.2 The decision to process the application on a limited notified basis was made by a Council officer under delegation authority on the 10th March 2021.

6 SUBMISSIONS

- 6.1 Six submissions were received, one in support and five in opposition.
- 6.2 The supporting submission was from Chartwell Properties (Cambridge Road).
- 6.3 The five opposing submissions were from:
 - a) Frank and Colleen Ritchie and John Coltman as Trustees of the Frank and Colleen Ritchie Family Trust (397 Grasslands Drive Cambridge);
 - b) Cary Alton (59 Racecourse Road Cambridge);
 - c) Jeanette and Desmond Brough in association with Cambridge Cohousing Project Society (1835A Cambridge Road);
 - d) Gareth Hawthorn (Grassland Drive Cambridge); and
 - e) Xiaofeng Jiang & Liping Yang (1835 Cambridge Road).

6.4 The matters raised in submissions are summarised below².

- a) Inconsistency with district plan and structure plan.
- b) 'Triggers' for uplift of Deferred Zone not met. Trigger (c) was particularly referred to as not met as the land is not serviced by at least being set aside.
- c) Effects of the relocation of the north/south collector road and stormwater reserve onto adjacent land, including development potential of the land adjacent to the relocated infrastructure.
- d) Potential effects on the ability of the Council to establish the north/south collector road and stormwater swale, and the reserve.
- e) Early establishment of roading and stormwater services within the C2 growth cell is made possible by the location of this infrastructure on the application site, as shown on the structure plan. This provides more certainty for continuing development and release of other land within the C2 growth cell, rather than having to rely on acquisition of land outside of the subject site for critical infrastructure. The proposal to move this infrastructure off site removes this certainty.
- f) Significant disruption resulting from the relocation of the collector road and stormwater onto established smaller properties, and effects on the continuing viability for established occupation and use.
- g) Consideration of the proposal in isolation from other proposals within the C2 growth cell is not appropriate.
- h) Effects on timing and certainty of achieving structure plan objectives as a result of potential difficulties with acquiring land for alternative routes.
- i) Urban design considerations related to orientation of lots and houses relative to the north/south collector road.
- j) Effects on the amenity of land occupied or adjacent to the relocated collector road route.
- k) Effects on already committed investment, continuing viability and timing of affordable housing schemes for land affected by the alternative location of the collector road and stormwater route suggested in the application.
- l) Additional costs to the community resulting from work required to re-plan and design alternative roading and stormwater networks.

² As taken from the section 42A report.

WRITTEN APPROVALS

6.5 Written approvals were received from the following parties:

- a) St Peters School, 1832 Cambridge Road;
- b) Te Awa Life Care, 1866 Cambridge Road;
- c) Blackwood Lodge, 690 Grasslands Drive;
- d) Ron and Thea Gussey, 694 Grasslands Drive; and
- e) Plaw Family, 3 and 5 Hunter Lane.

7 SITE VISIT

7.1 The Hearing Panel undertook a site visit on the afternoon of the 27 May 2021 – following the adjournment of the hearing.

8 THE HEARING

8.1 The hearing was held on 26 and 27 May 2021. It was attended by:

Role	Name
Hearing Panel	Greg Hill (Chairperson) Tara Hills
Hearing Secretary	Jenny Nemaia
Applicant	Matthew Smith and Mike Smith
Appearing for Applicant	Lachlan Muldowney – Legal Counsel Matthew Smith – Applicant and Landowner Mark Chrisp – Planning Abbie Fowler – Planning Stuart Mackie – Urban Design Liam McCaffrey – Infrastructure

Role	Name
	Mark Apeldoorn – Transportation
Appearing for Council	<p>Helen Atkins – Legal Counsel</p> <p>Wayne Allan – Group Manager District Growth and Regulatory Services</p> <p>Tony Quickfall – Manager District Plan and Growth</p> <p>Tony Coutts – Senior Development Engineer</p> <p>Quentin Budd – Consents Team Leader</p> <p>John Miles – Manager Property Projects</p> <p>Mark Batchelor – Section 42A Author and Planning</p> <p>Matt Riley – Urban Design</p> <p>Bryan Hudson – Transportation</p> <p>Cameron Inder – Transportation</p> <p>Richard Bax – Infrastructure</p> <p>Anna McElrea – Parks</p>
Submitters in Opposition	<p><u>Xiaofeng Jiang and Liping Yang</u> represented by:</p> <ul style="list-style-type: none"> ▪ Jimmy Zhuang – Urban design ▪ Russell Baikie – Planning <p><u>G Alton F&C Ritchie G Hawthorn Brough (Cambridge Co-housing Project Society)</u> represented by:</p> <ul style="list-style-type: none"> ▪ Phil Lang – Legal Counsel ▪ David Phizacklea – Planning <p><u>Desmond and Jeanette Brough and Brad White</u></p>
Hearing dates	26 and 27 May 2021. The hearing was adjourned on the 27 May 2021 to enable the Applicant to provide a written Reply.
Hearing closed	The hearing was closed on the 18 June 2021.

9 STATUTORY REQUIREMENTS AND FRAMEWORK

RESOURCE CONSENTS REQUIRED AND ACTIVITY STATUS

- 9.1 Resource consent is required from Waipa District Council in accordance with the following rules of the Operative Waipa District Plan (ODP)³:
- a) Rule 15.4.1.1(w) – Subdivision in a Deferred Zone – Non-Complying Activity;
 - b) Rule 15.4.2.1 (ac) – Residential Subdivision in the C1 and C2/C3 structure plan areas – Non-Complying Activity;
 - c) Rule 15.4.2.1 (ad) - Comprehensive Residential Subdivision in the C1 and C2/C3 structure plan areas, in accordance with Rule 15.4.1.1 (e) and Rule 15.4.2.62 - Non-Complying Activity;
 - d) Rule 15.4.2.3 - Lot frontage, lot shape factor and vehicle crossings (all other zones) – Discretionary Activity;
 - e) Rule 15.4.2.5 – Lot Design – Discretionary Activity; Rule 15.4.2.7 – Lot Design – Discretionary Activity;
 - f) Rule 15.4.2.13 – Site Suitability: General – Non-Complying Activity;
 - g) Rule 15.4.2.65 – Roads – Discretionary Activity;
 - h) Rule 16.4.2.2 – Road Hierarchy - Discretionary Activity; and
 - i) Rule 16.4.2.5 - Vehicle entrance separation from intersections and other vehicle entrances – Discretionary Activity.
- 9.2 In applying the bundling approach to the application, the entire application has been assessed and determined as a non-complying activity. There was no contention between any parties on this issue. We agree and have determined this application as a non-complying activity.

STATUTORY PROVISIONS OF THE RMA

- 9.3 As the application is a non-complying activity, section 104D (often referred to as the ‘gateway test’) is relevant, and states that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either:

1(a) the adverse effects of the activity on the environment will be minor; or

³ As set out at paragraph 16 of the Applicant’s legal submissions.

- 1(b) the application is for an activity that will not be contrary to the objectives and policies of:*
- i) the relevant plan, or*
 - ii) the relevant proposed plan, or*
 - iii) both the relevant plan and the relevant proposed plan.*

9.4 For the reasons that follow, we find the proposal does not satisfy either of the limbs of section 104D. On this basis we have no discretion but to refuse the consent.

9.5 However, in any event we have also assessed the application as if it had passed the section 104D test. On this basis we have assessed (and determined) the application based on its merits.

9.6 We record that even had the application been able to satisfy the gateway test of section 104D, we would have refused consent to the application pursuant to section 104B of the RMA. In this respect, and as required, we have considered the application in terms of the matters set out in section 104 of the RMA which requires us to, subject to Part 2, have regard to:

- (a) any actual and potential effects on the environment of allowing the activity; and*
- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) any relevant provisions of—*
 - (i) a national environmental standard:*
 - (ii) other regulations:*
 - (iii) a national policy statement:*
 - (iv) a New Zealand coastal policy statement:*
 - (v) a regional policy statement or proposed regional policy statement:*
 - (vi) a plan or proposed plan; and*
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

9.7 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 things⁴:

"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"

9.8 In our view that judgment (in summary) says 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.

9.9 We have been able to largely rely on the provisions in the District Plan (WDP) to determine this application. However, we have also considered the relevant provisions of the National Policy Statement on Urban Development 2020 (NPS-UD) given it came into force on the 20 August 2020, after the WDP provisions, including Plan Change 7 were made operative⁵. While we find the NPS-UD and the WDP 'cover the field', we have considered the Regional Policy Statement (RPS) and Part 2, in particular sections 7- Other matters and section 5 – Purpose of the RMA, and we address this later in this decision.

STATUTORY DOCUMENTS CONSIDERED

9.10 In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant provisions of the following documents:

- a) National Policy Statement on Urban Development;
- b) Waikato Regional Policy Statement;
- c) Waipa District Plan; and
- d) The following Iwi Management Plans:
 - i) Tai Tumu Tai Pari Tai Ao, the Waikato-Tainui Environment Plan; and
 - ii) Te Rautaki Tāmata Ao Turoa o Hauā, Ngāti Hauā Environmental Management Plan.

⁴ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, paragraph 83.

⁵ We address the applicability of the NPS-UD later in this decision.

10 SUMMARY OF THE LEGAL SUBMISSIONS AND EVIDENCE HEARD

APPLICANT'S LEGAL SUBMISSIONS AND EVIDENCE

- 10.1 Legal submissions were provided by **Lachlan Muldowney**. Mr Muldowney discussed the need for urban growth in the Waipa District, and that this proposal would help Council meet its planning requirements under the National Policy Statement on Urban Development 2020 (NPS-UD). He highlighted that the proposal would enable an efficient roll out of public infrastructure, with Council investment in the north/south collector road and swale deferred. His submission was that the proposed layout, which excludes the north/south collector road and swale, would not frustrate or be contrary to the structure plan's intended outcomes. He considered the proposal to be in 'general accordance' with the structure plan, and that the proposal could function independently of the north/south collector road and stormwater infrastructure. He also submitted that the impacts on the Submitters' properties would be no different to that which exists; that their land is located within a structure plan area and may be affected by development.
- 10.2 On questioning from the Hearing Panel regarding the notification status of the application, and if the application should have been publicly notified, both Mr Muldowney and Ms Atkins confirmed that they were satisfied that the limited notification status of the application was correct for the reasons set out in the notification report.
- 10.3 On questioning from the Hearing Panel regarding the purpose of the structure plan, Mr Muldowney advised that in his submission it provided guidance and a broad framework to assessing any development proposal. We address this in more detail later in this decision.
- 10.4 Evidence was provided by **Matthew Smith** on behalf of 3Ms. In Mr Smith's evidence he discussed 3Ms track record of development in Cambridge, and 3Ms vision for a quality development which will help address the need for urban development in Cambridge. He outlined the unsuccessful negotiations undertaken with Council to relation to the Council acquiring land for the north/south collector road and swale corridor. Mr Smith made several comments to identify items of concern or correct inaccuracies in Council's S42A report. These included concern with the proposed consent staging limiting 3Ms ability to sell the reserve land requested by Council, that the relocated roundabout has some positive effects on adjacent landowners, he refuted the assertion that a lack of sports fields within 3Ms' land had wider community effects, and commented on the benefit to Council of delaying capex spending. Mr Smith outlined communications with neighbouring property owners, identifying that development of small lots may require amalgamation for development to become viable, and that the proposal has positive development benefits for some landowners.
- 10.5 Supplementary evidence was also provided by Mr Smith. In his supplementary evidence Mr Smith responded to several matters arising from supplementary statements provided by Council staff or its consultants. Mr Smith further discussed the good faith Council negotiations to sell the north/south infrastructure land, highlighting that negotiation issues will occur whichever alignment the Council pursues. He discussed that Te Awa Life Care and St Peters both support the proposed roundabout

location, and would be likely to submit on the existing structure plan location. He discussed again the benefit to the Council from the deferred north/south corridor costs and the financial risks to the Council where it is unable to secure land in a timely manner. He requested that the Council commit to the northeast collector road to ensure the site is well integrated with the surrounding area and to facilitate access to the proposed school.

- 10.6 Planning Evidence was provided by **Mark Chrisp**. In this evidence Mr Chrisp discussed how the C2 growth cell was in a state of flux unless and until the Council designates and/or purchases the land required. He discussed how the non-complying nature of the application is a result of the Deferred Zone, which is proposed to be changed by proposed Plan Change 13 (PC 13), where the land will be rezoned to Residential (and Reserve). He identified that the main issue is the extent of, and any effects from, the differences in the proposal compared to what is shown in the structure plan.
- 10.7 It was Mr Chrisp's opinion that the adverse effects arising from these differences would be no more than minor as the north/south collector road and swale can be located elsewhere and still be in "general accordance" with the structure plan. He opined that the same reasoning can be applied to the sports fields – that they can be located elsewhere in the C2 growth cell (or elsewhere) and still be in general accordance with the structure plan. He also opined that any adverse effects on adjacent landowners would be fully mitigated by compensation through the land acquisition process.
- 10.8 Mr Chrisp discussed what he considered to be the purpose of the structure plan. He then confirmed that it was his opinion that the application was in "general accordance" with the structure plan, and that the structure plan outcomes would be achieved. In response to questions from the Hearing Panel about 'uncertainty' Mr Chrisp (referring to paragraph 18 of his supplementary evidence which discussed certainty), stated that uncertainty is not an adverse effect on the environment for the purposes of the RMA.
- 10.9 Mr Chrisp also provided supplementary planning evidence. In this he responded to evidence provided by Mr Phizacklea, Mr Baikie, Mr Miles and Mr Batchelor, and to Mr Lang's legal submissions. Points of particular note included that it is not the Applicant's responsibility to provide infrastructure for other development in the C2 Growth Cell, and that the application does not prevent or frustrate development in the rest of the C1 and C2/C3 growth cells. Mr Chrisp further opined that infrastructure was not being removed from the structure plan as stated by Mr Batchelor, but that viable alternatives were possible. He set out that the structure plan is to provide a framework for new growth areas. Mr Chrisp also considered that significant weight should be placed on the NPS-UD, and how the proposal will help achieve needed urban development.
- 10.10 **Stuart Mackie** gave urban design evidence, finding that both the structure plan and proposal layouts were equally valid from an urban design perspective and that development of adjacent land can be successfully undertaken. Mr Mackie noted that development benefits would occur if smaller landholdings were amalgamated. We address the urban design aspect of the proposal in more detail later in this decision.

- 10.11 **Mark Apeldoorn** provided transportation evidence. This evidence summarised his Integrated Transport Assessment report, and discussed subsequent proposed changes and their transportation effects. He found that the capacity of the proposed Cambridge Road intersections will be able to accommodate the proposed traffic without the collector roundabout.
- 10.12 Mr Apeldoorn also presented supplementary transportation evidence. This evidence set out that he had conferred with Mr Inder regarding the control of vehicle speeds within the site and at the local road connections to Cambridge Road, increased pedestrian and cyclist provision, and the potential upgrade of one of the Cambridge Road connections being signalised by 2027. These matters are addressed, and generally accepted, within Mr Apeldoorn's evidence.
- 10.13 On questioning by the Hearing Panel, Mr Apeldoorn advised that he did not have concerns about collector road volumes being directed onto local roads. He also advised that in his discussions with Council officers, they advised that that they are more concerned with the safety of the proposal than traffic delays at Cambridge Road. Mr Apeldoorn advised that no additional land would be required for the proposed traffic signal layout.
- 10.14 **Liam McCaffrey** gave infrastructure evidence. Mr McCaffrey's evidence set out that the proposed development could be appropriately serviced with regard to three waters, and that the proposal would not impede servicing of the wider C1 and C2/3 growth cells.

SUBMITTER'S SUBMISSIONS AND EVIDENCE (XIAOFENG JIANG AND LIPING YANG)

- 10.15 **Jimmy Zhuang** presented urban design evidence on behalf of Xiaofeng Jiang and Liping Yang. It was Mr Zhuang's opinion that the proposed development would be a significant departure from the structure plan, with a less than optimum site layout resulting in adverse effects for adjacent landowners. Mr Zhuang raised concerns that the proposed development would make it difficult to align local roads with adjacent land, leading to a fragmented design. Adjacent land would have a lower development yield, and the layout would not result in good urban form or contribute to the structure plan outcomes. Mr Zhuang also raised concerns regarding construction timeliness of the relocated north/south collector road due to the multiple holdings affected. This delay in construction of the collector road would reduce the ability of adjacent growth cell land to be developed until this issue was resolved.
- 10.16 **Russell Baikie** presented planning evidence on behalf of Xiaofeng Jiang and Liping Yang. Mr Baikie opined that the proposed development is not in general accordance with the structure plan and is not integrated with the surrounding land. Mr Baikie contends that the structure plan had been through the First Schedule process of the RMA, and represents a high level of planning with a clear direction, and an expectation that the structure plan would be adhered to. He considered that the location of the collector road is clearly specified in the structure plan, and that this proposal would result in a suboptimal layout with particular urban design adverse effects as opined by Mr Zhuang and Mr Riley.

10.17 Mr Baikie considered the potential effects on neighbours to include the loss of collector road frontage, reduction in yield, and uncertainty as to development timeframes and form. He also considered that the proposal would not be an efficient use of the land resource. He also opined that the adverse effects would be more than minor and contrary to the relevant objectives and policies of the District, and that the application should be refused.

SUBMITTER'S LEGAL SUBMISSIONS AND EVIDENCE (G ALTON, F AND C RITCHIE, G HAWTHORN, BROUGH/CAMBRIDGE CO-HOUSING PROJECT SOCIETY)

10.18 **Mr Phil Lang** gave legal submission on behalf of Submitters G Alton, F and C Ritchie, G Hawthorn, Brough/Cambridge Co-housing Project Society. He set out that the Submitters opposed the proposal because it would create the potential for the north/south infrastructure to be constructed on their land instead of where they expected it to be constructed (as shown in the structure plan). Mr Lang discussed how 3Ms had supported Plan Change 7, without requesting any change to the north/south infrastructure location. He submitted that the structure plan location of the north/south infrastructure is the most appropriate as it affects one landowner only, and gives certainty to the growth cell development.

10.19 Mr Lang submitted that the proposed layout was contrary to relevant plan provisions and there would be considerable uncertainty over when, and if, the north/south infrastructure would be constructed. He further submitted that the proposal lacked integration with the rest of the growth cell. Mr Lang submitted that as a non-complying activity, if consent were to be granted the proposal would need to demonstrate some special or unique qualities so as not to adversely impact on 'plan integrity' or create an undesirable precedent. It was Mr Lang's submission that no special or unique qualities existed.

10.20 **Mr David Phizacklea** gave planning evidence on behalf of the same Submitters represented by Mr Lang. Mr Phizacklea initially provided a rebuttal of some of Mr Chrisp's evidence, before continuing with his evidence. Mr Phizacklea rebutted Mr Chrisp's contention that the proposal was in "general accordance" with Rule 15.4.2.69 the structure plan. Mr Phizacklea's opinion was that the adverse effects on the environment (specifically effects on the overall outcomes of the C2 structure plan) were more than minor. This opinion was largely based on the matter of the collector road and stormwater infrastructure not being provided for within the site and that no alternative provisions had been confirmed.

10.21 This matter was highlighted in his evidence⁶ where Mr Phizacklea discussed the Proposed Plan Change 13 structure plan policy 15.3.15A.2 "*To avoid development and subdivision of land within Deferred Zones where it may compromise the future intended use of the land*". He opined that the proposed layout would adversely affect the ability for the wider C1 and C2/3 growth cells to be developed. Mr Phizacklea also drew attention to operative District Plan provision S19.5.2.2.2 which

⁶ Paragraph 4.13 of Mr Phizacklea evidence

requires that collector roads be “generally fixed in location”. He considered that the application should be refused consent for the reasons addressed in his evidence.

- 10.22 **Desmond and Jenette Brough** submitted that due to their long attachment to their land they wished to be able to develop it in accordance with their existing plans. They considered that they are adversely affected by this proposal, as they will no longer be able to realise their vision and plans (a co-housing development) for their land.
- 10.23 **Brad White** submitted on behalf of the Cambridge Co-Housing Project (as part of the Brough’s submission) advising how they would be adversely affected by the proposed subdivision. Mr White considered that the proposal would create uncertainty and would likely frustrate their plans for a co-housing development on the site. Their planning work to date had been based on the structure plan location of infrastructure, and they expected the structure plan to be adhered to.

COUNCIL’S LEGAL SUBMISSIONS AND EVIDENCE

- 10.24 **Helen Atkins** provided legal submissions on behalf of Waipa District Council (WDC). She addressed a number of factual matters raised, the relevance of effects in relation to reserve provision, and matters arising from evidence (staging conditions and the meaning of “generally in accordance with”). She also provided response notes when the Council was commenting on the evidence heard.
- 10.25 **Anna McElrea** provided a supplementary expert statement on reserves. She disagrees with Mr Chrisp that not providing sport fields was not a significant departure to the structure plan. She considered that not providing sports fields would adversely affect people near existing sports fields which will subsequently have higher usage, and C1, C2, C3 and C7 residents will have to travel further to access fields.
- 10.26 Ms McElrea disagreed with Mr Mackie that the reduced active recreation space will be offset by the increased local open space. This is because the open space will not provide for active recreation, large community gatherings and events, and parking provision for sports fields and the playground. She also disagreed with Mr Smith that the lack of sports fields would have no wider community effects.
- 10.27 **Mr John Miles** provided a supplementary expert statement on property detailing the negotiations for the acquisition of land from 3Ms for infrastructure works as per the structure plan. He noted that the compulsory acquisition of land outside of the subject site for the collector road and stormwater swale is likely to be a time-consuming process, particularly if there are unwilling landowners. Mr Miles advised that Council had made an offer to 3Ms for the reserve land (this was also addressed in the Applicant’s Reply Submission).
- 10.28 **Mr Richard Bax** provided a supplementary expert statement on infrastructure. Mr Bax discussed how the Council had invested significant resources in planning and designing the collector road in the location indicated on the structure plan. He advised that the north/south collector road and

stormwater swale are critical to enabling the surrounding land to be developed. Delays in providing this infrastructure will affect the ability to develop the surrounding land. Mr Bax identified that the proposed stormwater pond solution put forward by the Applicant would reduce the amount of land available for residential development.

- 10.29 **Mr Matt Riley** provided a supplementary expert statement on urban design. Mr Riley set out that he agreed with Mr Zhuang’s evidence; that the proposed layout gives poor urban design outcomes at 1835 Cambridge Road, with a large number of rear lots and jointly owned access lanes. Mr Riley disagreed with Mr Mackie that the adjoining land could be developed in a straight-forward way, and instead considered that options available to adjoining owners to develop their land in a manner that achieves positive urban design outcomes were very limited. Mr Riley opined that the proposal legibility and character effects at the wider C2 growth cell level are not as strong as would be obtained with the structure plan layout. He considered the structure plan north/south collector road and swale to provide a gateway and sense of place which may be lost with this proposal.
- 10.30 **Mr Cameron Inder** provided a supplementary expert statement on transportation. On questioning from the Hearing Panel, Mr Inder advised that he agreed with the intention of the transportation conditions, but that the conditions would benefit from some revision. Mr Inder and Mr Apeldoorn were requested to discuss the transportation conditions in an attempt to determine if they could come to an agreement regarding those conditions. Mr Inder agreed to undertake this work with Mr Apeldoorn.
- 10.31 **Mr Mark Batchelor** provided a supplementary expert planning statement. In this statement he outlined where he had a difference of opinion with Mr Chrisp. Mr Batchelor considered that the ‘removal of infrastructure’ from the structure plan removes the means by which the structure plan can be implemented. He opined that unless an alternative could be secured the proposal would result in significant adverse effects. Mr Batchelor’s opinion was that the proposal would be “in general accordance” with the structure plan only if a new location for the ‘removed infrastructure’ was secured elsewhere. He provided recommended consent conditions to ensure this outcome was achieved.

APPLICANT’S RIGHT OF REPLY

- 10.32 **Mr Muldowney** provided a written Right of Reply dated 11 June 2021. The key issues addressed are summarised below.

DEFERRED RESIDENTIAL ZONING, ACTIVITY STATUS AND S 104D GATEWAY TEST

- 10.33 Mr Muldowney confirmed the non-complying nature of the proposed activity in the deferred residential zone. He set out that the proposed subdivision satisfies the deferred residential zone objectives and policies (i.e. it is consistent with, and not contrary to, those provisions) and it would not compromise the ability of the wider area to be developed. Mr Muldowney also set out that the

adverse effects on the environment will be no more than minor. On this basis, he said that both limbs of section 104D were met.

STRUCTURE PLAN

- 10.34 Mr Muldowney set out that the Applicant's expert planning evidence is that the structure plan is a guiding document only, and that this finding is supported by the Council. He noted that the Submitters consider the structure plan to be more rigid, with the collector roads to be 'generally fixed in location', creating certainty for development. Mr Muldowney considered the term 'generally' to indicate flexibility and not the more fixed position held by the Submitters. He also submitted that the proposal would not frustrate or negate the intended vision and outcomes set out in the structure plan.

"UNCERTAINTY" AS TO THE EFFECTS ON LAND WITHIN C2/C3 GROWTH CELLS

- 10.35 Mr Muldowney pointed out that 'uncertainty' or 'increased uncertainty', as raised by Submitters and the s42A author, is not an adverse environmental effect. He also noted that the structure plan does not offer certainty. He set out that the removal of options regarding the location of public infrastructure was an inevitable outcome of development, and the Applicant's evidence was that alternative corridors exist (and they had presented one possible option).

SECTION 42A AUTHOR'S RECOMMENDED CONDITIONS TO PRESERVE INFRASTRUCTURE CORRIDOR OPTIONS FOR COUNCIL

- 10.36 Mr Muldowney submitted that Mr Batchelor's proposed condition 8 should be rejected as it fails both the statutory requirements of s108AA and the *Newbury* tests. He set out that the condition is not directly connected to an adverse effect/regional or district rule/National Environmental Standard or administrative matter, and is not reasonable in light of Council's statutory duties.

THE SPORTS FIELDS

- 10.37 Mr Muldowney submitted that Council has an abundance of available land in Cambridge for sports fields. Nevertheless, he set out that 3Ms has identified land available for open space which they have offered to the Council to purchase. 3Ms do not support Mr Batchelor's proposed condition 7 relating to the provision of a sports field as they consider it unreasonable and unnecessary.

NPS-UD AND ITS SIGNIFICANCE IN THE OVERALL EVALUATION UNDER S 104 OF THE RMA

- 10.38 Mr Muldowney submitted that the application will have a very significant positive contribution to the achievement of this national policy directive. Other positive benefits include the supply of residential lots to the market, and the provision of the school and retirement village.

CONDITIONS

- 10.39 Mr Muldowney confirmed that Mr Chrisp and Mr Bachelor conferred to provide draft conditions that they could either both endorse, or to provide draft conditions identifying where differences occurred. Mr Muldowney also confirmed that the draft conditions were shared with Mr Phizacklea and Mr Baikie, and their comments sought. Two sets of conditions were provided; Version A was those preferred by 3Ms, and Version B were those preferred by Mr Bachelor. Both Mr Phizacklea and Mr Baikie supported Version B, subject to amendments.
- 10.40 Mr Muldowney also confirmed that Mr Inder and Mr Apeldoorn had discussed and agreed the transport conditions.

CLARIFICATION OF TRAFFIC MATTER

- 10.41 Following the receipt of the Applicant's Reply Submission, the Hearing Panel requested a clarification of a traffic matter. Clarification was sought on the 17 June 2021 as whether Mr Inder agreed the traffic conditions in the context of proposed condition 8 (previously proposed condition 3) being a condition of consent or not.
- 10.42 Mr Inder's reply (via the Council's legal counsel) advised that he considers that the proposal can proceed from a traffic perspective without proposed condition 8.

11 THE PRINCIPAL ISSUES THAT WERE IN CONTENTION

- 11.1 The entire proposal was in contention as the Applicant sought that consent be granted, while some of the Submitters sought that consent be refused. The reasons for this have been summarised in the section "Summary of evidence provided" above.
- 11.2 While most Submitters did not oppose the development of the land per se; accepting that it was within an identified growth cell in the District Plan and would likely be developed in the future, it was how and when it was proposed to be subdivided (and subsequently developed) that was opposed. The Submitters considered the manner of development to be contrary to and considerably different to that of the recently approved structure plan for the area.
- 11.3 The main issue was that the identified infrastructure and open space (the collector road and stormwater corridor and the open space for active recreation) were not to be provided as shown on the structure plan map (or could not be provided on the site if the subdivision was approved as the subdivision precluded it). Submitters considered the proposal unreasonably foreclosed options for the efficient subdivision, use and development of their and other land within the growth cells, and they had been relying on the implementation of the structure plan in relation to their own development aspirations.

- 11.4 While Mr Batchelor recommended that the application be granted, he recommended a number of conditions that, in his opinion, would need to be imposed. While the Applicant agreed with most of the conditions, it strongly disagreed with condition 3 in the section 42A report which required *“land with a location agreeable to the Council (either in the location shown in the C2 structure plan or alternative practicable location) shall be secured to provide a north/south oriented stormwater and pathway linkages reserve (as drainage and recreation reserve) and north south collector road”*).
- 11.5 As part of the Reply Statement, two versions of the recommended conditions were provided. Option A was those sought by the Applicant, while Option B was those sought by Mr Batchelor. The main difference was Mr Batchelor’s recommended conditions 7, 8 and 9 (which were similar to condition 3 in the section 42A report) which the Applicant maintained its strong opposition. Those conditions were:

SPORTS FIELDS RESERVE

- 7 The subdivision shall not proceed until the sports reserve identified in the attached plan titled ‘Alternative Active Reserve Layout Option’ referenced 17001-SK-126 dated 02.03.21 has been purchased by the Waipa District Council.

COLLECTOR ROAD AND STORMWATER AND RESERVE NORTH/SOUTH NETWORK

- 8 The subdivision shall not proceed until the north/south oriented collector road and stormwater and reserve corridor as shown on the structure plan for the C2 structure plan has been established or otherwise provided for in a manner that will enable them to be constructed either within the application site or in another practicable location.
- 9 A developer agreement shall be established between the Council and consent holder for those matters referred to in the conditions of this consent referring to a developer agreement. The agreement shall be established between the consent holder and Council prior to construction of the subdivision beginning.

- 11.6 The Applicant’s position was that these conditions were unnecessary and unjustified. This was on the basis that their evidence demonstrated that a *“stormwater and pathway linkages reserve (as drainage and recreation reserve) and north south collector road”* could be provided elsewhere to service the growth areas, and their proposal could adequately address any issues relating to stormwater, open space and traffic within their site.

12 THE MAIN FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION AND REASONS FOR REFUSING CONSENT

12.1 The Hearing Panel has considered the application, the section 42A report, the legal submissions, evidence and submissions presented at the hearing, and the relevant statutory planning documents and undertaken a site visit. We address here our findings and reasons for refusing consent.

STATUTORY POLICY/PLANNING

12.2 We address the statutory policy/planning implications of the proposal, and as part of that, set out our findings in relation to the structure planning provisions; a matter that occupied much of the hearing.

12.3 The majority of the Submitters considered that the structure plan provisions should be accorded significant weight. They did not think that the Applicant's proposal was in accordance with the structure plan provisions (and in particular the map), and that the subdivision, if granted, would have significant adverse effects on them, and the surrounding area. The Applicant's position was that their proposal was "in general accordance" with the structure plan and any adverse effects would be no more than minor. We address these matters in some detail below.

12.4 The main differences between the C2 structure plan and Applicant's subdivision proposal (effectively showing a revised structure plan), as set out in the section 42A report,⁷ were:

- i. Variations in location and shape of the school site.*
- ii. The active sports field is removed (Negotiations between the Council and applicant have reached a stage where replacement of the sports fields to their original location planned in the C2 structure plan has been suggested and sale and purchase negotiations have been initiated).*
- iii. The local community/commercial centre is reduced in size and relocated towards the east to a location more central to the application site rather than a location central to the wider C2 structure plan. This separates the community centre from the collector roading that contribute to this separation by being moved west onto adjacent land, within the C2 structure plan.*
- iv. Introduction of higher density (compact) housing areas.*
- v. Variations in roading layout from the C2 structure plan including variations in connections with adjacent land within the C2 structure plan.*

⁷ Section 3.10 and 3.14 of the Section 42A report.

- vi. *Variations to the C1 and C3 and balance of the C2 structure plans are shown on the plans. These have been described for the purpose of indicating how the variations on the site can be accommodated in these other plans and within the balance of the C2 plan.*
- vii. *There is a proposal to vary the C3 structure plan that the applicant is involved with. This has been a factor in relocation of the roundabout and possibly influencing the proposal to relocate the north/south stormwater reserve and collector road corridor so the main access routes to both the C2 and C3 structure plans will be served by that intersection.*
- viii. *Increase in width of central east/west drainage swale and reserve to increase its stormwater capacity and pathway and overall amenity contributions to the community. This is described in the application as compensating for removal of the sports fields and the stormwater reserve from the western boundary of the site.*
- ix. *Disconnection of the site from the C2 structure plan stormwater network, that includes an east/west component from the C1 draining into the C2 structure plan, then towards the C3 structure plan, and replacement of this with onsite stormwater collection and infiltration within a stormwater infiltration basin.*
- x. *Inclusion of a large 'super lot' area in the south east quarter of the site identified for a retirement village.*
- xi. *Removal of identified visitor accommodation locality adjacent to Cambridge Road.*
- xii. *Removal of the north/south collector road from the site and relocation of this to adjacent land to the west and consequent need for acquisition of that land.*
- xiii. *Relocation of the intersection of the north/south collector road within the C2 structure plan with Cambridge Road, as referred to above. This is not part of the application; it has been negotiated with the Council separately. This relates directly to the north/south stormwater reserve and collector road corridor proposed to be removed from the application site to line up with the roundabout.*
- xiv. *Removal of the north/south stormwater reserve from the site and relocation of this to adjacent land to the west and consequential need for acquisition of that land.*
- xv. *A short local road connecting the eastern side of the site to land to the east (Kelly Road) was initially proposed to be replaced as a lot identified for stormwater purposes. This has now been replaced, subsequent to lodgement of the application, but is now proposed as a lot for road and stormwater and requested to be acquired by the Council.*
- xvi. *The application proposes financial contributions related to stormwater should not be payable due to the proposal to manage all stormwater on the site and not rely on the proposed stormwater network and north/south swale provided in the C2 structure plan. The value of the*

land within reserves areas is also referred to as a possible basis for a similar approach to development contributions.

NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT (NPS-UD)

- 12.5 The National Policy on Urban Development (NPS-UD) was gazetted on the 23 July 2020, and came into force on the 20 August 2020. It applies to all local authorities that have all or part of an urban environment within their District. Waipa District Council is listed as a Tier 1 local authority⁸.

Section 1.3 - Application of the NPS-UD states:

This National Policy Statement applies to:

- (a) all local authorities that have all or part of an urban environment within their district or region (i.e., tier 1, 2 and 3 local authorities); and*
- (b) planning decisions by any local authority that affect an urban environment.*

- 12.6 In summary its purpose is to:

- a) Have well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future; and
- b) Provide sufficient development capacity to meet the different needs of people and communities.

- 12.7 The relevance of the NPS-UD is that it appears to have a strong enabling 'theme' for urban development; to have well-functioning urban environments; the need to provide sufficient development capacity to meet the different needs of people and communities; supporting competitive land and development markets (to improve housing affordability); enabling more people to live in, and more businesses and community services to be located in areas of urban development; and an explicit recognition that urban environments (and amenity values) change over time.

- 12.8 With respect to the applicability of the NPS-UD, the Hearing Panel is aware of the recent Environment Court decision⁹ issued on the 15 June 2021 (after the hearing) which impacts on the applicability of the NPS-UD at this stage. That decision appears to limit the applicability to those provisions which refer to "planning decisions"¹⁰ and that the Court determined that it *"is not required to and will not be giving effect in this case to the Objectives and Policies in the NPS-UD that are not requiring*

⁸ Appendix" Tier 1 and 2 urban environments and local authorities

⁹ Eden-Epsom Residential Protection Society Incorporated v Auckland Council [2021] NZEnvC 082

¹⁰ The definition of the "planning decision" in the NPS-UD includes resource consents (section 1.4 –Implementation)

*“planning decisions” at this time*¹¹. Given the date the decision was issued, and there was no opportunity to address the implications of that decision at the hearing, we have addressed the NPS-UD below, but ultimately find this proposal (for the reasons we set out) would not, at this time, give effect to the NPS-UD.

12.9 In the context of the Court’s decision, we also note that Proposed Plan Change 13 (PC 13) to the WDP while seeking to give effect to the NPS-UD 2020 *“through continuing to enable urban development to occur in identified growth cells which provide for a variety of communities and meets the development capacity recognised in the District Growth Strategy”*¹², is relatively early in its First Schedule process. As we set out later, we have given little weight to PC 13.

12.10 The opening legal submissions addressed the NPS-UD stating¹³:

“..... There are a number of territorial districts within New Zealand where planning for growth is not a significant strategic issue. Waipa District is not one of them. For Waipa District the issues are significant, and urgent. The National Policy Statement on Urban Development 2020 (NPS-UD) identifies Waipa District as a high-growth urban area and a Tier 1 urban environment. As such, it is required to adhere to Policy 2 of the NPS-UD, which provides:

Policy 2: Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.

Clearly this policy is not currently being met in Cambridge, the identified primary growth node within the district, nor is being met across the other identified growth nodes. Council is however taking steps to address the issue. It has made a series of planning decisions which have created ‘plan enabled’ land resources, and is in the process of making certain financial decisions within its Long Term Plan (LTP) framework that will assist in the provision of some public infrastructure which will support development.

12.11 The legal submissions went on to state¹⁴:

The 3MS of Cambridge GP Limited (3MS) subdivision application (development) represents a significant opportunity for Council to begin its journey of delivering on its growth strategy for Cambridge. A 40 hectare block of land within the C2 Growth Cell, held in single ownership, delivering up to 242 individual households providing homes for up to 600-800 people, a school accommodating 300 pupils to being with, and reaching up to 1000 pupils, a retirement village comprising 185 townhouses, an 80 bed hospital and 60 serviced units, all integrated with public and private spaces achieving the best in urban design principles.

¹¹ Paragraph 129 of the Court’s decision

¹² Section 32 Evaluation – section 3.4.2

¹³ Paragraphs 6 and 7 of the Opening Legal Submissions

¹⁴ Paragraph 9 of the Opening Legal Submissions

- 12.12 We accept that this subdivision proposal is a “*significant opportunity for Council to begin its journey of delivering on its growth strategy for Cambridge*”. However, the subdivision proposal of itself will not deliver any additional housing, infrastructure or community facilities. The Applicant, Council and Submitters’ expert planners agree that land use resource consents would be required to enable development of this site should the subdivision consent be granted. This would remain the case even if PC 13 is approved and the Deferred Residential zoning is ‘uplifted’ and replaced with the Residential Zoning, as the C2 structure plan would still apply irrespective of the zoning.
- 12.13 It was Mr Chrisp’s opinion that any land use consents were likely to be a Restricted Discretionary Activity (under the residential zoning). This was due to the land uses envisaged (as set out in the Applicant’s “*Structure Plan Integration 3Ms refined version*”) being “*designed in general accordance with the requirements of that structure plan...*”¹⁵ . However, we understand that if the land use proposal was not “*designed in general accordance with the requirements of that structure plan...*” then the proposal would be a Discretionary Activity. Given our findings (elsewhere in this decision) that the subdivision is not in general accordance with the structure plan, then there is a potential that the land use consent would be a Discretionary Activity¹⁶. The point we are making is that other resource consents are required to provide any additional housing, infrastructure or community facilities.
- 12.14 Accordingly, while the NPS-UD is ‘enabling’ of urban development, it does not provide a ‘carte blanche’ for urban development, but a requirement to ensure a “*well functioning*” urban environment. In respect, and in terms of this proposal, the NPS – UD is not a ‘trump card’ to justify granting consent.
- 12.15 For the reasons that follow we do not consider the subdivision as proposed, and at this time, gives effect to the NPS-UD.
- 12.16 As we have already set out, and as acknowledged in the opening legal submissions¹⁷, the issue of the location and timing of certain public infrastructure (roading and stormwater) and community facilities assets (public open space) became a central theme of the hearing. We address this matter in more detail later in this decision, but first set out Objective 6 of the NPS-UD and its relevance to our decision¹⁸.
- 12.17 Objective 6 states:

Local authority decisions on urban development that affect urban environments are:

(a) integrated with infrastructure planning and funding decisions; and

¹⁵ Rule 15.4.2.69

¹⁶ For the avoidance of doubt, no land use consent application was before us.

¹⁷ Paragraph 9 of the Opening Legal Submissions

¹⁸ It may be that Objective 6 is not applicable in terms of the *Eden-Epsom Residential Protection Society Incorporated v Auckland Council* [2021] NZEnvC 082 decision. However, the RPS and the WDP have a number of provisions relating to the integration of infrastructure, planning and land use

- (b) *strategic over the medium term and long term; and*
- (c) *responsive, particularly in relation to proposals that would supply significant development capacity.*

12.18 With respect to (a) above it was clear to us that the Council (in relation to the growth cells, and in this case C2), had integrated infrastructure planning and funding decisions. Mr Bax and Mr Allan both addressed us on the planning and funding decisions made regarding the structure plan and the provisions to fund the purchase of the infrastructure corridors within the 3Ms site. As Ms Atkin's set out in the "Councils Response" –

The key points are:

1. *The Structure Plan under consideration was developed in that the context of PC7 – a full publicplan change process which the applicant was a full participant in;*
2. *Up until the middle of last year the Council proceeded with 3MS on the basis of a willing buyer/willing seller with regards to the land for the infrastructure corridor;*
3. *This is why Council has not used the NOR tool to date. Council could use an NOR but in the context of the application now under consideration that is not considered appropriate;*
4. *The break-down in negotiations at the 11th hour with 3Ms starkly illustrated how vulnerable this "holding hands" strategy is. Of note:*
 - a. *Final detailed design was completed as per the structure plan working with 3MS and agreed to by them (approx. \$1.3m council investment noting we agree that not all that work is lost as some can be used for a new alignment);*
 - b. *Council approved bringing forward LTP funding of \$40 million to roll out the infrastructure as per the detailed design in February 2020;*
 - c. *All the agreements – Infrastructure Works Agreement, Development Agreement and Sale and Purchase Agreement had been nearly finalised.*

12.19 She also stated (as did Mr Allan verbally at the hearing) that "Council is somewhat between a rock and hard place. It has backed and continues to back the SP [structure plan] infrastructure alignment"¹⁹.

12.20 What became clear to us was that while the Council had undertaken detailed infrastructure planning and had made funding decisions based on that planning, it had been unsuccessful in purchasing the land from 3Ms. While Mr Bax and Mr Allan said the funding of the infrastructure would be retained (and used to acquire other land for infrastructure) little if any planning had been done to identify and

¹⁹ Introduction/Overview of the Council's response

assess the feasibility of other land that is not consistent with the structure plan to enable the sustainable and integrated development of the growth cells (i.e. the matters addressed in NPS-UD objective 6 (b)). This included the option(s) put forward by the Applicant in its application.

- 12.21 With respect to NPS-UD objective 6 (c), - *responsive, particularly in relation to proposals that would supply significant development capacity*, we have already addressed that the proposed subdivision of itself is only one step in supplying “*significant development capacity*”. Consent(s), potentially with a discretionary consent status, would still be required to realise any development capacity.
- 12.22 While the Applicant had identified an alternative location for the infrastructure otherwise located with the structure plan area of the 3Ms site, it was simply an option and not one the Council (in its role of providing infrastructure) had fully assessed as being appropriate, or if it would enable the efficient and integrated development within C2 itself or with the other growth cells.
- 12.23 While we accept the subdivision of the 3Ms site as proposed would likely be an efficient use of its land, it is much less clear to us if it would enable the efficient and integrated development of land identified in the District Plan to accommodate Cambridge’s growth, and result in a well functioning urban environment, as opposed to a well functioning (3Ms) site only.
- 12.24 In short, we are not convinced that Objective 6 of the NPS- UP is given effect to by the 3Ms proposal. That is - if the subdivision proposal was granted, in the absence of greater certainty of the location (and functioning) of key infrastructure, there is not integrated infrastructure planning and funding as is already publicly planned²⁰. This would not lead to a well functioning urban environment as required by Objective 1 (and Policy 1) of the NPS-UP (and the related policies).

WAIKATO REGIONAL POLICY STATEMENT, INCLUDING TE TURE WHAIMANA (THE VISION AND STRATEGY FOR THE WAIKATO RIVER).

- 12.25 As we have set out above, we have not had to rely on the provisions of the RPS to determine this application. However, for completeness, we address it below.

TE TURE WHAIMANA

- 12.26 Te Ture Whaimana is the primary direction-setting document for the restoration and protection of the Waikato and Waipā Rivers. We agree with Mr Chrisp that the proposal would not adversely affect the RPS provisions relating to Te Ture Whaimana, or broader water quality issues, where he states²¹:

The subdivision of land has no adverse effects on the Waikato River. While the subdivision will enable a range of land uses (mostly residential), that activity will either be in accordance with permitted

²⁰ Via the Plan Change Process and Council LTP process – both of which are public processes

²¹ Paragraphs 87 and 88 of Mr Chrisp’s evidence-in-chief

activity rules in the Waipa District Plan (following Plan Change 13 becoming operative) or by way of a Land Use Consent being granted by Waipa District Council. The latter will provide for an assessment of the effects of any land uses in relation to the Vision and Strategy.

The main aspect of the future residential development of the land in the C2 Growth Cell of relevance to the Vision and Strategy is the discharge of stormwater. In that regard, Waipa District Council has already secured a resource consent authorising the discharge of stormwater from the C1 and C2/C3 Growth Cells to ground and to the Waikato River. The proposal advanced by 3Ms will result in less stormwater (and associated contaminants) ending up in the Waikato River, which is a positive effect compared with the outcome that would be achieved if the stormwater solution in the Structure Plan was pursued.

OBJECTIVES - WAIKATO REGIONAL POLICY STATEMENT

- 12.27 Mr Batchelor, in the section 42A report, considered that the proposal may be inconsistent with the provisions of clause (c) of Objective 3.12. This clause seeks to ensure that land use and infrastructure be integrated. Mr Phizacklea agreed with Mr Batchelor regarding this matter.
- 12.28 Mr Chrisp did not agree that the proposal was inconsistent with Objective 3.12. He set out that the AEE, and the evidence of Mr McCaffrey and Mr Apeldoorn, confirmed that the site can be serviced with appropriate infrastructure provision in a manner that integrates with the wider area. While we accept Mr McCaffrey and Mr Apeldoorn’s evidence that the site can be serviced, for reasons we have already set out (and further set out below) we are not convinced it is integrated in the “planned manner” set out in the WDP provisions.
- 12.29 We have already set out that we have not had to rely on the provisions of the RPS to assist us in determining this application. However, the RPS provision above supports our findings regarding the lack of land use and infrastructure integration (or at least from an uncertainty perspective).

WAIPA DISTRICT PLAN (WDP)

- 12.30 Prior to considering the relevant objectives and policies of the WDC, we address the provisions of the structure plan in the WDP. It is our view that understanding the ‘role and function’ of the structure plan provisions is important to our determination of this application.
- 12.31 It was evident from the legal submissions and planning evidence of the Applicant and Submitters (in particular), but also the Council, that there was a considerable difference of view (and opinion) of the role and function of the structure plan provisions. In a nutshell the Applicant’s view (legal counsel and its planner) is that the structure plan is a set of guidelines and a “broad framework” in which to assess development proposals. The submitter’s view (legal counsel and the planners) is that the

structure plan is more directive and determinative of the outcome sought, and is not merely a set of guidelines. The Council's position, as set out by Council's Counsel, is²²:

We agree with the Applicant that the Structure Plan is a framework. It is a very detailed framework but the maps do not have the status of planning maps they show indicative alignment of corridors and location of important infrastructure not a fixed location. This is evidenced by the fact that there is a process to depart from the Structure Plan layout. In short I think Council and the Applicant agree that is the outcomes of the Structure Plan that are the key. We also agree that the corridor alignment was not fixed in stone but it was more than just high level indication as noted by Mr Lang and his witnesses.

In short, the Structure Plan is not sacrosanct. The issue here is the clarity/certainty around the provision of infrastructure and whether this proposal or parts of the proposal should wait for that to be clearer before it (or parts of it are) is allowed to proceed.

12.32 We address the structure plan, and our findings, in more detail below.

12.33 Plan Change 7 to the WDP was publicly notified in November 2017 (and made operative in March 2019). It sought to rezone the C1 and C2/C3 growth cells identified in Waipa 2050 from Rural Zone to predominantly Deferred Residential Zone along with some areas to be zoned Deferred Commercial Zone. The plan change also inserted a Structure Plan for the C1 and C2/C3 growth cells into the WDP (as Appendix S19).

12.34 For context, we record that 3Ms was a submitter to Plan Change 7, and as set out by Mr Chrisp in his evidence-in-chief²³:

Of particular note, the 3Ms proposed Structure Plan layout included:

- (a) A location for a school;*
- (b) Recreational reserve (with the potential for sports fields, again to ensure that there was the provision for sports fields);*
- (c) The north/south public infrastructure corridor on the western boundary of the 3Ms site; 15*
- (d) Additional areas of piped stormwater conveyance from the C1 Growth Cell rather than being conveyed via an open channel;*
- (e) Conveying the stormwater through the centre area of the C3 Growth Cell via a piped system, rather than an open channel via the C3 Stream (to the west); and*
- (f) Additional areas of large lot residential.*

²² In her "Council Response" when presenting for the Council after hearing the applicant and submitters.

²³ Paragraph 40 of Mr Chrisp's evidence-in-chief

12.35 At paragraph 42 Mr Chrisp stated:

Largely as a result of the 3Ms submission on Plan Change 7, the C1 and C2/C3 Structure Plan was developed into that which is now appears in the Waipa District Plan.

12.36 It was Mr Muldowney's submission that²⁴:

Despite the deferred residential zoning not yet being in place, there is good guidance in the ODP regarding the ultimate urban form of the land resource, if it were to be developed ahead of PC13 becoming operative. Subdivision Chapter 15 in the ODP contains extensive provisions controlling subdivision within the C1, C2 and C3 Growth Cells, which are each subject to a Structure Plan.

The rule which links subdivision to the Structure Plan is Rule 15.4.2.65 which provides:

*15.4.2.69 All development and subdivision within an area subject to an approved structure plan, development plan or concept plan **shall be designed in general accordance with the requirements of that structure plan**, concept plan or development plan.*

12.37 We note that the issue of "in general accordance" was a recurring theme in the hearing from legal counsel and witnesses. We have addressed this in some detail, as while it of itself is not determinative of outcome of this decision, it does provide a context to the evaluation of the relevant objectives and policies of the WDC.

12.38 Mr Muldowney further set out in his submissions that the requirement for development to be "in general accordance" with the Structure Plan was reflected in many of the structure plan provisions – and these reflected the 'guidance' characteristics of the structure plan rather than a prescribed set of performance standards. He then provided a "snapshot" of some of the structure plan provisions gives a flavour for the broad guidance offered²⁵. An example is²⁶:

*S19.1.2 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.*

12.39 While we accept the plan provisions provide wording such as "broad framework" and "flexible manner" these need to read in context. As an example, the opening lines of S19.1.2 (quoted above) is "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

²⁴ Paragraphs 22 and 23 of the opening legal submissions

²⁵ Paragraph 24 a-p of the opening legal submissions

²⁶ Paragraph 24 a of the opening legal submissions

*managed*²⁷. These words can be read as more directive, and are in contrast to those emphasised by Mr Muldowney.

12.40 Furthermore, Appendix SO1 – Growth Cells - Growth Management Structure Plans and Concept Plans states in the table - Cambridge Residential Growth Cells – anticipated now to 2035, states the following:

GROWTH CELL	LAND AREA	OVERVIEW AND CAPACITY
Cambridge North	87ha	This growth cell is zoned for residential development in the Waipa District Plan and is actively being developed. Approximately two hectares have been set aside for a neighbourhood commercial centre. ♣ The growth cell has a remaining dwelling capacity of approximately 1044 dwellings
C1	46ha	This is a residential growth cell, with the potential for a commercial neighbourhood centre. <u>Development shall be undertaken in accordance with the relevant structure plan contained within this District Plan.</u> The growth cell has a dwelling capacity of approximately 528 dwellings.
C2 and C3	284ha	This combined growth cell has been identified as the major new growth cell for residential growth on the northern side of the Waikato River. C2 includes potential for a neighbourhood centre. <u>Development shall be undertaken in accordance with the relevant structure plan contained within this District Plan.</u> The growth cell has a dwelling capacity of approximately 3400 dwellings.
C4	66ha	Intended for residential development as an alternative along with C5 and C11, for development on the Leamington side of Cambridge. The growth cell has a dwelling capacity of approximately 790 dwellings.
C6	53ha	This growth cell is intended for large lot residential development and has a Structure Plan in place. The growth cell has a dwelling capacity of approximately 160 dwellings.

(Underlining and bolding is our emphasis)

12.41 Clear and directive language is used in the table above in relation to C1, C2 and C3 re - “Development shall be undertaken in accordance with the relevant structure plan contained within this District Plan”.

²⁷ Underlining is our emphasis

This wording is not used for Cambridge North or C4 and C6. We do not know if this was deliberate, but it adds weight to our view that the structure plan provisions are intended to be more determinant than guidance. However, we accept rule 15.4.2.69 (as quoted above) states that development and subdivision is to be designed in “*general accordant*” with the requirements of that structure plan.

- 12.42 Mr Chrisp’s opinion was, similar to that of the legal submissions, that the structure plan provides a framework and guidance to guide the development or redevelopment of land within the structure plan area, and that strict adherence to the structure plan is not required. He opined²⁸:

A structure plan is a framework to guide the development or redevelopment of an area by defining the future development and land use patterns, areas of open space, the layout and nature of infrastructure (including transportation links), and other key features and constraints that influence how the effects of development are to be managed. It is generally not anticipated that structure plans fix the location of all assets – this would be impractical as structure plans are typically prepared years in advance of development and do not reflect the changing nature or expectations of the residential market. If structure plans were to fix the location of public infrastructure in an inflexible manner, then a significant amount of upfront work would be required to confirm the appropriateness of those locations (for example, detailed geotechnical investigations in the location of the proposed assets). This amount of spend on technical assessments at the Structure Plan stage is generally not appropriate given the timeframes in which structure plans are prepared versus when development occurs (i.e. it can be years between Structure Plan preparation and any resulting developments).

- 12.43 It was also Mr Chrisp’s opinion that the proposal, as sought by the Applicant, was in general accordant with the C1 and C2/C3 Structure Plan²⁹. Notwithstanding this, it was his opinion, with which we agree, that³⁰:

In my view, the key matter for consideration in relation to the C1 and C2/C3 Structure Plan is whether the 3Ms subdivision frustrates or prevents the outcomes of the Structure Plan being achieved. In that regard, the assessment should relate to whether the outcomes sought in the C1 and C2/C3 Structure Plan, rather than the exact lines on the Structure Plan diagram, [can be achieved]³¹.

- 12.44 Mr Phizacklea (planning witness for a number of the Submitters) did not consider that the 3Ms proposal was “*in general accordant*” with the structure plan. He stated³²:

Specifically, the proposal is not in ‘general accordant’ with the C2 Structure Plan as the necessary collector roading and stormwater infrastructure are not provided for as part of the application within the subject site, and no alternative provision for this necessary growth cell infrastructure has been made by Council.

²⁸ Paragraph 107 of Mr Chrisp’s evidence-in-chief

²⁹ As examples, Paragraphs 81, 106 and 185 of Mr Chrisp’s evidence-in-chief

³⁰ Paragraph 98 of Mr Chrisp’s evidence-in-chief

³¹ The wording in the square brackets is our interpretation

³² Paragraph 2.6 of Mr Phizacklea evidence

- 12.45 Mr Baikie (planning witness for Xiaofeng Jiang and Liping Yang) had a similar view to Mr Phizacklea. On this matter Mr Baikie stated³³:

I am cognisant of Rule 15.4.2.69 “that all development and subdivision within an area subject to an approved structure plan shall be designed in general accordance with the requirements of that structure plan.” That seems to imply some flexibility in how an area is designed and developed for subdivision purposes to ensure suitable outcomes. I would expect some possible variations of a minor nature such as tier 2 roads and some land use repositioning may be acceptable, but the absence of key network infrastructure material to the entire structure plan area, being absent within the application site but contemplated by the Plan is of greater significance.

In my opinion the proposal has not been designed in general accordance with the key structural elements of the structure plan under Rule 15.4.2.69. I therefore consider the design is inconsistent with the structure plan and relevant objectives and policies referred to above.

- 12.46 We prefer the opinions of both Mr Phizacklea and Mr Baikie. We do not find that the 3Ms proposal is “in general accordance” with the structure plan. We accept the outcome (once and if land use was granted) of this proposal would be much needed residential development. However, it is, in our view, a considerable departure from the outcomes sought in the WDP structure plan; and if granted would have major implications for the development of the other land within the C2 growth cell, as well as land in the adjoining growth cells.

- 12.47 Notwithstanding the above, we agree with Mr Lang (representing G Hawthorn, F & C Ritchie, G Alton, D & J Brough) where he submitted³⁴:

The extent and significance of departures from the Structure Plan

It is not essential in this case to determine whether the proposed exclusion of the main collector road and stormwater corridor will or will not be “in general accordance with” the Structure Plan. The activity is already categorised as a non-complying activity because there is a Deferred Residential zoning. Therefore it is not vitally important to determine whether these departures from the Structure Plan would make the activity discretionary because they are not “in general accordance” with the Structure Plan.

The critical determination is about the extent and significance of the departures from the Structure Plan in terms of the relevant District Plan objectives and policies and environmental effects.

3Ms has approached this issue by examining whether the proposed departures will frustrate or prevent development of the C2 Growth Cell as it is specified and described in the Structure Plan. The more relevant consideration is how those proposed departures fit with the objectives and policies and what effects the departures will have on the environment. (Underlining is our emphasis)

³³ Paragraphs 29 and 39 of Mr Baikie’s evidence

³⁴ Paragraphs 42 – 44 of Mr Lang’s legal submissions

- 12.48 We address the objectives and policies of WDP below. However, before we do, we set out our findings on the ‘weight’ we think needs to be placed on the structure plan provisions.
- 12.49 We find that the structure plan provisions are more than a set of guidance or a broad framework to subdivision, use and development. It is something more determinative and important to integrate subdivision, use and development across the growth areas, as opposed to individual sites within the growth cell areas. In this regard we agree with Mr Baikie’s view being³⁵:

The public consultation and submission process associated with Plan Change 7 together with Council best planning practice of applying structure plans ultimately derived and determined the optimal land uses for the relevant structure plan area including the likely location and form of key infrastructure and overall anticipated outcomes. That public process created a degree of clarity and expectation as to what could reasonably expect to happen and the form of that landuse or infrastructure within a set timeframe. The public have therefore placed some reliance on this public document and it is a legitimate expectation that reasonable adherence to it would follow.

- 12.50 We find that some of the ‘language’ in the structure plan provisions is not particularly helpful, and can be read as ‘having a bob each way’. We also accept Ms Atkin’s submissions that “*the Structure Plan is not sacrosanct*” and that the WDP provides a consenting pathway (in this case a non-complying activity) to develop this land.
- 12.51 However, given the above, we find that the structure plan provisions need to be read ‘as a whole’ and in the context of being in the WDP via the First Schedule process³⁶. In our view the evaluation of this application against the objectives and policies of the WDC needs to be undertaken in light of our findings on the role and function of the structure plan. We address this below.
- 12.52 The relevant WDP provisions, including its objectives and policies, were comprehensively addressed by the planners who presented at the hearing. This included Mr Batchelor (the section 42A report author), Mr Chrisp (for the Applicant) and Mr Phizacklea and Mr Baikie (planning witnesses for a number of the Submitters). Having had regard to that expert evidence (and the evidence of the other witnesses) we set out our findings below.
- 12.53 Section 1 of the WDP – Strategic Policy Framework lists several outcomes to support a planned and strategic approach to subdivision and development. This is clearly relevant to sustainable growth of Cambridge. Clause 1.1.33(c):

“A consolidated urban form with new development being integrated with infrastructure provision, and focused within the urban limits of existing towns and villages in the locations and sequence identified in the District Growth Strategy”.

³⁵ Paragraph 35 of Mr Baikie’s evidence

³⁶ Plan Change 7 was made operative 14 March 2019

- 12.54 In the context of this application, this anticipated outcome is important (particularly “*new development being integrated with infrastructure provision*”) given that the identified infrastructure in the structure plan will not be provided, or able to be provided, on this site. This outcome is reflected in a number of the objectives and policies, including:

Objective 1.3.2 -

To ensure that development and subdivision happens in a way and at a rate that is consistent with the anticipated settlement pattern, maximises the efficient use of zoned and serviced land, and is co-ordinated with cost-effective infrastructure provision.

Policy 1.3.2.6 -

To manage the increased demand on infrastructure from development and subdivision by requiring all subdivision and development to be co-ordinated with the provision of infrastructure including utility services, and integrated with the transport network and the District’s road hierarchy.
(Underlining is our emphasis)

- 12.55 The higher order objectives and policies (which reflect significant resource management issues for the District) are carried through to Objectives and Policies of Section 14 – Deferred Zone, Section 15 – Infrastructure, Hazards, Development and Subdivision, Section 16 – Transportation, and to Appendix 19 – Cambridge Structure Plans (which we have addressed above).
- 12.56 Section 14 – Deferred zoning, sets out to identify and ‘hold’ land required for the District’s projected growth. The sole objective (14.3.1) of the zone is:

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.

- 12.57 This chapter clearly links to the structure planning provisions that we have already addressed. One of the key issues, in our view, of the Deferred Zone and the Structure Plans is the “**planned manner**” in which the growth cell areas (and structure plans) are to be developed. Currently the 3Ms site (and the entire C2 growth cell) is zoned Deferred Residential. Urban development is not envisaged within this area until the land is ‘live’ zoned (and hence the specified non-complying rule - Rule 15.4.1.1(w) – Subdivision in a Deferred Zone).
- 12.58 PC 13 to the WDP is seeking to remove the deferred zoning and replace it with a live zoning (in terms of the 3Ms site this includes, as we understand it, a combination of residential and reserve zoning). We have placed limited weight on PC 13 given the stage it is at in the First Schedule process (hearings of submissions had not commenced at the time of the 3Ms hearing). Notwithstanding this, we were advised that the current structure plan was not part of PC 13, and given our finding that this proposed development is not in general accordance with the Structure Plan, land use as contemplated by this subdivision proposal would require (for much of it) a discretionary activity resource consent.

- 12.59 Section 15 - Subdivision of the Plan is explicit about integration of infrastructure with development and subdivision. Objective 15.3.3 and Policy 15.3.3.2 (a) and (d) state:

Achieving the efficient and cost effective servicing of land by ensuring that servicing is provided to areas proposed to be developed.

Development and subdivisions shall:

- (a) Be located in areas where infrastructural capacity has been planned and funded; and*
- (d) Include infrastructure provision for both the strategic infrastructure network and local infrastructure connections*

- 12.60 Furthermore, Objective 15.3.15 and Policy 15.3.15.1 state:

“To achieve integrated development within structure plan areas”

“To enable development and subdivision within approved structure plan areas where the development and subdivision is integrated with the development and infrastructure requirements specified in an approved structure plan”. (Underlining is our emphasis)

- 12.61 Section 16 – Transportation is also explicit about integration of transport with development and subdivision. Objective 16.3.1 and Policy 16.3.1.2 (b) state:

All new development, subdivision and transport infrastructure shall be designed and developed to contribute to a sustainable, safe, integrated, efficient (including energy efficient network design) and affordable multi-modal land transport system.

Development, subdivision and transport infrastructure shall be designed and located to:

- (b) Accommodate future transport network connections and walking, cycling and passenger transport options to Deferred Zones and future growth areas. (Underlining is our emphasis)*

- 12.62 It is our view that the subdivision proposal is contrary to, or at least inconsistent with, the quoted objectives and policies. This is due to the anticipated and planned public (strategic) infrastructure (notably the centrally located north/south stormwater and collector road) not being provided in the location as specified. While the Applicant has identified a potential alternative infrastructure and open space option, this option has not been planned or funded as raised by the Council. That is – the Applicant has simply suggested that alternatives may exist to this infrastructure and that there is nothing inherently unusual or special about its site that suggests the infrastructure should or needs to go on its land.

- 12.63 While this may be correct, in the absence of planned and funded alternative infrastructure, and the more directive (and planned) nature of the structure plan, granting consent to this subdivision now may ultimately compromise the effective and timely delivery of the infrastructure by Council, and its

broader integration of subdivision, use and development over the rest of the C2 and the other growth cell (structure plan) areas.

- 12.64 We find that this subdivision, if approved as proposed, would have a consequential land use change or potential effect on other landowners by virtue of a different land use and infrastructure outcome/configuration that was otherwise anticipated by the structure plan. In this regard we agree with Mr Baikie where he states³⁷:

This is an inward-looking subdivision/development with insufficient regard or consideration to the consequential effects on other landowners and its contribution to broader structure plan outcomes (eg positioning of neighbourhood centre) therefore enabling achievement of the expected outcomes of the structure plan for all stakeholders and future residents. In my opinion the proposal has not been designed in general accordance with the key structural elements of the structure plan under Rule 15.4.2.69. I therefore consider the design is inconsistent with the structure plan and relevant objectives and policies referred to above.

- 12.65 As was set out in the legal submissions and evidence of the Applicant (in particular Mr Smith) and the Council, there was significant effort by both parties to reach agreement on the necessary land purchases to enable the provision of the infrastructure and open space. Ultimately, no agreement could be reached. We acknowledge this has clearly been frustrating for the landowners as well as the Council. However, the financial considerations between 3Ms and the Council, and the lack of agreement per se, cannot be the basis of determining this resource consent application.
- 12.66 The proposal does not appropriately address the key requirements of accommodating the necessary infrastructure for the wider growth area(s) (and affecting other matters such traffic and urban design which we address later). Due to this the proposal, if granted, would therefore potentially affect land use efficiency and integration within adjacent parts of the structure plan area, as well as the other growth cell areas.
- 12.67 Overall, we find that the structure plan is an important policy and regulatory method in the WDP. Given our finding above, it is our view that the proposal is contrary to, or at least inconsistent with, the relevant objectives and policies of the WDP.

EFFECTS OF THE ACTIVITY

- 12.68 As discussed at the hearing, this proposal is for a subdivision, and not the land use/development of the land if subdivided as proposed by the Applicant. Under the Deferred Residential zoning, the land use envisaged by the Applicant would (mainly) be a non-complying activity. If the Deferred Residential zoning is uplifted, as is being sought by PC 13, while some permitted activities could be

³⁷ Paragraph 39 of Mr Baikie's evidence.

established on the land, the majority of land uses will require consent; either as restricted discretionary or discretionary activities.

12.69 However, for the purpose of this decision, the Applicant accepted that it would be ‘artificial’ to ignore the fact that if the subdivision was granted, it would essentially establish a land use pattern³⁸. On this basis the Applicant accepted it was appropriate to take this into account when assessing the actual or potential effects of the subdivision proposal. We agree, and we set out below what we consider are the actual or potential effects (both adverse and positive) of the proposal. However, we firstly set out what we do not consider to be effects as defined by the RMA.

12.70 We agree with the Reply Submissions that:³⁹

The submitters, and to an extent, the s42A report author have erred in their identification of the adverse environmental effects arising from the application. In particular, the submitters have repeatedly identified ‘uncertainty’ or ‘increased uncertainty’ relating to the provision of public infrastructure as an adverse environmental effect. They also referred to effects on their properties arising from the alternative corridor alignment suggested by 3MS. Each of these concerns, while genuinely held, are not environmental effects which the commissioners can take into account of in their evaluation of the effects of the application under s 104(1)(a) of the RMA.

(Underlining is our emphasis).

12.71 We agree that “uncertainty” as characterised by the Submitters, of itself, is not an adverse effect. While we understand the concerns raised by Submitters, we have addressed this matter (i.e. what we see in terms of “uncertainty” and the ‘planned urban growth’ of Cambridge, as articulated in the WDP, in the **Statutory policy/planning** section above. We address the following effects of the proposal: Amenity and Character, Urban Design, Open Space, Traffic/Transportation, servicing/technical aspects (stormwater, wastewater, water supply, earthworks and geotechnical), Cultural, and positive effects.

AMENITY AND CHARACTER

12.72 A number of Submitters raised the issue that the amenity and character of the area would fundamentally change if this subdivision was granted, and this would adversely affect their on-going peri-rural lifestyle. In this respect, we agree with the Reply Submissions where it stated:⁴⁰

These expectations are unrealistic, and do not reflect the reality of living and owning land within a highly strategic urban growth cell. Owning and living on land within a deferred residential growth cell on the immediate edge of Cambridge creates uncertainty. Land use changes signalled in the ODP creates uncertainty.

³⁸ The Applicant’s legal counsel and planner both verbally confirmed this at the hearing

³⁹ Paragraph 19 of the Reply Submissions

⁴⁰ Paragraph 21 of the Reply Submissions

- 12.73 It is clear that the Deferred Residential Zone is a ‘holding zone’ until a ‘live’ zoning is put in place. This is what PC 13 is seeking to do in terms of a residential and reserves zoning for the C2 growth cell (including the 3Ms site). The subdivision proposal is, at least in part, consistent with the expectation that most of the land in the C2 growth cell will be residential. We have already addressed the extent to which the subdivision proposal (and subsequent land use) is not in general accordance with the structure plan provisions.
- 12.74 Furthermore, the NPS- UD states:

Policy 6: - When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:

- (a) *the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*
- (i) *may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*
- (ii) *are not, of themselves, an adverse effect*

(Underlining is our emphasis)

- 12.75 It is clear that this land is planned to be urbanised at some stage. This will involve significant changes to the area, and that change while affecting some people’s amenity value, that of itself is not an adverse effect according to the NPS. For the purpose of section 104D we find that any adverse amenity effects due to this proposal would not be more than minor.

URBAN DESIGN

- 12.76 Mr Mackie provided expert evidence on urban design for the Applicant. He noted that while aspects of the proposal differed from that presented in the S19 structure plan, the proposal aimed to address as many urban design ambitions as possible as part of the subdivision application. It was his opinion that that both approaches were equally valid from an urban design perspective.
- 12.77 It was his view (in summary) that⁴¹

A key aspect raised by the urban design assessment is the affect the scheme has on the development potential of properties to the west of the 3Ms site. I have prepared an initial concept of how this might work, noting that there are certainly a number of other options.

⁴¹ Paragraph 4 and 5 of Mr Mackie’s evidence

My conclusion is that while the changes to the 3Ms site do affect the neighbouring land uses, this change to urbanisation is a community expectation, and there are ways to develop these properties successfully. As part of this, the S19 Structure Plan is relatively unrefined in its configuration of roads and street blocks and will in any event require ongoing refinement in a comprehensive manner. The irregular shapes of some properties and fragmented nature of the landholdings suggests that the best development outcomes would occur where different land holdings are developed together.

- 12.78 Mr Zhuang, provided expert urban design evidence for Xiaofeng Jiang and Liping Yang. He set out that even the refined version of the proposal (as set out at the hearing) was unacceptable from an urban design perspective. This was due to the “Collector Road and Open Channel Green Space” not being provided as per the structure plan map and the urban design implications this had for sites to the west of the Applicant’s site, including his client’s land. He stated⁴²:

“Relocating the Collector Road and Open Channel Green Space will also significantly and adversely affect the potential development yields for the multiple smaller land-holdings and their owners..... The subdivision layout does not enable adjoining land to develop in a manner that achieves good urban form and contributes to Structure Plan outcomes”.

- 12.79 Mr Riley, urban designer for the WDC, provided a report as an ‘input’ to the section 42A report and a supplementary expert statement. Both he and Mr Mackie used the same/similar urban design methodology to inform their opinions on the appropriateness of the urban design outcomes of the proposal. Mr Riley, in his “Concluding Comments” of his report stated⁴³:

In conclusion, I consider that the proposal is generally consistent with the urban design related outcomes expected for urban development in the C2 Growth Cell and for subdivision in District Plan Section 15 and is acceptable from an urban design perspective. I do, however, have significant reservations about the 3Ms proposal’s effect on adjoining land to the west, noting the constraints it places on development options for that land. My degree of concern on this particular matter is such that my overall support for the proposal is only and very marginally on the side of support. I would encourage the applicant to provide at the hearing information requested at s92 stage that robustly demonstrates development options for adjoining land to the west of the 3Ms site that are consistent with expected Structure Plan outcomes and good urban design practice.

(Underlining is our emphasis)

- 12.80 Mr Riley, having heard the evidence of Mr Mackie and Mr Zhunga, provided a Supplementary Statement. In terms of Mr Mackie’s evidence and in relation to Development options for adjoining land and Legibility and Character respectively, Mr Riley stated ⁴⁴:

⁴² Paragraph 7.1 of Mr Zhuang’s evidence

⁴³ Section 11 of this report

⁴⁴ Paragraphs 7 and 9 respectively of Mr Riley’s Supplementary Statement

I disagree with Mr. Mackie that adjoining land could be developed in a straightforward way. There is uncertainty about the alignment of the north-south collector road and any stormwater swale. This, combined with the generally small size and narrow width of neighbouring lots, is such that I consider the subdivision options available to adjoining owners to develop in a manner that achieves positive urban design outcomes are very limited.

And

My view on this matter remains the same. While assessing the effects of each change from the Structure Plan individually has merit, an overall holistic assessment is then required. When viewed as a whole, I remain of the view that the direct changes from the Structure Plan, or those that are likely to result from it – as adjoining land is developed – will not produce the same strength of legibility and character outcomes as the Structure Plan.

(Underlining is our emphasis)

12.81 With respect to Mr Zhuang’s evidence, Mr Riley stated⁴⁵:

At paragraph 5.20 of his statement, Mr. Zhuang considers the testing of potential subdivision layout on neighbouring sites against the Notified version of the 3Ms Illustrative Structure Plan undertaken by Mr. Mackie in an appendix to his statement. Page 2 of 4 He considers that in relation to the land owned by Mr. Xiaofeng Jiang and Ms. Liping Yang at 1835 Cambridge Road, this does not show good urban design outcomes, due to the large number of rear lots and JOALs.

I agree with Mr. Zhuang.

(Underlining is our emphasis).

12.82 We accept that both Mr Mackie and Mr Riley agree that that the urban design outcome proposed (and as refined) by the Applicant is ‘acceptable’ in urban design terms. However, as set out above, Mr Riley’s view is heavily qualified. Mr Zhuang’s opinion is that the urban design response, particularly as it relates to the properties to the west, is unacceptable.

12.83 Mr Mackie accepted that the proposal would affect the development potential of properties to the west of the 3Ms site. However, from an urban design perspective, it was his view “*there are ways to develop these properties successfully*”⁴⁶. In this respect he had prepared an initial concept of how this might work, “*noting that there are certainly a number of other options*”⁴⁷.

12.84 Having considered the urban design evidence and the differing opinions of the urban designers, we are mindful that Mr Mackie and Mr Riley consider that the urban design outcome is ‘acceptable’. Mr Zhuang does not. However, it is clear to us that Mr Riley’s view is that the urban design outcome is

⁴⁵ Paragraphs 4 and 4.1 of Mr Riley’s Supplementary Statement

⁴⁶ Paragraph 4 of Mr Mackie’s evidence

⁴⁷ *ibid*

sub-optimal and, as set out above, will not produce the same strength of legibility and character outcomes as the structure plan as set out in the WDP. Mr Riley considers that the north/south collector road and swale will provide a gateway and sense of place which may be lost with this proposal. Mr Riley and Mr Zhuang consider that the current structure plan map in the WDP would result in a superior urban design outcome.

12.85 We find for the purpose of section 104D(1)(a) that the adverse urban design effects would be more than minor for the reasons we have set out above. However, in terms of assessing and determining the urban design effects under section 104 (as part of a decision pursuant to section 104B of the RMA), given the conclusions of Mr Mackie and Mr Riley, the urban design effects, of themselves, would not be determinative in a refusal of consent.

OPEN SPACE (ACTIVE SPORT AND RECREATION RESERVE)

12.86 The Applicant proposed a different combination and layout of open space in its proposal than shown in the structure plan map. The revised plan proposed the following within the 3Ms site:

- a) A 5,151m² recreation (neighbourhood) reserve (lot 501) which adjoins the 0.19 ha commercial centre;
- b) A 2.3117 ha central stormwater multifunctional local purpose (drainage) reserve (lot 502) that will comprise stormwater management features and active reserve features (such as fitness trails);
- c) A 2.2603 ha lineal stormwater local purpose (drainage) reserve (lots 503 and 505) which provides an off road shared path E/W connections to the edge of the development site; and
- d) A 420m² local purpose (drainage) reserve (lot 506).

12.87 The proposal does not provide the active reserve for sports fields (4-5 hectares in size) as shown in the structure plan map in the WDP. It is noted that the structure plan sets out that there will be approximately 10 hectares of public open space across C1, C2 and C3; comprising a large central active reserve with playing fields, 2 neighbourhood reserves, 1 historic reserve, 5 amenity reserves and a conservation reserve to protect the bush escarpments in C3.

12.88 The lack of provision for the active reserve for sports fields and its 'replacement' with a Central Stormwater Reserve (approximately 4.57 hectares) was the most contentious issue in terms of the provision of open space.

12.89 Mr Chrisp set out in his evidence that not providing sports fields in the application was not a "significant departure to the structure plan with potential for effects on the wider Cambridge community"⁴⁸. He also stated⁴⁹:

⁴⁸ Paragraph 146 of Mr Chrisp's evidence-in-chief

⁴⁹ Paragraph 147 of Mr Chrisp's evidence-in-chief

The 3Ms proposal, in my opinion, provides sufficient reserves within its development, including the stormwater basin, east/west linear swale and the destination playground, that will service not only its development appropriately but has wider positive effects.

12.90 Ms McElrea, in her supplementary evidence, disagreed with Mr Chrisp's opinion. She stated⁵⁰:

4.3 *The development of the subject site and the wider C2 growth cell surrounding it generates a demand for sports field playing hours that if not met through the provision of this sports fields within the C2 growth cell, will have an impact on:*

4.3.1 *Cambridge residents adjoining existing sports fields proposed to be upgraded as an alternative as a result of the significant increase in activation and associated impacts such as noise, light, traffic generation and parking pressures on training and game days,*

4.3.2 *participants and clubs who will likely face at least in the short to medium term, challenges associated with a growing sports field capacity shortage, and*

4.3.3 *the residents of C1, C2, C3 and C7 who will have to travel further to access their recreation activities, not have in close proximity a large open public space to hold community events and gatherings and not experience the way of life envisaged in the structure plan.*

12.91 Having heard all of the evidence Ms McElrea maintained her view as set out in her initial Reserves Report (which informed the section 42A report) that the area of land for active sports and recreation, as set out in the structure plan, was required.

12.92 The Applicant's position with respect to the provision of open space was provided in the Reply statement, where Mr Muldowney stated. ⁵¹

Council has an abundance of available land in Cambridge for sports fields, all within its control. The map of the Cambridge reserve areas presented on day 2 of the hearing illustrated this point (Attachment A). Cambridge currently has 72.1 hectares of active reserve land, 161.1 hectares of general reserve land, and somewhat remarkably, 184.5 hectares of reserve land which is currently not used for reserve purposes, but is instead in pasture and subject to grazing leases. Most of that grazed land sits within the 'town belt', a contiguous swathe of open space which encompasses the central urban areas of Cambridge. Under any comparative analysis, Cambridge is very well served for existing reserves and open spaces. The fact that it leases out 184.5 hectares of its current reserve land for grazing purposes bears out the point and raises its own questions around the best and most efficient use of publicly owned land.

12.93 However, Mr Muldowney further stated⁵²:

⁵⁰ Paragraph 4.3 of Ms McElrea's supplement evidence

⁵¹ Paragraph 40 of the Reply Statement

⁵² Paragraph 44 of the Reply statement

However, as acknowledged in the evidence of Mr Smith, 3MS is willing to sell to Council the land it seeks for sports fields, as depicted in Attachment B. 3MS sees this as an incredibly inefficient use of highly valuable residential land, and an inefficient allocation of Council funds, but nevertheless has agreed to sell land to Council. The parties were however unable to conclude the agreement given that the subject land was likely to have been caught in a later stage of the staging plan recommended by the s42A author.

12.94 It is our view that the Council could acquire the land for active sport and recreation if it so wishes. On this basis we do not find any adverse effects, in terms of the provisions of open space, would be more than minor (for the purposes of section 104D). However, the effect of the land offered by 3Ms in terms of traffic and urban design has not been assessed or evaluated. We have addressed the traffic and urban design related aspects of the proposal elsewhere in this decision.

TRAFFIC AND TRANSPORTATION

12.95 We accept that the proposal can ‘stand-alone’ and is not expected to create adverse traffic effects either internally or at the Cambridge Road intersections, with the proposed transportation conditions. While increased delays will occur at the Cambridge Road intersections over time, these delays will act to ensure that rat run traffic does not occur between Cambridge Road and Victoria Road via the C1 and C7 growth cells. The proposed pedestrian and cyclist and Safe Travel Management Plan (STMP) are expected to align the site with Vision Zero principles and prioritise walking and cycling over vehicle trips.

12.96 We consider the main traffic issue to therefore be that the 3Ms site lacks integration with adjacent growth cells. This creates the potential for parts of C1 and C7 growth areas, as well as parts of the C2 area outside of the 3Ms site, to either not be developed, or to generate traffic on the proposed 3Ms local roads, if these areas are developed prior to the construction of the north/south collector road and roundabout. The potential impact of the C1 and C7, and C2 areas outside of the 3Ms site, to not be developed in a timely manner, is considered to be the most significant adverse effect that the roading network layout may have.

12.97 If parts of adjacent growth cells are developed and obtain access via the 3Ms local roads, this also has potential traffic issues associated with increased conflicts between vehicles and pedestrians/cyclists being provided for on the 3Ms local roads. These concerns would have been mitigated by the proposed STMP, but would still result in a less than ideal situation where relatively high traffic volumes are using local roads instead of a collector road.

12.98 As a consequence, the proposal does not meet the District Plan objective of a site which “shall be designed and developed to contribute to a sustainable, safe, integrated, efficient (including energy efficient network design) and affordable multi-modal land transport system” which “give(s) effect to the road hierarchy”⁵³. Nor does the proposal “accommodate future transport network connections

⁵³ Objective 16.3.1

... to Deferred Zones and future growth areas”⁵⁴ as we have previously set out. The effects arising from this proposal will be more than minor.

- 12.99 Given our reasons and findings above, it is our view that the potential adverse traffic effects (specifically integration with the surrounding growth cells) will be more than minor, and those effects have not been satisfactorily avoided or mitigated.

STORMWATER, WASTEWATER, WATER SUPPLY, EARTHWORKS AND GEOTECHNICAL

- 12.100 We are satisfied based on the Applicant’s AEE, the section 42A report, and evidence provided by the Applicant and the Council that the site is able to be serviced in relation to stormwater, wastewater and water supply with little or no adverse effects. We are also satisfied that any adverse effects in relation to geotechnical matters and earthworks would be no more than minor.

- 12.101 All of the matters addressed above could be appropriately managed by consent conditions (and these were included in the draft set of consent conditions provide as part of the Reply statement).

CULTURAL

- 12.102 The Applicant had consulted with the Tangata Whenua – Ngāti Korokī Kahukura and Ngāti Hauā as part of the application process. Also the application provided in Appendix E the “*Tangata Whenua Statement and Engagement Report*”. As set out in that report the Ngāti Korokī Kahukura and Ngāti Hauā supported the proposal.

- 12.103 On this basis, and as no opposing submissions were lodged or any cultural evidence was presented, we find any adverse effects (for the purposes of section 104D) would be no more than minor and in accordance with the two Iwi Management Plans cited earlier.

POSITIVE EFFECTS

- 12.104 We accept there would be positive effects arising from the granting of this consent. These were set out in the Application at section 5.1 – Positive Effects. These were also addressed in the legal submissions and evidence. The positive effects would include the delivery of residential sections to market (with a diversity of section sizes) as well as enabling other community facilities (e.g. the school, open space, the playground and a commercial centre).

- 12.105 While we accept there would have been positive effects, the subdivision of itself only provides the first step in delivering those positive outcomes. It would not be until the land uses were established that these outcomes would be realised. We have addressed the land use consenting regime earlier in this decision.

⁵⁴ Policy 16.3.1.2 (b)

OVERALL FINDING IN RESPECT OF THE EFFECTS OF THE PROPOSAL

- 12.106 Mr Bachelor recommended that consent be granted subject to the conditions he recommended (attached as part of the Reply Submissions). He recommended (among others) conditions 7, 8 and 9. These required the sports ground, the north/south oriented collector road and stormwater and reserve corridor to be established or otherwise provided for prior the subdivision proceeding.
- 12.107 We agree with the reasoning set out in the Reply Statement that conditions 7, 8 and 9 are unreasonable and inappropriate in the context of the proposal before us, and were not accepted by the Applicant. Furthermore, we also question their vires in that the provisions of the sports ground and the other infrastructure is not directly in the control of the Applicant to deliver or provide. On this basis, it is our view that it would be inappropriate, and potentially unlawful, to impose those conditions.
- 12.108 Overall, for the purposes of section 104D(1)(a) we find that the adverse effects of the proposal are more than minor. We also find that the adverse effects have not been avoided or mitigated (such that the effects would not be more than minor) where it may have otherwise, from an effect perspective, been acceptable to grant consent. The reasons for this have been set out above.

PLAN INTEGRITY AND PRECEDENT

- 12.109 The issue of plan integrity and precedent was raised by Mr Lang and Mr Phizacklea, saying that there was nothing unusual or unique about this site and this was a relevant consideration in our deliberations about whether or not consent should be granted.
- 12.110 Mr Phizacklea set out in his evidence under the heading “Precedent Effect”⁵⁵ the following⁵⁶:

Section 10.11 of the section 42A Council report sets out additional matters to the AEE consideration of the effects resulting from the non-complying activity status of the application. I agree with those additional matters in so far as how the provisions of the WDP have been applied, but find the integrity of the WDP open to question should consent be granted for the subdivision. Any other landowners within the C2 structure plan area or other structure plan areas could take a similar approach, and seek to reconfigure core infrastructure requirements to effectively move the provision of infrastructure to another part of the structure plan.

- 12.111 Plan integrity and precedent are relevant “other matters” pursuant to section 104 (1)(c) of the RMA.
- 12.112 The Environment Court's decision - *Blueskin Bay Forest Heights Ltd v Dunedin City Council*,⁵⁷ considered the way in which the concept of precedent could be had regard to in considering a resource consent application. The decision stated:

⁵⁵ We note the “precedent” is not an effect as defined by the RMA.

⁵⁶ Paragraph 7.1 of Mr Phizacklea's evidence.

⁵⁷[2010] NZEnvC 177.

[46] Cases such as *Dye v Auckland RC* [2001] NZRMA 513 make it clear that while there is no precedent in the strict sense in this area of the law, there is an expectation that like cases will be treated alike and that the Council will consistently administer the provisions of the Plan. And cases such as *Rodney DC v Gould* [2006] NZRMA 217 also make it clear that it is not necessary for a proposal being considered for a *non-complying* activity to be truly *unique* before Plan integrity ceases to be a potentially important factor. Nevertheless, as that Judgment goes on to say, a decision maker in such an application would look to see whether there might be factors which take the particular proposal outside the generality of cases. (Underlining is our emphasis)

12.113 In our view, the question of plan integrity and precedent arises in this case. That is - are there factors which take this particular proposal outside the generality of cases? We find there are none and agree with Mr Phizacklea that other landowners within the C2 structure plan area, or other structure plan areas, could take a similar approach and seek to reconfigure core infrastructure requirements to effectively move the provision of infrastructure to another part of the structure plan area.

12.114 The circumstances relating to this application could be repeated where other landowners wish to develop in a way and at a time that may be contrary to the wider planned growth strategy that is incorporated into the WDP. Accordingly, in the absence of anything particularly unusual or unique about this site and its circumstances, we find that precedent and plan integrity issues have a real potential to arise, with the consequence of undermining the District's growth strategy as articulated in the WDP.

NON COMPLYING ACTIVITY – SECTION 104D OF THE RMA

12.115 As already set out, we find the proposal **does not satisfy** either limb of section 104D. On this basis we have no discretion but to refuse consent.

12.116 However, we have also assessed the application as if it had satisfied section 104D of the RMA. For the reasons we have set out above, we would have also **refused consent** pursuant to section 104B of the RMA having considered the matters in section 104 of the RMA.

13 PART 2

13.1 As set out earlier, we have not needed to rely on Part 2 to determine this application. However, as required, we have turned our minds to Part 2, noting that in doing so this has not substantially added anything to the evaluative exercise we have undertaken. However, we find as follows.

13.2 Section 6 – Matters of national importance and section 8 – Treaty of Waitangi are not relevant to the application.

13.3 The relevant Section 7 - Other matters, provisions include:

- (b) the efficient use and development of natural and physical resources:
- (c) the maintenance and enhancement of amenity values:
- (f) maintenance and enhancement of the quality of the environment:

13.4 In terms of (b) and (f) we accept that the 3Ms proposal in terms of its site, would satisfy those section 7 matters. However, as we have found above this proposal is likely to result in the inefficient use and development of the balance of the C2 growth cell and the adjoining and nearby growth cells. This is due to inefficiencies: in the stormwater design when considered in the total C2 context; in the roading design with additional local roads and intersections with Cambridge Road required; and in the urban design of the site interface with (in particular) land along the west boundary.

13.5 Given our findings set out in this decision, this proposal would not satisfy section 5 – the purpose and principles of the RMA.

14 DECISION

14.1 Acting under delegated authority from the Waipa District Council and in consideration of Section 104, and pursuant to Sections 104D, 104B and 108 of the Resource Management Act 1991 and the Operative Waipa District Plan, consent is **refused** to 3Ms of Cambridge Limited Partnership's subdivision proposal for the reasons set out in this decision.

Signed:



Greg Hill

CHAIRPERSON OF HEARING PANEL

Dated: 6 July 2021