

**IN THE MATTER OF
AND
IN THE MATTER OF**

the Resource Management Act 1991

a resource consent application by Bluehaven Commercial Limited for consent to establish and operate a Commercial and Retail Complex Development and Reformation of Parapara-iti Pā development at the corners of Devon (SH3), Smart and Katere Roads, New Plymouth (LUC17/47175).

**DECISION OF THE HEARING COMMISSIONER APPOINTED BY
NEW PLYMOUTH DISTRICT COUNCIL PURSUANT TO SECTION 34A OF
THE RESOURCE MANAGEMENT ACT 1991**

Independent Commissioner:

Mark St.Clair

3 April 2020

APPOINTMENTS

- [1] Pursuant to section 34A of the Resource Management Act 1991 (RMA), independent commissioner Mark St Clair was appointed as a commissioner by New Plymouth District Council (NPDC/Council) to hear and determine the application lodged by the “Applicant” Bluehaven Commercial Limited for resource consent (LUC17/47175) to establish and operate a Commercial and Retail Complex Development and Reformation of Parapara-iti Pā development at the corners of Devon (SH3), Smart and Katere Roads, New Plymouth.

PROCEDURAL MATTERS

Directions

- [2] I issued directions (Minute #1) on 24 December 2019 requesting the pre-circulation of Council’s Section 42A Report and evidence as required by Section 103B of the RMA. In that Minute I also requested conferencing between any expert witnesses for the Applicant and Council.
- [3] The pre-circulation of the Section 42A Report, including copies of Joint Witness Statements (JWS) from the planning and traffic experts, occurred in compliance with the timeframes set out in Minute #1. On reviewing that material I noted that the Section 42A report appeared to close with a potential resolution of conditions or modifications of aspect of the proposal. In addition, there was a large degree of commonality amongst the experts in the Joint Witness Statements and that the planning experts were preparing a joint set of conditions. With this background in mind, I issued Minute #2 noting that given the substantial costs in convening a physical hearing and that there were no other parties other than the Applicant and Council, a hearing may not be required. I gave the Applicant the opportunity not to have a physical hearing, but rather have the matter determined on the papers.
- [4] Ms Barry-Piceno (Counsel for the Applicant), on behalf of the Applicant, duly advised that they did not wish to have a physical hearing and they wished the application to be determined on the papers. The draft set of conditions from the planners by way of JWS was filed, followed by the Applicant’s evidence.
- [5] For completeness I record that Minutes #3 and #4 related to timetabling, for filing of evidence, JWSs and any questions from myself.
- [6] On reviewing the draft set of conditions and the Applicant’s evidence, there were a small number of matters for which I sought additional information from the Section 42A reporting officer, the Applicant and the Applicant’s planning witness in their role as an expert (Minute #5). That information was duly received in line with the timetable for filing.
- [7] The final matter, was an enquiry by the Applicant as to whether or not I required a site visit. By way of Minute (#6) I sought the Applicant’s view on my undertaking a site visit, recognising both the financial costs and potential delay in proceedings of my doing so. On 10 March 2020 the Applicant advised that a site visit by the Commissioner was not required.

- [8] On receipt of that information I formally closed the hearing by way of Minute #7 on 10 March 2020, indicating that the decision report would be completed by 31 March 2020. However, due to disruptions related to the Covid-19 situation and the Government's Lockdown, I issued a further Minute (#8), extending the decision report completion date until 3 April 2020.

Decision format

- [9] I have had regard to the requirements of Section 113 of the RMA when preparing this decision. In particular, I note and have acted in accordance with Section 113(3) which states:

"A decision prepared under subsection (1) may, -

- (a) instead of repeating material, cross-refer to all or a part of -*
 - (i) the assessment of environmental effects provided by the applicant concerned:*
 - (ii) any report prepared under section 41 C, 42A, or 92; or*
- (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly."*

- [10] During the course of reviewing the evidence, and as result of receipt of the JWSs from the planning and traffic experts, it became apparent the outcome of the application was not in doubt or being challenged but rather what was in contention was the nature of conditions shaping that outcome, particularly on the topic of roading improvements. This was the central issue and I therefore focused my consideration and consequently focused my decision on those same matters.

THE APPLICATION PROCESS

- [11] BTW Company Limited lodged on behalf of Bluehaven Commercial Limited, a resource consent application with the NPDC to establish and operate a Commercial and Retail Complex Development and Reformation of Parapara-iti Pā development at the corners of Devon (SH3), Smart and Katere Roads, New Plymouth. I record that there was some history that lead to this current application. I record that that history as such, is not a matter before me and that I have focused on the application, and the subsequent additional information, evidence and JWSs provided.

- [12] A decision that the consent application should be limited notified was made on 5 September 2018. At this point the Applicant requested that the application be placed on hold while they sought the written approvals of the parties identified in the Section 95 decision. All those written approvals were obtained and provided to Council.¹ I observe that the date on which the final written approval was received by Council and the recommencement of the processing of the application was not contained in the written material before me.

- [13] I record that I read the application and I have had regard to it as part of my evaluation of the application.

¹ Section 42A Report, Paras 3.18 – 3.19

- [14] I record that expert conferencing was conducted and JWSs prepared between the traffic experts Mr P Brown, Mr M Apeldoorn and Mr G Doherty dated 22 January 2020. As for the planning experts, Ms Manning and Mr Brophy prepared two JWSs. The first dated 5 February 2020 and the second dated 11, 12, 18 February 2020 (signed 19 Feb 2020). I also record that the JWSs were prepared in accordance with the Environment Court Practice Note 2014. The JWSs set out matters of agreement and disagreement between the experts. As recorded above, I have conducted my deliberations and made decisions focusing on those matters of disagreement.
- [15] As noted above, all evidence was pre-circulated in accordance with section 103B of the RMA. I record that I read all of the evidence and have taken it into account as part of my evaluation of the application.

THE HEARING and EVIDENCE

- [16] The hearing was scheduled to be held in the New Plymouth District Council, the New Plymouth District Council offices (NPDC), in the Plymouth Room, Ground Floor, 1 Liardet Street, New Plymouth on 28 February 2020, commencing at 9:00am.
- [17] As recorded above, with the agreement of the Applicant, a physical hearing was not held. Rather the matters were determined on the papers.
- [18] The evidence pre-circulated was received from the following:

Applicant

- [19] For the Applicant:
- Mr. Bryan Perring – Development Specialist, Kaitiaki Property Services Limited.
 - Mr Phillip Brown – Traffic Engineer, Traffic Engineering & Management Limited.
 - Mr Mark Apeldoorn – Traffic Engineer, Stantec NZ Ltd.
 - Mr Jeremy Brophy – Planner, BTW Company Ltd.

Council officers

- [20] The following officers for council were in attendance and responded to matters raised:
- Ms J Manning – Consultant Planner, Section 42A reporting officer.
 - Mr G Doherty – Consultant Traffic Engineer.
 - Ms S Knowles – Consultant Environmental Engineer (Contaminated Land).
 - Mr R Bain - Consultant Landscape Architect
- [21] A Section 42A officer's report was prepared by Ms J Manning, Consultant Planner, Resource Management Group.

- [22] I was assisted in an administrative capacity by Ms N Phillips, Hearings Administrator, NPDC.
- [23] The parties provided additional material in response to my directions and questions posed in minutes. For reference, that material is as follows;
- Ms J Manning, Section 42A Reporting Officer's Response to Commissioner Direction Minute #5, received 27 February 2020
 - Response to Commissioner Direction Minute #5, Applicant's response and Mr J Brophy's Expert Opinion Response and Rebuttal, dated 4 March 2020
- [24] All of the material presented by the above parties is held on file at NPDC. For the sake of brevity I do not repeat the detail of all the material in this decision. However, I do refer to relevant matters raised in the material in subsequent parts of the decision.

LEGAL DESCRIPTION AND ZONING

- [25] The property or area to which the application applies is complex. Ms Manning² and Mr Brophy³ are in agreement as to the description of the property and surrounding area in relying on the AEE⁴ and the Notification Report and Notification Decision⁵.
- [26] For completeness, the Notification Report and Notification Decision sets out the legal descriptions, site area and district plan zoning as to operative New Plymouth District Plan (oNPDP) as follows:

Application site legal descriptions:	Lot 1 DP 339878, Lot 1 DP 491841 and part of Lot 1 DP 440933 (Note: the site plan defining the application site within the application documentation does not identify the entire area contained within these parcels)
Proposal area¹ legal descriptions:	Lot 1 DP 339878, Lot 1 DP 491841, part of Lot 1 DP 440933, part of Lot 1 DP18029 (Z Service Station), Section 1 SO 14853 (Pou Tutaki/Fitzroy Pole Reserve) and legal road administered by the New Plymouth District Council and Crown (New Zealand Transport Agency)
Areas:	Approximately: <ul style="list-style-type: none"> • Commercial and retail complex site – 7.1261 hectares • Aotere/Parapara-iti Pā site – 0.5605 hectares
District Plan Environment areas:	Industrial C (application site) Business B and Industrial C (proposal area)
District Plan Overlays & Notations relating to proposal:	<ul style="list-style-type: none"> • Designations (all public roads including state highways): <ul style="list-style-type: none"> - Devon Road (SH3) - State Highway (Limited Access) - Smart Road – Arterial - Katere Road - Local <p>(Underlying zoning: per adjoining sites. Each side of road takes on zoning of adjacent site, with centre-line of road forming boundary between two)</p>

¹ Refer Section B (Background), Paragraph 11, pg. 10 of this report for differentiation between the 'application site' and 'proposal area'

² Section 42A Report, Para 2.4

³ Mr J Brophy, Evidence in Chief (EIC), Para 21

⁴ Resource Consent Application and Assessment of Environmental Effects (AEE), Rev 2E – 06/07/2018, Section 1.3 and 2

⁵ Section 42A Report, Appendix 1, Notification Report and Notification Decision, Page 1 of 66

**District Plan
Overlays &
Notations relating
to proposal
cont'd:**

- Devon Road (SH3) – New Plymouth Entrance Corridor
- Mangaone Stream – Priority Water Body Hazard Area (H3) – Volcanic
- Waahi Taonga/Sites of Significance to Māori & Archaeological Sites (within or within +/- 200 metres of the site):
 - 677 - Pā – Parapara-iti - Ngāti Tawhirikura
(Pt 143 DP 4909, BLK VI Paritutu SD, being Lot 3 of a subdivision of Lot 1 DP 339878, Lot 1 DP 491841, Lot 4 DP 475974, and Lots 1 and 2 DP 440933)
 - 673 - Carved Maaori Toko - Ngāti Tawhirikura and Puketapu
(Pt Sec 1 So 13371 BLK VI Paritutu SD)

[27] The relevant zoning and notations as to the proposed New Plymouth District Plan (pNPDP), are as follows;

- a. *The key zonings and notations relating to the site are:*
 - i. *General Industrial Zone;*
 - ii. *Roading Hierarchy (Devon Road – State Highway, Smart Road – Arterial and Collector and Katere Road – Collector);*
 - iii. *Volcanic Hazard Area; and*
 - iv. *New Plymouth Entrance Corridor.*
- b. *Within proximity of the site (+/- 100 metres) the following notations are relevant to the proposal:*
 - i. *Archaeological site;*
 - ii. *Two sites of significance to Māori;*
 - iii. *Designations – State Highway (Devon Road), Railway (Marton to New Plymouth line) and Lower Waiwhakaiho Local (Soil Conservation and River Control Scheme); and*
 - iv. *Mangaone Stream (Waiwhakaiho) - significant waterbody.⁶*

[28] In the Planning JWS dated 5 February 2020, the planners agreed to the definition of “the site” and “the proposal”⁷ which updated the legal description references. In addition, Ms Manning set out further clarification as to Defining Site, the Proposal Area and the Piece of Land⁸ in the Section 42A Report. I adopt the agreed description of property and surrounding area for the purposes of this decision.

⁶ Section 42A Report, Para 3.5

⁷ Planning JWS, dated 5 February 2020, Paras 2.1 - 2.2

⁸ Section 42A Report, Paras 2.5 and 2.6

THE PROPOSAL

[29] In the Section 42 Report⁹ Ms Manning notes that the proposal was fully described in the AEE¹⁰ including the technical appendices and the Notification Report and Notification Decision¹¹. By way of overview I have included a brief description of the staging proposal as set out in the Section 42A Report, which is as follows:

- 2.8. I will not repeat that information verbatim here, but note the stages of development proposed by the applicant as:
 - a. **Stage 1:** Demolition and removal of existing buildings and infrastructure. Soil remediation and earthworks over entire 'piece of land' and recontouring of the Pā;
 - b. **Stage 2:** Development of the 'upper platform area' (being the southern reaches of the site), including LFR hardware shop building, construction of the retaining wall between the upper and lower levels, road network alterations and upgrades, and consequential works on and adjoining the site (being within the proposal area); and
 - c. **Stage 3:** Development of the 'lower platform area' (being the northern reaches of the site) and remaining upper platform area, including LFR (one a possible supermarket), specialty retail, food and beverage premises, offices, cinema and hotel, road network alterations and upgrades and consequential works on and adjoining the site (being within the proposal area).
- 2.9. As evident on multiple occasions throughout the application documentation, AEE and appendices, works are to be undertaken during Stages 2 and 3 to the surrounding local and state highway road network to address the high traffic generation anticipated by the proposal and include:
 - a. Stage 2: Signalisation of the Katere and Devon (SH3) Roads intersection, road marking changes and pedestrian linkages; and
 - b. Stage 3: Intersection upgrade at Devon (SH3) and Smart Roads and pedestrian linkages; new signalised intersection at the entrance to the proposed complex and widening on Smart Road; widening of Devon Road (SH3) for additional traffic lane provision; and road marking changes.
- 2.10. The works to achieve these are intended to be undertaken by the applicant in a staged approach as reflected and required by each of Stages 2 and 3 during the development of the complex to provide for tenancies as they become operational. The applicant has volunteered a condition precedent framework for each stage pertaining to the road works to achieve this.
- 2.11. For completeness, I note that there are other approvals both from Council and other authorities and agencies that the applicant will need to address as a part of the project. These are identified in Section E of the Notification Decision Report (pg. 16-19) but is not an exhaustive list.

[30] Mr Brophy in evidence, similarly considered the proposal to be well described in the AEE and notification report.¹²

⁹ Section 42A Report, Paras 2.7

¹⁰ AEE, Section 3, Pages 13 - 36

¹¹ Section 42A Report, Appendix 1, Notification Report and Notification Decision, Section C, Paras 12 - 45

¹² Mr J Brophy, EIC, Para 24

ACTIVITY STATUS

- [31] The Section 42A officer's report, noting Section 1.4 of the AEE, adopts the specified and described standards and non-compliances set out in the Notification Report and Notification Decision as to the applicable rules under the oNPDP¹³. In summary, the proposal does not comply with the following rules; Ind9, Ind19, Ind22, Ind50, Ind84 – Ind89, OL81 – OL83 and therefore the application falls to be considered as a restricted discretionary activity.
- [32] The Section 42 officer's report, also canvasses the applicability of the Council's pNPDP (notified 23 Sept 2019, submissions closed 28 November 2020)¹⁴ with Rules HH-R17, SASM-R5, SASM-R17 and WB-R4 having immediate effect and therefore being applicable in relation to consideration of the proposal. Mr Brophy points out that since the preparation of section 42A report, Taranaki Regional Council has granted the necessary regional plan resource consents meaning that Rule WB-R4 is no longer triggered.¹⁵ I adopt that advice.
- [33] In conclusion as to the activity status assessment, the Reporting Officer also noted that as the application was made prior to the notification of the proposed Plan, therefore under section 88A(1A) of the RMA, the activity status remains, as it was, at the time the application was lodged¹⁶.
- [34] The JWS records agreement amongst the planning experts that the proposal is a restricted discretionary activity under the applicable rules of the oNPDP¹⁷. I accept that activity status classification.
- [35] For completeness, I record that the application includes earthworks and soil remediation that triggers a resource consent requirement under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Level) Regulations 2011 (NES-CS). The Reporting Officer identifies the activity status for this aspect of the proposal as restricted discretionary¹⁸ and I accept that assessment.

STATUTORY PROVISIONS

- [36] This application falls to be considered as a restricted discretionary activity under Part 2 and sections 104 and 104C, of the RMA.

SECTION 104C OF THE RMA

- [37] This is Restricted Discretionary Activity. As such the application is subject to Section 104 and Section 104C RMA.
- [38] Section 104C states that:
- (1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which—*
- (a) a discretion is restricted in national environmental standards or other regulations:*
- (b) it has restricted the exercise of its discretion in its plan or proposed plan.*

¹³ Section 42A Report, Para 3.3

¹⁴ Section 42A Report, Paras 3.4 – 3.8

¹⁵ Mr J Brophy, EIC, Para 16

¹⁶ Section 42A Report, Paras 3.9 – 3.10

¹⁷ Planners' JWS dated 5 February 2020, Para 3.1

¹⁸ Section 42A Report, Para 3.11

- (2) *The consent authority may grant or refuse the application.*
- (3) *However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which—*
- (a) *a discretion is restricted in national environmental standards or other regulations:*
- (b) *it has restricted the exercise of its discretion in its plan or proposed plan.*

PRINCIPAL ISSUES IN CONTENTION

- [39] As signalled above, the principal issues in contention, as I have determined them, revolve around issues in relation to the ability for the consent authority to impose conditions given matters to which the discretion are restricted too and the traffic effects on the wider roading network.
- [40] I record that the other potential effects of the proposal have been addressed in the Section 42A Report. Those effects being, Land Contamination and Human Health Effects, Character and Visual Amenity Effects, Landscape and Streetscape Effects, Effects on Sites of Significance to Maori and Archaeological Sites, Slope Stability Effects and Acoustic Effects, which in Ms Manning's view were, subject to the imposition of conditions in Appendix 2 of her report, considered to be no more than minor.¹⁹ Mr Brophy concurs with the Reporting Officer's assessment as to those matters.²⁰ With a no evidence to contrary, I adopt that assessment from the planning experts and the other specialist experts, and hence do not address those matters further in this decision report.

Imposition of Conditions in Relation to Matters of Discretion

- [41] By way of introduction, this matter of contention relates to the Assessment Criteria 15 and 16 of the oNPDP Rules Ind84 – Vehicle Access Point, Ind85 - Parking, Ind86 – Landing and Standing Space, Ind88 – On site manoeuvring and Ind89 – On-site queuing. The relevant policy identified in the planner's JWS dated 5 February 2020 is Policy 20.3. For completeness, the wording of Policy 20.3 and the Assessment Criteria 15 and 16 are as follows:

Policy 20.3

Potential conflict between VEHICLES, pedestrians and cyclists moving on the ROAD TRANSPORTATION NETWORK should be minimised to protect the safety and efficiency of ROAD and footpath users.

¹⁹ Section 42A Report, Paras 4.28 – 4.78

²⁰ Mr J Brophy, EIC, Para 38

- 15) The adverse effects on the safety of people, both on and off the **SITE**, due to not providing the required parking, **LOADING, STANDING, QUEUING or MANOEUVRING SPACE, VEHICLE ACCESS POINT or DRIVEWAY** and/or inappropriate design or construction of these.
- 16) The extent to which the safety and efficiency of the **ROAD TRANSPORTATION NETWORK** would be adversely affected by parking, loading, manoeuvring and/or queuing **VEHICLES** due to inappropriate design or construction.

[42] The view of Mr Brophy, as recorded in the Planners' JWS Dated 5 February 2020, which I think is helpful to set out in full, was as follows;

3.4 Mr Brophy asserts that, when considering the wording of the rules triggered under the ODP, the Assessment Criteria and District Plan policy related to the above rules apply only to "site" as agreed and defined under Section 2.2 above rather than lands included within "the proposal". Mr Brophy also notes that each rule non-compliance relates to "on-SITE" requirements (**SITE** being in bold relating to its definition in the ODP). Further to this Mr Brophy considers that because the ODP is an "effects-based plan" each rule non-compliance for example Ind84 (vehicle access point) shall be the focus of the effect's assessment, when considering the restricted discretionary assessment criteria. The policy framework informs the exercise of the rule, as a result policy 20.3 which includes the term "Road Transportation Network" should be considered in a similar focused way. Mr Brophy asserts that the proposed augier conditions proposed by the applicant address wider roading upgrades that are not located within the "site" or subject to restricted discretionary assessment criteria identified in the ODP.

[43] Mr Brophy further expanded on this in evidence opining that, in relation to restricted discretionary activity and section 104C, that "... *When drafting the Operative District Plan, Council clearly sought an approach for the District whereby consideration of effects for an activity requiring resource consent was focused on specific matters rather than a board assessment.*"²¹ Mr Brophy further opined as to the relationship between s104C and section 108AA of the RMA as to what conditions may be

²¹ Mr J Brophy, EIC, Para 28

imposed by a consent authority.²² Mr Brophy then observed that the officer's report did not acknowledge the permitted baseline in relation to traffic generated by a activities in the Industrial Zone and also set out a permitted baseline argument for a credible permitted hypothetical development prepared by the applicants project team, although noting that the that proposal automatically triggers resource consent for queuing. Mr Brophy concluded that the permitted baseline shows that the Industrial C zone does not have rules, standards or terms for traffic generation.²³

[44] In rebuttal evidence to Ms Manning's response to Questions 1 and 2 of Minute #5, Mr Brophy set out further reasons for maintaining his view that the assessment criteria did not provide for the imposition of conditions relating to traffic and parking. I have summarised these to include, the wording of the assessment criteria, the discrete non-compliances (queuing) and the definition of 'site', and the link to the policies being too broad and not focusing on the specific consent triggers when considering the assessment criteria.²⁴

[45] Ms Manning's view, as recorded in the planners' JWS Dated 5 February 2020, was that the assessment criteria afforded a, "... consideration of an area wider than just with the 'site', more particularly the road transportation network" and that the transport standards of the restricted discretionary activity, "... are not compartmentalised assessment matters to specific rules, so all criteria are to be assessed. In doing so, Ms Manning also asserts in her view that this provides for consideration of the 'proposal' under that scope of the RDA assessment matters."²⁵

[46] Ms Manning further expanded her view as to Assessment Criteria 15 and 16 in response to my Questions 1 and 2 of Minute #5, which I have summarised as, the express reference in Assessment Criteria to the adverse effects on safety of people both on and off site and for Assessment criteria 16 to the off-site effects as safety and efficiency of road transportation network.²⁶ Ms Manning then identified aspects of the proposal as assessed by the Council's development engineer and traffic expert as to the potential associated effects concluding that;

9. *While each of the above on their own may be discrete non-compliances with the OPD standards, they establish the overall proposal, where consideration of discretion applies in respect of Rules Ind85 – Ind89. This, among other criteria, provides for consideration of criteria 15 and 16 as to those effects that could potentially arise on the road transportation network due to not meeting the respective standards.*²⁷

[47] Finally, Ms Manning sets out her consideration of the relevant issue, objective, and policy linkage to the rule and assessment criteria, noting that there are eighteen criteria in relation to Rules Ind85 – Ind89 that are not compartmentalised to specific rules but that those matters can be considered for any application for any of those rules.²⁸

[48] I have carefully considered the JWS and evidence from both planners as to this matter, including the permitted baseline. In considering that material, I observe that this is a plan interpretation matter and that the applicant did not file any legal submissions. In addition, I have placed little weight on the planning evidence as to

²² Mr J Brophy, EIC, Paras 29-30

²³ Mr J Brophy, EIC Paras 31-37

²⁴ Mr J Brophy, Response to Commissioner Direction Minute #5, Applicant's response and Mr J Brophy's Expert Opinion Response and Rebuttal, dated 4 March 2020, Paras 18 - 14

²⁵ Planners' JWS dated 5 February 2020, Paras 3.5 – 3.6

²⁶ Ms J Manning, Response to Commissioner Direction Minute #5, received 27 February 2020, Paras 4 - 6

²⁷ Ms J Manning, Response to Commissioner Direction Minute #5, received 27 February 2020, Para 9

²⁸ Ms J Manning, Response to Commissioner Direction Minute #5, received 27 February 2020, Paras 10 - 15

references to the 'Reasons' in the Management Strategy in the operative District Plan, but rather have focussed on the wording of the assessment criteria and rules, and the objectives and policies.

[49] At a fundamental level the issue is whether or not the assessment criteria, which are also the matter to which the consent authority's discretion is restricted to, provides the ability for the consent authority to impose conditions? In this case, as to Assessment Criteria 15 and 16 of Rules Ind85 – Ind89 in oNPDP, I find that it does. Both assessment criteria relate to the consideration of effects that are beyond the site, being the adverse effects on safety of people and the road transportation network. I am not persuaded by Mr Brophy's view as to the 'so broad'²⁹ an interpretation and that, as an effects based plan, "... *each rule non-compliance for example Ind84 (vehicle access point) shall be the focus of the effect's assessment, when considering the restricted discretionary assessment criteria. The policy framework informs the exercise of the rule, as a result policy 20.3 which includes the term 'Road Transportation Network' should be considered in a similar focused way.*"³⁰ Rather, I endorse the opinion Ms Manning that discretion is provided by the express reference in Assessment Criteria 15 to the adverse effects on safety of people both on and off site and for Assessment Criteria 16 to the off-site effects as safety and efficiency of road transportation network. The reference back to the relevant issue, objective, and policy linkages to the rule and assessment criteria has also been instrumental in my finding.

[50] In conclusion I find that there is scope within the Assessment Criteria 15 and 16 of Rules Ind85 – Ind89 in oNPDP, for conditions to be imposed as to the wider effect of the proposal, being works to undertaken in respect of the road network.

Traffic and Transport Effects

[51] The potential traffic and transport effects of the proposal on the surrounding area were a primary focus of the expert evidence and JWS from expert conferencing, filed as part of this hearing.

[52] A thoroughly considered Traffic and Transport JWS dated 22 Jan 2020, set out clearly the areas of agreement and disagreement amongst the experts. Those areas of disagreement were then addressed in evidence.

[53] The matters of disagreement were, in summary, as follows³¹;

a. Constructability of the northwest kerbline at the Smart Road/Devon Street intersection (JWS para 1);

b. Constructability of a footpath on the north side of Smart Road north (JWS para 3);

c. The extent that traffic demands would transfer from Katere Road to Egmont Road and to the Egmont Road. Devon Street intersection (JWS para 8);

d. The appropriate form of traffic management markings on Smart Road south at the Z service station access point (JWS paras 10 & 11);

e. Use of the flush median area on Smart Road south (JWS para 15(a)(iii));

²⁹ Mr J Brophy, EIC, Para 37

³⁰ Planners JWS, dated 5 February 2020, Para 3.4

³¹ Mr M Apeldoorn, EIC, Para 14

- f. Pedestrian crossing provisioning in the Sidra modelling (JWS para 15(b));
- g. The number of pedestrians crossing Devon Street at Katere Road intersection (JWS 15(c));
- h. The use of land in the SH3 (Devon Street) corridor and it's availability for future growth on the network (JWS para 15(f));
- i. The need for an additional lane on Smart Road north (JWS para 15(g)).

[54] Mr Doherty for the Council³² and Mr Brown for the Applicant³³, both set out in evidence their views as to the particular issues. In addition, Mr Apeldoorn for the Applicant, also provided evidence on the same matters³⁴, including a review of Mr Brown's and Mr Doherty's evidence as it related to those same matters. I do not repeat those details here.

[55] I do note that in conclusion, Mr Doherty, considered that, in his view;

*"The scale of the proposed development will create negative transport effects on the surrounding transport network. The scale of the negative effects, once the development is fully developed, will be greater than reported by the Applicant in the ITA. These negative effects have not been mitigated to the extent of being no more than minor and in some cases, particularly on the local roads, the negative effects remain significant. Additional lanes on Smart Road North could mitigate some of the remaining negative effects but my overall conclusion is that the proposed roading network is unable to mitigate all the negative effects to be no more than minor due to the scale of the development proposed."*³⁵

[56] By contrast, Mr Brown's conclusion was;

"177. From this work, it is my opinion, and conclusion that the traffic and transportation-related effects of this application will be acceptable from a traffic engineering perspective when consideration is given to the:

- a) Upgrading described in the Application;*
- b) Changes agreed in the traffic JWS;*
- c) Recommendations made in the JWS for consideration in the conditions of consent."*³⁶

[57] Mr Apeldoorn's conclusion was similar to that of Mr Brown,

*"59. On the basis of the peer review assessments I have described, I have concluded the development proposal, with the mitigation measures and consent condition considerations I have described, will appropriately mitigate the potential traffic and transportation effects."*³⁷

[58] I have carefully considered all the expert traffic and transport evidence and the JWS, and in general I am persuaded by the evidence of Mr Brown and Mr Apeldoorn as to

³² Mr G Doherty, EIC, Paras 27 – 39 [There was a gap in the paragraph numbering in Mr Doherty's evidence after para 32. For the purpose of referencing this decision I have renumbered the paragraphs from that point on]

³³ Mr P Brown, EIC, Para 27 - 134

³⁴ Mr M Apeldoorn, EIC, Paras 18 - 49

³⁵ Mr G Doherty, EIC, Para 39 [There was a gap in the paragraph numbering in Mr Doherty's evidence after para 32. For the purpose of referencing this decision I have renumbered the paragraphs from that point on]

³⁶ Mr P Brown, EIC, Para 177

³⁷ Mr M Apeldoorn, EIC, Para 59

the particular technical matters that were in disagreement. There are some exceptions to that finding which I now address.

- [59] Mr Doherty's concerns as to the significant impacts on the wider roading network carries some weight, noting Mr Doherty's concession as to being unable to quantify the effects or their location and Mr Doherty's point that a wider transport model was requested but not provided as part of the application process.³⁸
- [60] In the Traffic and Transport JWS, Mr Brown and Mr Apeldoorn both consider, amongst other things, that impact of vehicle moments in the district and drawing traffic away from the CBD, to be outside the assessment required of the traffic related matters required by a restricted discretionary activity.³⁹ Mr Brown records in evidence that he is advised by Mr Brophy that particular traffic matters as to wider roading network are outside the RDA assessment criteria.⁴⁰ Mr Apeldoorn in his evidence, considered that on a technical basis Mr Brophy's draft conditions capture the additional conditions identified in the JWS, noting that the issue of scope of restricted discretionary activity was a matter for the planners.
- [61] I record the above, as I have already found that there is scope within the Assessment Criteria 15 and 16 of Rules Ind85 – Ind89 in oNPDP, for conditions to be imposed as to the wider traffic and transportation effects of the proposal, being works to undertaken in respect of the road network. On that basis, and on the basis of the traffic and transport evidence before me, there is need for the roading works in order to address the effects on the wider roading network. Therefore, at a general or high level I find that it is appropriate and lawful to include those roading works as conditions of consent.
- [62] As to specific roading conditions, Mr Brophy and Ms Manning addressed such matters in evidence and in response to my questions in Minutes. The specific conditions not agreed between the planning experts relate to traffic and transport matters so I address those here.
- [63] Ms Manning recommended a suite of conditions in the Section 42A officer's report⁴¹, noting that for, *“(human health, acoustics, internal site design and operation, landscape and building design), Council's expert advisors and technical officers have indicated that adverse effects can be sufficiently managed through conditions, should consent be granted. For others, specifically the wider improvements within the surrounding roading network, resolution through design revisions and/or conditions volunteered by the applicant is required.”*⁴²
- [64] The second Planning JWS – dated 19 February 2020, clearly sets out Ms Manning's and Mr Brophy's views as to the conditions that were in contention and helpfully provided attachments of the two versions⁴³ of conditions.
- [65] Mr Brophy in evidence further set out his view as to the conditions in contention which in summary include, noting that the road upgrade conditions were offered up by the Applicant, that the conditions as to road upgrading were outside the scope of the RDA criteria, other NZTA and Council approval processes were required, that monitoring conditions were not required by the oNPDP and that Condition 50 of Version B along with the other monitoring conditions were withdrawn by the Applicant as described in the planning JWS.⁴⁴

³⁸ Mr K Doherty, EIC, Para 38

³⁹ Traffic and Transport JWS, Dated 19 February 2020, Pars 17 iii

⁴⁰ Mr P Brown, EIC, Paras 144 and 162

⁴¹ Section 42A Report, Appendix 2

⁴² Section 42A Report, Executive Summary, v.

⁴³ Planning JWS signed 19 February 2020, Version A – Mr Brophy, Version B - Ms Manning

⁴⁴ Mr J Brophy, EIC Pars 92 - 98

- [66] Ms Manning in response to Minute #5 questions, set out her reasoning for the inclusion of Condition 25 and the sequencing as to Condition 26 and 37, which I summarise as reflecting changes from the Traffic and Transport JWS as to conceptual design, that evidence that the first stage has occurred with undertakings in place to enable specific detail to occur prior to each stage commencing, the necessity for preliminary plans and service level agreements, recognition of risk around not being able to fully implement any consent where approvals or authorisations outside the process are not achieved and for Condition 26 and 37 the provision of documentation to Council as to each stage.⁴⁵ As to the monitoring Conditions 46 - 52, I summarise Ms Manning's response as, having identified those parts of the Traffic and Transport JWS where there was no agreed resolution and the subsequent evidence of Mr Doherty, that the Conditions in Version B of the Planning JWS addressed those matters.⁴⁶
- [67] Mr Brophy in response to my questions in Minute #5 and in rebuttal to Ms Manning's response to my questions, I summarise Mr Brophy's response to include, reference to the six principles listed in the Quality Planning Website and referenced the Newbury test, and opined issues to certainty, that conditions should be practical and efficient for the use of the affected resources and consent holder, that Version B bypasses the proposed staging;⁴⁷ that as to Condition 25 the condition does to relate back to the restricted discretionary activity assessment criteria⁴⁸ and as to the monitoring conditions, Mr Brophy focusses, on the Smart Road monitoring, noting aspects addressed or not addressed in the Traffic and Transport JWS, lack of certainty as to post opening noting the Smart Road is the main entrance to the proposed development.⁴⁹
- [68] Having reviewed the conditions presented and carefully considered the evidence presented the I find the conditions as set out in Version B of the Planning JWS signed 19 Feb 2020 to be generally be appropriate, subject to my findings as to effects and mitigation set out above.
- [69] In conclusion, and for the reasons set out above I find that, the traffic and transport effects will be acceptable.

Section 104 RMA

- [70] Section 104 (1) of the RMA requires that a consent authority:
- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of 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;*

⁴⁵ Ms J Manning, Response to Commissioner Direction Minute #5, received 27 February 2020, Paras 17 - 26

⁴⁶ Ms J Manning, Response to Commissioner Direction Minute #5, received 27 February 2020, Paras 27 - 33

⁴⁷ Mr J Brophy, Response to Commissioner Direction Minute #5, Applicant's response and Mr J Brophy's Expert Opinion Response and Rebuttal, dated 4 March 2020, Paras 11- 14

⁴⁸ Mr J Brophy, Response to Commissioner Direction Minute #5, Applicant's response and Mr J Brophy's Expert Opinion Response and Rebuttal, dated 4 March 2020, Para 27

⁴⁹ Mr J Brophy, Response to Commissioner Direction Minute #5, Applicant's response and Mr J Brophy's Expert Opinion Response and Rebuttal, dated 4 March 2020, Paras 29 -35

- (vi) a plan or proposed plan, and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

[71] I have discussed the significance of any actual or potential effects on the environment of allowing the activity in the above sections, and turn now to the statutory provisions requirement of section 104(1)(b).

National instruments

[72] Ms Manning and Mr Brophy concur that the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health is applicable to this application.⁵⁰

[73] This was the only national instrument drawn to my attention. I heard no evidence to the contrary, so I accept the position of the planning experts.

Taranaki Regional Policy Statement (“the RPS”)

[74] Ms Manning, in her section 42A Report, identified what she considered to be the relevant sections of the RPS⁵¹, undertook an assessment of those objectives and policies, and concluded that, *“To the extent that I have found above that the proposal is consistent with the provisions of the Proposed Plan, that same finding can be applied to these relevant parts of the RPS.”*⁵²

[75] As set out in the Planner’s JWS dated 5 February 2020, the planning experts agreed that the RPS Taranaki 2010 is a relevant consideration but did not identify which provisions.⁵³ I heard no expert evidence to the contrary so accept the views of Ms Manning and Mr Brophy.

Operative and Proposed Regional Plans

[76] The planning experts did not identify any relevant matters for consideration in any Operative or Proposed Regional Plans. I adopt that position.

Operative New Plymouth District Plan (oNPDP) and the proposed New Plymouth District Plan (pNPDP)

[77] Ms Manning identified the higher order provisions of the oNPDP and pNPDP and provided an analysis of proposal against those provisions.⁵⁴ The conclusion of Ms Manning’s assessment was;

4.121 When read as a whole, my view is that the proposal is broadly consistent with the relevant objectives and policies of the Operative and Proposed Plans.

4.122 The two exceptions to this relate to the proposal’s consistency with the Industrial Zone and Transportation policies of the Proposed Plan seeking to

⁵⁰ Planners’ JWS, dated 5 February 2020, Para 4.15

⁵¹ Section 42A Report, Para 4.124

⁵² Section 42A Report, Para 4.129

⁵³ Planners’ JWS, dated 5 February 2020, Para 4.15

⁵⁴ Section 42A Report, Para 4.79 - 4.120

avoid the effects on the road network safety and efficiency, and of incompatible activities within the Industrial Zone. With the imposition of appropriate conditions as recommended, the proposal will be more consistent with these policies.

4.123 In my view, as both of these inconsistencies relate to the Proposed Plan that is in an early stage of the overall plan process under the RMA and subject to challenge via several submission, less weight should be afforded these at this stage.

- [78] As to the oNPDP, Mr Brophy in evidence⁵⁵, in general concurs with or reaches a similar conclusion to Ms Manning. The exception being Policy 20.2 where Mr Brophy has assessed the objectives and policies in a focussed way as to relate to rule non-compliances and placed reliance on the Management Strategy for explain the intent of Policy 20.3.⁵⁶ As I have set above, I did not find in favour of that specific approach.
- [79] In relation to the pNPDP, Mr Brophy concurred with Ms Manning as to weight that should be afforded to the pNPDC objectives and policies and to the identification of those provisions relevant to the proposal.⁵⁷ In conclusion, Mr Brophy considered that that the proposal was consistent with the framework in the oNPDP and the relevant objectives and policies.⁵⁸
- [80] For the record I find the relevant objectives and policies, to be those set out in the Section 42A Report at paragraph 4.80, and do not repeat them here.
- [81] In this instance, I adopt the overall general assessment of Ms Manning and Mr Brophy. To the extent that the effects of the proposed activity are knowable, and appropriate conditions are able to be imposed, the provisions of the oNPDP and the pNPDP are likely to be met.

Conditions s108

- [82] I have already addressed the specific conditions that were in contention under the traffic and transport section above. However, I do record that conditions as to staging and the effects on wider roading network were critical in reaching the final decision as to the proposal. There was no dispute as to the remainder of the conditions. I received no evidence to the contrary so accept that the suite of conditions, as a whole, avoid or mitigate the adverse effects of the proposal.

PART 2 – RMA

- [83] This application is to be considered under section 104 of the RMA, which sets out the matters that consent authorities shall have regard to when considering resource consent applications.
- [84] In the decision (RJ Davidson Family Trust v Marlborough District Council [2018] NZCA 316, the Court of Appeal reconfirmed the pre-eminence of Part 2 matters in the consideration of resource consents. However, the Court found that in those instances where it is clear that a planning document has been competently prepared having regard to Part 2 and contains a coherent set of policies leading toward clear

⁵⁵ Mr J Brophy, EIC, Paras 70, 77, 80

⁵⁶ Mr J Brophy, EIC, Paras 71 - 74

⁵⁷ Mr J Brophy, EIC, Para 82

⁵⁸ Mr J Brophy, EIC, Para 85

environmental outcomes, consideration of Part 2 is unlikely to assist evaluation of a proposal. Conversely, where a plan has not been prepared in a manner which appropriately reflects Part 2, or the objectives and policies are pulling in different directions, consideration of Part 2 is both appropriate and necessary.

[85] Ms Manning considered that the proposal was broadly consistent with Part 2, with the caveat that this was,

“ ... based on the assumption that the transportation design detail issues identified above and by Council’s expert will be sufficiently addressed.

4.135 *In this latter respect, and in particular if the proposal is likely to result in significant adverse traffic safety effects, my conclusion about the proposal’s consistency with the RMA’s purpose may well be different.*⁵⁹

[86] In contrast, Mr Brophy’s view was that;

91. *In this instance the Operative District Plan is considered to be complete and includes a coherent set of policies and rules prepared under Part 2 of the Act and no further assessment of Part 2 is considered to be necessary.*⁶⁰

[87] In this case I note that there is general agreement from the parties, the Applicant and the Council that the application should be granted. Full consideration of the oNPDP has been accorded and addressed earlier in the decision. I have considered reasons set out in Mr Brophy evidence identifying the relevant Part 2 provisions and concur with that assessment.

Conclusion and Decision

[88] Acting under delegated authority pursuant to section 34A, and sections 104, 104C, and 108 of the Resource Management Act 1991, the application made by Bluehaven Commercial Limited for resource consent (LUC17/47175) to establish and operate a Commercial and Retail Complex Development and Reformation of Parapara-iti Pā development at the corners of Devon (SH3), Smart and Katere Roads, New Plymouth is **granted**, subject to conditions.

[89] This decision is made for the reasons discussed throughout and, in summary, because:

- The activity that is **granted** is consistent with the purpose and principles of the Resource Management Act 1991;
- Subject to the imposition of appropriate conditions, the activity that is **granted** is generally consistent with the provisions of the operative and proposed New Plymouth District Plan; and
- The activity that is **granted** is unlikely to have any significant adverse effects on the environment provided the conditions imposed are fully implemented.

[90] The consent conditions attached as *Schedule 1* are imposed.

⁵⁹ Section 42A Report, Paras 54.134 – 4.135

⁶⁰ Mr J Brophy, EIC, Para 91

DATED this 3rd day of April 2020



Mark St.Clair (Independent Commissioner)

SCHEDULE 1

GENERAL ACCORDANCE

Documentation and Plans

1. Except as to meet further conditions of this consent, removal of trees (within 50m of Waahi Taonga Sites), earthworks (including soil remediation), construction/development and operation of the site shall be undertaken generally in accordance with the revised application and assessment of environmental effects (AEE) lodged with Council on 6 July 2018:
 - a) AEE Rev 2E, prepared by BTW Company Limited: *Resource Consent Application and Assessment of Environmental Effects – To establish and operate a commercial and retail complex and reform Parapara-iti Pā with associated parking, servicing and landscaping for Bluehaven*, and dated 6 July 2018.
 - b) Letter authored by BTW Company Limited: *Response to Section 92 Request for the Proposal to Establish and Operate a Commercial and Retail Development on the corner of Smart, Katere and Devon Roads, Waiwhakaiho, New Plymouth (LUC17/47175)*, and dated 6 July 2018.

including the following:

- c) Staging Plans prepared by Ignite: *Staging Plans, Stage 1 and Stages 2 & 3*, plan references: 1433-002, SHT RC07 & RC08, Resource Consent, and dated May 2018 – labelled LUC17/47175 - A1 and A2.
- d) Earthworks Plans prepared by BTW Company Limited: *Bulk Earthworks Plans - Site Overview Level 1 and Ground Level, Cross Sections AA, BB, CC, DD, EE, FF & GG, Pa Site Overview and Cut Fill Depth Analysis*, Drawings No. 16216-05, SHTs 1-4, Rev 7, dated 06 July 2018, SHT 5, Rev 3 and SHTs 6 & 7, Rev 4, dated 26 September 2017, and SHT 9, Rev 3, dated 27 September 2017 – labelled LUC17/47175 - B1 to B8.
- e) Site Plans prepared by Ignite: *Lower and Upper Ground Site Plans*, plan references: 1433-002, SHTs-RC012 & RC013, Resource Consent Rev 2, and dated July 2018 – labelled LUC17/47175 - C1 and C2.
- f) Floor Plans prepared by Ignite: *Zone A - Lower Ground Floor Plan – Gateway & Dining Lane, Zone B – Lower Ground Floor Plan, Zone C – Upper Ground Floor Plan and Zone D – Upper Ground Floor Plan Hardware Shop*, plan references: 1433-002, SHTs-RC028, RC037, RC042 & RC047, Resource Consent Rev 2, and dated July 2018 – labelled LUC17/47175 - D1 to D4.
- g) Elevation Plans prepared by Ignite: *Proposed Site Elevations, Proposed Site Sections and Zone C – Sections and Elevations*, plan references: 1433-002, SHTs-RC019 to RC021 & RC048, Resource Consent Rev 2, and dated July 2018 – labelled LUC17/47175 - E1 to E4.
- h) Building Height Plans prepared by Ignite: *Roof Plan – Building Heights and Building Heights Sections – 1 & 2*, plan references: 1433-002, SHTs-RC011 to RC013, Resource Consent, and dated May 2018 – labelled LUC17/47175 - F1 to F3.

- i) Carpark & Aisle Dimension Plans prepared by Ignite: *Lower and Upper Ground Carparks & Aisle Dimension Plans*, plan references: 1433-002, SHTs-RC03 & RC04, Resource Consent, and dated May 2018 – labelled LUC17/47175 - G1 and G2.
- j) Eastern Devon Road/Smart Road Rooding Upgrade Plan prepared by BTW Company Limited: Bluehaven Commercial – Project Robyn, Rooding Upgrades, Devon Road/Smart Road Layout Plan, Drawing No. 16216-12, SHT-1, Rev B2, and dated 18 July 2018 – labelled LUC17/47175 - H1.
- k) Pedestrian Linkage Plans prepared by Ignite: *Lower and Upper Ground – Pedestrian Links*, plan references: 1433-002, SHTs-RC015 & RC016, Resource Consent Rev 2, and dated July 2018 – labelled LUC17/47175 – I1 and I2.
- l) Landscape Plans prepared by Boffa Miskell: *Landscape Concept Plan, Proposed Planting Palette and Landscape Staging Plan*, references: T17125, Rev G, and dated 22 May 2018 – labelled LUC17/47175 - J1 to J3.
- m) Remediation Action Plan prepared by 4Sight Consulting: *Ravensdown – Remediation Action Plan*, Version 5.0 and dated 17 May 2018.
- n) Contaminated Site Management Plan prepared by 4Sight Consulting: *Ravensdown – Contaminated Site Management Plan*, Version 4.0 and dated 7 March 2018.

Where there is any apparent conflict between the revised application and conditions, the consent conditions shall prevail.

Information Requirement/Liaison

2. The Consent Holder shall notify Council’s Planning Lead, or nominee, at least 10 working days prior to any works commencing on the site, so that monitoring of the conditions of this consent can be undertaken.

Advice Note

- a) Failure to notify Council as stated in the above condition may result in enforcement action.
- b) In respect of all conditions of this consent, the reference to "works" on the site includes earthworks (i.e. filling), drainage and construction works.

3. The Consent Holder shall ensure that a copy of this consent and all documents and plans referred to in this consent are kept on site at all times and:

- a) provided to all parties undertaking works authorised by this consent; and
- b) presented to any New Plymouth District Council officer on request.

Advice Notes

- a) The following conditions of this consent are ordered to the phases of development, being
 - i. Stage 1 - *Removal of trees within 50m of Waahi Taonga site, soil remediation and earthworks, including the Pā site reformation;*
 - ii. Stage 2 - *Construction/development of the upper platform area, including the construction and operation of the Large Format Retail hardware shop; and*
 - iii. Stage 3 - *Construction/development of the lower platform and the remaining upper platform areas, including the construction and operation of the Large Format Retail, specialty retail, food and beverage offerings, offices, cinema and hotel area.*

it shall be noted that these stages all form part of one land use consent application, and they should not be read in isolation of each other.

- b) The consent, and the Consent Holder, shall meet the requirements of Council for all Bylaws, Regulations and Acts.

- c) All costs arising from any of the conditions of this consent shall be borne by the Consent Holder.
- d) The Consent Holder should note that this resource consent does not override any registered interest on the property title.

STAGE 1 - Removal of Trees (within 50m of Waahi Taonga Sites), soil remediation and earthworks, including the Pā site reformation

Waahi Taonga/Sites of Significance to Māori and Archaeological Site

- 4. The Consent Holder shall notify in writing Ngāti Tawhirikura and Te Atiawa, and Puketapu representatives at least 10 working days prior to the commencement of:
 - a) soil disturbance or earthworks on the site; and
 - b) works associated with reformation of Aotere Pā on Lot 3 DP 509004.

Advice Note

- a) The notices required under Condition 4(a) and (b) may occur simultaneously.
- 5. At the time the Consent Holder gives the first notification to Ngāti Tawhirikura and Te Atiawa in respect of Conditions 4(a) and 4(b), the Consent Holder shall establish the:
 - a) monitor/s who is to be present during soil disturbance, earthworks and reformation of the Aotere Pā, and
 - b) protocols in respect of any archaeological, waahi tapu or other cultural site unearthed during earthworks.
- 6. At the time the Consent Holder gives the first notification to Puketapu and Ngati Tawhirikura in respect of condition 4(a) the Consent Holder shall establish the protocols in respect of any earthworks within 50m of Te Pou Tutaki. The Consent Holder shall provide Council's Planning Lead, or nominee, a copy of the agreed protocols.
- 7. Prior to earthworks commencing on the site of Aotere Pā (Lot 3 DP 509004) the Consent Holder shall provide Council's Planning Lead, or nominee, a copy of the:
 - a) archaeological authority from Heritage New Zealand;
 - b) development plan for the reformation of Aotere Pā site; and
 - c) protocols established with and monitor/s to be present from Ngāti Tawhirikura and Te Atiawa.

NES-CS Conditions

- 8. Soil assessment and disturbance associated with the site enabling works shall be undertaken in accordance with the Remedial Action Plan (**RAP**) as referenced by Condition 1(m).

Advice Note

- a) The RAP also encompasses the Contaminated Site Management Plan as referenced by Condition 1(n).
- 9. Soil disturbance works associated with the remediation or removal of contaminated soils, as outlined in the RAP, shall be carried out in accordance with that Plan. The

management and mitigation measures prescribed in the RAP shall be implemented for the duration of the soil disturbance works.

10. Prior to any soil disturbance activities, the consent holder shall ensure that all environmental control measures outlined in the RAP are in place.
11. That any excavated soil, identified by the RAP, as requiring off-site disposal, is to be removed under controlled conditions to an authorised facility or landfill for disposal in accordance with the requirements of the disposal site and the relevant authority.
12. Within two (2) months of the completion of the site remediation earthworks, the consent holder shall submit a Validation Report to both the Council's Planning Lead, or nominee.
13. The validation report required by Condition 12 shall:
 - a) Be prepared in general accordance with the Contaminated Site Management Guidelines No.1 Guidelines for Reporting on Contaminated Sites in New Zealand, Ministry for the Environment, 2011.
 - b) Include, but not be limited to:
 - A summary of the works undertaken;
 - Reports of any complaints and breaches of the procedures set out in the RAP, or with the conditions of this consent;
 - A summary of any testing undertaken, tabulated analytical results, and interpretation of the results in the context of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS);
 - Volumes of soil and copies of the disposal dockets for the material removed from the site;
 - A figure showing the areas where contaminated soil (i.e. above guideline values specified in the RAP) are left on site; and
 - Results of testing of any imported fill material to ensure compliance with the definition of 'cleanfill', as per 'A Guide to the Management of Cleanfills', Ministry for the Environment (2002).
14. If work on site is abandoned, the Consent Holder shall take adequate preventative and remedial measures to control sediment discharge and shall thereafter maintain those measures for so long as is necessary to prevent sediment discharge from the site.

Advice Note:

- a) Commencement of soil disturbance activities related to NESCS process is considered to be 'giving effect' to this resource consent.

Construction Traffic Management Plan

15. No less than 10 working days prior to the commencement of works on site, the Consent Holder shall provide a Construction Traffic Management Plan (**CTMP**) to

Council's Planning Lead, or nominee, for certification in accordance with the specifications of Condition 16, and:

- a) the purpose of the CTMP is to outline the controls and exclusions that will be implemented to adequately manage potential adverse traffic effects during works on the site; and
- b) the CTMP shall be prepared by a suitably qualified person.

Advice Note:

- a) For the purposes of this condition, certification refers to confirmation by Council's Planning Lead or nominee that each of the requirements of the CTMP listed in Condition 15 have been met.

16. The CTMP as required by Condition 15 shall, as a minimum, include the following:
 - a) Contact information and details for the site manager;
 - b) A description of how deliveries will be made to the site, including how heavy or over dimension vehicles will be brought to and removed from the site;
 - c) The location of loading areas (such as any temporary use of the on-street traffic lane);
 - d) The hours of operation;
 - e) The location of parking for workers or sub-contractors who need to have their vehicles on or close to the site;
 - f) The location and details of wheel washing facilities;
 - g) Provision of signage for temporary Traffic Management Plan and way-finding;
 - h) Any measures required to ensure access to neighbouring properties will not be compromised;
 - i) Those measures required for works within the road network as approved by NZTA and Council (roading);
 - j) Procedures for maintaining a permanent record, to be made available to Council on request, of any complaints received alleging adverse effects from or related to the works. This record shall include:
 - The name and address of the complainant (if provided);
 - The date and time that the complaint was received;
 - Details of the alleged event;
 - Weather conditions at the time of the complaint; and
 - Any measures taken to mitigate/remedy the cause of the complaint.
17. Should certification for the CTMP be withheld, the Consent Holder shall submit a revised plan to Council's Planning Lead, or nominee, for certification as soon as is practicable. Should certification of the revised plan be again withheld then the Consent Holder shall engage a suitably qualified mutually acceptable independent person for resolution of the matters of dispute and his or her decision on those matters shall be final. The costs of dispute resolution shall be met by the Consent Holder.
18. Activities subject to the CTMP shall not commence until the CTMP has received certification.

19. The Consent Holder shall exercise this consent in accordance with, and comply with, the provisions of the CTMP (including any certified variation) at all times during the construction phase.
20. The control measures contained in the certified CTMP (and any amendments to it) shall be implemented throughout the duration of the earthworks and construction activities.
21. The CTMP may be varied by the Consent Holder at any time. Any amendments thereto shall be in accordance with the conditions of this consent and shall be provided to Council's Planning Lead or nominee for certification prior to replacing the previously approved CTMP and follow the process outlined in Conditions 15 to 17.

Information Requirement/Liaison

22. The Consent Holder shall notify Council's Planning Lead, or nominee, no later than 5 working days post completion of Stage 1 works on the site and Aotere Pā (Lot 3 DP 509004).

Landscape Screening

23. The existing pohutukawa/taupata shelter belt located on the boundary with Devon Road (SH3) and for the first 50 metres of Smart Road shall be retained until completion of demolition/removal of buildings associated with Stage 1 as notified to Council by Condition 22.
24. Where earlier removal of the existing pohutukawa/taupata shelter belt than as provided for by Condition 23 is required to complete soil remediation, install sediment retention ponds or remove directly adjacent buildings, the Consent Holder shall inform Council's Planning Lead, or nominee, at least 10 working days prior to their removal setting out the reasons for which removal is necessary.

Advice Note:

- a) For the purposes of clarity of Condition 23:
 - i. the shelter belt on the boundary of Devon Road (SH3) is located within Lot 4 DP 509004;
 - ii. the shelter belt on Smart Road is located within Lot 5 DP 509004; and
 - iii. the distance of 50 metres along Smart Road shall be measured from the intersecting (corner) point between Lots 4 and 5 DP 509004.

DEVELOPMENT PRE-REQUISITE CONDITION - Road Upgrades Stages 2 and 3

25. Prior to any works commencing on site associated with Stages 2 and 3, the Consent Holder shall in respect of the roading upgrades for both Stages 2 and 3, provide to Council's Planning Lead, or nominee, in respect of both Stages 2 and 3:
 - a) Preliminary Design Phase approval by the New Zealand Transport Agency (**NZTA**) associated with roading upgrades related to Devon Road (SH3) and the intersection of the same with the local roading network;
 - b) Preliminary Design Phase approval by Council (Transportation Manager) associated with roading upgrades related to Smart and Katere Roads and the intersection with the state highway network;

- c) Road Safety Audit/s (**RSA**) for the Preliminary Design Phase submitted to and approved by the NZTA and Council (Transportation Manager);
- d) Service Level Agreement/s for the life of the project established with the NZTA and Council (Transportation Manager); and
- e) Service Level Agreement for the life of the project established with Puketapu in respect of any works adjacent to or on the site of the Local Purpose (Historic) Reserve.

Advice Note:

In respect of Conditions 25(a), (b) and (c), the Preliminary Design Phase is as defined within the New Zealand Transport Agency Road Safety Audit 2013

ROAD UPGRADES STAGE 2 DEVELOPMENT PRE-REQUISITE CONDITION

26. Prior to any works associated with building construction commencing on site for Stage 2, including the Katere Road bridge works (to provide access to the site), the consent holder shall provide to Council's Planning Lead or nominee of the following:
- a) Plans identifying the road upgrades to be completed within Stage 2, including the bridge works to Katere Road;
 - b) RSA/s for the Detailed Design Phase submitted to and approved by the NZTA and Council (Transportation Manager) for Stage 2;
 - c) All approvals, authorities, and/or consents required from NZTA in respect of the works associated with roading upgrades related to Devon Road (SH3) and Katere Road for Stage 2;
 - d) All approvals, authorities, consents, encroachment licences, and/or reserve encroachments required from Council (roading) in respect of the works associated with roading upgrades related to Katere Road and Devon Road (SH3) under Stage 2;
 - e) Protocols established with Ngāti Tawhirikura and Te Atiawa in respect of any works adjacent to Aotere Pā (Lot 3 DP 509004) during Stage 2;
 - f) Detailed design of the roading layouts associated with Stage 2 road upgrades as approved by the NZTA and Council (Transportation Manager) in relation to Condition 25(a)-(c) which entail, but are not limited to:
 - Establishment of a signalised intersection and related lane re-marking on the corner of Devon and Katere Roads,
 - Establishment of the bridge crossing from Katere Road;
 - Reconfiguration of the lane road markings on Devon and Katere Roads;
 - Configuration of two marked approach lanes (in the order of 70 metres in length to provide for the 95th percentile right turn queue length from the SIDRA analysis) in addition to the flush median, on the Katere Road approach to the Devon Road signalised intersection,
 - Establishment of lane road markings adjoining the constructed bridge over the Mangaone Stream,
 - Provision of cycle and pedestrian facilities at the Devon Road/Katere Road intersection,

- Potential installation of advanced queue warning signals for the back of queue of the westbound traffic on Devon Road, west of the Vickers Road intersection, and
- Provision of cycle facilities accessing the development.

STAGE 2 - Development of upper platform area

Construction Traffic Management Plan

27. No less than 10 working days prior to the commencement of Stage 2 works on site, the Consent Holder shall provide an addendum to the CTMP to Council's Planning Lead, or nominee, for certification in accordance with the specifications of Condition 21.
28. The addendum to the CTMP as required by Condition 27 shall address the management of traffic in relation to all works associated with Stage 2 and as a minimum include those matters identified in Condition 16.

Road Upgrades Stage 2

29. Prior to the inaugural opening of the activity to occupy and operate from the building on the upper platform area, as-built plans of road upgrades completed as part of Stage 2 shall be provided to Council's Planning Lead, or nominee, to confirm that works have been completed in accordance with the plans required by Condition 26.

Landscape Planting

30. The Consent Holder shall have prepared by a suitably qualified person and submit for certification by Council's Planning Lead, or nominee, a detailed Landscape Management Plan (**LMP**) for Stages 2 and 3 prior to any physical works commencing on site.
31. The LMP shall as a minimum include, but not be limited to:
 - a) implementing the overall design as outlined by the Landscape Plans prepared by Boffa Miskell referenced by Condition 1(i) LUC17/47175 - J1 to J3;
 - b) identification of all species of planting, including the minimum height at planting and the maximum height at maturity for planting required by this condition;
 - c) identification of that landscaping contained within the site owned by the Consent Holder and that held in ownership of others;
 - d) identification of the stages of completion; and
 - e) identification of the parameters for landscaping, screening and fencing within the site and along the external boundaries of the overall site.
32. Any amendments to the LMP shall be:
 - a) consistent with the conditions of this consent;
 - b) prepared by an appropriately qualified person; and
 - c) submitted in writing to the Council's Planning Lead, or nominee, for certification prior to any amendment being implemented.

Advice Notes:

- a) With respect to Conditions 29 and 31 Council will either certify, or refuse to certify, the LMP within 10 working days of receipt, based on the parameters contained within Condition 30.
 - b) Provided that the information requirements are addressed by the LMP, certification shall not be withheld.
33. The first stage of the LMP, associated with Stage 2 of this consent, shall be implemented within the first planting season post the date of completion of the erection of building/s on the site associated with Stage 2.

Advice Notes:

- a) For the purposes of this condition, completion shall refer to the issue of a Code Compliance Certificate for the building/s.
34. The Consent Holder shall maintain all planting in a good and healthy condition. Any planting not in a good and healthy condition that is removed, lost, or defective in any way shall be replaced by the Consent Holder within the next planting season, so as to be in accordance with the approved LMP.

On Site Parking, Manoeuvring, Loading/Standing and Access

35. Prior to the inaugural opening of the activity to occupy and operate from the building on the upper platform area:
- a) parking spaces are to be sealed and marked in accordance with the parking dimension plan labelled 1433-002, SHT – RC 03 and 04, dated May 2018;
 - b) main internal roading corridors shall have directional markings and where necessary signage;
 - c) dedicated loading spaces shall be sealed and marked;
 - d) parking spaces for staff shall be appropriately marked and/or signposted if they are in a defined staff parking area; and
 - e) bicycle parking shall be provided at the rate of 1 bicycle per 10 vehicle parking spaces.
36. The car parking located at the eastern end of the Hardware Shop (adjacent to the loading area) shall only be used for staff parking.

ROAD UPGRADES STAGE 3 DEVELOPMENT PRE-REQUISITE CONDITION

37. Prior to any works associated with building construction commencing on site for Stage 3, the consent holder shall provide to Council's Planning Lead or nominee of the following:
- a) Plans identifying the road upgrades to be completed within Stage 3;
 - b) RSA/s for the Detailed Design Phase submitted to and approved by the NZTA and Council (Transportation Manager) for Stage 3;
 - c) All approvals, authorities, and/or consents required from NZTA in respect of the works associated with roading upgrades related to Devon Road (SH3), Smart Road and Katere Road for Stage 3;
 - d) All approvals, authorities, consents, encroachment licences, and/or reserve encroachments required from Council (roading and parks) in respect of the

works associated with roading upgrades related to Smart Road, Katere Road and Devon Road (SH3) under Stage 3;

- e) Protocols established with Puketapu, Ngāti Tawhirikura and Te Atiawa in respect of any works adjacent to or on the Local Purpose (Historic) Reserve and to Aotere Pā (Lot 3 DP 509004) during Stage 3;
- f) Detailed design of the roading layouts associated with Stage 3 road upgrades as approved by the NZTA and Council (Transportation Manager) in relation to Condition 25(a)-(c) which entail, but are not limited to:
- Establishment of a signalised intersection and related lane re-marking on the corner of Devon and Smart Roads,
 - Reconfiguration of the lane road markings on Devon and Smart Roads;
 - Establishment of the reconfigured signalised intersection on the corner of Devon and Smart Roads, related road widening, lane re-marking and the provision of cyclist and pedestrian facilities,
 - Establishment of a footpath adjoining the eastern (Harvey Norman) side of Smart Road North from the Devon Road intersection and the Harvey Norman southernmost access point,
 - Establishment a signalised intersection on Smart Road to provide access to the site, related road widening and lane re-marking,
 - Widening of Devon Road in the vicinity of, and between, the intersections of Devon Road with Smart Road,
 - Establishment the proposed Devon Road slip lane and related road marking,
 - Establishment of landscaping in accordance with the LMP required by Condition 30,
 - Provision of cycle and pedestrian facilities at the Smart Road Devon Road intersection,
 - Kerb line for the left turn from Smart Road North onto Devon Road heading east bound, shall enable a semi-trailer that 'protects' the inside lane on Devon Road through the entirety of the turn. The kerb or any aspect of its construction shall not encroach into the local purpose reserve, where Te Pou Tutaki is located,
 - Matters relating to the angle and width of the left turn egress from the 'Courier Depot' to Devon Road,
 - Operation of the area in the immediate vicinity of the Z service station access on Smart Road South. Some improvements that involve the relocation of the start of the northern end of the flush median to a point at the Z driveway,
 - Provision of cycle facilities accessing the development,
 - Provision of pedestrian facilities from the south-eastern corner of the SH3/Smart Road intersection into the north-western corner of the development,

- Road marking details on Devon Road need to be to provide for the 95 percentile queue length (80 metres) from the SIDRA modelling for Lanes 4 and 5 on Devon Road West and potentially accommodate a right turn 'pocket' for Bridle Street if the right turn into Bridle Street is to be retained, and
 - Configuration of SCATS is undertaken to manage the operation of two new signalised intersections and the upgrading of the Smart Road/Devon Road intersection at the time of detailed design and commissioning of the new signals; and
- g) Proof of acquisition of any private land associated with the roading upgrades such that there is no impediment to the roading upgrades on all roads.

STAGE 3 – Development of Lower Platform Area

Construction Traffic Management Plan

38. No less than 10 working days prior to the commencement of Stage 3 works on site, the Consent Holder shall provide an addendum to the CTMP to Council's Planning Lead, or nominee, for certification in accordance with the specifications of Condition 21.
39. The addendum to the CTMP as required by Condition 38 shall address the management of traffic in relation to all works associated with Stage 3 and as a minimum, but not limited to, include those matters identified in Condition 16.

Acoustic Insulation

40. Prior to construction commencing for the hotel complex, the Consent Holder shall provide to Council's Planning Lead, or nominee, an acoustic design certificate from a suitably qualified and experienced acoustic engineer stating that the design of the hotel is such that post construction the level of noise received within a noise sensitive room, excluding noise from any construction work, does not exceed 40 dBA L₁₀ between 10pm and 7am on any day.

Advice Note:

- a) To achieve compliance while at the same time ensuring adequate ventilation, noise sensitive rooms with doors and windows or other openings opening to the outdoors may need to utilise other methods to meet the ventilation requirements of the Building Act and relevant codes thereunder.
- b) Noise sensitive room refers to any indoor room of the hotel complex occupied by residents, visitors or guests for sleeping, rest, recreation, lounging or where meals are consumed.

Overhead Strike Bar Design in Loading and Standing Area

41. Prior to construction commencing for the stage 3 building complex, the Consent Holder shall provide to Council's Planning Lead, or nominee, documentation, including design plans, from a suitably qualified and experienced traffic engineer stating the most suitable location and design of an overhead 'strike bar' in the loading yard area adjoining the two northern most vehicle access points on Katere Road.

Landscape Planting

42. The second stage of the LMP as required by Condition 30, associated with Stage 3 of this consent, shall be implemented within the first planting season post the date of completion of the erection of buildings on the site associated with Stage 3.

Advice Notes:

- b) For the purposes of this condition, 'completion' shall be confirmed by the issue of a Code Compliance Certificate for the buildings.
43. The Consent Holder shall maintain all planting in a good and healthy condition. Any planting not in a good and healthy condition that is removed, lost, or defective in any way shall be replaced by the Consent Holder within the next planting season, so as to be in accordance with the approved LMP.

Road Upgrades Stage 3

44. Prior to the inaugural opening of the activity to occupy and operate from the first building in respect of Stage 3, as-built plans of road upgrades completed as part of Stage 3 shall be provided to Council's Planning Lead, or nominee, to confirm that works have been completed in accordance with the plans required by Condition 37.

Servicing

45. The 8 metre rigid truck servicing the two small loading areas on the southern side of the stage 3 building (upper platform car parking) shall be limited for use outside of operating hours for the speciality retail.

MONITORING AND REVIEW

46. Prior to the inaugural opening for the activity to occupy and operate from a building within the area defined by Stage 2, baseline vehicle traffic volumes along:
 - a) Smart Road between the intersections of Atiawa Street and Devon Road;
 - b) Smart Road between the intersections of Colson Road and Alberta Road; and
 - c) Atiawa Street between the intersections of Smart Road and Tupoki Streetshall be recorded. The recording of these traffic volumes shall be undertaken by the Consent Holder for a period of four continuous weeks. This recording shall be undertaken during any period outside of school or tertiary holidays. The baseline vehicle traffic volumes shall be provided to Council's Planning Lead, or nominee.

Advice Note:

- a) The purpose of monitoring Smart Road between Colson and Alberta Roads is to specifically exclude natural growth, or other traffic impacting the monitoring of the development.
47. Monitoring of the roads outlined in Condition 46, shall be undertaken by the Consent Holder 18 months after the date of completion of the Stage 3. Monitoring shall not take place during school or tertiary holidays. Monitoring shall:
 - a) Be undertaken by a suitably qualified transportation engineer(s).
 - b) Be undertaken on two consecutive peak days identified in the ITA i.e. Wednesdays and Thursday.

Advice Note:

- a) For the purposes of this condition, 'completion' shall be confirmed by the issue of a Code Compliance Certificate for the buildings.

- 48. The results of the monitoring shall be submitted to Council's Planning Lead, or nominee, within one month of the assessment being completed. Council shall confirm acceptance within 1 week of receipt as to whether the assessment satisfies Conditions 46 and 47.
- 49. Should post-opening monitoring detailed in Condition 47 record an additional 40 vehicles or more above the baseline traffic volumes in the peak hour (4.30pm to 5.30pm) along Atiawa Street, the Consent Holder shall implement traffic calming measures and/or speed reductions to reduce the desirability of the route.

Advice Note:

- a) Advice note: any background traffic growth from other land use activities or changes to the transport network shall be excluded from traffic recorded in Condition 47.

- 50. Should post-opening monitoring detailed in Condition 47 record over 250 vehicles in the peak hour (4.30pm to 5.30pm) accessing the site from the Smart Road signalised access and observe a reduction in the efficiency of Smart Road, in particular the signalised intersection with Smart and Devon Roads, then the Consent Holder shall provide design solutions to Council to address this issue. Such design solutions may include (but not be limited to) the implementation of measures to reduce the desirability of a route and/or the restriction of vehicle movements on site.
- 51. The remedial actions required in Conditions 49 and 50 shall be installed within 3 months of receiving all necessary approvals for the same, at the expense of the Consent Holder.
- 52. Pursuant to s128 of the RMA, Council may serve notice on the Consent Holder of its intentions to review the conditions of this consent within six months of any remedial actions having been installed in accordance with Conditions 49 and 50 for the purpose of dealing with any adverse traffic effects identified by the monitoring.