
Thursday, 20 February 2020

Te Hui o Te Kaunihera ā-Rohe o Heretaunga

Hastings District Council

Commissioner Hearing Meeting

Kaupapataka

Decision Agenda

(Jara Family Trust)

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TE KAUNIHERA Ā-ROHE O HERETAUNGA

Thursday, 20 February 2020

Te Hui o Te Kaunihera ā-Rohe o Heretaunga
Hastings District Council: Commissioner Hearing

Item 2

Te Rārangi Take

Report to Commissioner Hearing

Nā:
From: Christine Hilton, Democracy and Governance Advisor

Te Take:
Subject: Decision from Commissioner hearing - Jara Family Trust

1.0 PURPOSE AND SUMMARY - TE KAUPAPA ME TE WHAKARĀPOPOTOTANGA

- 1.1 The purpose of this report is to have a means to put the Commissioner Decision from the Jara Family Trust Hearing, held on 20 February 2020, onto the website following completion of the hearing and release of the decision.

2.0 RECOMMENDATIONS - NGĀ TŪTOHUNGA

That the Commissioner Decision from the Jara Family Trust hearing on 20 February 2020 be put onto the website so it can be viewed by members of the public.

Attachments:

[A](#) Signed Commissioner Decision (including scheme plan) for Jara Family Trust hearing held on 20 February 2020 54413#0217

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

AND

An application to the Hastings District
Council for resource consent by Jara
Family Trust to establish seasonal
workers accommodation and
associated establishment work in
respect of properties legally
described as Lot 4 DP 542005
(formerly Lot 1 DP 13268) (**Lot 4**) and
Pt Section 24 Block XV HSD (**Section
24**) and Section 66 SO Plan 438108
(**Section 66**) (currently held in one
record of title) located at 62 Irongate
Road East and 97 York Road, Hastings

AND

An application to the Hastings District
Council to cancel an amalgamation
condition in full pursuant to Section
241(3) of the Act in respect of Section
24 and Section 66 (currently held in
one record of title).

1. APPLICATION

An application for resource consent had been made by the applicant (Jara Family Trust) to undertake a two-lot subdivision of a property located at 97 York Road and amalgamate the southern Lot 2 created with land at 62 Irongate Road (9 Maultsaid Place). The access will be via a bridge over the Irongate Stream and across Lot 2, and via other rights of way to Maultsaid Place.

The proposal also involves the establishment of Seasonal Workers Accommodation (SWA) for up to 150 persons, including establishment of associated buildings for this activity including sleeping, ablution, kitchen / dining facilities, managers unit and volleyball courts. Servicing for the proposal is proposed to be either by way of on-site methods or via public reticulation.

During the course of proceedings, the applicant withdrew the subdivision components of the application and applied under s243(1) of the Act for cancellation of an amalgamation condition, being condition 2 of subdivision consent RMA20160138

which currently requires Section 24 and Section 66 to be held together. The Applicant also volunteered a condition precedent on the land use consent which would have the effect of amalgamating Lot 4 and Section 66 through a covenant in gross requiring the land to be held together, which would occur prior to implementation of the land use consent. Prior to registration of the covenant the applicant would be required to obtain a single record of title for the whole of Lot 4 and Section 66.

2. SUBJECT SITE

The location of the proposal involves two sites and they are described as follows in the s42A report and appendices¹.

"97 York Road

This is a large production parcel of land, with orchard uses, trees and existing dwelling. Access to this parcel is off York Road. The parcel adjoins a marginal strip 20m wide to the south and beyond this is the Irongate Stream.

To the west of the rear portion of this land is the State Highway.

To the east of the site is other Plains Production zoned land in production use including pasture.

The south-easternmost part of the site adjoins esplanade reserve on the northern side of the Irongate Stream.

62 Irongate Road

This land is currently in paddock, with buildings to the front of the site. The site is subject to two consented Industrial lot subdivisions, one for a two lots from the parcel, and one for 4 lots from the parcel.

The site adjoins a marginal strip to the northern boundary and beyond that Irongate Stream.

To the west is land currently in production use, but currently with a resource consent being processed for Industrial lot subdivision.

To the south is fairly recently subdivided Industrial land that has access off Maultsaid Place.

The land has an established 15m right of way easement from Maultsaid Place to the eastern side of the parcel. However, it is unformed. There is a consent notice requiring the formation of the right of way.

The land is generally flat, and forms part of an emerging Industrial area, the change being symbolised by road upgrading along Irongate Road, established Maultsaid Place and industrial activities on land to the east of the site".

¹ S42A Report – Appendix B

3. SITE LOCALITY-OTHER RESOURCE CONSENTS

The s42A report describes that in the locality of the subject site, various resource consents that have been granted for seasonal workers accommodation in the General Industrial Zone, and the detail of these have been described in section 2.3 of that report.

4. APPOINTMENT

I was appointed by the Hastings District Council ("the Council") as an Independent Hearings Commissioner ("Commissioner") in terms of s34A of the Resource Management Act 1991 (the Act) to hear the applicant, and the Council's reporting officer and to make a decision on the application. It is noted that there were no submissions in respect of the proposal.

Following amendment of the application to include the application under s241(3) for cancellation of the amalgamation condition, I obtained confirmation that my appointment extends to include consideration and determination of that application and that I have delegated authority to do so. This confirmation was contained in legal advice the Council received from Ms Asher Davidson dated 13 March 2020.

The information available to me prior to the hearing included the application, assessment of environmental effects ("AEE") report and other information; pre-circulated expert evidence; and a s42A report prepared by the Council's reporting officer, Ms Rebecca Jarman.

5. HEARING

The hearing was held in the Landmarks Room, Hastings District Council offices on Thursday 20 February 2020.

Appearances were from:

Applicant

- Mr Matthew Lawson- Counsel
- Mr John Roil- Applicant (Jara Family Trust)
- Mr Matthew Holder- Consultant Planner
- Ms Rebecca Blunden- Counsel, T & G Global Ltd
- Mr Maurice Windle- Labour Manager, T & G Global Ltd

Council

- Ms Rebecca Jarman- S42A Reporting Officer
- Mr Caleb Sutton- Team Leader Environmental Consents/Subdivision
- Mr Murray Arnold- Environmental Consents Manager
- Mrs Christine Hilton- Democracy and Governance Adviser

6. ADJOURNMENT & CLOSURE

I adjourned the hearing on 20 February 2020 to allow the applicant to provide an amended plan and amended conditions given the applicant had withdrawn the subdivision application part of the proposal at the hearing, and any further relevant information to the Council, and for subsequent assessment of that information by the Council. This included a revised s42A report (addendum), comments on the amended plan and covering note, and comments on the applicant's draft amended conditions, highlighting both points of agreement and disagreement.

Advice from LINZ was also sought by the Council on the amended proposal and the proposed amalgamation condition. No advice has yet been received.

I subsequently obtained independent legal advice from Mary Hill of Cooney Lees Morgan, Tauranga, in relation to the amended application and particularly the proposal to cancel the existing amalgamation condition and the volunteered condition precedent on the land use consent effectively amalgamating Lot 4 and Section 66.²

The hearing was formally closed on the 11 August 2020.

7. SITE VISIT

I conducted a site visit prior to the hearing on 20 February 2020. I was accompanied by Mr Dave Bishop of Hastings District Council, who was not involved in any reporting capacity to the hearing.

After the hearing, I also undertook a site visit to 291 Springfield Road which both Mr Lawson and Mr Roil suggested I undertake to look at the site of a seasonal workers accommodation proposal. No parties were present, and I viewed the site from the public road.

² Letter from Cooney Lees Morgan dated 11 August 2020.

8. STATUTORY & DISTRICT PLAN PROVISIONS CONSIDERED

In considering the application, I have had regard to the matters to be considered as set out in sections 104 and 104C of the Act, recognising the status of the land use activity as a restricted discretionary activity. The Act provides for such activities to be granted or refused by the consent authority and in the event that the consent is granted, then conditions may be attached to the consent.

In respect of activity status, I have considered alternative opinions on this matter. Ms Jarman in her addendum s42A report dated 13 March 2020, expressed the view that given the amalgamation condition under section 241 (3) of the RMA, it required assessment as a change of conditions under section 127 of the RMA and therefore was to be considered as a discretionary activity. It is noted that putting that issue aside, the proposal failed to meet District Plan standards for seasonal workers accommodation and when considering that matter alone it fell to be considered as a restricted discretionary activity.

Ms Davidson was also of the opinion that the proposal be considered as a discretionary activity, given her advice that a change in conditions was required under section 127 of the RMA.

Mr Lawson held a different opinion to this and believed that the matter should be considered as a restricted discretionary activity as it was not considered appropriate that section 127 be applied to this matter, and that what the applicant had requested, was for the Council to exercise its powers under section 241(3) to cancel the current amalgamation condition. Mr Lawson³ noted that section 241(3) does not cross-reference any procedure found elsewhere in the RMA and that other provisions should not be imported to provide a framework for consideration of the section 241(3) request.

Ms Hill in her advice was of a similar view and that it was not appropriate to utilise the provisions of section 127 of the RMA to assess the cancellation of the amalgamation condition. This is further discussed in section 13 of this decision.

I have after considering the various legal opinions on this particular matter, concluded that it is appropriate to consider the section 241(3) request without reference to section 127 provisions to assess the request.

I have considered and applied s241(3) in relation to the application to cancel the amalgamation condition.

³ Lawson Reply Submissions- Paras 16 & 17

Given the discussion on this matter, I have assessed the proposal as a restricted discretionary activity.

The proposal fails to comply with standards relating to seasonal workers accommodation primarily Rule 6.2.6K(1) as the proposal exceeds the maximum gross floor area for such accommodation, which is 125m² and exceeds the total building coverage for the site which is limited to 1500m², being Rule 6.2.5.J. Section 6.2.8 and 27.1.7 contain relevant assessment criteria.

I wish to note that even if my conclusion is considered to be incorrect in respect of activity status, I am of the view that the proposal generally aligns with the policy and objective framework of the District Plan and could appropriately be granted consent as a discretionary activity. This is particularly so given the proposal is provided for by the District Plan provisions.

9. LIMITED NOTIFICATION AND SUBMISSIONS

The proposal was subject to limited notification on 11 November 2020 such notification being made to Department of Conservation; JK & LM Hammond; Hastings District Council as esplanade reserve owner; and Heretaunga Tamatea Settlement Trust. No submissions were received. I also note that no affected party consents were received in respect of the application.

10. PRINCIPAL MATTERS FOR CONSIDERATION

The principal issues that were highlighted for consideration included:

- Effects on Plains Production/ Versatile Soils
- Visual Amenity and Character
- Public Access
- Traffic Parking and Access Effects
- Natural Hazards
- Cumulative Effects
- Cultural Effects
- Positive Effects
- Other Matters related to proposal/ subject site
- Amalgamation of land parcels

11. SUMMARY OF EVIDENCE

The following summary is not intended to be a full coverage of all matters raised at the hearing but rather to cover the main points that were presented. Relevant parts of the evidence presented by the parties are referred to in the Main Findings below

where that evidence forms a component of the findings by me in deciding the application.

- **Applicant**

Mr Lawson highlighted the main points in his submissions, including the soil types on the land and how the location of the Irongate Stream and associated marginal strips affected the use of the site/extent of planting.

Mr Lawson made the point that the application did not involve a subdivision, but rather involved de-amalgamation and re-amalgamation of land. There was no intention to divide Lot 66, and this would be transferred in its entirety. In contrast to a subdivision process, there were no resultant additional titles or added development rights arising from this proposal.

Mr Lawson advised that the applicant proposed to use land that was not highly productive/planted for seasonal workers' accommodation which was integral to plains production activity.

Mr Lawson advised that no work was proposed at all in relation to the bed of the Irongate Stream and that there would be provision of a bridge to provide access. He advised that the application was for a land use consent only.

Mr Lawson confirmed that prior to construction of the "expressway", this land was part of an area on the other side of that roadway and accessible from Stock Road and that it was a severance from that original land.

Mr Lawson addressed various the aspects of the proposal including what made the subject site and proposal situation unique; referred to Policies PPP3 and PPP5 and compared the current plan provisions to those proposed as part of the Variation 7 "Seasonal Workers Accommodation".

Mr Roil presented displayed and addressed a power point presentation and circulated a site plan and development layout plan. He *outlined* key elements of the proposal; the work he had done with the pip-fruit industry on a modular system for RSE worker accommodation; and the model he had developed to meet fire code and noise regulations.

He outlined that T & G Global would undertake management of the facility.

Mr Roil suggested that I undertake a visit to view a site at 291 Springfield Road, which had been shown in the power point slides which had seasonal workers accommodation on land that had been in production.

Mr Holder spoke to his pre-circulated evidence and highlighted various matters. Some of the points Mr Holder addressed included the unique situation regarding the site and alternate locations considered; use of this site would protect more valuable plains land; proximity to transport routes which was required needed and given proposal was not considered to be a subdivision, then it was not contrary to District Plan objectives and policies.

Ms R Blunden and Mr M Windle outlined T & G Global support for the proposal.

Ms Blunden circulated and read a statement outlining that T & G Global was very reliant on RSE workers for 3 to 6 months each year; and purpose- built accommodation was preferred over dwellings or motels.

They were looking for larger blocks to accommodate more workers, preferably out of town with access to transport routes. She noted that larger blocks enabled the best management practices to be set up, this aspect being T & G's responsibility.

It was also noted MBIE guidelines needed to be met.

- **Council**

Ms Jarman spoke to her s42A report and recommended conditions as well as addressing some of the issues that had arisen as part of evidence presented at the hearing. She referred to the issue of subdivision, explaining there had been discussions between the parties regarding how this type of application could work, the technical issues involved and what mechanisms could be utilised.

Ms Jarman advised that an application would need to be made to the council regarding de-amalgamation rather than that being a purely administrative process. If this was granted, the next step was to apply to the Registrar of Lands to check that a separate title can be issued in accordance with 226(e). She felt the issuance of a certificate in this situation may be a complicated process due to factors such as access and the smaller site size not meeting plan requirements.

Ms Jarman reiterated the difference of opinion between the applicant and officers regarding whether or not this proposal involved a subdivision. If a section 241 determination needed to be made, it was suggested that I may need to consider legal

advice as to whether or not I had the scope to make such a determination on this application.

Consideration needed to be given as to whether this was a land use consent involving de-amalgamation; it was suggested that the Right-of-Way needed to be addressed under section 247 by way of a separate Local Government Act process; and the process involved if parcels were to then be amalgamated. Split zoning was also referred to and the effect of the marginal strip and width of the stream.

Ms Jarman disagreed with the evidence and felt that Lot 2 would have additional development rights. Given site coverage issues, any development on Lot 2 would need consent regardless.

She concluded that she still supported the recommendation in her report to decline the application.

Subsequently Ms Jarman provided a supplementary s42A report given the range of matters that arose at the hearing including the withdrawal of the subdivision elements of the proposal. That report also contained legal advice from Matthew Casey QC (Asher Davidson) that confirmed I had jurisdiction to consider and determine a request under section 241 (3) of the RMA regarding the amalgamation matters and that a condition requiring that Sec 66 and Lot 4 be held together can be imposed.

Notwithstanding the amended application and supplementary information provided, Ms Jarman was still of the opinion that the application be declined for the reasons outlined in her supplementary report.

- **Applicant's Right of reply**

Mr Lawson then undertook a partial oral reply on the basis that the hearing would be adjourned in order for the Commissioner to receive the additional information as agreed.

Mr Lawson did not believe that section 226 was relevant as the proposal did not involve a subdivision or an additional title with associated additional development rights. He noted that regarding the scheme plan, the inclusion of old/existing legal descriptions would assist me. A covering note would be included to formally amend the application and withdraw the subdivision component. An updated Form 9 addressing the section 241 RMA proposal (de-amalgamation/re-amalgamation) (including amended conditions under a section 241 scenario) would be forwarded to the Council.

Mr Lawson advised that the difference between the proposal and Variation 7 was the scale demanded by the horticultural industry, with T & G currently managing workers on 19 different sites.

Subsequently I was provided with the Mr Lawson's written reply submissions on 1 April 2020.

In the submissions Mr Lawson submitted that extensively that the proposal did not fall within the definition of 'subdivision'. He noted that the applicant has requested is for the Council to exercise its powers under section 241(3) to cancel or modify an amalgamation condition and to impose a new amalgamation condition requiring amalgamation of section 66 with a different title.

He further submitted that any reference or consideration of section 127 was not appropriate as it does not apply and outlined reasons why that was the case.

Mr Lawson stated that the request pursuant to section 241(3) to cancel the existing amalgamation condition and replace with another amalgamation condition, was made on an "Augier" basis. This allows the imposition of conditions of consent that may not be considered appropriate on a resource management basis to be imposed with the agreement of an applicant.

He highlighted that in respect of precedent and plan integrity matters, the proposal was for seasonal workers accommodation which is an activity envisaged and promoted by the District Plan. The applicant proposes to utilise land for the proposal that through unusual circumstances has been created. He noted that in his long time in practice that he has never made an application pursuant to sections 240 or 241 of the RMA. Mr Lawson also outlined that no evidence of the Council likely to be inundated with similar types of applications that includes the unusual land title arrangements, that relate to the proposal.

He concluded that the Council has not provided any rational basis for refusing to exercise powers under section 241 of the RMA. He further agreed that I had the necessary delegated authority to determine the request.

- **Adjournment**

At the conclusion of Mr Lawson's partial reply, I adjourned the hearing to allow the parties to provide the following information by the agreed dates, which were determined at the hearing:

❖ Information to be provided by Friday, 28 February 2020

The Applicant to provide to Council (and to also be forwarded to the Commissioner at that time):

- An amended plan including legal descriptions – clarification of the scheme plan, including any old/existing legal descriptions that can help clarify.
- A covering note that formally amends the application and withdraws the subdivision component.
- Suggested amended conditions.
- Amended legal submissions to focus on the issues addressed.
- An updated Form 9 addressing the section 241 RMA proposal (de-amalgamation/re-amalgamation).

The Applicant's reply had been reserved at this stage and I requested that it be provided in writing.

❖ Information to be provided by Friday, 6 March 2020

The Council is to provide (to the applicant and to the Commissioner):

- A revised s42A report (addendum comments would be acceptable).
- Comments on the applicant's amended plan and associated covering note.
- Comments on the applicant's proposed amended conditions (and highlighting the points of agreement and disagreement between the two parties) and that a joint set of draft conditions be provided.

I noted that I would then consider all of the information provided and will also work through the legal issues of whether I can deal with the section 241 RMA proposal. As noted, I have obtained independent legal advice on this issue, which has given consideration to both the opinion from Ms Davidson and the written reply by counsel for the Applicant.

I advised that a decision would be made by me in due course, as to whether to reconvene the hearing or make a decision on the papers.

After considering the information provided to me, I determined that I would not need to reconvene the hearing and proceed to consider and determine the application based on the information before me.

12. MAIN FINDINGS

The main findings that have led to this decision are as below. They, along with the reasons for the decision, have been reached after considering the application details, the submissions, the evidence presented at the hearing and the section 42a report and addendum from the reporting planner, together with the legal advice. Further consideration has been given to all the relevant statutory and planning provisions, the principal issues that were in contention and the details gathered from my visit to the site and locality.

Effects on Plains Production/ Versatile Soil

The District Plan provides for seasonal workers accommodation as a permitted activity in the Plains Production Zone and that if certain standards are not met, it would require consideration as a restricted discretionary activity.

The proposed activity is clearly envisaged to support plains production activities. In respect of the proposal, it is to consist of relocatable buildings and the land resource can be used for other activities if the use ceased. In addition, it is considered that the subject site is unsuitable for intensive production⁴. I have no expert evidence to the contrary

Having regard to these matters both Ms Jarman and Mr Holder consider that the proposal would have a no more than minor adverse effect on the versatile land resource.

I concur with the analysis and conclusions reached by the planning experts on this matter.

Visual Amenity and Character

Ms Jarman⁵ concluded that given the low- profile nature of the buildings proposed and their separation from other uses, that there would be a no more than minor wider adverse effect on visual amenity and character.

She considered however that some landscaping to provide softening, visual screening and buffering of the proposal would assist in minimising the hard appearance of the buildings so they more effectively fit into the general location.

⁴ AGFIRST Soil Report- Paras 1 & 4

⁵ S42A Report Para 2.15

The preparation of a landscape plan by a suitably qualified landscape professional and its subsequent implementation is considered appropriate to address visual amenity concerns.

I further noted that Mr Lawson in his opening submissions with the recommended conditions regarding this matter.

Having considered the matters highlighted by Ms Jarman and Mr Lawson, I conclude that any visual and character effects of the proposal are no more than minor with the requirement for a landscape plan and its associated implementation. I further note that there were no submissions from any of the property owners/occupiers subject to the limited notification process.

Public Access

I was advised that to ensure that public access is secured along the marginal strip with the construction of the bridge, an easement mechanism to secure access and the public would still be able to pass by the bridge and /or use the bridge.

Given specific design details have yet to be provided, details of the earthworks, driveway and bridge are to be provided to the Council to ensure that public access is provided including an appropriate design that provides for sufficient pedestrian grade along each side of the Marginal Strip for any use along the side of the stream.

The reporting officer⁶ outlined that it is a matter for the Department of Conservation as owners of the Marginal Strip, regrading who manages and maintains the bridge and whose asset it becomes, and who will be entitled to utilise the bridge.

Traffic, Parking and Access Effects

The s42A report highlighted various issues that with appropriate conditions of consent, can be adequately addressed and any effects mitigated. The roading network can cater for the additional traffic arising from the proposal.

Detailed plans are required in respect of the access to the site, parking, footpaths, and bridge to ensure that the final design of these matters is appropriate.

I do note that the Council has recommended that the shared movement lane (driveway) within 9 Maultsaid Place be a minimum of 6 metres in width to provide for two- way movement of vehicles and shared use with cyclists and pedestrians. It is also

⁶ S42A Report- Para 2.26

a width that is consistent with the movement lane requirements for industrial access outlined in the District Plan.

The Council's Development Engineer considered a one- way bridge that provided for a clear movement lane of no less than 3 metres in width was appropriate.

I concur with the reporting officer that the access, footpath, parking, and bridge be established prior to the use of the proposal for seasonal workers accommodation.

Natural Hazards

It is considered that flooding and liquefaction are the primary potential hazards in respect of the subject site where the proposal is to be located as referenced in the s42A report⁷.

In respect of potential liquefaction, it is a matter that can be appropriately addressed at the time building consent applications are made.

Flooding effects relate to the effects of potential flooding on the proposal and any flooding effects in respect of the proposed bridge.

The proposed accommodation complex is to be located within an area subject to flooding as noted in the s42A report.⁸ The buildings are to be placed on piles above flood levels to protect them from flooding. I note that at the time of building consent applications, the flood level across the site would need to be established so relevant minimum floor levels can be imposed as part of any building consent approval process.

Given the flooding potential although considered 'very low in frequency'⁹ that any moveable features be located outside of any floodable area.

The bridge design is subject to Regional Council resource consent and it is considered that matters relating to bridge design and any impact on flooding will be considered as part of that process.

I note that the Council's Development Engineer has advised¹⁰ that any change to flooding parameters would likely be minimal and unlikely to detrimentally impact on surrounding land and uses.

⁷ S42A Report – Paras 2.42 & 2.43

⁸ S42A Report -Paras 2.46 & 2.47

⁹ S42A Report -Para 2.51

¹⁰ S42A Report- Para 2.45

The reporting officer has recommended that an emergency flooding management plan be prepared for the complex and be in place at all times to ensure there are sufficient measures for the safety of people on the site during a flood event. This could be part of the site management plan.

In conclusion it is considered that flooding events pose a very low risk in frequency and any effects given it is a relocatable complex, and with emergency measures in place, are considered to be no more than minor.

Reverse Sensitivity

While there may be potential sensitivity from surrounding activities such as industrial activity to the south, State Highway traffic noise, and rural activities occurring on land to the north of the proposal, it is considered that there would be only minor potential effects on the SWA as a result of its surrounding environment and inherent activity.

It would be unusual for neighbouring rural activity in this area to have noise impacting on sleeping of seasonal workers during the night- time as outlined in the s42A report¹¹.

I was advised that the proposed Hastings District Plan does not consider Seasonal Workers Accommodation to be a noise sensitive activity in the rural area, and as such it is not considered necessary for any special acoustic insulation measures for the buildings to be imposed.

I noted that the applicant had offered a 'no-complaints' condition on the consent in respect of reverse sensitivity and I consider it is appropriate to take up this offer and impose such as a condition of consent. The condition would acknowledge on an on-going basis, the neighbouring industrial activity uses and rural environment surrounding the subject site.

Cultural Effects

The s42A report noted that given the localised nature of the proposed works associated with the proposal and that consideration of matters associated with the proposed bridge and stream works by the Regional Council, that any potential adverse cultural effects would be no more than minor.

In addition, it is considered that an accidental discovery protocol be imposed to ensure that any discovery due to earthworks and site work is appropriately managed.

¹¹ S42A Report- para 2.53

Cumulative Effects

I noted that Ms Jarman had highlighted the issue of cumulative effects particularly in respect of the traffic network but would be addressed if the proposal is undertaken in accord with the proposed consent conditions relating to such matters.

No further discussion in my view is required on cumulative effects.

Positive Effects

The proposal will provide accommodation for seasonal workers which is beneficial to support the regions horticultural industry.

Other Matters

- Earthworks

The proposed buildings are to be located on piles and therefore any earthworks are to be limited. The applicant has proposed that erosion and sediment controls be imposed by way of consent conditions.

It is considered appropriate that any cut and fill arising from the proposal be accommodated on the subject site hence minimising any removal of topsoil from the Plains Production zone.

I note that the subject site is within an area subject to flooding from the Irongate Stream and therefore any earthworks and associated design should be of a nature so as not to effect of impact on other land beyond the subject site.

It is noted that any works relating to the propose bridge and within the Irongate Stream are subject to consents from the Hawkes Bay Regional Council (HBRC). The applicant would need to obtain these additional consents which will include consideration of the earthworks and erosion and sediment control measures in respect of the stream network and the impact on flooding.

It is considered appropriate that a condition be imposed to ensure that all HBRC consents are obtained prior to any works associated with the proposal, and will ensure that any effects of the bridge works and any effects in respect of the Irongate Stream are addressed by the regional consenting process.

The reporting officer in her s42A report ¹² recommended that an earthworks plan and erosion and sediment control information be provided prior to the commencement of works associated with the proposal, and I concur with that approach.

-Noise Effects from Proposal

It is noted that there are noise sensitive activities in proximity to the proposal being residential uses at 59 and 97 York Road and 13 Maultsaid Place. I was advised that the proposal will comply with the relevant District Plan noise standards.

The applicant has proposed that the accommodation complex would be managed by an on-site manager. The reporting officer had outlined that a site management plan be prepared and submitted to the Council. It was also recommended that a review condition be also imposed so the adequacy of the plan can be reviewed on an on-going basis so that any noise effects are appropriately controlled.

-Temporary Construction Effects

It is considered that the imposition of conditions related to construction activities can appropriately addressed through the imposition of conditions.

-Servicing Effects

It is proposed that wastewater be discharged on site and this would require compliance with the relevant Hawkes bay Regional Council requirements.

The provision of water supply would be by on-site means such as on- site storage tanks to utilise rainwater runoff from roofs.

The Council has recommended that a condition be imposed to ensure that provision is made to provide for firefighting water supply in accordance with the relevant NZ Fire Service Code of Practice.

-Security

The proposed Site Management Plan will include a code of conduct for workers including expected behaviours and a manager will reside on site to ensure the management plan is enforced. Such plans also include measures regading visitors and that no visitors are allowed to stay at the facility.

¹² S42A Report- Para 2.33

-Adjacent Properties

The reporting officer has observed¹³ that in her opinion that those in the vicinity would be able to reasonably undertake permitted and consented activities on their land without unreasonable levels of adverse effects provided the recommended conditions of consent are imposed.

It is noted that the owners / occupiers of 97 York Road are subject to a sale and purchase agreement for the disposal of Lot 2 in respect of the proposal and therefore it is considered that they are supportive of the proposal.

Notwithstanding this situation I consider that the proposal with associated landscaping and the site management plans, and consents obtained from HBRC, that any effects would be no more than minor in respect of the use of this site.

There will be potential change to the visual quality and use of the esplanade reserve area although the reporting officer observed that public use of the reserve was currently low to negligible. The function of the esplanade reserve currently is as a riparian edge to the stream. The proposed bridge works are the key potential impact to the reserve but provided public access past the bridge remains available to provide access to the esplanade reserve and that Regional Council consent to the proposed bridge / stream works is obtained, then it is considered that any adverse effects on the esplanade would be no more than minor.

Matters related to flooding have been discussed in the natural hazards section of this decision.

I was advised that the owners / occupiers of 59 York Road had not made a submission on the application. Any adverse effects of the proposal on this property are considered to be limited, with large open paddocks between the subject proposal and the dwelling on the site. It is noted that the dwelling has outdoor living orientation generally to the north away from the site.

Having regard to conditions relating to landscaping, screening, and management plans in respect of the proposal, it is considered that any adverse effects in respect of this neighbouring site to be reasonable and no more than minor. The current use of the land is able to be maintained which is sheep grazing.

¹³ S42A Report- Paras 2.69-73

13. AMALGAMATION CONDITION

The applicant at the hearing amended the proposal and withdrew the subdivision component of it. The applicant through Mr Lawson outlined that what is now applied for is the cancellation of an amalgamation condition and the grant of land-use consent for seasonal workers accommodation, subject to an amalgamation condition.

The applicant has made a request pursuant to section 241(3) of the RMA to cancel an amalgamation condition, and in conjunction with a land-use application, have offered a replacement amalgamation condition to be secured on a new certificate of title by a covenant in gross.

This would effectively require Section 66 SO 438108 to be held in the same title as Lot4 DP 542005. This condition was offered on an Augier basis and is proposed as a condition precedent which would ensure that the new title is issued and the covenant in gross registered prior to the land use consent being implemented.

I note that in the legal opinion¹⁴ sought by the Council, Ms Davidson had concluded that such a condition could be imposed but that care needed to be exercised in its wording.

Essentially the condition would be a 'condition precedent' and that it would need to be satisfied to allow the land-use consent to be given effect to. If it could not be, then the applicant would not be able to exercise any land-use consent if granted and that would be the end of the matter unless the applicant applied separately for a subdivision consent as originally proposed.

I note the reporting officers' concerns regarding the potential cancellation of the amalgamation condition and implications for other land that is subject to division as a result of public works or for special purposes. She noted that the proposal could create an "adverse precedent" in allowing a severance area that would unlikely have been approved under normal resource management processes to be separated off in a way that is a departure from the policy direction of the Plains Production zone.

While I understand the concerns expressed, the subject site does not have any identified value for productive purposes. This is supported by the AGFIRST soil report and previously referenced in this decision.

¹⁴ Asher Davidson 13 March 2020- Para 27

Looking at the matter from a slightly different angle, the proposal will support permitted activity in the Plains Production zone through the provision of seasonal workers accommodation. The proposal is clearly supported by Turners and Growers and the evidence adduced from Ms Blunden and Mr Windle, outlined the need for such accommodation. While the arrangement regarding cancellation of an amalgamation condition to sever one property and amalgamation with a different property by way of a volunteered condition on a land use consent, are probably somewhat unusual, it does allow for a title to be available for the seasonal workers accommodation.

The situation is somewhat unusual but given that productive land is not being utilised and noting that seasonal workers accommodation can be located on actual productive land in the Plains Production zone,, I am satisfied that the particular circumstances relating to this proposal warrant consent being granted. I do re-iterate that in my opinion, the circumstances relating to the proposal and land title arrangements are different from what is generally likely to occur, and while I do not necessarily use the word unique, the circumstances that have given rise to the land title situation and it coinciding with land that has little productive value, does result in a situation that is unlikely to be replicated so as to create a precedent or becomes common practice to apply.

I note that the Plains Production zone provisions do not exclude productive land being used for seasonal workers accommodation, and Mr Lawson referred me to instances where such productive land had so been used.

I am also satisfied that the proposal provides for the sustainable management of the land resource through the re-arrangement of amalgamation conditions to allow for the creation of a title to facilitate the establishment and use of seasonal workers accommodation to support Plains Production zone activities, for which there was a demonstrable need.

I have obtained independent legal advice from Mary Hill which affirms the view of both counsel for the applicant and counsel advising the reporting officer that I have jurisdiction under the amended application to determine the request to cancel the existing amalgamation condition and to impose a condition on the land use consent if granted along the lines offered by the applicant, which would ensure that the land use consent could not be implemented unless and until a new single title is issued for the whole of Lot 4 and Lot 66 subject to a covenant in gross requiring the land to be held together.

Ms Hill's advice is that the application under s241(3) for cancellation of the amalgamation condition does not require assessment as a discretionary activity under s127 of the Act. Rather, it would require the application of the principles of administrative law relating to statutory decision making which require reasonableness, taking in account relevant matters (and not taking account of irrelevant matters) and procedural fairness. The latter requirement requires a clearly reasoned decision. I have set out my reasons for my decision to grant the application to cancel the amalgamation condition above. They are related to my approval of the land use consent subject to the volunteered amalgamation condition.

14. PERMITTED BASELINE

It is not considered appropriate to apply the 'permitted baseline given the nature of the application and the need for the amalgamation of land parcels to occur to give effect to the proposal.

15. DISTRICT PLAN OBJECTIVES AND POLICIES

- **Variation 7**

I was advised that Variation 7 had been publicly notified after lodgement of the proposal. The variation seeks to introduce amendments to the Plains production Zone provisions related to seasonal worker accommodation including imposing an 80-person limit on accommodation. However, Mr Lawson¹⁵ noted that the activity status would still be a restricted discretionary activity notwithstanding the 80- person limit was exceeded.

He further outlined that hearings in respect of the variation had just been held (prior to this hearing) and no decisions on submissions had been issued by the Council.

Given the stage of development of variation 7, I have given consideration to it but have accorded it little weight in respect of the proposed size limit that the variation proposes. I also note that the conclusion of both Mr Holder and Ms Jarman that the proposal did not give rise to any environmental effects that were greater than minor, and that the applicant through Mr Lawson's opening submissions agreed with the draft consent conditions.

¹⁵ Opening Submissions-Lawson Para 55

- **Operative District Plan**

Both Ms Jarman and Mr Holder provided through the s42A report and expert evidence, an extensive analysis of District Plan objectives and policies. It is not intended to repeat that analysis, but it was helpful in my gaining an understanding of the relevant policies and objectives and considering how the proposal either aligns or is in conflict with such. It is relevant to note that extensive parts of the respective assessments no longer have relevance given the subdivision elements of the proposal have been withdrawn.

Bearing the above in mind, Ms Jarman concluded while noting that the effects of the proposal were considered to be no more than minor, considered that the proposal was contrary to some policies and objectives and in particular those relating to urban boundaries and that it had the potential to create incremental creep of urban land use and development in the rural area and would result in ad hoc urban development.

I do not agree with this conclusion. The proposal happens to adjoin the industrial area and because it may gain access through that area, does not mean it is an expansion of the urban area. The proposal could be located in its current location if a different title situation existed and where access is achieved does not necessarily contribute to ad hoc urban development. The proposal is subject to specific consent and the buildings are required to be relocatable.

In addition, the proposal does not reduce the flexibility for the subject site for use as versatile land, given that if the use ceased, the buildings would need to be relocated. These provisions apply to all seasonal workers accommodation proposals that are permitted as of right or through a consent process. The District Plan provisions make this very clear.

The proposal in my opinion aligns and is supported by the District Plan framework for seasonal workers accommodation. It involves somewhat unique or rare characteristics in terms of how the subject land tile arrangements were created. The subject site is not considered suitable for highly primary productive purposes and provides for accommodation to support Plains Production Zone activities.

The land title arrangements are unusual and such circumstances are unlikely to have widespread application, and the general intent of the policy direction of the District Plan is preserved and not compromised. If the land title matters relating to de-amalgamation and re-amalgamation are unable to be resolved as outlined in this decision, then the resource consent is unable to be implemented.

16. NATIONAL POLICY STATEMENTS AND ENVIRONMENTAL STANDARDS

- **National Environmental Standards**

I was advised that no consents were required in respect of the NESCS and that there were no contamination matters requiring consideration.

It was noted in the s42A report that there was unlikely to be any conflict with the NES for Sources of Human Drinking Water and Mr Lawson concurred with that conclusion.

- **National Policy Statement- NPS-UDC**

As noted by both the applicant and the reporting officer, the subject property is located partially in urban and rural environments. While the proposed amalgamation arrangements will result in the property having different zonings, I am of the view that given the high level direction provided by the NPS which has a focus on ensuring there is adequate land supply for both residential and business purposes, that the proposal is not in conflict with it.

It is noted that seasonal workers accommodation is provided for in both the rural and urban environments and does not compromise the intent of the NPS to provide for a planned and co-ordinated approach to development.

- **National Policy Statement for Freshwater Management 2014**

The responsibility for matters relating to stormwater and wastewater discharge to ground and stream works rests with the Hawkes Bay Regional Council. Provided all relevant consents are obtained from that Council or any relevant permitted standards for these activities are met, then no further consideration of this NPS is considered necessary. I did not receive any advice to the contrary.

17. HAWKES BAY REGIONAL POLICY STATEMENT

The s42A report provided a comprehensive analysis of the RPS. I noted that the applicant's AEE did not contain an assessment of the RPS or the RRMP.

In considering Ms Jarman's assessment, I broadly concur with the conclusions reached. However, I do not agree that the proposal creates an unjustifiable fragmentation of versatile land. She noted that the AGFIRST report limited its' consideration to Sec 66 SO431108 and did not consider the whole of 97 York Road as an existing site and economic unit.

Notwithstanding this situation, the proposal utilises land that is not used or considered appropriate for primary production purposes apart from some limited pastoral use.

Also, the proposal is utilising land that is not in primary production whereas seasonal workers accommodation can be located on sites that have versatile soils and can result in the removal of such land from primary production activity.

Therefore, it would seem appropriate for the subject site to be utilised for an activity such as seasonal workers accommodation that supports primary production in the Plains Production zone.

Ms Jarman noted that the proposal would create urban creep outside of urban boundaries by severing land from a larger economic unit zoned for rural purposes and merging with industrial zoned land, whether this creates 'urban creep' is a moot point. While there may be title arrangements that traverse zone boundaries, this in itself is not an unusual situation. Zone boundaries do not always neatly follow land title boundaries as a number of factors including topography and soil type can give rise to such differentiation.

I do not see that a particular title arrangement gives rise to the concerns highlighted by the reporting officer.

Overall, with the imposition of consent conditions, I consider that the proposal can be considered consistent with the provisions of the RPS.

18. OTHER MATTERS

Heretaunga Plains Urban Development Strategy (HPUDS)

HPUDS is a long term, integrated land use and infrastructure strategy that guides growth and development in respect of the Heretaunga Plains. It is implemented through the Regional Policy Statement and District Plans. Given the high-level nature of the strategy and that it is reflected in statutory documents, any direct relevance to the proposal is limited.

As previously noted, I do not consider that the proposal offends the planning frameworks that are in place, given that seasonal workers accommodation is provided for, and that there are no effects greater than minor in respect of the proposal.

19. PART 2 MATTERS: RMA

Section 5 of the Act defines sustainable management as *"managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while -*

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment".*

Case law¹⁶ has clarified that there is no need to resort to consideration of Part 2 matters where a plan has been competently prepared as it would not add anything to the evaluative exercise.

The reporting officer referenced further case law¹⁷ being *Stone v Hastings District Council* where the Environment Court held that the Hastings Proposed District Plan *"has a coherent set of policies designed to achieve clear environmental outcomes. ... Further, the PDP has only recently been made operative and we understand there to be no challenge to the competency of the plan."*

Ms Jarman had undertaken an evaluation as variation 7 had only been recently notified and noted that given it was in the early stages of the RMA process, little weight can be given to it.

She had concluded that any adverse effects of the proposal on the environment would be minor and that any localised effects can be adequately addressed through consent conditions. I concur with this conclusion and am of the opinion that the proposal provides for the sustainable management of natural and physical resources as it provides for a use to support primary production activities in the Plains Production zone, utilises land other than that containing versatile soils, and any effects can be adequately mitigate or addressed by conditions of consent.

Section 6 sets out matters of national importance. I was advised that there were no such matters relevant to this application and I concur with that advice. Any issues

¹⁶ RJ Davidson v Marlborough District Council [2018] 3 NZLR 283

¹⁷ S42A Report- Para 9.2

relating to access along the Irongate Stream, can be addressed through consent conditions to ensure access is provided around the proposed bridge.

Section 7 sets out a range of other matters that a consent authority needs to have regard to and such matters of relevance to this application are the efficient use of natural and physical resources, maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment. The proposal is in general accord with the policy and objective framework of the District Plan and that any effects are no more than minor, and with the imposition of consent conditions, the proposal provides for the efficient use of the land resource given its limitations for intensive primary production and does not compromise amenity values or the quality of the environment.

No issues in relation to Maori were put before me in my consideration of Part 2 matters.

Overall, and in exercising a broad judgment, I conclude that proposal is consistent with the purpose and principles of the Act and can be granted consent.

20. CONDITIONS PRECEDENT

I have reached a decision to grant the application to cancel the amalgamation condition, and the land use application subject to a condition precedent that requires the amalgamation of Lot 4 and Section 66 to occur prior to implementation of the land use consent. This is necessary to provide for an appropriate land title arrangement. This would need to be put in place to enable the resource consent to be given effect.

If it is not undertaken or possible to achieve, then the applicant will be unable to implement the consent. This is a risk the applicant takes and has indicated through Counsel, one that he understands and acknowledges.

Ms Hill's advice confirms that conditions precedent are an appropriate mechanism to ensure that important pre-conditions which require the input of third parties and are therefore outside of the control of the consent holder are met prior to implementation of a consented activity. I have made some adjustments to the proposed condition wording which reflect Ms Hill's advice. I agree with Ms Hill that these amendments are matters of form rather than substance and are therefore consistent with the condition offered by the applicant so that the *Augier* principle would apply.

21. CONCLUSIONS

In my opinion the proposal is worthy of being granted as it will provide for seasonal workers accommodation for which there is a demonstrated need and can occur without any effects on the environment more than minor.

The proposal does require however as a condition precedent, for de-amalgamation and re-amalgamation conditions to be met before the consent can be given effect. This is a matter that the applicant will need to resolve.

The relevant assessment criteria for restricted discretionary activities have been adequately addressed in respect of the proposal and the conclusions reached that any effects on the environment are considered to be no more than minor. Section 12 of this decision considers any effects including the matters to be taken into account in respect of the relevant assessment criteria.

Overall, I consider that the proposal does not offend the overall policy and objective framework of the District Plan.

Given its purpose which is to provide for seasonal workers accommodation, which the District Plan supports; it will not result in urban creep across the industrial zone boundary into the Plains Production Zone given its specific nature and being subject to resource consent; and is not inconsistent with higher order planning instruments such as the Regional Policy Statement.

22. DECISION

Part 1: Application to cancel amalgamation condition

Pursuant to Section 241(3) of the Resource Management Act 1991, the Hastings District Council hereby cancels in full condition 2 of subdivision consent RMA20160138 which is shown on the record of title for Part Section 24 and Section 66 and will prepare and forward to the Registrar General of Land a certificate signed by the territorial authority to the effect that the condition has been cancelled in whole to enable the Registrar to note the records accordingly.

Part 2: Grant of Land Use Consent

(The land use consent can only be implemented if the conditions precedent, are fully complied with)

That pursuant to Sections 104, 104B and 108 of the Resource Management Act 1991, the Hastings District Council grants consent to Jara Family Trust to establish seasonal workers accommodation and associated establishment work in respect of

properties legally described as Lot 4 DP 542005 (formerly Lot 1 DP 13268); and Section 66 SO Plan 438108 (currently held in one record of title); located at 62 Irongate Road East and 97 York Road, Hastings; subject to the following conditions:

1. **Conditions precedent to implementation of consent**

Prior to any works commencing pursuant to this consent, the consent holder shall:

(a) obtain a single record of title (**New Title**) for the whole of the land currently comprised in two separate parcels of land being legally described as Section 66 SO Plan 438108, and Lot 4 DP 542005; and

(b) register on the New Title a land covenant in gross in favour of the Hastings District Council covenanting that the land formerly comprised in Section 66 SO Plan 438108 shall not be dealt with separately from the land comprised in Lot 4 DP 542005 and restricting the issue of separate certificates of title for each of those land parcels without the prior written consent of the Hastings District Council.

This condition was volunteered by the consent holder in accordance with the principle in *Augier v Secretary of State for the Environment* (1978) and the consent holder agrees to be bound by it.

General

2. That the development/facility is restricted to seasonal workers accommodation only, and shall be undertaken accordance with the plans and information submitted in the application and further information provided as amended at the hearing (HDC Ref: PID 54413), Resource Consent: RMA20190203, unless otherwise altered by the consent conditions. This includes that all buildings shall be a minimum of 15m from any site boundary (including boundary with the marginal strip).

The total number of people utilising the accommodation at any one time shall not exceed 150 people.

Site Details

3. A detailed Site Layout Plan, including access shall be provided to the satisfaction of Council's Environmental Consents Manager (or nominee) showing:
- The location of all buildings located more than 15 metres from the boundaries of section 66 (including the boundary with the marginal strip)
 - The extent of all buildings, hard-surfacing and sealed areas on the site
 - 18 car parking spaces meeting the minimum PDHP parking dimensions, with associated on-site manoeuvring area
 - A 1.5-metre wide footpath within the access right of way over 11 Maultsaid Place
 - Formation of a shared driveway and all parking and on-site

- manoeuvring
- Location of outdoor washing lines
- Location of rubbish storage areas
- Location of wastewater and stormwater disposal fields location of water supply/tanks and fire-fighting water supply

Certification by a suitably qualified surveyor shall support this information certifying that the location of boundaries, are accurately represented in relation to the proposed features.

The proposal shall be undertaken in accordance with the details submitted in accordance with the above condition.

4. Fire- fighting water supply and facilities and access shall be installed and be fully operational prior to the first occupation of the SWA buildings, all in accordance with the requirements of the New Zealand Fire service Code of Practice SNZ PAS 4509:2008

Advice Note: Building regulations may require fire safety measures also.

5. That the proposed rights of way from Maultsaid Place shall be constructed in accordance with the Hastings District Council Engineering Code of Practice 2011, to the satisfaction of the HDC Development Engineer (or nominee), and this shall be completed prior to first use and occupation of the Seasonal Workers Accommodation.
6. That the car parking area shown within the development site shall be permanently surfaced and marked out in accordance with the District Plan and the Hastings District Council Engineering Code of Practice 2011, to the satisfaction of the Hastings District Council Development Engineer (or nominee) prior to occupation of the facility, and includes 18 car parks as specified in the application.

Note: Compacted hardfill will be acceptable as a permanent surface for the car park in this case as the activity is a temporary/relocatable activity.

Building Design

7. That the accommodation and amenity units used for the Seasonal Workers Accommodation (including the site managers accommodation) shall be constructed so that they are relocatable and that upon cessation of the seasonal workers accommodation activity on site, these accommodation and amenity units shall be removed off site, and associated structures (such as volleyball courts and clothes lines) shall be dis-established and the site returned to pasture. This shall be undertaken to the satisfaction of Council's Environmental Consents Manager (or nominee)

Servicing

8. All wastewater and stormwater discharge from activities occurring from the SWA shall be discharged on-site, including the disposal field and any reserve field/s.

For completeness for this condition 'site' means land currently known as Sec 66 SO438108 and within the Plains Production Zone but entirely outside of the Marginal Strip

Note- Council as Asset Manager for public reticulation for wastewater disposal and for public stormwater disposal, has not agreed to accept discharge from the seasonal workers accommodation and on the Plains Production Zone in this case, into the public system. Therefore, alternative on-site methods need to be utilised.

9. Water supply for the SWA shall be provided by way of on-site methods on Sec 66.

For completeness for this condition 'site' means land currently known as Sec 66 SO438108 and within the Plains Production Zone but entirely outside of the Marginal Strip. For clarity, this means that the activity shall not utilise the water supply servicing the General Industrial (Irongate) zoned area.

Note- Council as Asset Manager for water supply has not agreed for public reticulated water supply to serve the seasonal workers accommodation. Therefore, the activity must be served via alternative water supply.

Site Management Plan

10. That a Site Management Plan (SMP) and associated Code of Conduct (CoC) for the activity be prepared and submitted to the satisfaction of Council's Environmental Consent's Manager, detailing the ways in which the proposed use will occur under specified requirements in accordance with the following objectives:
- A. Confirm the purpose of the SMP and CoC to ensure that all residents are accommodated in a comfortable, safe, and healthy environment during their stay, and that they comply with the CoC for the premises; and
 - B. Avoid or minimise any effects generated during the use of the site for SWA activities authorised by this resource consent; and
 - C. Provide clarity as to how the proposal is to be operated
 - D. The SMP shall contain, but shall not be limited to, the following sections:
 - i) Purpose and scope
 - ii) Site management methodology that is to be employed
 - iii) Contact details and responsibilities. This will include the 24-hour contact details for the resident on- site manager; on site signage displaying contact details, and any other contact information

- iv) Training and induction of staff
- v) Active monitoring and site/accommodation inspections/checks; and
- vi) Frequency and purpose of meetings; and
- vii) Code of conduct for all residents; and
- viii) The SMP plan and code of conduct shall include reference to the reverse sensitivity covenant required by condition 7 of this consent
- ix) Management of rubbish, and methods to ensure the site is kept in a tidy condition at all times
- x) Emergency management provisions in the event of a flooding event, including management of any property and safety of persons, including the ability to exit the site in a safe and timely manner.

The Seasonal Workers Accommodation activity authorised by this consent shall not occur until the SMP and associated Code of Conduct has been certified by the Council's Environmental Consents Manager (or nominee) as meeting the requirements of this condition.

The SWA activity on the site shall be undertaken in accordance with the SMP submitted in accordance with this condition to the satisfaction of the Council's Environmental Consents Manager (or nominee).

Reverse Sensitivity Covenant

11. That pursuant to section 108(2)(d) of the Resource Management Act 1991 the following land covenant shall be registered on the new Record of Title for the land containing the Seasonal workers Accommodation buildings, and also included in the Site Management Plan and Code of Conduct for the SWA, prior to occupation of the facility:

This site is located in the Plains Production zone and General Industrial Zone and may experience a lower level of amenity and higher noise levels than what could be experienced in residential or other zones.

Where land use activities in the surrounding area are carried out in accordance with the relevant District Plan requirements, the property owner, or their successor in title shall not:

Bring any proceedings for damages, negligence, nuisance, trespass, or interference arising from the use of that land: or Make nor lodge: nor be party to nor finance nor contribute to the cost of:

Any application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or

restrict the continuation of the operations of any industrial activity on surrounding land, including without limitation any action to require the surrounding landowners/occupiers to modify the industrial operations carried out on their land.

This covenant shall be prepared by the applicant's lawyer at the cost of the applicant. This covenant shall be approved by the Hastings District Council and registered against the relevant Record/s of Title, prior to this land use resource consent being exercised.

Landscaping/Screening

12.

- a) Prior to the commencement of any works in conjunction with this consent, the consent holder shall submit a detailed Landscape Design and Management Plan (LDMP) (the purpose being to have planting/landscaping to screen and buffer the SWA activity, and in particular from the State Highway, 59, 97 and 107 York Road, and 13 Maultsaid Place, and site amenity planting) prepared by a suitably qualified and experienced person and to be provided to the satisfaction of the Council's Environmental Consents Manager, including:
 - i) planting specifications detailing the specific planting species to achieve a mix of ground cover and specimen trees, suitable for the site and ground conditions
 - ii) the number of plants and their locations, heights, and sizes at time of planting
 - iii) confirmation that the location (distance from boundary) of the species at planting is appropriate for the species type and provision is made for sufficient space for ongoing maintenance and trimming from within the site, at the height specified
 - iv) details of the boundary fencing (existing and/ or proposed
 - v) details of the shelterbelt to be established along the State Highway side of the site
 - vi) details of the irrigation and ongoing watering requirements. This shall include permanent irrigation system being installed and regular watering
 - vii) compliance with standard 6.2.5H of the Hastings PDP relating to 'Shading of Land, Buildings and Roads' including particularly but not limited to:
 - viii) trees no less than 1.8 m in height at the time of planting along the full length of the boundary of Sec 66 SO 481108 with 59 York Road, to provide buffering and screening of the site activity from this neighbouring property
 - ix) planting and / or fencing to at least 1.8m in height to screen clothes- line areas and rubbish storage areas from surrounding sites
 - x) screening consisting of fencing and/ or planting to comply with Standard 6.2.5D(c) of the Hastings PDP whereby outdoor storage and parking areas shall be fully screened from adjacent residential activities
- Note- This includes residential activity at 107 and 97 York Road (proposed Pt Sec 24 Block XV Heretaunga SD), 59 York Road and 13 Maultsaid Place where there is a residential caretakers dwelling.
- b) The landscaping and screening shall be undertaken, planted and irrigation

installed in accordance with the details submitted in accordance with a) of this condition, prior to occupation of the SWA facility, and shall be maintained thereafter for the duration of the activity on the site.

For the purpose of this condition 'maintained', means the ongoing replacement of any dangerous, dead or dying matter, the replacement of any plants that are lost or otherwise defective, and the general preservation of the landscaping to a healthy standard.

Construction Noise

13. That during construction on site, noise levels shall comply with and measured in accordance with the New Zealand Standards NZS 6803: 1999 Acoustics – Construction Noise.

Note- Construction related earthworks (only for the SWA buildings and access areas including the bridge establishment works, and no other earthworks have been proposed as part of this consent)

Engineering

14. Pursuant to s348 LGA (rights of way approval) and to address earthworks management, the consent holder shall submit to Council, detailed engineering plans including earthworks plans, detailing the construction of the rights of way including the bridge and earthworks to be carried out, for approval by the Council's Development Engineer (or nominee), prior to any construction, including but not limited to the following:
- a) demonstrating consistency with any Regional Resource Consents for the proposal and/ or relevant permitted activity standards of the Hawkes bay Regional Resource Management Plan
 - b) Works being completed in accordance with the Engineering Code of Practice 2011
 - c) An erosion and sediment control plan prepared by an appropriately qualified person detailing how sediment and erosion controls will be carried out at the site in accordance with current engineering best practice. A statement shall be included with the plan stating the author's qualifications and experience in this area
 - d) Earthworks plan showing the areas of cut and fill and the volumes of each. This will include no removal of topsoil off site
 - e) Erosion and Sediment Control Plan
 - f) That no part of the earthworks involve filling taking place that will obstruct overland flow from higher ground/ upstream
 - g) The shared movement lane across Lot 4 DP 542005 to be no less than 6 m wide, and the movement lane across the Marginal Strips and Irongate Stream and within Section 66, no less than 3m in width. These movement lanes shall be formed and sealed with appropriate stormwater controls, excepting within Section 66 which shall as a minimum, have a metalled surface, given the

relocatable requirement and the rural area of the SWA activity.

All works shall be undertaken in accordance with the abovementioned approved plans. All works shall be completed to the satisfaction of the Council's Environmental Consents Manager (or nominee) prior to the first occupation and use of any building for the Seasonal Workers Accommodation.

15. That while construction earthworks are being undertaken and prior to re-vegetation, any areas of exposed earth shall be regularly dampened with water to ensure that no wind born dust is able to be deposited outside the property boundaries.
16. That all areas of construction earthworks shall be planted or re-grassed with a minimum cover of 90%. This applies to all areas where not otherwise covered by buildings, sealed areas, or hardstand. All undertaken to the satisfaction of the Council's Environmental Consents Manager (or nominee) within 3 months of the completion of the construction earthworks.
17. That a registered and professionally qualified Engineer shall certify that the sedimentation works have been designed and constructed in accordance with the approved design, prior to first occupation of the and use of any building for the Seasonal Workers Accommodation.

Accidental Discovery

- 18
 - a) If any archaeological features are uncovered on the site, works shall cease on site and the Council's Environmental Consents Manager and Heritage NZ Pouhere Taonga should be notified immediately. Works shall not commence again on the site, in whole or in part, unless otherwise agreed with the Council's Environmental Consents Manager.
 - b) Immediate steps shall be undertaken to secure the discovery site (tape it off) to ensure the archaeological remains are undisturbed and the site is safe in terms of health and safety requirements
 - c) If burials, human remains/ koiwi tangata are uncovered then the NZ Police and Iwi representatives of the area shall be contacted immediately and the area must be treated with discretion and respect and the koiwi tangata/ human remains dealt with according to law and tikanga
 - d) Works at the discovery site shall not recommence until an archaeological assessment has been made at the consent holders expense, all archaeological material has been dealt with appropriately, and statutory requirements met, and at a time agreed by the Council's Environmental Consents Manager

Monitoring

19. That a monitoring deposit of \$195 (including GST) shall be payable to cover the reasonable costs of monitoring compliance with the above condition in accordance with Council's schedule of charges.

In the event of noncompliance being detected by monitoring or justified complaint and /or the costs of monitoring consent exceeding the deposit, the costs to Council of any additional monitoring shall be paid by the consent holder in accordance with the Council's advertised schedule of fees.

Review Condition

20. The Council may serve notice on the consent holder of its intention to review the conditions of this resource consent six months after the commencement of this consent and within one month after the first anniversary of the commencement of this consent and within one month after each subsequent anniversary, for the following reasons;
- To review the effectiveness of the conditions of this resource consent in avoiding, remedying and mitigating any adverse effects on the environment from the consent holder's activity and , if considered appropriate by the consent authority, to deal with transportation effects by way of further or amended conditions, and may include additional measures for pedestrian safety and accessibility and additional on-site parking, signage and traffic calming measures; and deal with noise effects by way of other on-site measures.
 - To review the appropriateness of conditions in the light of relevant national standards, regulations and guidelines and the relevant district plan.
 - To impose additional, or modify existing conditions of consent relating, but not necessarily limited, to the matters specified above if the Environmental Consents manager (or nominee) considers it necessary to deal with any adverse effect on the environment which may arise from the exercise of this consent and which is appropriate to deal with at a later date.

Actual and reasonable costs associated with the undertaking of any review of conditions shall be borne by the consent holder.

The reasonable costs incurred by the consent authority in monitoring, supervision, and enforcement of any or all of the conditions of this consent shall be fully met by the consent holder pursuant to section 36 of the Resource Management Act 1991.

Rights of Way

21. Prior to the commencement of works associated with this consent, easements for Rights of way shall be registered for the benefit of sec 66 SO 438108 over the proposed access route from Maultsaid Place to serve Sec 66 SO 438108. This includes rights of way over areas:
- As shown on the 'Scheme Plan' prepared by Development Nous referenced Drawing Number H20190055-SO1 Revision 3 dated 27.2.2020 (HDC Reference 54413, and attached to this decision as Attachment 1) labelled:
 - 'E' across Lot 3 DP 524530 (RT 837394)
 - 'A', 'B' and 'C' over lot 3 DP 542005 (RT 911873 and
 - 'D' over Lot 4 DP 542005 (RT 911874) and:

- Additional Rights of Way over the marginal strip on the northern side of the Irongate Stream (and if necessary, the bed of the Irongate Stream)
22. Pursuant to Section 348 of the Local Government Act 1974, the Hastings District Council approves the granting of the Right of Way in favour of Section 66 SO 438108 over Lot 4 DP542005 (shown B on scheme plan) and the Marginal Strips abutting Lot 1 DP 498287 and Section 66 SO 438108 on both sides of the Irongate Stream, Lot 3 DP 542005 (RT 911873) (shown A, B, C on scheme plan), and Lot 3 DP 524530 (RT 837394) (shown E on scheme plan) as shown on Development Noun Plan H20190005-S001 Revision 3 attached (HDC Ref: 54413#0209)

Advice Notes:

1. To avoid doubt, except as otherwise allowed by this resource consent, all land uses must comply with all remaining standards and terms of the relevant Hastings District Plan. The proposal must also comply with the Building Act 2004, Conservation Act, Engineering Code of Practice and Hawke's Bay Regional Plans. All necessary consents and permits shall be obtained prior to development. This includes all necessary consents and approvals associated with the construction of the proposed Bridge across the Irongate stream.
2. Under section 125 of the Resource Management Act 1991 a resource consent will lapse if not given effect to within 5 years of the date the consent was granted unless an extension is authorised under section 125(1A) (b).

Reasons for granting consent are outlined in the decision report but can be summarised as follows:

1. *That there are no effects on the environment that are greater than minor and that conditions of consent ensure that any effects are mitigated, remedied, or avoided.*
2. *The proposal provides for the efficient use and development of the existing land resource that is not utilised or suitable for intensive primary production activities, and that the provision of seasonal workers accommodation is provided for by the District Plan to support primary production activities.*
3. *The proposal is consistent when taking an overall broad consideration, with the policy and objective framework of the District Plan and in particular those applying to the Primary Production Zone and seasonal workers accommodation.*
4. *That matters relating to the land title arrangements will need to be resolved to enable this consent to be given effect to and the conditions precedent provide for this to occur.*
5. *The proposal meets the various statutory provisions to be given regard in terms of the Resource Management Act 1991.*

6. *The proposal is generally consistent with the purpose and principles of the Resource Management Act 1991.*

Reasons for granting the application under s241(3) of the RMA to cancel the amalgamation condition are outlined in this decision report but can be summarised as follows:

1. *When taken together with the new amalgamation condition, the de-amalgamation will support activity in the Plains Production zone by allowing an area of land to be owned and managed together to allow for the provision of seasonal workers accommodation which supports primary production activities in the zone.*
2. *The site being severed does not have any identified value for productive purposes.*
3. *The proposal is considered to be a reasonable approach through re-arranging land tiles to facilitate the establishment of seasonal workers accommodation for which there has been a demonstrable need.*



**William Wasley
Independent Commissioner
12 August 2020**

