

BEFORE THE HEARING COMMISSIONERS

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

A resource consent application by 3Ms Of Cambridge GP Limited for subdivision to create 246 Residential Lots within the C2 Growth Cell, and associated lots for public assets, at 1865, 1863, 1871 and 1881 Cambridge Road, Cambridge.

STATEMENT OF EVIDENCE OF DAVID JONATHAN DOMINIC PHIZACKLEA

Dated 18 May 2021

1 INTRODUCTION

- 1.1 My name is David Jonathan Dominic Phizacklea and I am an independent planning consultant. My statement of evidence is given as the planning witness for the following submitters to the application:
- Frank and Colleen Ritchie and John Coltman as Trustees of the Frank and Colleen Ritchie Family Trust, 397 Grasslands Drive, Cambridge.
 - Gary Alton, 59 Racecourse Road, Cambridge.
 - Jeanette and Desmond Brough in association with Cambridge Cohousing Project Society 1835A Cambridge Road.
 - Gareth Hawthorn, Grassland Drive, Cambridge.
- 1.2 I am an experienced resource management planning professional with over 26 years' experience in local, regional and central government. I am currently an independent planning consultant. Until the end of December 2019, I was employed at Bay of Plenty Regional Council – Toi Moana as a planning policy manager. I have been involved in SmartGrowth, the equivalent of Future Proof, in the western Bay of Plenty subregion since 2000.
- 1.3 My evidence addresses planning aspects of the application by 3MS Of Cambridge GP Limited seeking resource consent for subdivision to create 246 Residential Lots within the C2 Growth Cell, and associated lots for public assets, at 1865, 1863, 1871 and 1881 Cambridge Road, Cambridge (the application).

2 SUMMARY OF EVIDENCE

- 2.1 Subdivision consent as a non-complying activity is required under Rule 15.4.1.1(w) of the operative Waipa District Plan (WDP). The subject site is zoned Deferred Residential.
- 2.2 The application for subdivision consent must meet either of the two 'gateway tests' in accordance with section 104D of the RMA to be considered under section 104 of the RMA. It is my opinion that the application does not pass either gateway test.
- 2.3 Based on my evidence and the material accompanying the application and the section 42A Council report, it is my opinion the while the effects of the proposal are mostly positive, there are adverse effects on the environment which are more than minor. Specifically, effects on the overall outcomes sought to be achieved for the C2 structure plan as set out in the Waipa District Plan (WDP).
- 2.4 The proposal is consistent with the urban development objectives and policies of the Waipa 2050 Growth Strategy, Future Proof, National Policy Statement on Urban

Development 2020, and much of the Waikato Regional Policy Statement and the WDP. However, in order to grant resource consent, the Hearing Panel must be satisfied that it is in 'general accordancy' with Rule 15.4.2.69 of the WDP. It is my opinion that this is not the case.

- 2.5 I disagree with the AEE conclusion that the actual and potential environmental effects are acceptable under section 104(1)(a) of the RMA.
- 2.6 It is my opinion that the application should be declined on the basis that it is not consistent with required objectives and policies of the operative Waikato Regional Policy Statement and the operative Waipa District Plan, as set out in my evidence. Specifically, the proposal is not in 'general accordancy' 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.
- 2.7 The applicant is reliant on Proposed Plan Change 13 to enable the requirements of Chapter 14 to be met, through the rezoning of the land from its current Deferred Residential zoning to Residential and associated urban development zones.

3 BACKGROUND

- 3.1 My full name is David Jonathan Dominic Phizacklea.

Qualifications and Experience

- 3.2 I am an independent planning consultant, based in Tauranga, operating as Phizacklea Consulting since January 2020. Prior to that I was employed by the Bay of Plenty Regional Council (Regional Council) for 13 years most recently in the position of Regional Integrated Planning Manager responsible for resource management planning at the regional level for the Bay of Plenty. My management roles at Regional Council have included responsibility for urban growth management, regional planning, including the Bay of Plenty Regional Policy Statement and statutory advocacy. I have overseen and been responsible for submissions and comments made to city and district plans in the region, as well as resource consent applications received from territorial authorities, under agreed protocols. I have also held planning roles at Tauranga City Council and the Department of Conservation.
- 3.3 I hold a Master of Science (Technology) degree from the University of Waikato with First Class Honours and a Bachelor of Science (Earth Sciences) degree also from the University of Waikato. I am an associate member of the New Zealand Planning Institute and member of the New Zealand Coastal Society. I have over 25 years' experience in resource management.

- 3.4 I have been an expert witness in Council and Environment Court hearings on resource consent, regional plan and district plan matters. Most recently this has included planning evidence before the Environment Court on a subdivision development within Hamilton City as the first development within the planned Peacocke Structure Plan growth area (Amberfield development).
- 3.5 My experience includes providing evidence and advice on resource consent applications, policy statements, regional plan, district plans and associated plan changes. I have presented evidence to Council and Environment Court hearings, participated in mediation, caucusing and negotiations and been involved in High Court and Court of Appeal matters on regional planning appeals.
- 3.6 Relevant to the application, my Environment Court experience has included:
- (a) Preparation and presentation of Environment Court expert planning evidence for Tauranga City Council on plan change to Western Bay of Plenty District Plan for the urbanisation of Omokoroa Peninsula in October 2004.
 - (b) Preparation of Environment Court expert planning evidence for Bay of Plenty Regional Council on urban limits and development density requirements of Change No. 2 to the Regional Policy Statement (Carrus Corp v Bay of Plenty Regional Council) April 2009.
 - (c) Preparation and presentation of Environment Court expert planning evidence for Bay of Plenty Regional Council on 48 lot rural subdivision at Matakana Island in July 2011 Blakely Pacific and Others v Western Bay of Plenty District Council.
- 3.7 I have recently led the project planning for the review of the next Tauranga City Plan required by the National Planning Standards to be notified by April 2024, and am currently contracted to Tauranga City Council for three days per week as the Technical Director for the City Plan Review project. Like Hamilton, Tauranga is a high growth area, which is required to provide more land for housing and business needs under national direction. I am currently preparing the Housing and Business Needs Assessment for the western Bay of Plenty/Tauranga urban environment under the National Policy Statement on Urban Development 2020.
- 3.8 In my recent work with Tauranga City Council I have coordinated and assessed rezoning requests for redevelopment with Tauranga City, through the City Plan Review.

Code of Conduct

- 3.9 I confirm that I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Consolidated Practice Note 2014 and agree to comply with it.
- 3.10 I confirm that the opinions addressed in this statement are within my area of expertise except where I state I have relied on the evidence of other persons.
- 3.11 I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of evidence

- 3.12 I have kept my evidence brief and focused on the issues specifically relevant to the application and in contention. I have not repeated analysis of the statutory planning documents that are included in the Assessment of Environmental Effects (AEE) submitted with the application, but do comment on aspects of these.

The specific topic areas that I will discuss are:

- (a) Planning Framework
 - (b) Waikato Regional Policy Statement
 - (c) Operative Waipa District Plan and plan changes relevant to applicant's site.
 - (d) Structure Planning and Deferred Zoning requirements
 - (e) Actual and Potential Effects
 - (f) Statutory Planning Assessment and section 104 RMA
 - (g) Proposed Consent Conditions
 - (h) Conclusion.
- 3.13 This statement of evidence also addresses matters raised in the Council Officer's section 42A report by Mr Mark Batchelor, the original Assessment of Environmental Effects (AEE) and the statement of evidence of the applicant's planning witness Mr Mark Chrisp.
- 3.14 I have read the available material provided on the Waipa District Council website in relation to the application and this hearing.
- 3.15 I have read the application and assessment of effects, including the appendices which contain supporting reports, as well as the addendum information and reports and response to Council's section 92 requests for further information. Much of this is covered in the officer's section 42A report and accompanying material. I have also read Plan Change 7 hearings material.

The Application

- 3.16 The application is for a residential type of development anticipated in the Waipa District Plan as the site is within the C2 structure plan area and has a Deferred Residential zoning over it. It is well described in the application documents and in Mr Batchelor's section 42A report and in Mr Chrisp's planning evidence to this hearing.
- 3.17 A range of residential lot types are provided for in the application, ranging from single lot residential development to compact housing development. It aims to provide 246 fee simple residential lots across the site with associated public asset to vest in Council.
- 3.18 The proposal follows design guidelines set out in the WDP for the C2 structure plan area, as is set out in the application. In many ways this proposal is a straight forward application of the WDP provisions as they currently stand, its non-complying activity status notwithstanding. In reading the correspondence accompanying the AEE between 3MS of Cambridge GP Ltd and Council the application appears to be the result of an impasse on agreeing a funding agreement for required infrastructure servicing the subject site and wider C2 structure plan area and beyond.
- 3.19 As is clear from later sections of my evidence, the structure plan requirements of the WDP are not able to be adequately met by the application due to the spatially significant departures from the C2 structure plan.
- 3.20 I agree with Mr Chrisp that there is essentially only one issue associated with the proposal advanced by the applicant. Mr Chrisp sets this out as "the extent of, and any effects of, the differences in the proposal compared to what is shown on the Structure Plan"¹.

4 ANALYSIS

Planning Framework

- 4.1 The applicant's site is zoned Deferred Residential Zone under the operative Waipa District Plan (WDP). Subdivision consent as a non-complying activity is required under Rule 15.4.1.1(w) of the operative Waipa District Plan (WDP). The subject site is zoned Deferred Residential in planning map 24 to the WDP. The C2 structure plan applies to the site and the wider structure plan area (as part of the C1 and C2/C3 growth cell structure plan). As noted in the application and section 42A report the C2 structure plan is one of a number of structure plans around the outskirts of the Cambridge urban area providing for residential development.

¹ Evidence of Mr Mark Chrisp, paragraph 5 dated 11 May 2021

- 4.2 The WDP currently requires a plan change or a resource consent to be granted to allow residential development within the C2 structure plan area. The provisions of the Deferred Zone include reference to a resolution separately from resource management procedures prescribed in the RMA, which has been determined by the Council not to be available.
- 4.3 Plan Change 7 and Proposed Plan Change 13 are relevant considerations in relation to the application.

Plan Change 7 - C1, C2 and C3 Structure Plans

- 4.4 Plan Change 7 rezoned the C2 and C3 Growth Cells zoned as Rural to Deferred Residential and Deferred Commercial. The Plan Change also adopted Structure Plans for growth cells C1, C2 and C3 and made associated amendments to the WDP. These changes were to Sections 2 (Residential Zone), 6 (Commercial Zone), 15 (Development and Subdivision), 21 (Assessment Criteria) and the addition of Appendix S19 (the C1 and C2/C3 Structure Plans). Plan Change 7 was made operative only relatively recently on 14 March 2019.
- 4.5 Mr Chrisp in his evidence usefully sets out the background to Plan Change 7 and provides the originally notified structure plan for the C2/C3 growth cell, stormwater/infrastructure plan, land use pattern, and the structure plan promoted by 3MS to that plan change².
- 4.6 I have reviewed the Council decisions on Plan Change 7 and the submissions made to it. Of interest I note for the Plan Change 7 hearings Mr Chrisp stated in his evidence in relation to the C1 and C2/C3 structure plan.

“Except as otherwise discussed in my evidence, 3MS is largely happy with the Structure Plan document relating to the C1 and C2/C3 Growth Cells presented in Appendices 2 and 2 of the Section 42A Report, including in particular the actual ‘Structure Plan’ presented in Appendix A of the document. Subject to the following (in relation to the Compact Housing Overlay), the Structure Plan reflects an agreed layout in relation to the C2 Growth Cell”³.

- 4.7 That agreed layout (as shown in Appendix S19 of the operative WDP) is presented in the evidence of Mr Chrisp and Mr Smith to this hearing. As part of the Plan Change 7 process a revised stormwater infrastructure plan was promoted by 3MS and agreed to by Council staff for the C2 structure plan.

² Evidence of Mr Mark Chrisp Figures 1-4 and paragraphs 33-42, dated 11 May 2021

³ Evidence of Mr Mark Chrisp to submissions on Plan Change 7 to the Waipa District Plan for 3Ms of Cambridge GP Ltd, dated 29 August 2018.

4.8 It appears that discussions since Plan Change 7 became operative on 24 April 2019 have not resulted in agreements between 3MS and Council for the required infrastructure, including the collector road and stormwater reserves as set out in the C2 structure plan. This is traversed in the evidence of Mr Smith and I expect will be responded to by Council during the hearing.

Proposed Plan Change 13: Uplifting Deferred Zones

4.9 The purpose of Proposed Plan Change 13 as stated in the plan change document is to update the District Plan to reflect best practice with regards to the process of uplifting the Deferred Zone.

4.10 Rule 14.4.1.9 of the Waipa District Plan is proposed to be deleted as part of Plan Change 13. Mr Chrisp states (para 127) "As far as I am aware, there are no submissions seeking that this rule be retained".

4.11 Submissions to Proposed Plan Change 13 closed on 21 April 2021. I have read through the submissions received and confirm to the best of my knowledge that no submissions were made on the removal of Rule 14.4.1.9 in PC 13⁴. Submissions have been made on the C2 and C3 growth cell, largely in relation to the planning maps.

4.12 The changes to Section 15 Infrastructure, Hazards, Development and Subdivision are summarised in the Proposed Plan Change document⁵ as:

Objectives

- *Insert Objective 15.3.15A – to provide a policy framework to protect areas within Deferred Zones from inappropriate development and subdivision*

Policies

- *Insert Policies 15.3.15A.1 and 15.3.15A.2 – to provide policy framework to support the provisions within Section 15 regarding Deferred Zones.*

Rules

- *Delete Rule 15.4.2.61 – to remove reference to development and subdivision within Deferred Zone.*
- *Amend Rule 15.4.2.69 – to remove Structure Plans which are no longer required and include new Structure Plans.*

4.13 Some consideration in particular, should be given to proposed new 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."

⁴ [Proposed Plan Change 13 - Plan Change and Section 32 Report \(waipadcc.govt.nz\)](https://www.waipadcc.govt.nz/plan-change/13)

⁵ [Proposed Plan Change 13 - Plan Change and Section 32 Report \(waipadcc.govt.nz\)](https://www.waipadcc.govt.nz/plan-change/13) – Page 10

4.14 In my opinion there are aspects of the application that will compromise the future intended use of land within the C2 structure plan area, whereby Council would have difficulty in acquiring the collector road and stormwater reserves corridors.

RELEVANT STATUTORY PROVISIONS

4.15 This application must be considered in terms of Sections 104, 104B, 104D, 106, 108, 108AA, 220 and 221 of the RMA.

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

4.17 Subject to Part 2 of the Act, Section 104 sets out those matters to be considered by the consent authority when deciding a resource consent application. Considerations of relevance to this application are:

- 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 purposes 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 matters the consent authority considers relevant and reasonably necessary to determine the application.*

4.18 Section 106 enables Council to refuse a subdivision consent, or to grant a subdivision consent subject to conditions if there is a significant risk from natural hazards or sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision. I do not consider that there are matter relating to section 106 that need to be considered in this instance.

Sustainable management of natural and physical resources

4.19 Part 2 of the Act sets out the purpose and principles of the Act. The purpose of the Act is to promote the sustainable management of natural and physical resources.

Sustainable management is defined in section 5(2) of the Act. In essence, it sets out four objectives that must be contemporaneously achieved when managing of the use, development, and protection of natural and physical resources. These four objectives, in summary, are:

- enabling people and communities to provide for their wellbeing, and health and safety;
- safeguarding the potential of natural and physical resources meeting the reasonably foreseeable needs of future generations;
- safeguarding the life-supporting capacity of air, water, soil and ecosystems;
- avoiding, remedying or mitigating adverse effects.

4.20 The rest of Part 2 of the Act, national policy statements, the RPS, and the WDP set out how the sustainable management purpose of the Act is to be achieved in this location.

4.21 I wish to now turn to those relevant objectives and policies, starting with the high order policy documents.

4.22 The AEE sets out objectives and policies from the Waipa District Plan and from the Waikato Regional Policy Statement in some detail. In this section I draw on some of the objectives and policies identified in the AEE and identify further policy guidance from the RPS. This review of policy guidance is relevant in terms of the second leg of the non-complying activity gateway test, and, if it passes that gateway test, in terms of the assessment of the application under section 104 of the Act.

National Policy Statement on Urban Development 2020

4.23 The housing shortage in high growth areas, including the Waikato, is acknowledged and the need to provide for more housing. The Housing and Business Land Assessment for Greater Hamilton undertaken by Future Proof partners in 2018 to meet the requirements of the National Policy Statement on Urban Development Capacity 2016 identifies those shortfalls. I am aware that a new HBA is being prepared for the Greater Hamilton urban environment under the National Policy Statement on Urban Development 2020, which is required to be completed by 31 July 2021 for the housing portion of that assessment.

4.24 Section 6.5.2.3 of the AEE provides a detailed assessment of the proposal in relation to the National Policy Statement on Urban Development (NPS-UD). Mr Batchelor

concur with that analysis in his section 42A report, as noted by Mr Chrisp in his evidence.

- 4.25 Most of the policies are directed to local authorities in their plan development role. Those objectives and policies that are specifically relevant to decisions to resource consent applications are well assessed in the AEE and the application is consistent with the NPS-UD in that regard.
- 4.26 I agree that the applicant's site meets the NPS-UD definition of an urban environment, and since it is within the jurisdiction of a Tier 1 local authority, the 3Ms site is part of the Greater Hamilton Tier 1 urban environment, as set out in the application.
- 4.27 Mr Chrisp views Objective 2 of the NPS-UD as fundamental to the application⁶, and that the 3Ms proposal will make a significant contribution to Waipa District Council being able to meet its obligations under the NPS-UD. That there is a demand for housing in Cambridge and other parts of the Waipa District is not in dispute. The development of the applicant's site will provide much needed housing. However, those houses can only be built if the required infrastructure is in place in a manner which also enables houses to be built within the wider C1 and C2/C3 growth cells.

Waikato Regional Policy Statement

- 4.28 As a resource consent application, regard is to be had to the regional policy statement, among other resource management documents, under section 104(1)(b)(v).
- 4.29 The Waikato Regional Policy Statement (RPS) was made operative on 20 May 2016 and was updated on 19 December 2018 as required by the National Policy Statement on Urban Development Capacity 2016.
- 4.30 Objective 3.27 of the Regional Policy Statement sets out minimum housing targets for the Waipa District, and for Hamilton City and the Waikato District.
- 4.31 More detail on urban development intentions is provided in the section 6 of the Regional Policy Statement, titled "Built Development". This section sets out policies and methods intended to ensure subdivision, use and development of the built environment occurs in a planned and coordinated manner. Methods include growth strategies, urban development planning, information requirements for applications, and aligning infrastructure and land use planning.

⁶ Evidence of Mr Mark Chrisp dated 11 May 2021, paragraph 90. NPS-UD Objective 2 states: "Planning decisions improve housing affordability by supporting competitive land and development markets."

4.32 Mr Batchelor assesses the relevant RPS provisions, including Objectives 3.2, 3.10 and 3.12. Objective 3.12(c) is most relevant to the central issue in my opinion. Objective 3.12(c) states:

“Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by: ...

....

c) integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors;”

4.33 I agree with Mr Batchelor that “Clause c) of this objective that is concerned with integrating land use and infrastructure. The variations to location of the stormwater and collector road corridor are requiring the Council to acquire alternative location for them.”

4.34 I also agree with Mr Batchelor that some aspects of the subdivision application “present effects that may have less than ideal outcomes in this regard as a result of the proposed layout presenting potential for restraint on continuing release of residential land outside the site boundaries”⁷.

4.35 While the AEE largely assesses only the objectives of the RPS, there are various policies in section 6 of the RPS that are relevant⁸, in particular Policy 6.1 - Planned and co-ordinated subdivision, use and development

“Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:

a) has regard to the principles in section 6A;

b) recognises and addresses potential cumulative effects of subdivision, use and development;

c) is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and

d) has regard to the existing built environment.

4.36 Section 6A sets out “General development principles”. These includes that “New development should (among a range of matters):

“d) not compromise the safe, efficient and effective operation and use of existing and planned infrastructure, including transport infrastructure, and should

⁷ Section42A Council report section 11.2i – page 46

⁸ <https://www.waikatoregion.govt.nz/council/policy-and-plans/regional-policy-statement/>

allow for future infrastructure needs, including maintenance and upgrading, where these can be anticipated;

e) connect well with existing and planned development and infrastructure;"

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

Waipa District Plan

4.38 Section 4.1 of the AEE (pages 78 to 123) sets out the activity status and relevant provisions of the Waipa District Plan. The Section 42A report provides additional assessment of key provisions. I do not repeat the relevant provisions in my evidence, but set out those provisions to be considered as part of the application in reaching my conclusion that the application for subdivision consent should be declined.

4.39 Mr Chrisp is correct in his evidence that the Waipa District Plan provides for activities not being in "general accord" with an approved structure plan as a Discretionary Activity. However, this application is being assessed as a non-complying activity overall. The discretionary activity pathway would apply were this the only rule triggered or other aspects of the subdivision proposal did not require consent as a non-complying activity.

4.40 The application is not in "general accord" with the structure plan as required by Rule 15.4.2.69 on the basis that the collector roads shown in the C2 structure plan are required by S19.5.2.2 to be "generally fixed in location". It is my opinion that aside from the sportsfield (which the applicant will provide conditional to subdivision consent being granted) other aspects of the amended application, are able to meet the structure plan requirements and Appendix S19 outcomes, based on the evidence of Mr McCaffrey and Mr Mackie for the applicant, and section 42A report and accompanying documents.

4.41 There is considerable policy guidance on the appropriate design of the subdivision and proposed urban development, including residential housing. The proposal, by and large, follows that guidance in its urban design characteristics, which are well described in the AEE and in the section 42A Council report.

4.42 While the applicant is not seeking land use consents, the AEE details where consent would be required and where non-compliance with the WDP is expected to occur. For example, the Town Centre. These are effects that are relevant to the application and must be considered. The subdivision layout will set the land use pattern for the local centre, collector roads, stormwater reserves, recreation reserves and sportsfield, as well as the intended built form set out in detail in the AEE with residential and commercial drawings and typologies.

- 4.43 I agree with the positive effects anticipated from the subdivision application (and resultant development and land use) set out in section 5.1 of the AEE (pages 126-127).
- 4.44 I have read the evidence of Mr Mathew Smith and agree that the resulting largely residential development is intended to be of a high quality, from developments involving the same directors elsewhere and based on the information in the AEE. It is clear that a residential development of the type outlined in the AEE is intended by the Waipa District Plan, Proposed Plan Change 13, Future Proof and Waipa 2050.
- 4.45 The matter is whether as a non-complying activity the subdivision consent should be granted prior to securing land required to realise the development potential of the C2 growth cell, and the uncertainty with which that creates for future development. There is no guarantee that Council will seek to deviate from the existing C2 structure plan and instead pursue land acquisition from adjoining landowners. While I note discussions have occurred with landowners, if there is no willing seller, willing buyer arrangement then Council will need to secure the land through the Public Works Act. Logically, Council could choose to do so based on the existing structure plan. As far as I am aware, Council is not seeking to amend the C2/C3 structure plan in the WDP, and any submissions on Proposed Plan Change 13 would fall outside the scope of that plan change.
- 4.46 In reaching this conclusion, I observe statements made by Mr Mark Batchelor in the section 42A report and the following in Appendix 6 to that report⁹:

“There is significant risk to council of acquiring the land for the north/south collector road on land not owned by the applicant. The applicant suggests council can acquire the land via the Public Works Act 1981 Section 23 process (compulsory acquisition), however there is no certainty - the Environment Court could determine that there are other options for its location. The land is likely to be an increased cost over those budgeted, and reflected in the Development Contributions Policy and subsequent DC calculations. The delay in constructing the collector road will potentially mean that not all of the 3Ms land can be developed as the local roads will not have the capacity that the collector provides this leads to potential safety issues for users.”

C2/C3 Structure Plan

- 4.47 Subdivision consent as a non-complying activity is required under Rule 15.4.1.1 (w) of the WDP. While no land use consents are being applied for as part of the proposal, the requirements of Section 14 of the WDP should be considered, including Rule 14.4.1.5(a) for the Deferred zoning. The AEE includes an assessment of these for

⁹ Appendix 6 Council Development Engineering Report, dated 15 and 16 April 2021 - page 6

completeness, but notes no consent is sought for any activity under Section 14 of the WDP.

4.48 The C2 Structure Plan from the WDP and the 3MS proposed integrated structure plan from eth AEE are shown in Figure 1 below.

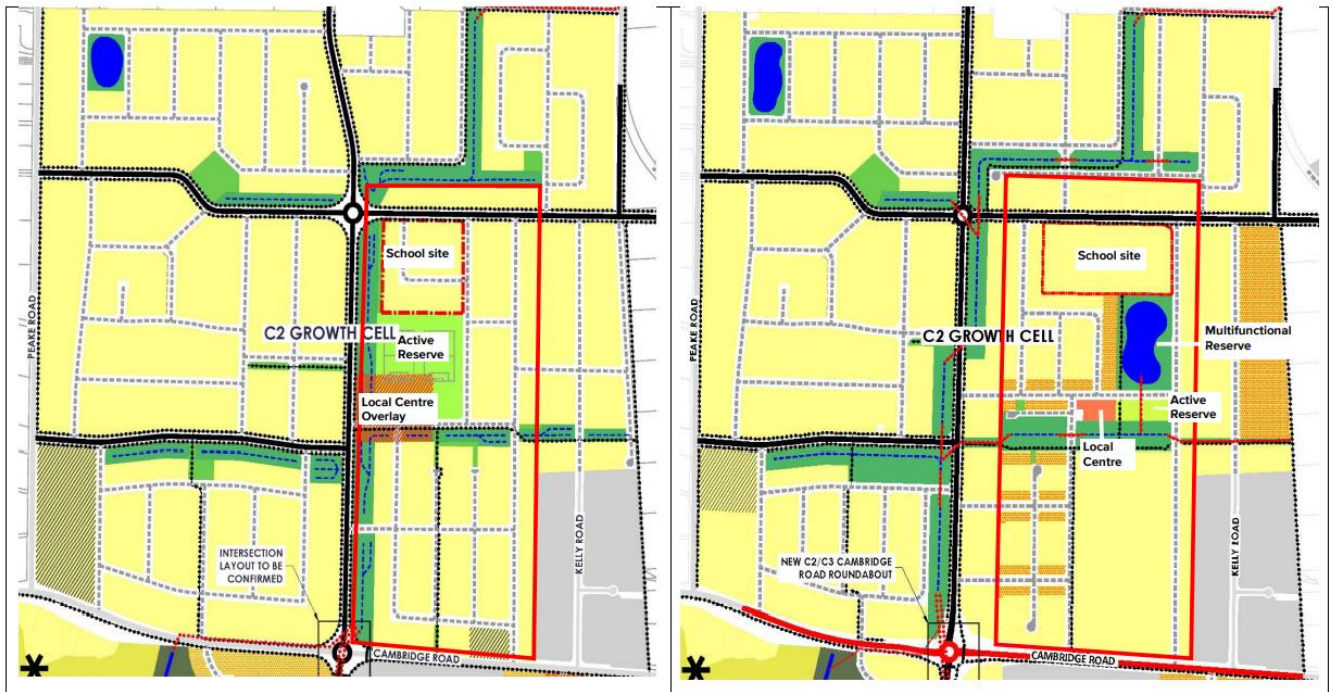


Figure 1 Structure Plan comparison (from AEE Figure 35) showing WDP C2 structure plan on left and 3MS proposed integrated structure plan on right.

4.49 The updated scheme plan included in Attachment A to the evidence of Mr Chrisp shows lots to be vested and lot sizes for the proposal based on the amended application.

4.50 Since the application was lodged with Council and following receipt of submissions, the applicant has produced a revised illustrative structure plan, setting out how the C1 and C2/C3 Structure Plan area can be developed alongside the 3MS subdivision proposal. That revised illustrative structure plan is included as Figure 6 in Mr Chrisp's evidence, and also in the evidence of Mr Smith and Mr McCaffrey for the applicant.

4.51 I agree with Mr Chrisp¹⁰ that the key matter for consideration in relation to the C1 and C2/C3 Structure Plan is whether the applicant's subdivision frustrates or prevents the outcomes of the structure plan being achieved. In other words what will be the actual or potential effects on the C1 and C2/C3 growth cells.

4.52 Linkage between development in a Deferred Zone and a Structure Plan is provided by Rule 15.4.2.69 in Section 15 of the Waipa District Plan that requires development

¹⁰ Evidence of Mr Mark Chrisp dated 11 May 2021, paragraph 98.

within a structure plan area to be in “general accordancy” with the applicable structure plan.

- 4.53 Rule 15.4.2.69 (All development and subdivision in areas subject to a Structure Plan, Development Plan or Concept Plan) states:

“All development and subdivision within an area subject to an approved structure plan, development plan or concept plan shall be designed in general accordancy with the requirements of that structure plan, concept plan or development plan. For the avoidance of doubt, the following areas are subject to concept plans, development plans and/or structure plans: ...

....

(r) Cambridge C1, and C2 / C3 Structure Plans Appendix S19”

- 4.54 Below the advice note, and forming part of this rule¹¹, Rule 15.4.2.69 also states:

“Activities that fail to comply with this rule will require a resource consent for a discretionary activity, except where these structure plans indicate that non-compliance with the rules of the structure plan, development plan or concept plan will result in the activity being a noncomplying activity.”

- 4.55 Objective 15.3.3 - Integrated development: efficient servicing requires that:

*“Achieving the efficient and cost effective servicing of land by **ensuring** that servicing is provided to areas proposed to be developed.” (emphasis added in bold)*

- 4.56 The relevant policies to Objective 15.3.3 include policies 15.3.3.1, 15.3.3.2(b), 15.3.3.2(d) and 15.3.3.4

- 4.57 The structure planning requirements of the WDP are encapsulated in Objective 15.3.15 and Policy 15.3.15.1 which require:

Objective 15.3.15 – “To achieve integrated development within structure plan areas.”

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

¹¹ Section 2.8 of the WDP states: “The detail in the grey box is part of the performance standard rule”.

Deferred Zones

4.58 Rule 14.4.1.5(a) from the Deferred Zone provisions applies to land uses and as assessed in the AEE is also a non-complying activity. Rule 14.4.1.5(a) of the Deferred Residential Zone classifies subdivision in the Rural Zone as a Non-complying Activity. Rule 14.4.1.5(a) states

“Within a Deferred Residential Zone, Cambridge North Deferred Residential Zone, Deferred Reserves Zone within the Cambridge North Structure Plan Area and the Deferred Commercial Zone for the Cambridge North Neighbourhood Centre, Deferred Large Lot Residential Zone, Deferred Commercial Zone, Deferred Industrial Zone, Deferred Reserves Zone excluding the Deferred Commercial Zone at Carters Flat, any activity listed as a discretionary activity or non-complying activity within the Rural Zone”.

4.59 The explanatory text to the Deferred Zones chapter in Section 14.2 of the WDP states: *“In Deferred Zones, it is critical that current land use practices do not conflict with the intended future land use, including its ability to be adequately serviced”.*

4.60 Subdivision consent if granted and implemented, would result in different land uses to that of the current site. There is as a result conflict with intended future land use of other properties within the C2 structure plan area as there is no certainty as to whether those future uses can be serviced.

4.61 At this point in time the applicant can not rely on Proposed Plan Change 13 to uplift the current Deferred Residential zoning of the site.

4.62 There is no dispute that the subdivision proposal is to be assessed as a Non-complying Activity under the operative Waipa District Plan. I agree with Mr Chrisp that the central issue for the Hearing Panel to consider is *“the extent of, and any effects of, the differences in the proposal compared to what is shown on the Structure Plan”*¹².

4.63 In the urban design assessment of Mr Matt Riley, he does not consider that the revised structure plan layout promoted by the applicant provides for better urban design and connectivity outcomes¹³.

4.64 The rules applying to the subject site within the C2 structure plan area are those of the Rural Zone and those provided in the Deferred Residential Zone chapter of the WDP. These include the development 'triggers' set out in Rule 14.4.1.9.

4.65 Policy 14.3.1.3 of the WDP is achieved by the application in my opinion. That policy states: *“To provide a framework for new growth areas through a comprehensive and integrated structure planning process”.* However there are other policies that are also relevant to consider, as set out in the AEE.

¹² Evidence of Mr Mark Chrisp 11 May 2021, paragraph 4.

¹³ Assessment of application by Mr Matt Riley (Barker & Associates) for Council dated 21 April 2021, contained as Appendix 8 to the section 42A Council report.

- 4.66 Given the conditions set out in Policy 14.3.1.7 are not able to be met and the application is for subdivision only, a number of provisions within Section 14 are not relevant to the application. The subject site is not sought to be rezoned as the 'trigger' conditions have not been met. The site is therefore subject to the Rural zone requirements of the plan.
- 4.67 These include reference to infrastructure required being either in place or the Council being satisfied that there is a solution to provide the necessary infrastructure.

Appendix S19

- 4.68 The Cambridge C1 and C2/C3 Structure Plans are contained within Appendix S19 to the District Plan and apply to land outside the existing urban area of Cambridge, to the west of the Town Green Belt and north of the Waikato River.
- 4.69 Key features of the C2/C3 Structure Plan that are shown on or directly adjoining the application site are:
- A collector road that extends north from a roundabout intersection with Cambridge Road;
 - An east-west collector road;
 - An indicative local road network and cycling and walking connections;
 - A stormwater swale system of reserves, including a reserve adjoining the north-south collector road and east-west reserves;
 - An indicative location for a school;
 - A large active recreation reserve;
 - Predominant residential land use; and
 - A local centre.
- 4.70 The revised illustrative structure plan is provided in the evidence of Mr McCaffrey¹⁴, and also in the evidence of Mr Crisp and Mr Smith for the applicant (reproduced as Figure 3 below). The movement network for the C1 and C2/C3 is provided in Figure 13 of section S19.5 of the WDP (reproduced as Figure 3 below).
- 4.71 The key differences in the proposed 3Ms subdivision layout from the Appendix S19 Structure Plan are:
- The north-south collector road and the adjoining north-south stormwater reserve are not on the 3Ms site;
 - The active recreation reserve is significantly smaller and is moved away from the north-south collector road further east into the site;
 - The school and Neighbourhood Centre are moved away from the north-south collector road further east into the site; and

¹⁴ Evidence of Mr Liam McCaffrey dated 11 May 2021 - Figure 3, page 13

- The 3Ms application proposes Lots intended for future Compact housing, whereas the Structure Plan shows no Compact housing or other intensified residential lots within that part of the Plan which applies to the site.



Figure 2 C1 and C2/C3 Movement Network - Figure 13 in S.19.5 of the WDP.

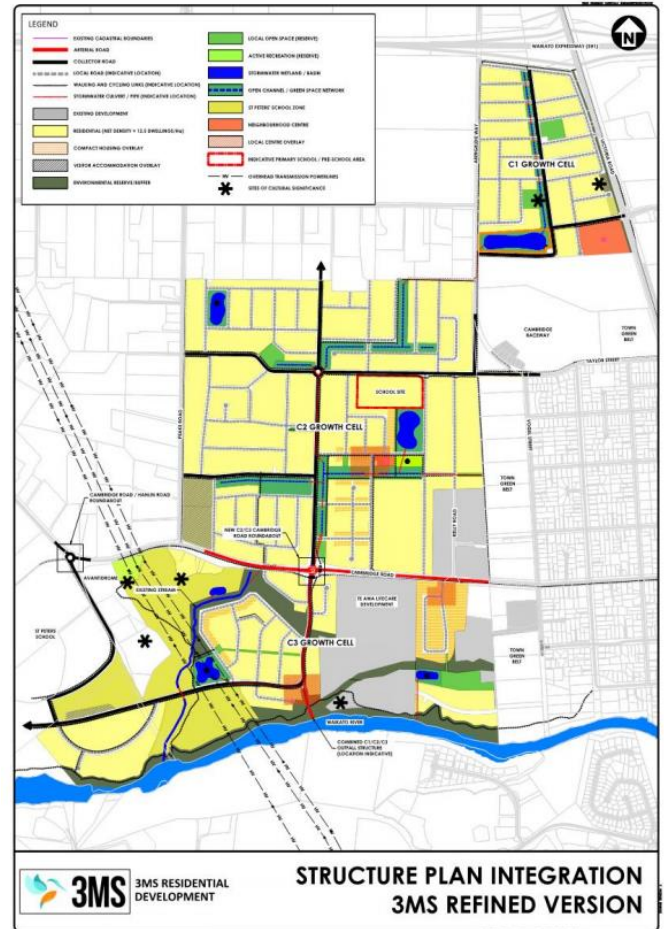


Figure 3 Refined Integrated Structure Plan by applicant (reproduced from Figure 3 of evidence of Mr McCaffrey dated 11 May 2021).

4.72 Mr Riley concludes in his assessment that “I consider that the 3Ms proposal will place significant restrictions on the flexibility of land owners to the west to develop their land in a manner that achieves Structure Plan outcomes”¹⁵. Mr Riley then concludes:

“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.”

¹⁵ Appendix 8 to the section 42A Council report – page 16

- 4.73 This support is couched on the basis of proposed condition 3 and the reasons set out by Mr Riley and Mr Batchelor.
- 4.74 Mr Mackie provides in his evidence to the hearing 'Indicative Perimeter Development' plans for those adjacent properties at 59 Racecourse Road, 409 Grasslands Drive, 1835 Cambridge Road and 1835A Cambridge Road, showing how those properties could be designed to achieve the urban design outcomes sought by the WDP and Appendix S19. Plan SK006 shows the 'Proposed Scheme Structure Plan Integration and Indicative Perimeter Development'¹⁶.
- 4.75 In relation to the adjoining properties to the west of the applicant's site Mr Mackie (paragraph 64) states "*...my view is that the land could be successfully developed. This will depend on what is proposed for the land, as building typologies do inform urban layout, especially when higher densities and smaller sites are being considered. At the same time, I believe that the underlying structure planning to the west will also need significant refinement to achieve a well-integrated outcome. This was always going to be the case due to the fragmented nature of the land holdings in that part of the C2 growth cell.*"
- 4.76 S19.1.2 of the WDP states:
- "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.*
- 4.77 Appendix 4 to the Section 42A report makes the following statements:
- "The application does however significantly vary from the structure plan layout applied to the site (see Figure 35 of the application below) in terms of the size, location and nature of the proposed recreation reserve, and the adjoining land use and roading and stormwater networks. The application only includes a 5,151m² neighbourhood reserve (lot 501) rather than a 4-5ha active reserve. This active reserve was intended to provide playing fields and a cricket oval adjoining the proposed school site and commercial centre which in addition to contributing to meeting the demand for sports field playing hours, would have also enabled the creation of a large central high quality open space with destination playground, large specimen trees and off*

¹⁶ Evidence of Mr Stuart Mackie dated 11 May 2021, plan SK006 at page 22.

road shared tracks that would have acted as a community hub and events space for the C1, C2, C3 and C7 growth cells. Other key differences to the wider open space network (including streetscape and stormwater reserves) are movement of the proposed north-south drainage reserve connections providing for a continuous shared path network and the north-south collector road to the west of the 3Ms site and the creation of a large central stormwater reserve.”¹⁷

- 4.78 In considering the assessments available to me, it appears that the majority of outcomes sought in Appendix S19 of the WDP can be met by an alternative layout such as that shown in 3Ms alternative proposed structure plan. However the effects on development of land external to the applicant's site may be adverse and unanticipated by the Appendix S19 Structure Plan. In this regard I agree with the assessments undertaken by Richard Bax/Tony Coutts (Development Engineering), Matt Riley (Urban Design) and Anna McElrea (Open Space) for Council provided as appendices 6, 7 and 8 to the section 42A report for the reasons set out further in my evidence.
- 4.79 Mr Batchelor in his section 42A report (section 7.4.4) states *“Departures from the framework are acceptable subject to demonstration that the overall outcomes of Appendix S19 can be achieved, particularly the overarching goal of integrated development”*. This is a broad sweeping conclusion, which requires closer assessment of Appendix S19.

Deviations from the Structure Plan

- 4.80 Paragraph 3.10 of the section 42A report set out the differences between the C2 structure plan and application structure plan proposed in the application.
- 4.81 I agree with Mr Batchelor's assessment that: *“Essentially the proposal is changing the structure of a locality that was established through a plan change process. This indicates that a change to the outcome of that may also require a plan change process if these matters cannot be resolved.”¹⁸*
- 4.82 The section 42A report sets out at paragraph 3.4:
- “The proposal includes variations from the C2 structure plan a portion of which it occupies. The more significant of these are removal of a central sports field, relocation of a stormwater reserve and walk and cycle ways and a collector road off the site onto adjacent land, relocation of the C2 community centre east from a central location within the structure plan to a central location within the application site.”*

¹⁷ Appendix 4 to section 42A Officer's report – Council Reserves Report, Anna McElrea, 21 April 2021 - page 4.

¹⁸ Paragraph 9.4.10 of the section 42A report

- 4.83 The AEE and the evidence of Mr Chrisp provide a more thorough analysis of the changes, with an overall conclusion that the application is in "general accordancy" with the structure plan.
- 4.84 The application is not required to be the "same as" the C2 structure plan in the WDP. The requirement is that it be in "general accordancy with" the structure plan.
- 4.85 Mr Chrisp states that the illustrative alternative "Structure Plans" show one possible alternative layout of the C1 and C2/C3 Growth Cells, and therefore demonstrate that the 3Ms proposal does not frustrate the achievement of the outcomes the Structure Plan seeks to achieve. In my opinion there is no certainty that the illustrative alternative structure plans will be achieved, or when the various components will be achieved, as Council and other landowners within the C2 structure plan are not seeking to develop in accordancy with these alternatives.
- 4.86 If the Hearing Panel is persuaded that the application is in general accordancy with the structure plan then this creates a precedent for development not only elsewhere in the C2 structure plan but also other Deferred Zones and growth areas within the Waipa District under the WDP. This is covered further in my evidence. The term in 'general accordancy' is not defined in the plan, but components of the structure plan are described within Appendix S19.
- 4.87 I am familiar with the structure planning approaches for the rezoning of greenfield sites. I have prepared a draft section 32 report for Tauranga City Council for intended rezoning of 740ha of Rural zoned land at Te Tumu (Papamoa East) to a mix of residential, commercial, employment and open space land uses. I have also been involved in the structure planning to rezone Rural land at Tauriko West on the outskirts of Tauranga City adjacent to State Highway 29 and the Wairoa River.
- 4.88 The approach to both Te Tumu and Tauriko West is to negotiate funding agreements with the landowners as part of the structure planning process. Internal roading and stormwater reserves are agreed and proposed to be included in zoning map accompanying these plan changes. This is a move away from the traditional approach of including a structure plan in the Tauranga City Plan.
- 4.89 In my experience it is not common for the location or alignment of key collector roads to be shifted to other landowners once they are part of an agreed structure plan in an operative plan. I accept that minor re-alignment does occur when development of individual land holdings move into the resource consenting and construction phases. The principal reasons for doing so are for urban design or geotechnical reasons. I do note however that Mr Chrisp in his evidence gives an example in the

C1 growth cell where Waipa District Council is seeking to purchase land and realign a collector road¹⁹.

4.90 The relocation of the collector road and stormwater reserves within the C2 growth area is not in my opinion a minor realignment. The application must consider the off-site effects of seeking to relocate these strategic assets as well as the on-site effects. In particular the integration of future development across the C2 growth area in a manner that meets the visions, objectives and outcomes set out in Appendix S19 of the WDP.

4.91 In this regard S19.5.2.2 states: "Collector Roads, as shown on the Structure Plans and within Figure 13: C1 and C2/C3 Movement Network, are **generally fixed in location**, subject to the outcomes of detailed design." (*emphasis added in bold*)

4.92 In my opinion this provides specificity to the higher level requirement "in general accordance with the structure plan" set out in Rule 15.4.2.69, by comparison with local roads and other transportation infrastructure, which are stated in S19.5.2.3 as "indicative in terms of their location".

4.93 Among other matters, S19.5.3.2 records:

"The following outcomes have been established for the Structure Plan to help guide future development:

(a) A road network based on a modified grid structure – supporting Cambridge's established gridsystem and supporting connectivity.

(b) A range of transportation choices provided with priority given to walking, cycling and a future provision of public transport.

(c) Integration of transportation and land use planning.

(d) Vehicle, pedestrian and cycling safety promoted through design – with streets designed as public spaces where pedestrians feel safe.

4.94 Without having any agreements or designations in place for the collector road and stormwater reserves outside of the applicant's site, I can not see how it is possible to grant subdivision consent.

4.95 Mr Batchelor in his section 42A report has grappled with this same issue. He identifies the matters requiring resolution as follows²⁰:

i. Assure the north/south collector road and stormwater reserve corridors shown in the application are able to be physically and legally established either within the site or outside the site but remaining within the C2 structure plan.

¹⁹ Evidence of Mr Mark Chrisp dated 11 May 2021 – paragraph 108(a)

²⁰ Paragraph 15.4

- ii. *Assure separation effects potential that Stage 2 along the western and northern boundaries of the site presents are avoided.*
- iii. *Assurance the sports fields removed from the site are being re-established either within the site or within the wider C2 structure plan.*
- iv. *Matters related to the location of community centre are comparatively minor in the wider scheme of things. This might however be improved. Description of how this might be addressed has been provided in Section 10.4 of this report.*

4.96 In my opinion there is considerable uncertainty which arises as key considerations and environmental effects, across the wider C2/C3 growth cell.

4.97 Mr Batchelor further sets out his consideration as to how conditions can be used to provide for these matters to be resolved either prior to or after a decision is made to facilitate finding consent is appropriate. At paragraph 15.6 of his section 42A report he concludes:

"The expected outcome from these options would be replacement of the sports fields and replacement of the north/south stormwater and collector road corridor on the site or an alternative site being provided. Both matters would benefit from time being provided to achieve these outcomes and the applicant and Council continuing to work with each other, a matter the commissioners may have powers to facilitate."

4.98 Mr Batchelor then gives his reasons including in paragraph 15.6(x):

"Removing the stormwater and collector road network from the site and not providing mitigation for this by providing an alternative site for the infrastructure is presenting effects to the whole locality reliant on it to facilitate its development for residential purposes. This effect is significant and requires mitigation by provision of an alternative practicable option. If this is not provided, the proposed subdivision is contrary to the policy applied to development of the locality for residential purposes and is having effects that are not being mitigated and may be determined to be more than minor if not significant due to the extent they will be experienced."

4.99 As referred to in the Plan Change 7 hearings documents and correspondence between the applicant and Council on this application, there are benefits to the 3MS land being in Stage 1 of the C2/C3 Growth Cell and being in one ownership to enable land acquisition more readily than dealing with multiple landowners.

4.100 Initial WDC staff feedback under 'Transportation'²¹ noted the following:

"I have concerns about the position of the roundabout moving. The collector road is now through multiple properties, making the land acquisition process a more

²¹ Appendix I to the AEE [Application - Appendix I - 3MS response to WDC feedback \(waipadcc.govt.nz\)](https://www.waipadcc.govt.nz)

strenuous task and creating a piecemeal approach to its construction. Many other developers could likely assess the new road as not economically viable to develop, given how much land yield is now required from their smaller sites. Will also see in future applications many ITA's saying the effects of their smaller development don't trigger its construction and use this area as a precedence not constructing."

- 4.101 Jeanette and Desmond Brough have outlined in their submission and attachments²², the development plans prepared for a Community Co-housing development. In looking at the C2 structure plan and the amended structure plan by 3MS, the application will severely impact on the delivery of this project.
- 4.102 For guidance as to how much scope for variation a "generally in accordance" prescription enables, the decision of the Environment Court in *Cooke v Auckland City Council* ([1996] 2 ELRNZ 271) has some relevance. The Court determined the phrase "generally in accordance" enabled alterations to plans that were not "material". In determining whether a possible variation is within scope (or conversely comprises a material variation), regard should be had to:
- (a) Whether the variation would contravene a district rule that would not be contravened by the unvaried proposal;
 - (b) Whether it would contravene a district rule to an extent greater than the unvaried proposal; or
 - (c) Whether it would have greater adverse effects on the environment than the unvaried proposal.
- 4.103 It is my opinion that the 3MS application will have adverse effects on the environment greater than the operative C2 Structure Plan for the reasons given earlier in my evidence.

5 OTHER DEVELOPMENT CONSIDERATIONS

Development within Growth Cells

- 5.1 Appendix S1 – Future Growth Cells to the WDP, provides tables and maps on the location and extent of each of the growth cells. The C1 and C2/C3 growth cells are shown in the Cambridge Growth Map with a broad timing of 'anticipated now to 2035'. This timing for the release of each growth cell is based on growth projections within the Waipa 2050 District Growth Strategy.

²² "Our plans for the site have been based on the current Waipa District Council Structure Plan and the position of the main collector road and infrastructure in that plan. Notwithstanding the effect that moving the infrastructure would have on the land (requiring more than half of it), this would also put a significant obstacle in the path of our joint development plans."

5.2 The table headed “Cambridge Residential Growth Cells – anticipated now to 2035’ is reproduced below. In relation to development within the C2 and C3 growth cells it states: “*development shall be undertaken in accordance with the relevant structure plan*”. This gives a greater expectation that the C2 structure plan will be adhered to, but does not override Rule 15.4.2.69.

Cambridge Residential Growth Cells – anticipated now to 2035

GROWTH CELL	LAND AREA	OVERVIEW AND CAPACITY
Cambridge North	87ha	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> This is a residential growth cell, with the potential for a commercial neighbourhood centre. Development shall be undertaken in accordance with the relevant structure plan contained within this District Plan. The growth cell has a dwelling capacity of approximately 528 dwellings.
C2 and C3	284ha	<ul style="list-style-type: none"> 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. Development shall be undertaken in accordance with the relevant structure plan contained within this District Plan. The growth cell has a dwelling capacity of approximately 3400 dwellings.
C4	66ha	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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.

The above growth cells make provision for 536 hectares of residential land with a dwelling capacity of approximately 5900 dwellings.

5.3 The process to uplift the Deferred zone over the subject site is described in the section 42A report. S19.1.6.1 of the WDP sets this out as follows:

“Deferred zonings can be uplifted to the zoning depicted in the Structure Plan once the triggers or requirements of the Structure Plan have been met. If the identified Structure Plan triggers or requirements have been met, this uplifting process can occur via Council resolution, not via a standard Schedule 1 Plan Change process.”

5.4 My understanding from the applicant's AEE and the evidence of Mr Chrisp is that agreement on the collector roads and stormwater reserves set out in the C2 structure plan has not been able to be reached between the applicant and Council. This appears to be the driver for the subdivision proposal, whereby the applicant is seeking to undertake residential development prior to the uplifting of the Deferred Zone.

5.5 The C2 structure Plan was made operative on 24 April 2019 through Plan Change 7 and following the involvement of affected and interested parties. Mr Chrisp in his evidence²³ records that 3MS were extensively involved in the structure planning for Plan Change 7, which is borne out in the decisions report and evidence to that plan change.

²³ Evidence of Mr Mark Chrisp dated 11 May 2021, paragraph 42

- 5.6 It is therefore reasonable to assume that the current structure plan, which is not years old, was the structure plan that 3MS sought to adhere to and which other landowners could reasonably be expected to rely upon.
- 5.7 The adjoining landowners to the 3MS land acknowledge in their submissions to the proposal that their land will be zoned from Rural land uses to Residential land uses through Proposed Plan Change 13. In effect confirming the intent of the Deferred zoning within the C2 structure plan area. For some landowners, they seek to continue to operate within the equine hub that the Waipa District Plan refers, for others they may take the opportunity to develop their land.
- 5.8 The current zoning and the land uses within the C2 structure plan area at present are rural or rural lifestyle land uses. The fragmentation of rural land within parts of the C2 structure plan area are able to be addressed in future through integrated development in accordance with the approved Structure Plan, and if necessary amalgamation of land holdings.

6 RESOURCE CONSENT CONDITIONS

- 6.1 If it is assumed that one of the 'gateway tests' in section 104 is able to be met by the proposal, then that simply allows Council to consider whether the application should be granted resource consent as a non-complying activity.
- 6.2 As is common practice the section 42A officer's report sets out proposed conditions of consent, should resource consent be granted. This normally occurs regardless of whether the recommendation is to grant or decline consent.
- 6.3 Mr Chrisp in his evidence, provides an alternative set of proposed consent conditions. I do not seek to debate which set should be preferred and expect the applicant and Mr Batchelor will present at the hearing in this regard.
- 6.4 Instead, I wish to focus on the conclusions in the section 42A report, which seek an Augier type condition offered by the applicant to resolve the collector road and stormwater reserve corridor issues. Mr Chrisp is quite clear in his evidence that the applicant does not offer an Augier condition. His preferred consent conditions do not contain any equivalent of proposed condition 3 set out in the section 42A report.
- 6.5 The recommended conditions by Mr Batchelor include proposed condition 3, repeated below:

"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."

- 6.6 Mr Batchelor includes an authors note "THIS CONDITION (3) IS RECOMMENDED AS A VOLUNTEERED CONDITION, AND THE RECOMMENDATION GRANTING CONSENT IS SUBJECT TO THIS CONDITION (OR ALTERNATIVE SOLUTIONS HAVING THE SAME EFFECT) BEING PROVIDED BY THE APPLICANT".
- 6.7 I do not necessarily agree with Mr Chrisp that without being offered by the applicant, this condition cannot be included. If it is not legally able to be included then in the absence of any agreement between the applicant and Council, the application in my opinion, must be declined.
- 6.8 Section 108AA allows for conditions to be imposed on the following basis:
- (1) *A consent authority must not include a condition in a resource consent for an activity unless—*
 - (a) *the applicant for the resource consent agrees to the condition; or*
 - (b) *the condition is directly connected to 1 or both of the following:*
 - (i) *an adverse effect of the activity on the environment;*
 - (ii) *an applicable district or regional rule, or a national environmental standard; or*
 - (c) *the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent*
- 6.9 In my opinion there are adverse environmental effects to other landowners due to the uncertainty created by not meeting the requirements of the C2 structure plan and the application does not meet the requirements of Rule 15.4.2.69 of the WDP.

7 EFFECTS

Precedent Effect

- 7.1 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.

Actual and Potential Environmental Effects

- 7.2 I agree with the assessment that adverse effects of the proposal will, with two exceptions, be no more than minor. This is a reflection of the zoning intentions for the site, and the way the applicant has responded to the design guidance for the C2 structure plan area.
- 7.3 The two exceptions are transportation effects and effects outside of the 3MS site of the revised alternative structure plan, or another similar layout, upon which the

application relies. These 'offsite' effects include the ability for current landowners to realise their own development plans and existing use of the land, including for equine purposes. The WDP does not require them to develop in the immediate future, and two of the submitters seek to continue to operate their existing rural businesses.

7.4 Mr Batchelor in considering the actual and potential effects states:

"I consider the proposal will or is likely to have adverse effects on the environment that are considered less than minor, minor and more than minor. Those effects which are considered to be more than minor are integration of infrastructure and landuse, structure plan, urban form, transportation effects and stormwater effects. However I consider that these effects can potentially be mitigated to an acceptable level subject to appropriate conditions of consent should consent be granted."

7.5 His assessment that the actual and potential effects of the proposal are minor and that the proposal therefore passes the first test of s104D(1)(a) of the RMA, is prefaced by the conditions of consent and reliance on proposed condition 3. It is my opinion that proposed condition 3 can not be relied upon and that the actual and potential effects are more than minor and are unacceptable.

7.6 I agree with Mr Batchelor²⁴ that the variations from the C2 structure plan presenting effects not otherwise expected from the residential development in accordance with the structure plan are:

- (a) relocation of the north/south stormwater reserve and collector road to adjacent land;
- (b) removal of the sports fields from the site; and
- (c) variations in layout including roading and location of community facilities.

7.7 It is the actual and potential effects of the first matter (a) that the application is unable to remedy or mitigate, because they are not provided for.

7.8 The AEE states that the proposal will result in a minor spatial departure from the Structure Plan. The relocation of the north-south collector road corridor, stormwater reserve corridors are in my opinion significant departures from what was approved through Plan Change 7 in March 2019. The relocation of the local centre and sportsfield can be considered minor departures, in that they are still located with the 3MS land and of a similar size and location.

7.9 The AEE at pages 74 and 75 set out where the applicant's alternative layout differs from the C1 and C2/C3 Structure plan and notes where it is the same. The AEE lists those parts of the structure that "are the same" which are proposed to be amended as a consequence of the application. The AEE further states: *"The only notable*

²⁴ Paragraph 9.4.4 of Council section 42A report

difference between the Structure Plan and the 3Ms alternative layout is that the north / south stormwater swale and the collector road will need to be moved to the west." I consider that all the differences listed in the AEE are notable, but agree that the significant departure is with the north-south collector road corridor, and stormwater reserve corridors.

8 CONCLUSION

- 8.1 The application for subdivision is a non-complying activity under the WDP. Non-complying activities are required to pass at least one of two 'gateway' tests before it is possible for the consent authority to consider granting consent to the proposal. The two "gateway" tests are:
- the adverse effects of the activity will be minor; and/or
 - the application is for an activity that will not be contrary to the objectives and policies of the District Plan.
- 8.2 Whether the second "gateway" test is met or not is more nuanced and finely balanced, in my opinion.
- 8.3 If it is considered that the "not contrary to objectives and policies" gateway is passed, the application then can be considered on its merits, with the considerations set out in section 104 of the Act. Those considerations include, consideration of Part 2 of the Act, and having regard to the Waikato Regional Policy Statement.
- 8.4 Given the lack of certainty as to where the north-south collector road and stormwater reserve corridors will be located, I have also considered the subdivision could exclude the north-south collector road and stormwater reserve corridors along the western boundary of the site. Without the application being amended, the Hearing Panel has no ability to partially grant the application or to amend the application in this regard.
- 8.5 Any conditions of consent for the subdivision application by 3MS must require "specificity, clarity and accuracy of expression leading to certain measure of certainty, before it can be enforceable."²⁵
- 8.6 While resource consent could be granted for the subdivision as sought by the applicant, with the suggested condition 3 imposed, this effectively renders the consent unimplementable for the foreseeable future. It is therefore better practice in my opinion to decline the application for the reasons set out in my evidence and in paragraphs 9.15 of the section 42A report, including:

²⁵ Ferguson v Far North District Council 1998 NZRMA

- Certainty of location and agreement with relevant landowners on infrastructure needed through sale and purchase agreement for land.
- The existing structure plan provides for the least number of owners for Council to deal with.
- Certainty and cost effectiveness have not been adequately addressed and are relevant environmental effects.
- The proposal would forego the opportunity for the C2 structure plan to be implemented.
- Council has not acquired any of the stormwater reserve or collector road corridors. A sub-standard outcome could arise, due to the uncertainty as to how the rest of the structure plan area will be realised.

A handwritten signature in black ink, appearing to be 'DJP', with a long horizontal line extending to the right.

David Jonathan Dominic Phizacklea

18 May 2021