

8 November 2022

Madeleine Berry
Acting Manager, Fast-track Consenting Team
Ministry for the Environment | Manatū Mō Te Taiao

By email: s 9(2)(a)
Copy to: s 9(2)(a)
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ODERINGS BROOKVALE ROAD MDR PROJECT: FURTHER INFORMATION

1. Thank you for your letter of 28 October 2022. This follows lodgment of the above application for referral into the FCTA process made on 23 September 2022. This is the first request for further information.
2. The relevant responses are provided below, using your requested information topics as headings.

(1) Provide supporting evidence demonstrating financial capability to fund and deliver the project.

3. Oderings is a 100% New Zealand privately owned family business of six generations spanning almost 93 years. Oderings currently has eight retail stores nationwide, five in Christchurch and three in the North Island, along with three Wholesale growing nurseries, two located in Christchurch and one in Hawke's Bay. Oderings employs over 180 staff nationwide and up to 300 during our peak period in Spring. As a privately owned company, it does not have to provide publicly available financial information as to its operations, but its financial strength should speak for itself.
4. However, the further information is offered to demonstrate Oderings' financial capability to fund and deliver the project in **Attachment A**. This information is confidential and commercially sensitive, and should not be released under any official information request.

(2) Provide details showing the track record of the applicant and partner organisation (David Reid Homes) of being able to deliver projects.

5. Oderings has over many years acquired land and developed it, principally for its garden centre sites, which usually include cafes, as well as its nurseries. The opportunity for developing the application site for medium density residential has only arisen because Oderings has successfully relocated the nursery operations that previously operated on that site elsewhere. It has recent "project" experience in the region to that extent.

6. Oderings is not, however, and happily accepts that it is not, an expert developer of residential projects. That is one reason it has decided to advance its development with a build partner, being David Reid Homes.
7. David Reid Homes is an iconic New Zealand brand with a proud history of building beautifully crafted, innovative homes. Since 1993, it has had the one goal: to create innovative homes that reflect personalities and the way people live their lives. Since then, it has grown to become a nationwide network of franchised branches, while maintaining its core values and aspirations. The current owner of the franchise business, who has run the business for the last three years has provided a letter of position, as **Attachment B**. This includes an attachment with examples of their track record in delivering projects.

(3) Quantify any time that would be saved using the FTCA compared to a standard consenting process under the RMA, including reasons for the expected time saved.

8. The application stated the following:

The project is consentable under the Hastings Operative District Plan framework (and the Regional Plan, eg where consent is required for any bridge crossing of the Karituwhenua Stream.

However, Hastings City Council officers have advised that a resource consent application for the same activity would be likely to be processed on a notified basis, given that the proposal does not fit with the (now anomalous) Plains Production Zone. Assuming that this advice from officers is correct, and noting the resourcing issues within Council (without criticism, but recognising the reality), and potential for at least some submissions, it would be expected to take in the order of 12 to 18 months to obtain a resource consent through a notified process. Appeals cannot be entirely discounted, although would be considered very unlikely. Any appeal, even if resolved by way of consent order would increase delays by at least 6 months, and more likely 9 months or more (as a mediation step would usually be required to reach agreement by consent).

In other words, it could take 2 years or more using the standard process – which is the time by which the project could be constructed and delivered to the market. Even at its quickest, without appeals, a year is the likely outcome.

The development parts of the site are vacant, and so there is an urgent need from the applicant to get on, and no impediments from an extinguishing of existing uses onsite, site preparation, etc perspective. So the proposal has a clear ability to deliver 35 dwellings to the market that warrants utilization of the fast track process.

9. This still remains the case. In other words, if a consent application were made tomorrow, then consent is unlikely to be granted until late 2023 at the earliest, but more likely not until mid 2024, or later.
10. In contrast (assuming that the MfE advice on timings is correct), a decision on referral should be made within about three to three and a half months from an application being made, then the applicant should know by the end of December or early 2023 if it will be entitled to apply to the EPA under the fast track process. The applicant is committed to

advancing the preparation of its application in the meantime, so that it is read to lodge with the EPA as soon as possible if a referral order is made. Assuming that a referral order is made in February 2023, then consent would be granted (if that is the Panel's decision), some 45 days later, so, say in May 2024. That is at least a year ahead of the likely outcome under a normal consent process.

11. In the context of a vacant site, where construction can immediately commence, that is a significant saving in time.

(4) Provide the following:

- an assessment of the project against the National Policy Statement for Freshwater Management 2020

12. An assessment against the relevant provisions of the National Policy Statement for Freshwater Management 2020 (NPSFM) has been provided in **Attachment C**. In summary:

- (a) The only freshwater body potentially affected by the proposal is the adjacent Karituwhenua Stream.
- (b) Potential adverse effects on the stream arising from the proposal relate to potential discharges of sediments during construction.
- (c) The stream will not be adversely affected as appropriate sediment control protocols will be in place during construction.
- (d) On this basis, but as to be confirmed in engagement with Iwi, the proposal will not give rise to any adverse effects on freshwater cultural values.
- (e) As the proposal will not adversely affect the water quality of the Karituwhenua Stream, the proposal will in no way impede the achievement of the national target for water quality improvement.
- (f) The NPSFM is fundamentally enabling of the proposal as Policy 15 enable communities to provide for their wellbeing (provision of housing) in a way consistent with the NPSFM.

- whether consent is required under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020

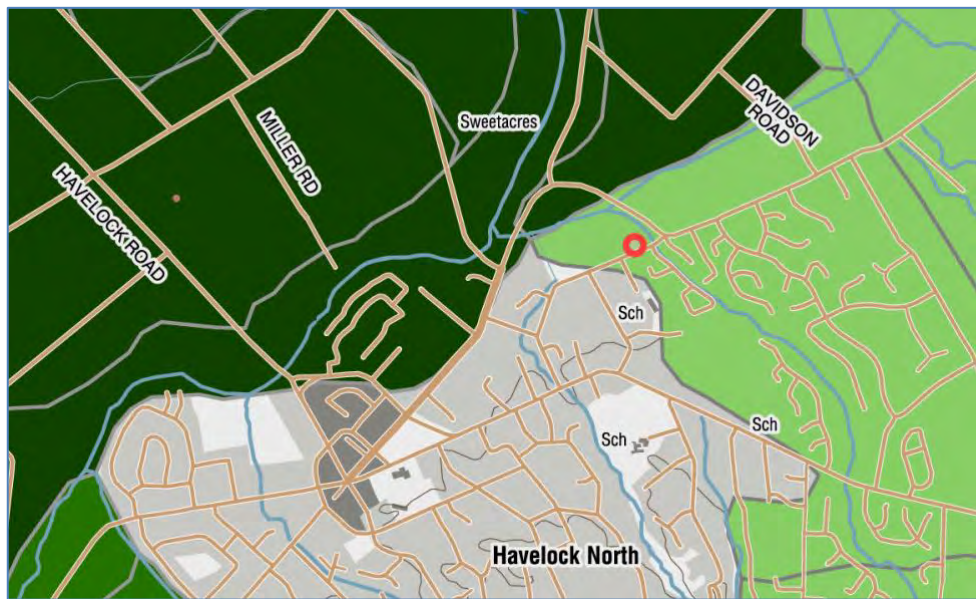
13. An assessment against the relevant regulations of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) has been provided in **Attachment D**. In summary:

- (a) There are no wetlands within 100m of the proposed works and the proposal does not trigger consent under Regulation 54.

- (b) No reclamation of streams is proposed and the proposal does not trigger consent under Regulation 57.

- an assessment of the project against the National Policy Statement for Highly Productive Land 2022

14. With regard to the NPS-HPL, this NPS directs that the Landcare soil maps are applied until such time that more detailed mapping is completed by the regional councils. The property is shown as being located in LUC3, as in the below (red circle denotes 55 Brookvale Road, the lighter green being LUC3):



15. In the first instance, it is considered inappropriate consider the subject site mapped as highly productive land for the following reasons:
- (a) Clause 3.4(1) of the NPSHPL requires that rural land considered predominantly Land Use Classification (LUC) 1, 2 or 3 is mapped as highly productive land.
 - (b) Under Clause 3.4(1) the subject site would be considered highly productive land as it is within a rural production zone under the Hastings District Plan and has been identified as LUC 3 land within The New Zealand Land Resource Inventory.
 - (c) However, Clause 3.4(2) creates an exception to Clause 3.4(1), requiring that land identified for future urban development must not be mapped as highly productive land.
 - (d) Under the Heretaunga Plains Urban Development Strategy 2017 (HPUDS) (a collaborative urban development strategy prepared by Hastings District Council, Napier City Council and Hawke's Bay Regional Council) the rural area surrounding the subject site has

been identified as a future urban development area (see Attachment E).

- (e) Accordingly, the exclusion of the subject site from the land identified for future urban development is an anomaly, likely an oversight related to the historical use of the site as a garden centre, nursery and residential land (the subject site already being a longstanding part of the existing urban landscape).
 - (f) In reality, the subject site is a de facto part of the future urban development area of Havelock North.
16. Notwithstanding the above, if, for technical reasons, the subject site were still to be considered “highly productive land”, then the following policies would be most relevant, in addition to the sole objective of the NPS:

Objective: Highly productive land is protected for use in land-based primary production, both now and for future generations.

Policy 3: Highly productive land is mapped and included in regional policy statements and district plans.

Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.

Policy 8: Highly productive land is protected from inappropriate use and development.

17. It is important to recall also, as a starting point, that the Supreme Court in *NZ King Salmon* did not suggest that an “avoid” policy required all adverse effects to be avoided – “minor” adverse effects (as well as “transitory” ones) do not offend an “avoid” policy: *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593 (SC), at [145].
18. The provisions of the NPS itself also provide exceptions (in clause 3.9) and exemptions (in clause 3.10).
19. Clause 3.9(2)(g) provides an exception where an activity is small-scale, that has no impact on the productive capacity of the land. In this present case, in terms of the wider areas identified as being LUC3, the activity is small-scale, and will have no impact on the productive capacity of the land, given that the land has already been taken out of productive use.
20. If Clause 3.9(2)(g) does not apply (including to the proposed subdivision), clause 3.10 applies as an *exemption*, for subdivision, use, and development, where:
- (a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years
 - (b) the subdivision, use, or development:

- (i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and
 - (ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and
 - (iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and
 - (c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
21. In resolving clause 3.10(1)(a), it is necessary under 3.10(2) for an applicant to demonstrate that “the permanent or long-term constraints on economic viability cannot be addressed through any reasonably practicable options that would **retain** the productive capacity of the highly productive land”.
22. In this instance, the land has already been lost to productive use, as it had been converted for use as a nursery, which did not rely on the soils of the site, but rather the growing soils and systems brought in to make the nursery work. The site is currently covered almost entirely in hardstand areas. Therefore there are no productive uses to “retain” and the policy is not engaged.
23. In respect of clause 3.10(1)(b):
- (a) significant loss of productive capacity of highly productive land in the district will not occur, both because of the small area of the site as well as it not having any significant productive capacity due to its use for other purposes;
 - (b) fragmentation of large and geographically cohesive areas of highly productive land is avoided, as the site is now a small remnant “island” of land surrounded by non-highly productive uses;
 - (c) there are no surrounding land-based primary production from the subdivision, use, or development upon which reverse sensitivity effects could occur.
24. While the size of the landholding is not in itself a determining factor, it must be that the size of the site, particularly when it is no longer surrounded by land in productive use, is highly relevant. It is essentially an “island” of land that remains zoned for productive use but hasn’t been used for that use for a long time, and is incapable of productive use in any meaningful way into the future.
25. As for clause 3.10(1)(c) (ie benefits) the social and economic benefits of the proposal far outweigh the long-term environmental, social, cultural and economic costs associated with the “loss” of highly productive land

for land-based primary production. There is a significant need for, and benefit to be derived from, the proposal.

26. Consistent with the requirements of Clause 3.10(2) and (3), there are no practical alternative uses of the land that could be reasonably anticipated to be undertaken on site within the next 30 years.

(5) Provide a copy of the café resource consent and provide an assessment on how the project will impact/affect compliance with any existing consents for the garden centre, including the café.

27. A copy of the consent document has been included as **Attachment E**.
28. The project will not impact the implementation of the garden centre café consent given the limited conditions imposed in relation to the garden centre café consent (implementation of the consent only requires consistency with the approved plans and information), or the operation of the garden centre itself, as the design of the project has been undertaken to fully integrate with the garden centre and will not adversely affect the function or operation of the centre.
29. Given that the applicant will hold the consents for both the proposed development and the garden centre there is little chance of any conflicts arising in the future.
30. Quite the contrary, in fact: the project has been designed to support the garden centre and café operation, as residents will be close to and use those facilities, significantly. Public access options through the site will also encourage wider used of the consented café.

(6) There are some discrepancies between the landscape master plan and the plan shown in the detailed site investigation report. Please clarify which plan is correct and accurately reflects the project.

31. The most accurate reflection of the project is the landscape masterplan. It is most recent and post-dates the DSI report, which was focused primarily on the extent of historical HAIL activities.

Forward progress

32. Please let me know if the above satisfied the current information requirements, or if further discussion is required.

Yours faithfully





JAMES GARDNER-HOPKINS

Consultant | Advisor | Project Manager

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www.jgh.nz

ATTACHMENT A: Confidential Oderings' financial information

ATTACHMENT B: David Reid Homes letter and project record



8th November 2022

To Whom It May Concern:

I, Warren Jardine, have been in the construction industry for Thirty-five years.

Twenty of those years I spent in Melbourne, Australia as a business owner of a construction company that focussed on multi-unit medium density town housing. We also completed several commercial projects that was multi-rise apartments located in Melbourne Central.

We moved to NZ 15 years ago for a lifestyle change. I spent the first few years contracting to group builders as a sole contractor. I opened up my own construction 13 years ago and recently bought the David Reid Homes franchise which we have run for the last three years. We have completed numerous builds since then and now looking to diversify. We are looking forward to returning to medium density construction that we were accustomed to.

All my companies to date are still financially stable and growing accordingly as our market presence increases.

Kind regards

Warren Jardine
Director
Hawkes Bay Design & Build Ltd
Franchisee for David Reid Homes Hawkes Bay

s 9(2)(a) [REDACTED]
2/211 Heretaunga St East, Hastings
PO Box 8343, Havelock North 4157

DAVID REID
HOMES

COMMERCIAL
PORTFOLIO





8 Lemington Road,
Westmere

Build Value: \$1.4m

Design & Build for a young
family in Westmere.

Site is very narrow, has great
views of the harbour.

Project completed
March 2022.







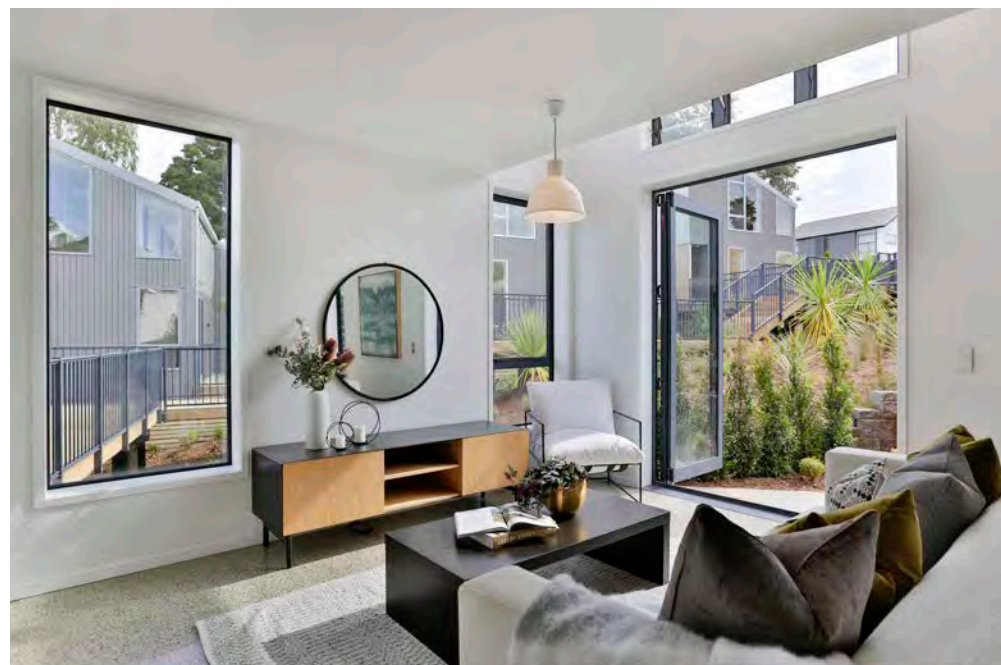
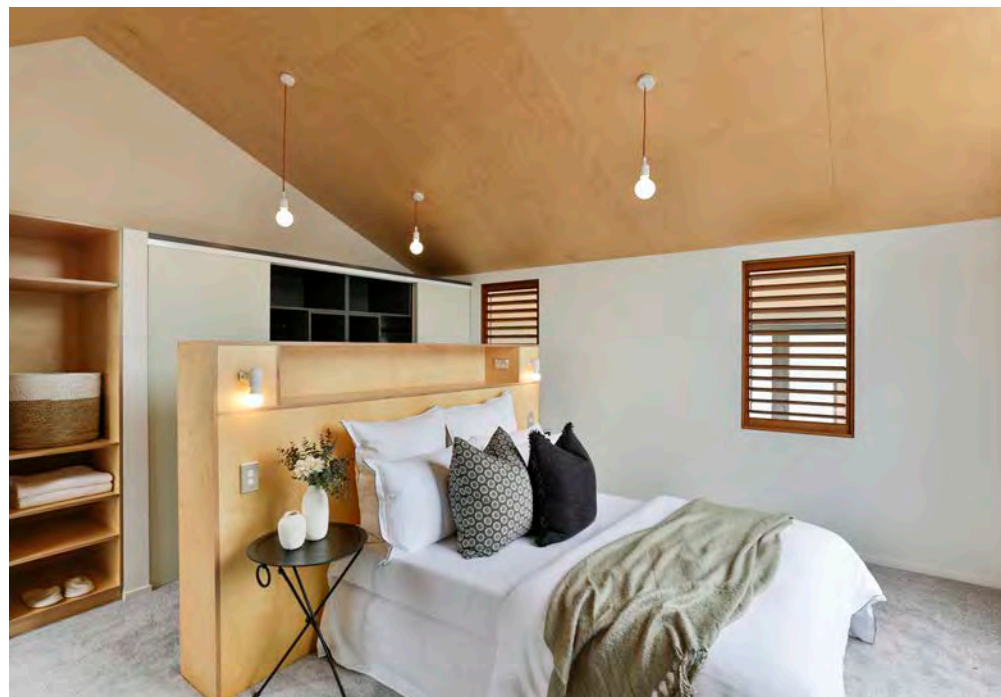
37 Castledine Cres, Glenn Innes

Build Value: \$3.3m

Tendered Build-only project to construct 5 townhouses, access walkways and carparking to a highly-complex site in Glen Innes.

Site is an overland flow path, so 4/5 houses and all of the walkways are built on timber piles, suspended above the ground.

Project completed August 2020.



EXPERIENCE THE NEW





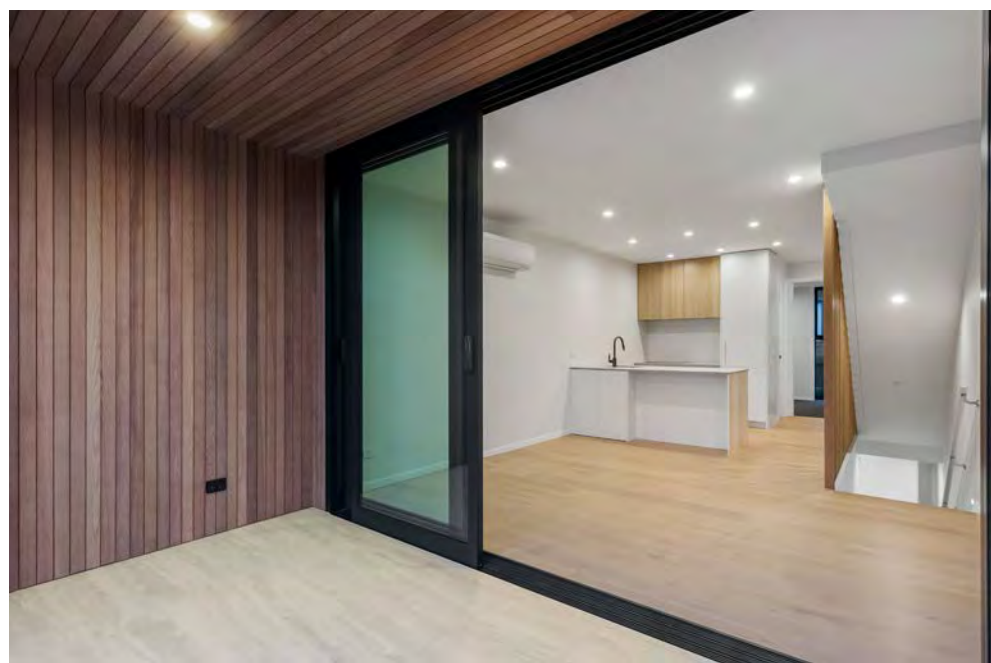
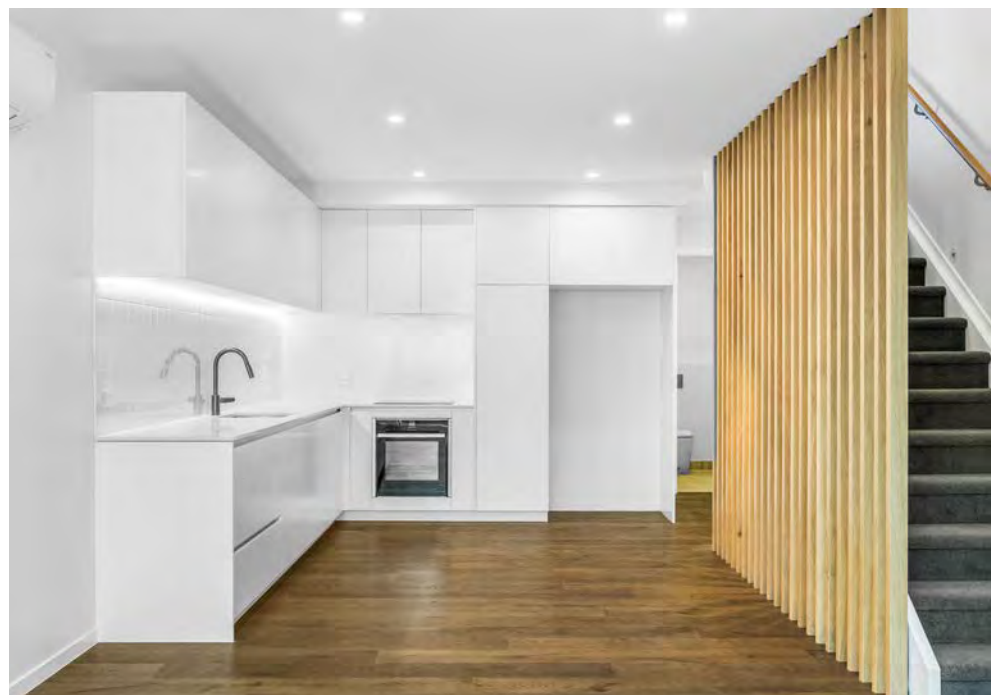
17 Lucerne Road, Remuera

Build Value: \$5m

Design and Build partnership to produce 8 high-end, 3-storey terraced townhouses in Remuera

Includes Civil and Site works, landscaping, and driveways.

Construction completed August 2022.



EXPERIENCE THE NEW







29 Abercrombie St, Howick

Project Value: \$6.2m

7 x 3-storey terraced townhouses within walking distance to Howick village. 4 houses of 260m², 3 at 180m², all highly spec'd with 4 bedrooms, lifts, engineered timber floors and fully tiled bathrooms.

We are the developer, designer, builder & sales team.

Construction completed April 2021.



EXPERIENCE THE NEW





55 Kelmarna Ave, Herne Bay

Build Value: \$1.7m

Design and Build partnership to produce 3 high-end townhouses in Herne Bay.

Includes Civil and Site works, landscaping, & driveways.

Construction completed February 2021.



EXPERIENCE THE NEW



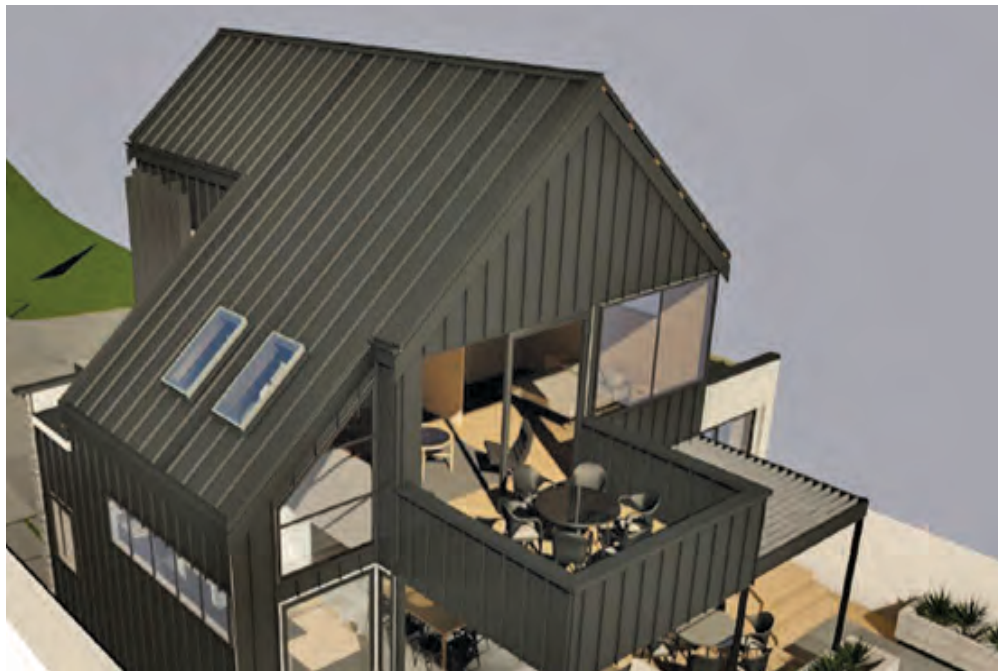
23 Horoeke Ave, Mt Eden

Build Contract Price: \$1.85m

Design and Build partnership to complete a subdivision, then build a new high-end, townhouse in Mt Eden. Site has heritage overlay, so design was carefully considered to blend in with surroundings, and achieve Council approval.

House is extremely highly spec'd, including a lift, polished and heated floor slab, feature stair case etc and was designed to be low maintenance for its owners.

Expected completion
December 2022.



246 Kapa Road, Mission Bay

Project Value: \$5.8m

Design and Build partnership to produce 10 high-end, 3 storey terraced townhouses in Mission Bay. Included managing design and civil/ subdivision works.

Expected completion
January 2024.





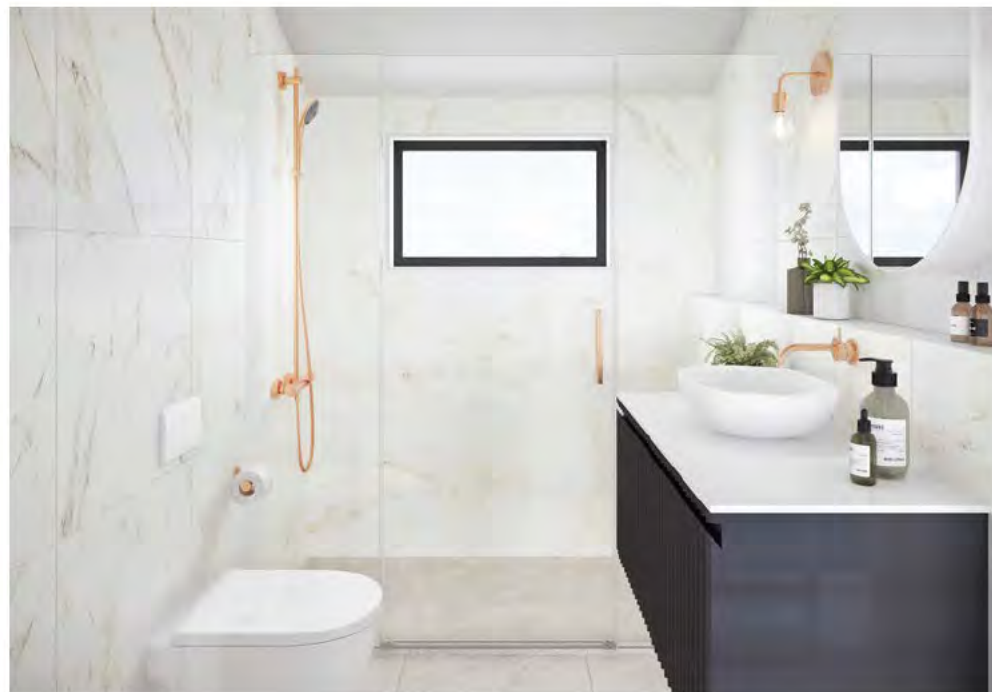
23 William Ave, Greenlane

Project Value: \$6.8m

A full Develop, Design, Build and sell project run by MDR and DRH.

Will provide 5 new, high-end terraced houses to the market.

Site works completion
September 2022, expected
completion November 2023.



EXPERIENCE THE NEW



79 Kesteven Ave, Mt Eden

Project Value: \$1.3m

2-lot subdivision and a
Build project for a family
in Glendowie. House is
approximately 260m².

Expected completion
October 2022.



33 Fern Glen Road South, St Heliers

Project Value: \$1.65m

Design & Build project
for the removal of an old
existing house, and the
construction of a new house
of circa 300m².

Expected completion
December 2022.





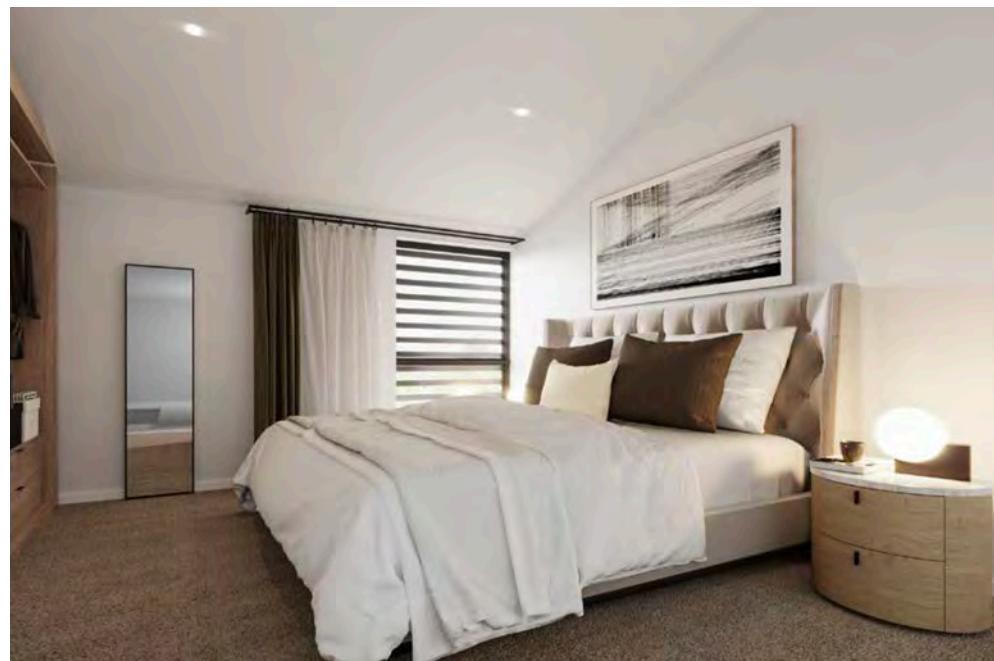


748 Remuera Rd, Remuera

Build Value: \$5.5m

Design & Build Partnership
to produce 9 high-end,
2 and 3 storey terraced
townhouses in Remuera

Expected Completion March
2023.



EXPERIENCE THE NEW



EXPERIENCE
THE NEW

DAVID REID
HOMES

ATTACHMENT C: NPSFM assessment

Attachment C

National Policy Statement for Freshwater Management	
Provision	Assessment
<p>Objective</p> <p>The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:</p> <ul style="list-style-type: none"> (a) first, the health and well-being of water bodies and freshwater ecosystems (b) second, the health needs of people (such as drinking water) (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future. 	<p>The proposal is consistent with the overall objective of the NPSFM as no modifications to freshwater bodies are being proposed and the in stream values of the adjacent stream will not be affected by the proposal.</p>
<p>Policy 1:</p> <p>Freshwater is managed in a way that gives effect to Te Mana o te Wai.</p>	<p>The proposal recognises the intrinsic value of freshwater bodies and will not give rise to any adverse effects on rivers or natural wetlands.</p>
<p>Policy 2:</p> <p>Tangata whenua are actively involved in freshwater management (including decisionmaking processes), and Māori freshwater values are identified and provided for.</p>	<p>Heretaunga Tamatea Settlement Trust, representing Heretaunga Tamatea, will be consulted in relation to the proposal, and any adverse effects on Māori Freshwater Values will be identified and addressed.</p>
<p>Policy 5:</p> <p>Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.</p>	<p>The only possible adverse effects on instream values arising from the proposal relate to potential sediment discharges to the adjacent stream during enabling earthworks. It is considered that any potential discharges can be avoided via the use of adequate sediment control protocols (compliance with the protocols can be assured via conditions of consent).</p>
<p>Policy 6:</p>	<p>No wetlands will be affected by the proposal.</p>

There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.	
Policy 7: The loss of river extent and values is avoided to the extent practicable.	The proposal is not anticipated to give rise to any adverse effects on the extent or values of the Karituwhenua Stream.
Policy 8: The significant values of outstanding water bodies are protected.	No outstanding waterbodies will be affected by the proposal.
Policy 12: The national target (as set out in Appendix 3) for water quality improvement is achieved.	As the proposal will not adversely affect the Karituwhenua Stream, it will in no way impede the achievement of the national target for water quality improvement.
Policy 15: Communities are enabled to provide for their social, economic, and cultural well being in a way that is consistent with this National Policy Statement.	The NPSFM is fundamentally enabling of the proposal as the development of new dwellings will allow the community to meet its housing needs without adversely affecting any freshwater bodies.

ATTACHMENT D: NES-F assessment

Attachment D

National Environmental Standards for Freshwater	
Provision	Assessment
<p>Regulation 54 Non-complying activities</p> <p>The following activities are non-complying activities if they do not have another status under this subpart:</p> <ul style="list-style-type: none">(a) vegetation clearance within, or within a 10 m setback from, a natural wetland:(b) earthworks within, or within a 10 m setback from, a natural wetland:(c) the taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland.	<p>No natural wetlands have been identified within 100m of the proposal.</p>
<p>Regulation 57 Discretionary activities</p> <p>Reclamation of the bed of any river is a discretionary activity.</p>	<p>No reclamation of the Karituwhenua Stream is proposed.</p>

ATTACHMENT E: Café consent

RESOURCE CONSENT DECISION

RMA20220268

Pursuant to:

- (a) Rule PP39 of the Partially Operative Hastings District Plan (11 March 2020);
- (b) Sections 104 and 104D of the Resource Management Act 1991;

Resource Consent as a Non-Complying Activity is GRANTED to Oderings Nurseries CHCH Limited to:

- (a) Convert a portion of the existing garden centre retail area into a café.

On a site legally described as Lot 2 DP 311724 and Lot 1 DP 8274 RT 46325, and physically located at 55 Brookvale Road, Havelock North.

This decision is subject to the following conditions imposed pursuant to Sections 108 and 108AA of the Resource Management Act 1991:

General

1. That the development proceeds in accordance with the plans and information submitted in the application (HDC Ref: 58894#0041 and 58894#0042), Resource Consent: RMA20220268, application received 27/6/2022, unless otherwise altered by the consent conditions. In particular:
 - a. The operating hours of the café are limited to 9am to 5pm Monday to Sunday.

With the Reasons for this Decision Being:

1. As assessed in the Section 95A and Section 95B notification reports for this application, there are no special circumstances that would warrant limited or public notification and there are no affected persons in terms of Section 95E of the Resource Management Act 1991.
2. The adverse effects of this proposal on the environment are no more than minor, in that:
 - The proposed activity is within the existing retail area which is internal to the site. There will be no change in terms of character and amenity of the site in relation to the wider environment.
 - The proposal will not have a significant adverse effects on the wider roading network as the majority of people using the café will be patrons of the garden centre.
 - Given the size of the site, the existing activity and the context of the site within the urban environment it is considered that the increase in staff numbers will not be discernible to the wider environment.
 - The proposal will have no impact on the versatile soils as it is occurring within a consented commercial building, with no increase in floor area. The site is physically separated from the remaining Plains Production zone and is surrounded by urban uses.
3. The proposal is not contrary to the Objectives, Policies and other provisions of the Hastings District Plan, in that:

- The versatile soils are not being further effected as there is no increase in floor area as a result of the proposal.
- The amenity of the site and area will be maintained.

4. The application meets the requirements of the Resource Management Act 1991.

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, Engineering Code of Practice and Hawke's Bay Regional Plans. All necessary consents and permits shall be obtained prior to development.
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).
3. This approval does not override any existing private easements, land covenants or other interests on the Record of Title. The consent holder should seek independent legal advice on such matters and how they might impact on the development.

Recommended by:

Hannah Hall
ENVIRONMENTAL PLANNER (CONSENTS)

Decision issued under Delegated

Authority by:




Caleb Sutton
ENVIRONMENTAL CONSENTS MANAGER
PLANNING AND REGULATORY SERVICES

Date:

25 July 2022

Approved Plan (HDC Ref: 58894#0041):


 HASTINGS DISTRICT COUNCIL Te Kaunihera ā-Rohe o Heretaunga	RESOURCE CONSENT APPLICATION RMA20220268
	PLANNING REPORT SECTIONS 95A, 95B AND 104 OF THE RESOURCE MANAGEMENT ACT 1991

Summary of Application Details		
Application Received: 27/6/2022	PID: 58894	Proposed café within an existing consented building used for retail use as a garden centre.
Applicant:	Oderings Nurseries CHCH Limited	
Address of Site:	55 Brookvale Road HAVELOCK NORTH 4130	
Legal Description:	LOT 2 DP 311724 and Lot 1 DP 8274 (RT 46325)	
Area:	2.02 Hectares	
Zoning:	Plains Production Zone – Partially Operative Hastings District Plan (March 2020)	
Reasons for Application:		
District Plan Provisions:	Rule P39 of the Partially Operative Hastings District Plan (March 2020)	
Assessment of Status:	Non Complying Activity	
Report Prepared By:	Hannah Hall – Environmental Planner (Consents)	

1.0 THE PROPOSAL

- 1.1 The applicant is applying for an application to convert a portion of the existing garden centre into a café. The application is best described by the applicant, in summary as follows:

It is proposed to convert part of the existing garden centre retail space to café, including a kitchen and toilet areas. The café seating will occupy approximately 60m², which when combined with the proposed kitchen and toilets results in a total floorspace of around 90m². The café will be located entirely within the northern most building used for retailing.

The opening hours of the café will match the existing hours of the garden centre – 9am to 5pm, Monday to Sunday.

There are 4 to 6 staff currently associated with the existing operation of Oderings Garden Centre and 3 new staff will be needed to run the proposed café, although they will not necessarily all be present on site at the same time during operating hours.

- 1.2 Plans of the proposal are shown below:



Figure 1: Plan showing portion of building proposed for café.



Figure 2: Proposed Café in relation to garden centre activity.

1.3 I have reviewed the title documentation for the subject site which was submitted with the application, being:

- RT 46325

There are no registered interests on the Record of Title of relevance to the consideration of this proposal.

2.0 THE SITE AND SURROUNDING ENVIRONMENT

The site is located on the Brookvale Road. The site has been described by the applicant as follows:

The 2.0270ha application site has been assembled from two adjoining Oderings owned properties located at 55 and 57 Brookvale Road, Havelock North. The properties are currently occupied by a residential dwelling at 55 Brookvale Road and the Oderings Garden Centre at 57 Brookvale Road.

As is evident in Figure 1, the land to the northeast of the site is currently transitioning from rural uses to a future residential area known as Brookvale, with the roading layout for the first stage of development in accordance with the Brookvale Structure Plan having been added to the GIS portal.

The surrounding area represents a significant greenfields growth area for Havelock North. Within this context, the site benefits from a visually “high profile position” with frontage to both Romanes Drive and Brookvale Road.

Brookvale Road extends from St Hills Lane to Thompson Road and is identified as a Secondary Collector Road, while Romanes Drive linking Napier Road and Brookvale Road is identified as a Primary Collector. All of the land to the south of Brookvale Road is an established residential area with primary, intermediate and secondary schools in close proximity.

The site adjoins Guthrie Park to the west which provides sports fields for football and cricket. The clubrooms for the Havelock North Wanderers are located at the eastern end of the Brookvale Road frontage.

To the north-east of the site is the Romanes Drive Reserve which includes a BMX Track and a passive recreation area.

The vast majority of the former shade houses and sheds previously used as a plant nursery within the northern area of the site have been removed (as shown in Figure 4). Oderings have however retained the existing garden centre and associated two buildings currently used for retailing in the south-eastern corner of the site. The eastern portion of the northern most building is the proposed location for the cafe.

After visiting the site, I agree with the applicant’s assessment of the site and surrounding area.

The site is shown in the aerial photo below:



Figure 3: Aerial Photo of site and surrounding environment.

3.0 REASONS FOR CONSENT AND ACTIVITY STATUS

3.1 National Environmental Standards

No National Environmental Standards are relevant to the application.

3.2 Partially Operative Hastings District Plan (11 March 2020)

As shown below, the site is zoned Plains Production.



3.2.1 District Wide Activity Status

No District Wide Activity rules are considered relevant.

3.2.2 Land Use Status

The activity is for a change of use of part of the existing retail activity, to include a café.

Resource consent was granted for a garden centre with associated café in 1997 by RMA970341. Although the garden centre was constructed, the café portion of the consent was not given effect to. The proposed café is within the building that has been consented and used for retail activity and the floor area is not increasing, however the proposal will require an increase in staff with none of the staff living on site.

The hours of operation remain unchanged by the proposal.

Overall the above breaches result in a **Non Complying Activity** status pursuant to Rules PP39 as an activity which is not provided for as a Permitted, Controlled, and Restricted Discretionary or Discretionary activity.

Note: this application does not constitute a variation to consent conditions (s127) of the resource consent RMA970341.

3.3 **Overall Status**

In accordance with Rule PP39 the proposal is therefore considered to be a **Non-Complying Activity** in terms of the Partially Operative Hastings District Plan (March 2020).

4.0 NOTIFICATION ASSESSMENT (SECTIONS 95A AND 95B)

4.1 Public Notification Assessment Section 95A

Step 1: mandatory public notification in certain circumstances

Has the applicant requested the application be publicly notified? (S95A(3)(a));	No
Has any further information been requested that the applicant has refused to provide to the Council under Section 95C? (S95A(3)(b)).	No
Has the application been made jointly with an application to exchange reserve land? (S95A(3)(c)).	No
Outcome Step 1: Mandatory public notification is NOT required [S95A(2)(b)].	

Step 2: if not required by step 1, public notification precluded in certain circumstances

Is the application for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes public notification? (S95A(5)(a))	No
Is the application for a Controlled Activity or a Boundary activity of any status? (S95A(5)(b))	No
Outcome Step 2: Public notification is NOT precluded by Step 2. Step 3 therefore applies.	

Step 3: if not precluded by step 2, public notification required in certain circumstances

Is the application for a resource consent for 1 or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification? (S95A(8)(a))	No
Will the activity have, or is likely to have adverse effects on the environment that are more than minor in accordance with Section 95D? (S95A(8)(b))	In terms of S95A(8)(b) an assessment of whether the effects of the proposal are more than minor is discussed below.
Effects More than Minor Assessment (Section 95D)	
A consent authority that is deciding, for the purpose of section 95A(8)(b), whether an activity will have or is likely to have adverse effects on the environment that are more than minor —	
<p>(a) must disregard any effects on persons who own or occupy—</p> <p>(i) the land in, on, or over which the activity will occur; or</p> <p>(ii) any land adjacent to that land; and</p> <p>(b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and</p> <p>(c) in the case of a restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard restricts discretion; and</p> <p>(d) must disregard trade competition and the effects of trade competition; and</p> <p>(e) must disregard any effect on a person who has given written approval to the relevant application.</p> <p>In accordance with Section 95D(a), I have disregarded effects on persons who own or occupy the properties identified by yellow star symbols in the following plan (being the adjacent land):</p>	



No written approvals have been provided with the application.

My assessment of whether there are adverse effects on the environment that are more than minor is as follows:

- The proposed activity is within the existing retail area which is internal to the site. There will be no change in terms of character and amenity of the site in relation to the wider environment.
- The proposal will not have a significant adverse effects on the wider roading network as the majority of people using the café will be patrons of the garden centre.
- Given the size of the site, the existing activity and the context of the site within the urban environment it is considered that the increase in staff numbers will not be discernible to the wider environment.
- The proposal will have no impact on the versatile soils as it is occurring within a consented commercial building, with no increase in floor area. The site is physically separated from the remaining Plains Production zone and is surrounded by urban uses.

Outcome Step 3: On the basis of the assessment above, I do not consider that the activity will have, or is likely to have, adverse effects on the environment that are more than minor. Public notification is therefore NOT required.

Step 4: public notification in special circumstances

I have considered whether there are special circumstances which exist in relation to the application which would warrant the application being publicly notified. I do not consider there are any such special circumstances given that:

- As assessed above, the effects on the environment are likely to be no more than minor;
- The commercial activity is existing on the site and the change in use is confined to the existing buildings on site.

4.1.1 Section 95A Recommendation

I am satisfied the application can be considered without full notification to the public in accordance with S95A(9)(b).

4.2 Limited Notification Assessment Section 95B

Step 1: certain affected groups and affected persons must be notified

Are there any affected protected customary rights groups? (S95B(2)(a))	No
Are there any affected customary marine title groups? (S95B(2)(b))	No
Is the proposed activity on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11? (S95B(3)(a))	No – as any physical changes are only internal to existing building
Outcome Step 1: Limited notification is not required to the above groups.	

Step 2: if not required by step 1, limited notification precluded in certain circumstances

Is the application for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes limited notification? (S95B(6)(a))	No
Is the application for a controlled activity (but no other activities) that requires a resource consent under a district plan (other than a subdivision of land)? (S95B(6)(b))	No
Outcome Step 2: Limited notification is NOT precluded by Step 2. Step 3 therefore applies.	

Step 3: if not precluded by step 2, certain other affected persons must be notified

Determine whether a person is an affected person in accordance with section 95E (S95B(8))
<p>Under Section 95E, a consent authority must decide that a person is an affected person if the activity's effects on them are minor or more than minor (but are not less than minor), subject to the limitations in Section 95E(2) and (3).</p> <p><u>Under Section 95E(2), I note:</u></p> <ul style="list-style-type: none"> I have not disregarded effects on the environment on the basis that a rule or national environmental standard permits an activity with that effect (S95E(2)(a)). The site does not adjoin a relevant statutory acknowledgment area specified in Schedule 11 (S95E(2)(c)). <p><u>Under Section 95E(3), I note:</u></p> <ul style="list-style-type: none"> Where written consent is obtained Council must disregard any effect on a person who has given written approval to the relevant application (Section 95E(3)(a)). In this case no written approvals have been provided as part of the application. <p>My assessment as to whether there are any other affected persons is as follows:</p> <ul style="list-style-type: none"> As discussed in Section 95D above, the proposed activity is within the existing retail area of the garden centre. This area is internal to the site and not likely to be noticeable by surrounding properties. The location of the café is well separated from properties on the opposite side of Brookvale Road and is well screened from adjoining properties on all sides. As the café is within the existing building and internal to the site, the character and amenity enjoyed by the surrounding properties is unlikely to change. It is expected that the patrons of the café will be visiting the garden centre, as café activities are often associated with garden centre activities. As a result, there is not expected to be a notable increase in

traffic as a result of the change of use. The site is close to Romanes Drive, being a primary collector road that acts as a major link to access the Havelock North community. The site is located on a secondary collector Road. The surrounding roads are capable of containing additional traffic, without being discernible to the surrounding properties.

- There are no change in hours of operation to that which currently occur and are consented by the original resource consent for the garden centre.
- The increase in staff numbers is not likely to be notifiable to the surrounding properties due to the size of the site and the existing customers coming and going.

Overall it is considered that the adverse effects of the proposal are less than minor on any person.

Outcome Step 3: I am satisfied that no persons in terms of Section 95E will be adversely affected as a result of this proposal under Section 95B(8).

Step 4: Special Circumstances

It is considered that there are no special circumstances that exist in relation to the application that would warrant notification of the application to any other persons not already determined to be eligible for limited notification (excluding persons assessed under Section 95E as not being affected persons). All relevant matters and persons are sufficiently addressed above in this report. Thus, no limited notification to any other affected persons is deemed necessary in accordance with Section 95B(10).

4.2.1 Section 95B Recommendation

I am satisfied the application can be considered without notification on a limited basis to any person in accordance with Section 95B(10)(b).

4.3 Summary of Notification Recommendations

Having assessed the application in accordance with the steps contained within Sections 95A and 95B of the Resource Management Act 1991, and for the reasons provided within sections 4.1 and 4.2 of this report, it is recommended that this application be considered on a **non-notified** basis.

4.4 Decision on Notification

Accordingly and for the reasons set out in the above assessment and recommendations, the application can be processed on a **non-notified** basis.

Notification Decision made under delegated authority by:



Hannah Hall
Environmental Planner (Consents)

Date: 25/7/2020

5.0 SECTION 104 ASSESSMENT

5.1 Statutory Considerations

As a **Non-Complying Activity**, subject to Part II of the Resource Management Act 1991, Section 104 sets out those matters that Council must have regard to. These are:

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

As a Non-Complying Activity, Section 104B of the Resource Management Act 1991 states that the Consent Authority may grant or refuse the application. If it grants the application, it may impose conditions under Sections 108 and 108AA.

Section 104D of the Act also states that a consent authority shall not grant resource consent for a Non-Complying Activity unless it is satisfied that:

- (a) The adverse effects of the activity on the environment will be minor; or
- (b) The application is for an activity, which will not be contrary to the objectives and policies of:
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

If the consent authority is satisfied that the proposal satisfies either of the limbs of the tests in Section 104D, then the application can then be considered for approval, subject to consideration under Section 104. If the proposal does not satisfy either limb, the application cannot be granted consent.

6.0 ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT - s104(1)(a)

6.1 Effects that must be disregarded

6.1.1 Trade Competition – S104(3)(a)(i)

Trade competition and the effects of trade competition are disregarded for the purposes of this assessment.

6.1.2 Any effect on a person who has given written approval to the application - s104(3)(a)(ii)

No written approvals have been provided.

6.2 Effects that may be disregarded - Permitted baseline assessment - s104(2)

When considering any actual or potential effects, the council (as consent authority) may disregard an adverse effect on the environment if a national environment standard or the plan permits an activity with that effect (the permitted baseline). The Council has discretion whether to apply this permitted baseline.

There is no permitted baseline for this proposal as it already exceeds the threshold limits of the District Plan however it is noted that the proposed café is a commercial activity within a building that has been consented for a commercial activity.

6.3 Assessment of Effects

Section 4 of this report has considered the actual and potential adverse effects that may result from the proposed activity. It was considered that for the purpose of the notification assessment under Sections 95A and 95B, that these adverse effects will be no more than minor for 95A and less than minor for 95B.

I adopt that section for this assessment of effects.

An assessment of effects in terms of the statutory planning documents is further discussed in the remaining sections of this report.

7.0 ANY MEASURE PROPOSED OR AGREED TO BY THE APPLICANT FOR THE PURPOSE OF ENSURING POSITIVE EFFECTS ON THE ENVIRONMENT - s104(1)(ab)

No specific measures are proposed or have been agreed to by the applicant.

8.0 RELEVANT STATUTORY DOCUMENTS - s104(1)(b)

8.5 Hastings District Plan – Assessment Criteria - s104(1)(b)(vi)

8.5.1 Assessment Criteria

An assessment of the effects of the activity shall be made considering the following:

(a) The ability of the activity to achieve the particular stated outcome of the General or Specific Performance Standard(s) and Terms which it fails to meet. Within the Plains Production Zone the outcomes principally relate to the soil effects and the effects on amenity. In this Zone the amenity centres around the open nature of the landscape, the low scale and intensity of buildings and the use of the land for orchards and cropping.

The relevant outcome is below:

8.6 Hastings District Plan - Relevant Outcomes - s104(1)(b)(vi)

The relevant outcomes in relation to the proposed activity are as follows:

Retail activities which have a relationship to goods produced in the District will have the opportunity to establish. The life-supporting capacity of the Plains Production soil resource will be safeguarded by limiting the range and size of Commercial Activities in the Plains Production Zone. Commercial Activities will be of a size and scale that have a potential for minor adverse Effects, are compatible with the Character of the Plains, and do not have adverse Effects on the vibrancy of the established COMMERCIAL ZONES.

An assessment of this outcome has been provided by the applicant as follows:

As noted, the PPZ on this site has progressively become an anomaly as the site has been severed from other PPZ land and now sits within the urban limits of Havelock North. The retail and commercial threshold limits applying to the site are therefore largely irrelevant from an effects perspective and, in this case with a

requirement to have at least one resident living on site, unduly restrictive as it no longer serves any relevant resource management purpose.

As has been explained previously no change in floorspace is proposed to accommodate the café. What is currently used as retail will simply be reduced in size and the space converted to a café. The overall extent of commercial use of the property will therefore not alter, nor will the way the use is operated, including its hours of operation.

Because the site has a zoning that is best described as anomalous the requirement to have a resident living on site no longer has any relevance. The site is in the midst of a residential area where living options abound without the need to have a dedicated dwelling for this purpose.

Trying to tie the commercial use to a productive use of the site is not a sustainable option for this particular site either. The property itself has not utilised the underlying soil resource for an extended period as it was established as a plant nursery based around pot plants being grown within tunnel houses. No new buildings are proposed by this application and only internal refitting works will be required. The proposed change of use from retail to café will therefore have no effect on the soil resource.

The site is located within the Havelock North urban area and surrounded predominantly by residential properties. It is considered that the proposed café space would add to the vibrancy of the local area and allow the owners and café operators to provide for their social and economic wellbeing. The establishment of a café within a garden centre is standard practice and expected by customers as a matter of course. A small scale café ancillary to the operation of the garden centre will have no discernible adverse effect on the vibrancy of established commercial zones but may provide an additional reason for people within the region to travel to Havelock North, with flow on benefits to other businesses.

The applicant has covered an assessment of the outcome and I agree with the assessment in that there is no increase in building floor area as a result of the proposal. The proposal is not increasing the size of commercial activity on the site and the original activity was granted consent to operate on the site in 1997, so has been in operation for a substantial amount of time. The operating hours remain unchanged, with the café primarily catering for existing customers of the garden centre.

Overall, although the proposal is not technically in line with the relevant outcome, the activity is not changing enough (noting the proposed café is only 60m²) to create any significant effects on the environment and is not out of character with what already exists on the site.

8.7 Hastings District Plan - Relevant Objectives and Policies - s104(1)(b)(vi)

8.7.1 Section 16.1 – Plains Production Zone

The relevant objectives and policies within the zone are as follows:

OBJECTIVE PPO1

To ensure that the versatile land across the Plains Production Zone is not fragmented or compromised by building and development.

POLICY PPP3

Limit the number and scale of buildings (other than those covered by Policy PPP4) impacting on the versatile soils of the District.

OBJECTIVE PPO2

To provide for flexibility in options for the use of versatile land.

POLICY PPP8

Provide for industrial and commercial activities in the Plains Production Zone where they are linked to the use of the land and with limits on the scale and intensity to protect soil values and rural character.

OBJECTIVE PPO3

To retain the rural character and amenity values of the Plains Production Zone.

POLICY PPP14

Require that any new activity locating within the Plains Production Zone shall have a level of adverse effects on existing lawfully established land uses that are no more than minor.

POLICY PPP15

Noise levels for activities should not be inconsistent with the character and amenity of the Plains Production Zone.

8.7.2 Assessment of Objectives and Policies

An assessment of the objectives and policies has been undertaken by the applicant in section 8 of the application document. I agree with the assessment within the application document and it is considered that the proposal is not contrary to the Objectives and Policies in that:

- The versatile soils have already been compromised within the area by urban development which has effectively cut off the proposed site from the surrounding Plains Production zone. The productive potential of the soil has been compromised as a result. There are however no additional buildings proposed as part of the application, with the existing commercial building being used for the proposed café. There will be no change of use of the land as a result.
- The proposal is unlikely to change the character and amenity of the area due to its small size of 60m², location within the existing building and internal to the site. Also given the urban nature of the surrounding land, the policy in relation to rural character are, in effect, redundant on this site.
- Noise levels will continue to comply with the relevant limits.

Accordingly it is considered that the proposal is not contrary to the relevant objectives and policies of the Hastings District Plan.

9.0 **SECTION 104(1)(c) ANY OTHER RELEVANT MATTERS**

9.1 Precedent Effects

The potential for the grant of consent to a proposal which is contrary to important objectives and policies to create an adverse precedent is an 'other matter' that may be considered under section 104(1)(c). An adverse precedent can be created where the granting of a consent could lead to similar applications for which Council, being consistent in its approach, would need to consider granting.

I do not consider that any adverse precedent would be established by the grant of consent in this case, as the proposal is for a commercial activity within a building that has been consented for a commercial activity. The location of the proposed garden centre is not typical in terms of a Plains Production site given the location surrounded by urban activities.

9.2 Integrity of the District Plan

The granting of consent to non-complying activities (where the proposal lacks any unique qualities) may be considered to undermine the confidence of the public in the consistent administration of the District Plan. Any potential impact upon the integrity and consistent administration of the District Plan is considered under Section 104(1)(c).

While technically this proposal would be against the integrity of the plan (and any application could be declined) in practical terms the application will comply with the overall intent of the plans objectives and policies which aim to ensure that versatile land is not compromised by building and development but also provide for commercial activities that are linked to the use of the land. Although not links specifically to the

use of the land, the garden centre was given consent in 1997 and has been operating on the same site, since then. No additional buildings are proposed and the café is intended to support the garden centre.

Given the assessment above, it is considered that the proposal is not contrary to the Objectives and Policies of the Plan and is not considered to significantly challenge the integrity of the Plan.

10.0 PARTICULAR RESTRICTIONS FOR NON-COMPLYING ACTIVITIES - s104D

Under Section 104D a non-complying activity must pass at least one of the 'gateway' tests of either Section 104D(1)(a) or Section 104D(1)(b) before a decision can be made on whether to grant a resource consent application under Section 104B.

If an application fails to pass both tests of Section 104D(1) then it must be declined.

In this case, the proposal satisfies both the tests of Section 104D(1) because the adverse effects on the environment (identified in section 6 above) will be no more than minor and the proposal will not be contrary to the objectives and policies of the Hastings District Plan as concluded above.

The application therefore meets both of the tests of Section 104D(1) and the application can be assessed against the provisions of Section 104B and a substantive decision made.

11.0 PART 2 OF THE RESOURCE MANAGEMENT ACT 1991

Part 2 sets out the purpose and principles of the Resource Management Act 1991, with the purpose being the sustainable management of natural and physical resources.

Case law has clarified that there is no need for separate resort to Part 2 where the plan has been competently prepared under the Act, as it would not add anything to the evaluative exercise. The Court in *RJ Davidson v Marlborough District Council* [2018] 3 NZLR 283 held:

“If it is clear that a plan has been prepared having regard to Part 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s104(1) should be to implement those policies in evaluating a resource consent application. Reference to Part 2 in such a case would likely not add anything. It could not justify an outcome contrary to the thrust of the policies.”

The District Plan was only recently made operative (being made partially operative March 2020) and has, in recent Environment Court cases,¹ been accepted as having coherent provisions with no need for a Part 2 analysis.

Accordingly, in my opinion, this is a situation where an assessment against Part 2 would not add anything more to the assessment of the application and is therefore not required.

12.0 CONCLUSION

Overall the application represents sustainable management of natural and physical resources as required by Part 2 of the Resource Management Act 1991. It is recommended that consent to this application be **granted**, subject to conditions imposed pursuant to Sections 108 and 108AA of the Resource Management Act 1991.

¹ *Endsleigh Cottages, Maurenbrecher and Evans v Hastings District Council* [2020] NZEnvC 064 (paragraph 272) and *Stone v Hastings District Council* [2019] NZEnvC 101 (paragraph 127).