
MINUTES
of the
CONSENT COMMISSION - COMMISSIONER MEETING
held
9.30 am, Wednesday, 28 May 2014
at
Tasman Council Chamber, 189 Queen Street, Richmond

- 1 OPENING, WELCOME
- 2 REPORTS
- 2.1 Hearing Report for CBH Limited Applications RM130922 (Subdivision to create 20 additional allotments) and RM130923 (Land Use - To erect a dwelling on each of the proposed additional allotments)

**Decision of Independent Commissioners
Appointed by Tasman District Council**

On an application for resource consents by CBH Limited

**Hearing held in the Tasman Room, Richmond on 28 and 29 May 2014
Site visits undertaken on 27 and 30 May 2014
Hearing closed on 17 June 2014**

Independent Commissioners Christine Foster and Graham Taylor were appointed by the Tasman District Council (*"the Council"*) to hear the application by **CBH Limited** (*"CBH"*) for the following consents in relation to the Appleby Hills subdivision (Ridgeview Road, Appleby):

Subdivision Consent (Application RM130922)¹

To subdivide CFR 554040 (having an area of 24.2689 hectares) to create 52 residential allotments, plus access allotments and additional open space areas to be commonly owned and access allotments. The proposal would increase the total number of residential allotments accessing Ridgeview Road to 85 (including 33 completed allotments in Stages 1 to 6 of the Appleby Hills subdivision). The proposed subdivision would also alter the boundaries of CFR 544029 to include the dam embankment and dam infrastructure within proposed Lot 66 (a proposed common area).

¹ The application as lodged and notified proposed 54 allotments within the site area, however was amended by the applicant's legal submissions in reply dated 16th June 2014 to 52 proposed allotments.

Land Use Consent (Application RM130923)²

To construct dwellings on each of the proposed residential allotments. Because a building location area is not identified for each allotment and there is no rainwater collection the proposed activity cannot meet the requirements of the Tasman Resource Management Plan Rule 17.7.3.2(d) and Rule 17.7.3.3(b).

Stormwater Discharge Permit (Application RM130932)

To discharge increased volumes of stormwater to land from the proposed allotments.

Land Disturbance Consent (Application RM130931)

To undertake land disturbance associated with forming the proposed allotments and access allotments.

Variation to Discharge of Wastewater Permit (Application RM050727V6)

To discharge increased volumes of wastewater to land from the proposed allotments.

Variation to Dam and Water Permits (Applications NN990445V1 and NN990446V1)

To change the legal description for the dam recorded in NN990445 and NN990446.

HEARING ATTENDANCE:

APPLICANT:

Camilla Owen (Legal Counsel)
Chris Edmonds (Director of Coastal M & D Limited)
Mark Lile (Consultant Planner)
David Sissons (Consultant Landscape Architect)
Damian Velluppillai (Consultant Water Resources Engineer)
Ray Edwards (Consultant Traffic Engineer)
Peter Born (Consultant Environmental Engineer)

SUBMITTERS:

Gerard Praat (Legal Counsel representing the following 26 submitters who live within Appleby Hill subdivision):

- B & A Smith
- P Halford
- T & S Coldicutt
- WR & FS Lloyd
- Y Mitchell
- R, J, L & S Hemingway
- HF & MA Kavanagh
- KS & HS Riddle
- AM & SK Schwass
- GJ & GA Lovelock
- MD Allen
- A Bradley
- M & G Win
- RV & HG Johansen
- IJ Eder
- B & F Kay
- C & D Beeby
- C MacDonald & S Hamilton
- PJ Mitchell & MJ Cranstoun
- G & S Tregidga
- DJ & RJ Thompson
- WJ Jordan

² The application was amended in the applicant's legal submission in reply by the specification of building location areas on proposed Lots 46, 47, 48, 52, 53, 54, 65, 68, 77, 78, 79, 80, 55, 57, 58, 59, 61, 62 & 63.

- G & L McNaughton
- DC Sampson
- DJ & SP Muirhead
- E & P Whalley

Brian Smith (on behalf of Brian and Ann Smith, 10 Kapuka Ln)

Andrew Schwass (on behalf of AM and SK Schwass, 3 Ribbonwood Ln)

Kevin Riddle (on behalf of KS and HS Riddle, 120 Ridgeview Rd)

David Thompson (on behalf of DJ and RJ Thompson, 50 Ridgeview Rd)

Louise Busby (on behalf of Stephen and Louise Busby, 247 Coastal Highway)

Graeme Downing (Legal Counsel representing Elizabeth Hodgkinson, 285 Coastal Highway)

Elizabeth Hodgkinson

TASMAN DISTRICT COUNCIL:

Pauline Webby (Council Subdivision Planner)

Tom Carter (Consultant Landscape Architect)

Dugald Ley (Council Development Engineer)

Leif Pigott (Co-ordinator – Natural Resources Consents on behalf of Mike Mackiggan who prepared a section 42A report on RM130931, RM130932 and RM050727V6 but who had been called away overseas at short notice)

Michael Croxford (Principal Resource Consents Advisor)

Hannah Simpson (Committee Secretary)

1. SUMMARY

All resource consents are **REFUSED** for the reasons summarised in section 18 of this decision.

2. DESCRIPTION OF THE SITE AND PROPOSED ACTIVITY

- 2.1 The applicant, CBH Limited, seeks consents to subdivide land zoned Rural 3 which encompasses the balance area of the partially constructed Appleby Hills subdivision approved under resource consent RM030632. The application also proposes to adjust the boundary of CFR 554029 to ensure that the infrastructure of Dam 135 is contained within Lot 66 (a common area). Land use consents are also sought for land disturbance associated with forming building platforms and for the erection of dwellings on the sites. A discharge permit is sought for additional stormwater discharge from the proposed allotments. Consequent variations to the conditions of an existing wastewater discharge permit, and dam and water permits are also sought.
- 2.2 The site comprises the Appleby Hills subdivision area, located approximately 10km west of Richmond. Appleby Hills is accessed from the Coastal Highway (**SH 60**), via Ridgeview Road which forms an intersection with SH60 and Research Orchard Road to the north-east.
- 2.3 Ridgeview Road extends south-west from the SH60 intersection past the private properties of adjoining landowners before reaching the Appleby Hills estate at which point the road heads west and rises up the rolling hill terrain to the completed Stages 1 - 6 of the original subdivision (RM030632). The undeveloped balance area of the Appleby Hills, comprising Stages 7 to 13 of RM030632 and RM100632, is the subject of this application.
- 2.4 The applicant holds a suite of existing resource consents granted for the development of the Appleby Hills subdivision under the Tasman Resource Management Plan (**"TRMP"**) Rural 3 Zone provisions. The Rural 3 Zone is described as providing for residential living in a rural context, and was introduced by way of a plan variation in 2003 to absorb and

reduce pressure for rural residential and residential subdivision in other parts of the District.

- 2.5 The original subdivision consent RM030632 authorising 61 residential sites and balance rural 'common' areas was approved in July 2005. Stages 1 – 6 comprising 33 large residential allotments contained in 4 cul-de-sacs accessed from Ridgeview Road have been completed, with dwellings erected on almost all sites. The existing subdivision comprises clusters of large residential sites, ranging in size from 1,841m² to 4,313m² with generally 2,500m² – 3,500m² area, as well as a large 14.85ha 'common' area, currently in pasture.
- 2.6 The area that is the subject of the current application, comprising the balance area of the Appleby Hills subdivision, is located to the west of completed Stages 1 – 6. There is a prominent ridgeline oriented north to south through the site. Residential development is proposed on the ridgeline and in two east-facing clusters facing back towards the existing subdivision, and in two west-facing clusters beyond the ridgeline extending down a west-facing slope to an existing dam. Additional larger residential sites are also proposed on the east-facing slope to the south of the dam.
- 2.7 The original 2005 subdivision consent authorised the creation of a further 28 allotments in the balance stages of the subdivision. In 2011, a further subdivision consent RM100632 was granted to create 34 allotments in the balance stages having at least 2,540m² area.
- 2.8 The present subdivision consent application, as lodged and publicly notified, proposed the creation of 54 residential allotments within CFR 554040 (with an area of 24.2689 hectares), as well as common open space areas. The application was amended in the applicant's legal submissions in reply, reducing the number of allotments by two to give a total of 52 proposed residential allotments. This is an increase in 18 lots over the number authorised by RM100632 in 2011, and is 24 more than originally approved in 2005. Thirty seven of the proposed allotments shown on the application as lodged had less than 2,000m² in area, with the smallest being 1,010m². The applicant amended the proposed layout, in its legal submissions in reply, such that 28 lots would have less than 2,000m² in area, with all but two of these located on the west-facing slopes beyond the north-south ridgeline. The average area of proposed residential allotments (excluding larger semi-rural sites) in this area is 1,584m² with the smallest remaining at 1,010m². The number of east-facing sites was reduced by two and increased in size, such that all but two (Lots 52 and 54) would exceed 2,000m² in area. The applicant claimed these changes would make the proposal consistent with statements made as to lot sizes in CBH's original advertising material (which had been referred to by several submitters).
- 2.9 The proposal will now result in a total of 85 allotments in the overall Appleby Hills subdivision accessed from Ridgeview Road.
- 2.10 Because CFR 554040 is subject to previous subdivision consents granted after 20 December 2003 (RM030632 and RM100632) it cannot meet the requirements of the TRMP Restricted Discretionary Activity Rule 16.3.7.3 (b) and Discretionary Activity Rule 16.3.7.4. Therefore, the subdivision requires consideration as a non-complying activity under Rule 16.3.7.5.
- 2.11 The application as notified also sought land use consent for residential dwellings on the proposed residential sites, because building location areas were not identified for all allotments (9 were identified) and there is no rainwater collection proposed. In its legal submissions in reply CBH amended the proposal by identifying building platforms on an additional 22 lots, including all east-facing sites, and proposed that all identified building platforms would be formed by the developer. Maximum building coverage areas were also proposed on 19 sites. The remaining sites, being 21 smaller sites located on the west-facing slopes, were not proposed to have pre-formed building platforms or coverage limits and would instead rely on TRMP setback rules. Maximum building heights of 6 metres

above natural ground level were proposed for all sites, except for 13 sites where a lower 5-metre limit was proposed.

- 2.12 The application proposed³ that building heights would be measured above '*natural ground level*'. However a note following suggested Condition 32 forwarded with the legal submissions in reply clarified that '*natural ground level*' would be measured above actual modified ground level following completion of earthworks to form building platforms, on-site access and roads. We are not satisfied that this proposed amendment is within the scope of the application as notified. The expression 'natural ground level' has a clear meaning that is different from the defined term 'ground level' in the TRMP. To define it as being measured in relation to modified ground level is something of an oxymoron and there is no certainty yet about the actual heights of ground after completion of earthworks. Accordingly, the actual effects of proposed buildings could be quite different compared with what was originally proposed in the application.
- 2.13 Although additional resource consents were sought in respect of additional land disturbance associated with the establishment of building platforms, no details of these earthworks, such as, depth and volumes were provided with the application.

3. SITE VISITS

- 3.1 We visited the site and surrounding area prior to the hearing on Tuesday 27th May and observed the application site, as well as visiting other Rural 3 Zone subdivisions nearby.
- 3.2 We conducted a second site visit following the hearing on Friday 30th May, where we observed the morning peak operation of the Ridgeview Road / SH60 intersection including school bus pick up. We also inspected the Ridgeview Road alignment and observed views of the site from several submitters' properties within the existing Appleby Hills subdivision as well as from some adjoining properties – including the properties owned by:
- B & A Smith – 10 Kapuka Lane
 - K & H Riddle – 120 Ridgeview Road
 - A & S Schwass – 10 Ribbonwood Lane
 - D & R Thompson – 50 Ridgeview Road
 - S & L Busby – 247 Coastal Highway
 - E A Hodgkinson – 285 Coastal Highway
 - C Barnett & L Richards – 91A Maisey Road
- 3.3 We also observed the site from the boundary of the property at 129 Maisey Road belonging to submitters L McMeeking & R Creed.

4. TASMAN RESOURCE MANAGEMENT PLAN ZONING, AREAS AND RULES

- 4.1 In addition to being within the Rural 3 Zone, the site is within the following areas identified in the TRMP:
- Land Disturbance 1
 - Wastewater Management Area
 - Coastal Tasman Area (Sub Unit 10 - Maisey Road)

³ In suggested condition 33 in Appendix 'J' of the application

4.2 The following are the applicable rules of the TRMP:

Activity	Relevant permitted rule	Applicable rule	Status
RM130922 Subdivision Access formation NES for Assessing and Managing Contaminants in Soil to Protect Human Health 2011	NA 16.2.2.1	16.3.7.4 16.2.2.6	Non-Complying Restricted Discretionary Discretionary
RM130923 First dwelling on each allotment	17.7.3.2(d) and 17.7.3.3(b)	S87 RMA	Discretionary
RM130931 Earthworks for additional access roads and building platforms	18.5.2.1 (p) and (q)	18.5.2.5	Restricted Discretionary
RM050727V6 Discharge wastewater	36.1.2.4	36.1.4.2	Restricted Discretionary
RM130932 Discharge of stormwater to land where it will enter water	36.4.2.1 (3)	36.4.2.3	Discretionary

4.3 No party disputed that the proposal should be considered, overall, as a **Non-Complying Activity** as this is the most stringent consent status of all consents sought.**5. RELEVANT RMA PROVISIONS**

5.1 Section 9 (3) of the RMA provides that:

'No person may use land in a manner that contravenes a district rule unless the use is

(a) Allowed by a resource consent.'

5.2 Section 11 (1) provides that:

'No person may subdivide land within the meaning of section 218, unless the subdivision is -

(a) ...expressly allowed by arule in a district planor a resource consent..."

5.3 Section 104B states that:

'After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.'

5.4 Our authority to grant or refuse this application for non-complying activity application is limited by section 104D which states:

(1) *Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –*

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of –

(i) the relevant plan [being the TRMP]....’

5.5 The reference in sub-section (a) above to section 104(3)(a)(ii) is a reference to situations where written approvals have been given.

5.6 Section 104 (1) sets out the matters we must have regard to in considering the application. The matters that are particularly relevant for this application are:

(a) The actual and potential effects on the environment of allowing the activity;

(b) The relevant provisions of the *TRMP*.

5.7 We note that section 104 (1) subject to Part 2 of the RMA. The following Part 2 matters are particularly relevant to this proposal:

- The sustainable management purpose defined in section 5;
- The maintenance and enhancement of amenity values (section 7 (c)); and
- Maintenance and enhancement of the quality of the environment (section 7 f)).

5.8 Section 104 (2) of the RMA provides that we may disregard an adverse effect of an activity if the District Plan permits an activity with that effect. Ms Webby and Mr Lile confirmed in evidence that there is no meaningful ‘permitted baseline’ for the purposes of section 104 (2).

6. WRITTEN APPROVALS, NOTIFICATION AND SUBMISSIONS

6.1 Written approval was received from the New Zealand Transport Agency. Pursuant to Section 104(3) (a) (ii) of the Act we must not have any regard to any effect on the New Zealand Transport Agency.

6.2 We were also initially advised that written approval had been received from Transpower. However it was clarified at the hearing that Transpower had lodged a submission requesting the imposition of conditions of consent protecting its transmission assets and that the applicant had agreed to those conditions.

6.3 The application was limited notified pursuant to Sections 95-95E of the Act and submissions closed on 28th March 2014.

6.4 A total of 38 submissions were received:

- Three supporting submissions, of which one submitter wished to be heard (submission number 16)
- 34 opposing submissions, of which 15 submitters wished to be heard. (submissions numbered 1, 6, 7, 8, 9, 10, 11, 13, 19, 20, 22, 23, 26, 27, 29)
- One neutral submission (Number 35 – Transpower NZ)

6.5 A number of common concerns were raised in submissions and we summarise those as:

- (a) Opposition in principle to the re-subdivision of an earlier approved subdivision layout and concern that the proposed layout does not give effect to the design intention proposed by CBH in its advertising material relied on by residents when purchasing their existing sections within the Appleby Hills subdivision;
- (b) Opposition to the reduced sizes of the proposed allotments;
- (c) Opposition to the increased residential density and concern that it will be out of keeping with the Rural 3 concept and result in suburbanisation of this rural setting;
- (d) Loss of rural amenity and rural character;
- (e) Loss of residential amenity values (including erosion of privacy on individual properties and increased noise in the neighbourhood) resulting from the small sizes of allotments and the placement of additional dwellings;
- (f) Potential adverse visual impact of future built development;
- (g) Potential loss of property value resulting from the adverse amenity effects;
- (h) Concerns about the adverse safety, noise and night light effects of additional traffic generated by the additional allotments;
- (i) Adverse effects associated with additional earthworks and with construction traffic (including dust and noise);
- (j) Loss of productive land;
- (k) Scepticism about the applicant's ability to comply with conditions of consent and concerns that previous private agreements between some submitters and CBH had not been implemented by CBH;
- (l) Impacts on Transpower's transmission line corridor;
- (m) Concerns about the adequacy of the water supply, wastewater treatment and disposal system and stormwater systems to accommodate the additional allotments and concerns about potential adverse impacts of stormwater flows;
- (n) Dam safety;
- (o) Concern that a grant of consent would create an adverse precedent for future subdivision in the Rural 3 Zone; and
- (p) The inadequacy of the applicant's consultation with neighbours.

7. EVIDENCE HEARD

7.1 The Council's section 42A reports and evidence on behalf of the applicant were pre-circulated prior to the hearing, and were taken as read. In addition, we directed that the applicant and Council planners and landscape architects engage in witness conferencing prior to the hearing and provide supplementary statements on the following matters:

- (a) The planners were asked to address matters concerning their baseline approach to assessing the application (whether that should be seen as intensification of an earlier approved subdivision layout or as a replacement proposal), and various TRMP policies relating to rural character and amenity values.
- (b) The landscape architects were asked to address specific areas of disagreement in approach in their respective statements of evidence.

7.2 The outcomes of the conferencing of experts on these matters was presented in joint statements circulated prior to the hearing. We found those statements helpful.

7.3 At the hearing, we heard expert evidence on stormwater, wastewater, traffic, planning and landscape effects by topic in joint questioning sessions, where questions were put to both the applicant's and Council's experts concurrently.

7.4 We summarise below the evidence and legal submissions heard:

7.5 Camilla Owen, Counsel for the applicant provided opening legal submissions. Ms Owen discussed the nature of the application, and the approach to consideration of the '*existing environment*' and whether this includes the unimplemented consents, with reference to the

Arrigato Investments and Hawthorn Estate Ltd decisions.

- 7.6 Ms Owen submitted that although the proposal is a non-complying activity, there is nothing in the TRMP that suggests that changes to consented Rural 3 Zone subdivisions are considered inappropriate, and referred to examples where existing consented subdivisions had been amended by way of section 127 variations. She specifically referred to the *Boomerang Farms Ltd* proposal, where a complete redesign of the subdivision had occurred. However, in questioning it became apparent that the *Boomerang* case was in fact a *de-intensification* of the previously approved proposal, reducing the residential allotments from 115 to 45.
- 7.7 Ms Owen discussed the landscape evidence of Mr Carter and Mr Sissons, including reference to the landscape architects' conferencing that had occurred in September 2013, prior to the lodgement of the application. She commented on the meaning of the term '*rural character*' insofar as it applies to the consideration of Rural 3 Zone subdivisions.

Stormwater:

- 7.8 We jointly questioned Damian Velluppillai (the applicant's consultant Water Resources Engineer) and Leif Pigott (the Council's Natural Resources Consents Coordinator on behalf of Mike Mackiggan) on stormwater management issues. Mr Velluppillai advised that increased stormwater flow would result in a 6% increase inflow to the dam in a 1 in 50 year rainfall event, and a corresponding 8% increase in outflow. He considered that the dam may require modification to the spillway and increased freeboard to comply with anticipated 2015 Building Act amendments. The 2015 standards are not yet developed therefore the specific improvements cannot be confirmed at this stage, and would be the subject of future resource consents if required.
- 7.9 Mr Velluppillai stated that the 2015 Building Act amendments deal with dam safety and do not relate to flow attenuation. Mr Edmonds subsequently advised that CBH would be prepared to apply the more stringent 1 in 100 year rainfall event to the dam attenuation improvements.

Wastewater:

- 7.10 Mr Peter Born (the applicant's consultant Environmental Engineer) and Mr Pigott were jointly questioned on wastewater treatment and disposal. Mr Born advised that the existing wastewater permit provides for a discharge of 90,000 litres per day from 89 dwellings, being 67 in the Appleby Hills subdivision and 22 additional sites outside the subdivision. If the proposed subdivision were approved, this would increase to 109 dwellings being serviced.
- 7.11 On the basis of design flows of 1,000 – 1,200 litres per day per dwelling, the 90,000 litre provided for in the current consent would be insufficient. It would be necessary to reduce flows to approximately 825 litres per day per dwelling.
- 7.12 The wastewater system presently experiences fluctuations in flows due to water infiltration during wet weather. This is due to a variety of reasons including poor installation and residents landscaping adjacent to gully traps. Without further management, it would not always be possible to achieve compliance with the discharge rate. Mr Born recommended a number of measures including treatment plant design to operate at worst case inflows, closer management of domestic installations for water tightness, monitoring through the residents association, and flow balancing to cope with peaks.

Traffic:

- 7.13 Ray Edwards (the applicant's consultant Traffic Engineer) and Dugald Ley (the Council's

Development Engineer) were jointly questioned in relation to traffic engineering matters. Mr Edwards' traffic assessment accompanying the application had been based on a 112-lot scenario. This included 20 potential lots on adjoining sites that do not form part of the Appleby Hills subdivision. We are not required to consider these potential lots, which do not form part of the application before us. Mr Edwards had therefore estimated traffic generation on Ridgeview Road which resulted in a highly conservative scenario. He also based trip generation on 8 trips per dwelling per day based on February 2013 count data, which is higher than the 6 trips suggested by Mr Ley, and added to the conservatism of his trip generation numbers.

- 7.14 Applying this to the 87 lots proposed in the application, Mr Edwards estimated there would be approximately 700 vehicle movements per day at the SH60 end of Ridgeview Road, with 61 vehicles during the AM peak hour and 87 during the PM peak hour. He also noted that these figures would decrease the further west one heads along Ridgeview Road. Mr Edwards and Mr Ley agreed that these figures are low from a traffic engineering perspective.
- 7.15 Mr Edwards undertook SIDRA intersection modelling to ascertain the effects of turning movements on the SH60 intersection. He concluded that the intersection design and traffic volumes would have no adverse effects on SH60 through traffic, and that queuing times at the Ridgeview Road intersection would be negligible.
- 7.16 Both traffic experts agreed that there is adequate intersection visibility at the SH60 intersection.
- 7.17 Mr Edwards and Mr Ley also both agreed that, although the legal speed limit on Ridgeview Road is 100kph, the actual comfortable speed limit is 45 – 50 kph, and both would support a lowered limit on this road. We note that this is a separate decision to be made by the Council as road controlling authority.

Landscape and Rural Character:

- 7.18 David Sissons and Thomas Carter were jointly questioned on their landscape evidence and subsequent joint statement. Their questions were split into two sessions to allow submitters to speak at the commencement of the second hearing day.
- 7.19 Both witnesses maintained their key points of difference, which related to the way that rural character should be considered. Mr Sissons maintained that the existing residential clusters were essentially fully residential in nature and exhibited little if any rural character. He did not consider that the open space between dwellings contributed to rural character. Rather, in his opinion, they represent residential type plantings and gardens. He considered that the rural character of the development was achieved predominantly through the provision of the large open common areas.
- 7.20 On this basis he considered that more intensive residential development could be accommodated within the existing approved clusters without adversely affecting overall rural character, provided that there was no further intrusion into the balance common areas. He considered that the proposed smaller allotment areas would still achieve the overall intent of the Rural 3 Zone.
- 7.21 Mr Carter considered that assessment of rural character requires a wider overall assessment. In his opinion the TRMP definition of *rural character* and references to rural character in the policies and Design Guide⁴ require a whole of site approach, and must include the residential sites. He did not consider that the TRMP provisions enabled consideration of rural character to be limited to the non-residential balance areas only, and noted that the definition encompasses more than just productive land. Mr Carter

⁴ A reference to the *Coastal Tasman Area Subdivision and Development Design Guide*

considered that the size and provision of open space within the residential allotments is an equally important component of the overall rural character that the TRMP seeks to achieve in the Rural 3 Zone. He thought that the small size of allotments proposed by the applicant tipped the balance away from rural character to being essentially residential sections.

- 7.22 Mr Carter had met with Mr Sissons in 2013, prior to lodgement of the application, to discuss an earlier CBH proposal to create 60 new residential sites. Mr Carter could not support this plan on the basis that he considered the small allotment sizes would reduce rural character and amenity. He agreed at the time that he could support a reduced 50-lot proposal, and signed an agreed statement to that effect. He advised that he had participated in the pre-application discussion without the benefit of a full landscape assessment, and without hearing the views of existing Appleby Hills residents.
- 7.23 We questioned Mr Sissons on the use of the photo imagery accompanying the application and he confirmed that it was indicative only, and should not be relied on in terms of scale and accuracy. Mr Carter noted that the photo imagery did not include important details such as vehicle driveways, paving, fencing or accessory buildings that generally feature in residential development.
- 7.24 Both experts discussed the proposed building platforms, and how these would compare with those created in the existing development. We questioned this as no details of building platforms or finished ground levels had been provided with the application, and we were concerned as to how this may affect the interpretation of building height in respect of future dwellings.
- 7.25 Mr Sissons provided a supplementary plan showing potential earthworks and contours to achieve building platforms on sites in three parts of the subdivision, including the two east-facing clusters. He considered that indicative houses of approximately 240m² floor area could be erected on sites with generous 5m and 10m setbacks, and that maximum crossfall on any slope of about 1 in 3 is achievable. This is less steep than the slopes of up to 1 in 2 on existing building platforms in the developed subdivision (e.g. on the Riddle property). He considered that earthworks for dwelling sites could be achieved on the small sites without resulting in excessive earthworks or adverse visual effects. Mr Carter disagreed. It was his opinion that earthworks, particularly on the smallest sites, would result in the landform being substantially changed in a way similar to many suburban residential subdivision forms.

Submitters' Evidence:

- 7.26 Gerard Praat, a solicitor, presented legal submissions on behalf of 26 submitters in opposition who all own and/or occupy properties in Stages 1 to 6 of the existing Appleby Hills subdivision. He referred to the principal reasons and explanation for the Rural 3 Zone policies in the TRMP, which state that people value rural locations for purposes other than soil based production. Mr Praat submitted that, whilst the Rural 3 Zone provides for residential development, it is still to retain the overall rural character and amenity values of the area. He referred to the anticipated environmental results for the Rural 3 Zone which include rural character and amenity values.
- 7.27 He discussed the proposal with reference to the TRMP definition of rural character, and identified effects associated with rural character including peace, privacy, open areas, space, isolation, and absence of suburban residential noise intrusion.
- 7.28 Mr Praat discussed the meaning of amenity values under the RMA, and how these might be different in a rural environment. He referenced this to the promotional material provided by CBH to submitters at the time they purchased their sites, and how this might affect their expectation of amenity values.

- 7.29 Brian Smith, of 10 Kapuka Lane, stated that his site is located close to the proposed east-facing cluster comprising Lots 42 – 54, although it is partly separated from it by an adjoining olive grove site at 131 Maisey Road. The adjoining site is also zoned Rural 3 but is not subject to this application, although has legal frontage to Ridgeview Road. We understand the olive grove may be subdivided for residential development in the future. However, no application had been lodged with the Council at the time of the hearing and the future development of this land is not relevant to CBH's current application.
- 7.30 Mr Smith discussed his reasons for purchasing his section in the Appleby Hills subdivision. He was aware that CBH proposed future allotments on the east-facing slopes but understood that the larger sites then being proposed would maintain rural atmosphere and not impact negatively on views from his property. The current, amended, proposal would result in 17 houses viewed from his property on smaller sites rather than the 11 he had expected. His major concern was that the additional allotments proposed would significantly alter rural character values for existing residents and neighbours.
- 7.31 Andrew Schwass, of 3 Ribbonwood Lane, owns a dwelling that directly faces the proposed south-eastern cluster. When he bought his property he knew and accepted that his property would view 6 future dwellings on 2,000m² to 4,000m² sites. However, the current proposal would result in his viewing 10 dwellings on smaller sites. He expects that the smaller sites and resultant reduction in open space and lesser areas for landscape planting would mean that future buildings on those sites will be more visually prominent.
- 7.32 Mr Schwass raised concerns with the adequacy of the water supply and the operation of the residents association, which he claimed was dominated by the developer due to uneven representation. He disagreed with statements made by Mr Sissons as to effects on rural character and visual amenity for existing residents.
- 7.33 Kevin Riddle owns the site at 120 Ridgeview Road, which is the last site on the northern side of Ridgeview Road. Mr Riddle is presently constructing a new dwelling there. The dwelling features a west-facing courtyard that will directly face the south-eastern residential cluster. His concerns included traffic impacts in terms of noise and amenity, loss of privacy due to being overlooked by an additional 3 dwellings. He also considered that the more intensive development on the western slopes near the dam would adversely affect local amenity values for residents of the subdivision utilising the common and open space areas throughout the subdivision for walking and recreation. He considered that the important amenity values enjoyed by himself and residents of the Appleby Hills subdivision extended throughout the full development, and are not limited to just each individual residential property.
- 7.34 David Thompson owns the property at 50 Ridgeview Road, which is the easternmost property in the existing subdivision and furthest from the proposed allotments. Although his submission raised concerns relating to views, his main concern related to traffic safety and road noise. He raised concerns about the road design and poor visibility on parts of Ridgeview Road adjacent to his property, with resultant corner-cutting by drivers. He was also concerned about additional traffic noise and headlight glare, as all vehicles entering and leaving Appleby Hills pass his residence.
- 7.35 Louise Busby owns a large rural site at 247 Coastal Highway, which adjoins the northern boundary of the existing Stages 1 – 6 common area. The Busby property has been developed as a hazelnut orchard as well as other productive uses and has a dwelling located near the south-east corner, close to Ridgeview Road. The dwelling has views to the west towards the proposed east-facing residential clusters. Some of these views are presently obscured by an existing shelterbelt that has been partially topped. Mrs Busby explained that the height of the remaining shelterbelt also needs to be reduced to provide better growing conditions for their orchard. This will open the site up to views of the residential clusters. She was concerned that the applicant was relying on the shelterbelt to mitigate visual impacts, when it was privately owned and not under CBH's control. She had

supported the original subdivision proposal in 2005, however now opposed the more intensive development.

- 7.36 Mrs Busby agreed with other submitters' concerns about road noise. When we visited the Busby property we noted that a bund constructed along Ridgeview Road adjacent to that property provides some mitigation of road noise.
- 7.37 Graeme Downing, a solicitor, presented legal submissions on behalf of Elizabeth Hodgkinson, who owns an adjoining site at 285 Coastal Highway. Her site adjoins the ridgeline and east-facing cluster containing proposed Lots 65, 68 and 77 – 80, Lot 110 and the large 5.4ha Lot 60. The proposal also includes a right of way accessing part of her site. She has an existing written agreement with the applicant concerning several matters including title boundaries, building locations and setbacks, an emanation easement concerning reverse sensitivity effects, access to the right of way, and a fencing agreement. Mrs Hodgkinson was concerned that, because the overall subdivision proposal is denser than the previous one, it would have increased adverse effects.
- 7.38 Mr Downing discussed the non-complying activity status of the subdivision and identified relevant TRMP policies. He considered that the closer subdivision of land that had been retained as open space either within or as an allotment on an earlier subdivision proposal would be contrary to policy 7.3.3.16. He referred to the recent Supreme Court decision *Environmental Defence Society v New Zealand King Salmon*, and considered that the effect of the King Salmon decision no longer supports an overall balancing judgement of objectives and policies, such that if a policy could not be *given effect* to by the grant of consent it cannot be granted.
- 7.39 He advised that Ms Hodgkinson was concerned with the intensification of development giving rise to creeping development and increasing urbanisation of the site.
- 7.40 Whilst Mrs Hodgkinson opposed the subdivision, she also sought that in the event that consent were granted, the existing agreement with her be imposed by way of conditions. Mr Edmonds stated at the hearing that CBH would give effect to the agreement in respect of the proposed subdivision.

RMA Planning Considerations:

- 7.41 We jointly questioned Mark Lile and Pauline Webby in respect of their planning evidence and their agreed conferencing statement.
- 7.42 Mr Lile also provided a summary table showing how building and related controls would apply to residential sites within the subdivision. We questioned his interpretation of how the proposed height limits would be applied in respect of finished ground levels on sites. He referred to the TRMP definitions of height and ground level, which state that ground level is taken as that established after earthworks to form the roads and sections in a subdivision, therefore the finished levels would apply. However we noted that the expression used in the application documents is *natural ground level*, which is materially different from the term used in the TRMP rules and from the approach Mr Lile advanced in evidence to the hearing. He accepted that the stated intention of the application (measurement in relation to original ground level) was unambiguous.
- 7.43 We questioned Mr Lile and Ms Webby on their interpretation of the TRMP rural character definition, and in particular whether it was concerned with only productive land, or whether references to other attributes included in the definition including open space and low density mean that rural character applies to the whole of the Rural 3 Zone development including the residential enclaves. Ms Webby agreed that the definition requires assessment of wider rural character including the residential clusters and is not limited to productive land only. Mr Lile also agreed that rural character required consideration in an

overall sense, however preferred to approach this from the perspective of effects on the wider rural area, and placed less importance on maintaining rural character within the existing and proposed residential clusters.

- 7.44 In their joint conferencing statement, Mr Lile and Ms Webby identified where in the TRMP Rural 3 Zone objectives and policies, and the *Coastal Tasman Area Subdivision and Development Design Guide* (the ‘**Design Guide**’) the terms “rural amenity values”, “rural character”, “residential amenity values” and “amenity values” are used. They noted that the terms “rural character” and “amenity values” are used several times. “Rural amenity values” are only referred to once in the Design Guide, and “residential amenity values” are not referred to at all. They concluded that the prime considerations in both documents are rural character and the amenity values that actually exist in any particular part of the Rural 3 Zone.
- 7.45 In her legal submissions in reply, Ms Owen advised of proposed changes to the application which we have previously noted. She provided comments on the *King Salmon* decision, which she considered to be not relevant to the CBH proposal, because it involved a Plan Change and consideration of the *New Zealand Coastal Policy Statement*. The RMA provisions in terms of regional plans specifically require them to give effect to a national policy statement, which is not the case here. There is no equivalent provision in respect of resource consent applications and District Plan level policies.
- 7.46 Ms Owen discussed amenity values with reference to relevant case law, and noted that Commissioners must apply the law objectively. She submitted that the views of residents are a starting point for assessing amenity values – not the end point. Ms Owen provided further discussion on the meaning of rural character under the TRMP and the expectation that the Rural 3 Zone will, over time, have more development, more people, and will experience change in both amenity and rural character.

8. PRINCIPAL ISSUES IN CONTENTION

- 8.1 The pre-hearing conferencing between the landscape architects and planners called by CBH and the Council had resulted in agreement on some matters relating to rural character, landscape effects and the weight to be given to some relevant provisions of the TRMP. However, the following matters remained in contention between the parties at the hearing:
- (a) How ‘amenity values’ should be defined for this Rural 3 Zone site and, particularly, what weight should be given to the amenity values enjoyed by residents of the already-completed stages of the Appleby Hills subdivision;
 - (b) What ‘rural character’ means for this site and locality within the Rural 3 Zone and whether the open space that exists (or is proposed) within individual allotments in the existing and proposed subdivision contributes to the ‘rural character’ of the site and locality;
 - (c) The nature, character and intensity of anticipated adverse effects on ‘amenity values’ and ‘rural character’;
 - (d) The potential for adverse traffic safety effects associated with the proposed additional allotments accessed from Ridgeview Road;
 - (e) The potential for adverse amenity effects associated with the additional traffic generated by the additional allotments accessed from Ridgeview Road – including additional traffic noise, and the potential intrusion of vehicle headlights; and
 - (f) The potential for adverse impacts on adjoining land resulting from the generation of stormwater from the proposed additional allotments.

- 8.2 Before discussing the evidence and submissions relating to these issues, we next examine the correct basis for assessing actual and potential effects and describe the foreseeable future environment in which the proposed subdivision will occur.

9. ASSESSMENT BASIS

- 9.1 It was apparent from the application and from aspects of Ms Webby's report and various witnesses' statements that the applicant and the Council had approached the proposal as being simply a change to the subdivision authorised by RM100632 in 2011. However, the application was not made on that basis. As lodged, it was a proposal to create 54 residential allotments from the balance land remaining in the Appleby Hills subdivision.
- 9.2 The Appleby Hills subdivision was authorised by RM030632 in 2005. Stages 1 to 6 have been developed and sold, creating 33 residential allotments. At the time of the hearing, residential dwellings had been built on all but one of those 33 allotments and a dwelling was under construction on the last (Lot 41). The remaining stages of RM030632 proposed 28 additional residential allotments. In 2005, the Appleby Hills subdivision was to comprise a total of 61 residential allotments.
- 9.3 CBH obtained subdivision consent RM100632⁵ in 2011 to increase to 34 the number of residential allotments in the remaining stages (Stages 7 to 13). CBH's current application proposes to change the layout and further increase the number of residential allotments in the remaining Stages 7 to 13. The additional allotments are distributed within – and do not extend beyond – the development footprint authorised by RM100632.
- 9.4 CBH's December 2013 application proposed 54 residential allotments in ten stages (Stages 7 to 16). However, as earlier noted, CBH further amended the design in its legal submissions in reply by deleting two allotments and amending the proposed road and allotment layout. Those changes mean there are 52 proposed residential allotments in Stages 7 to 16. The Appleby Hills subdivision is now proposed to comprise a total of 33 existing + 52 proposed = 85 residential allotments.
- 9.5 The application and Ms Webby's report emphasised that the proposed additional allotments would be contained within the development footprint authorised by RM100632 and had a focus on comparing the effects of the current proposal with the effects authorised by RM100632. However, in a memorandum circulated prior to the hearing, we queried whether that is the correct approach for the purposes of section 104 of the RMA.
- 9.6 Mr Edmonds, on behalf of CBH, clarified in evidence that if consent is *refused* for the current application RM130922, CBH will complete the Stages 7 to 13 authorised by RM100632. He stated that, if consent for RM130922 is *granted*, then the remaining Stages 7 to 13 in the layout proposed by RM100632 will not be implemented. They would be replaced by the current proposed RM130922 layout – noting that proposed Lots 42, 43 and 44 are unchanged between the RM100632 and RM130922 layouts.
- 9.7 The RMA planners (Ms Webby for the Council and Mr Lile for CBH) addressed this question in pre-hearing conferencing and Ms Owen also addressed the matter in her legal submissions on behalf of CBH. Ms Owen referred us to the *Hawthorn Estate* decision of the Court of Appeal⁶ in which the Court found that:

'In our view, the word 'environment' embraces the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.'

⁵ As well as consents for earthworks and buildings and associated discharge permits – but, for simplicity, we summarise those as 'RM100632'

⁶ *Queenstown Lakes District Council v Hawthorn Estate Ltd (No. 2)* CA45/05 12ELENZ 321

9.8 In the present case, the planners identified only the 2011 resource consents issued for Stages 7 to 13 as being relevant unimplemented resource consents for these purposes. They also clarified that, in terms of land subdivision, there is little change permitted by the TRMP for this site. Ms Owen noted that, whether or not RM130922 is granted, the environment will be changed by subdivision of the intensity authorised by RM100632 and that it would be artificial for us to disregard that.

9.9 Paragraphs 77 to 79 of the *Hawthorn Estate* decision discuss the concept of 'environmental creep':

'Environmental creep'is the possibility that someone who has obtained one resource consent might seek a further resource consent in respect of the same site, but for a more intensive activity. It would be argued that the deemed adverse effects of the first application should be discounted from those of the second when the latter was considered under s. 104 (1) (a).

9.10 Ms Owen referenced paragraph 79 of the *Hawthorn Estate* decision which stated:

'...It will always be a question of fact as to whether or not an existing resource consent is going to be implemented. If it appeared that a developer was simply seeking successively more intensive resource consents for the same site there would inevitably come a point when a particular proposal should properly to be viewed as replacing previous proposals. That would have the consequence that all of the adverse effects of the later proposal should be taken into account, with no "discount" given for consents previously granted. ...'

9.11 The Court was not persuaded, in the *Hawthorn Estate* case, that the prospect of 'environmental creep' should lead to the conclusion that the consequences of the subsequent implementation of existing resource consents cannot be considered as part of the future environment. In the present case however, CBH started with consents in 2005 authorising the creation of a total of 61 residential allotments. At that time, Stages 7 to 13 proposed 28 allotments. In 2005, application RM100632 sought 10 additional allotments in Stages 7 to 13 and was granted a total of 34. The current application RM130922 seeks a further 18 additional allotments (a total of 52 in Stages 7 to 13). CBH's successive applications have proposed 28, then 34 and now 52 residential allotments. Our view is that CBH's current application cannot be said to be genuinely an example of the subsequent implementation of existing resource consents for independent subdivision proposals. Rather, we think the current proposal can only be seen as *replacing* previous proposals with the effect that the ultimate result is more intensive than originally proposed.

9.12 After some discussion of Ms Owen's legal submissions at the hearing, it was agreed between the applicant and the Council staff that the future state of the environment is the environment as it is already changed (and has yet to be changed) by:

- (a) Stages 1 to 6 of RM100632; and
- (b) Proposed Lots 42, 43 and 44 of RM100632; and
- (c) Excluding the remaining Stages 7 to 13 of RM100632 because CBH will not implement the layout shown in those stages in the future state that involves the RM130922 layout.

9.13 We take Ms Owen's point that, even if consent for RM130922 is refused, a subdivision in the form of RM100632 intensity will proceed. However, we consider that it is proper for our assessment of RM130922 to be made on the basis that it is a replacement proposal. This approach differed from the approach that had been taken by Ms Webby, Mr Lile and the landscape experts prior to the hearing. However, the hearing proceeded on the basis clarified here.

9.14 Ms Owen acknowledged in her submissions that CBH had applied for a replacement

resource consent and stated that, equally, CBH could have applied for a 'variation' under section 127 of the RMA. It was Ms Owen's view that, if CBH had applied for a 'variation', the assessment of the proposal would have been confined to the differences between subdivision layouts. Ms Owen considered that CBH should not be 'penalised' for choosing to apply for a new (replacement) consent.

- 9.15 We do not consider CBH is 'penalised' in any way by our making a proper assessment of the effects of allowing the activity in the terms required by section 104 of the RMA and in the manner discussed above. The plain fact is that CBH's application was for a replacement consent. Whilst we do not consider that the unimplemented consents would form part of the 'consented' foreseeable environment for the purpose of section 104 (1) (a), they are other matters that we may have regard to under section 104 (1) (c).
- 9.16 We note that section 127 provides an ability for a consent holder to apply to change or cancel conditions. We question whether section 127 could be used to materially increase the number of allotments authorised by the consent. The number of allotments is specified in RM100632 as the 'activity' for which the consent is held and not as a condition of the consent. In our view, the changes result in a new and different proposal, rather than a change in conditions, and therefore would go beyond the scope of a section 127 application.

10. FORESEEABLE FUTURE ENVIRONMENT

- 10.1 CBH's site is located in an area of rolling Moutere Hills lying between SH60⁷ and the Redwoods Valley (a short distance to the west). The site was formerly an apple orchard with large areas in pasture grasses, some scattered pine trees and some gorse. As already noted, the roads and residential allotments of the first stages of the development have been formed. There are clusters of residential sections on four short cul-de-sacs that extend from Ridgeview Road. Those cul-de-sacs are: Toetoe Lane, Bright Lane, Ribbonwood Lane and Kapuka Lane. Parts of the road route through the next stage of the subdivision have been earthworked and some borrow areas have been created for those earthworks.
- 10.2 The occupiers of the existing residential sections are developing gardens on their properties. The apple trees have been removed and the extensive common areas within the site are largely open grass areas. The grass common areas are not grazed by stock but some areas are managed by periodic mowing. CBH has planted thousands of native trees, shrubs and grasses in gully areas and they are maturing successfully. There are isolated mature pine trees and other exotic trees scattered within the site. There is a dam in the north-western part of the site that was formerly used as an irrigation water source. A pair of Transpower high voltage transmission lines traverses the site in a broadly north-west to south-east direction.
- 10.3 The site can be broadly described as comprising three distinct sub-areas: the existing developed subdivision located along the east-west spur containing Ridgeview Road; the undeveloped east-facing slopes and the north-south ridgeline that are viewed from the existing Appleby Hills subdivision; and the western slopes beyond the north-south ridgeline extending down to the dam.
- 10.4 The site is currently more open, with fewer trees, than surrounding properties. The surrounding properties have access from SH60, Redwood Valley Road and Maisey Road. They feature a mix of production orchards (including olive and hazelnut orchards) and pasture grazing. There are substantial areas of mature trees including trees on visible ridgelines and dwellings are commonly surrounded by mature trees. Some of the properties in the immediate locality are 'rural lifestyle' properties with single dwellings on small rural sections with a mix of pasture grazing, horses and production orchards. On the

⁷ Also referred to as the *Coastal Highway*

seaward side of SH60, Research Orchard Road forms an intersection with Ridgeview Road and SH60. Many of the properties along Research Orchard Road are small 'rural lifestyle' or 'rural residential' landholdings.

10.5 There are also some subdivided smallholdings in the immediate locality that have not been developed. The TRMP provisions and resource consents already granted will permit the construction of dwellings on those undeveloped properties. For example, a building platform has been excavated on an adjoining site accessed from Maisey Road.

10.6 The site is within *Landscape Unit 10* (Maisey Road) described in Section 4.1 on page 17 of the Design Guide in the following terms⁸:

'Maisey Road South is relatively discrete and visually contained compared with the adjacent landscape units to the north and west. This area is not particularly visible from the coastal highway. There are few significant landscape features other than the distinctive watercourse pattern and associated landforms which are generally only evident from within the area itself. Views into the Redwood Valley area and the Waimea Inlet are significant as are views from those areas back into the landscape unit.'

Maintaining the landscape qualities of this unit will involve:

- (a) The maintenance of open space and productive buffers when viewed from the Coastal Highway.*
- (b) Focusing on cluster development within the internal landforms and gully system.*
- (c) Utilising riparian planting areas, ponds and wetland opportunities as buffer and open space areas.*
- (d) Consideration of the visual effects of development, when viewed from the Redwood Valley areas.'*

10.7 The development of Stages 1 to 6 of the Appleby Hills subdivision has altered the landscape character within *Landscape Unit 10* since the above words were written in the Design Guide. The subdivision has introduced into the Landscape Unit the four clusters of large residential properties which have an average size of 2,790m² (the smallest is 1,841m² and the largest is 4,313m²). The large section sizes together with careful building design and generous planting have combined to create high quality residential enclaves with attractive residential amenity and generous open space within the pastoral rural setting of the common areas. The submitters who live in the four Appleby Hills cul-de-sacs consistently described at the hearing the features of their neighbourhoods that they particularly value in the following terms:

- The spectacular views from all parts of their properties (which vary between sites but include some or all of views to the Waimea Inlet, Mount Arthur, other inland ranges and over the pastoral common areas of the site and to surrounding rural properties);
- The peace and quiet of the neighbourhoods;
- Low volumes of traffic on the access roads and a sense of safety associated with that;
- Few night lights;
- The openness within the neighbourhoods and the sense of separation between individual properties which give a strong sense of privacy within and between properties;
- The attractive planting within the common areas and within private residential properties which assists in blending the residential properties with the surrounding pastoral rural setting and reinforces the sense of privacy and obscures direct views between properties.

⁸ Page 14 of the section 42A report

- 10.8 In answer to our questions, some submitters who live within the four cul-de-sacs told us that they consider their properties are part of the wider rural setting and have rural character, rather than residential character. They do not distinguish their properties from the wider rural landscape. They consider their properties are part of and contribute to the wider rural character of this area.
- 10.9 The existing four cul-de-sacs are set on the lower slopes and spurs within the site. There is a prominent spur, aligned broadly north to south through the site which is central to CBH's current proposal. The east-facing slopes and ridgeline of this spur and the ridgeline of the spur are prominent in the view from large parts of many of the existing properties within the existing four cul-de-sacs.
- 10.10 We note again the applicant's point that, even if consent for the current proposal is refused, a subdivision will proceed along an extension of Ridgeview Road and will result in residential development on the slopes and ridgeline of this north-south spur. It is worth noting that the resident submitters who spoke at the hearing acknowledged the likelihood of further subdivision and were candid that they understood that was CBH's intention when they purchased their own Appleby Hills sections. However, they pointed out that their expectations about the future environment were based on CBH's own advertising material from that time which proposed 28 residential allotments in the 2005 RM030632 layout. CBH's advertising material, which was presented to the hearing in submissions and evidence, still shows that 2005 layout. Some submitters were critical of CBH in not updating its advertising material – for example, to show the additional allotments authorised by RM100632 in 2011. We note that, until our decision on the current application is determined, CBH has no consent basis for updating its advertising material.
- 10.11 The applicant's witnesses emphasised that change in this Rural 3 landscape must be anticipated. They highlighted the policy provisions in the TRMP that clearly foreshadow closer subdivision for residential purposes in the Rural 3 Zone. For example, the following text from the description of methods and the principal reasons and explanatory text on pages 7/3 and 7/6 of the TRMP states:
- '(iii) The Rural 3 Zone[s] cover a specific part of the Coastal Tasman Area within the District. This area contains land of high productive value, generally the more coastal land, and also land of lesser productive value, generally the more inland land in the zones. However the rules for these zones have been specifically developed to accommodate a level of residential development through a framework that provides for restricted discretionary subdivision and controlled residential development, and that recognises and protects the more productive land. In this way, much of the most potentially productive land in the area within the two zones should be retained and protected, although residential development takes place.*
-
- (v) The Rural 3 Zone has been introduced to the Plan to meet the demand for residential living in a rural context in an area close to main urban centres, transport routes and the coast. Lying within the Coastal Tasman Area, development in the area is subject to specific policies, and is intended to absorb and thus reduce pressure for rural residential and residential subdivision in other parts of the District, particularly Rural 1 areas and other areas of high landscape and rural character values.'*
- 10.12 Most submitters acknowledged the express purpose of the Rural 3 Zone in providing for further clustered residential development. One of the disputes for us to determine is whether the proposed subdivision density and layout are appropriate on this site in terms of the actual and foreseeable amenity values and rural character of this part of the Rural 3 Zone and the relevant District Plan policy provisions. We now turn to discuss the evidence

heard on that issue.

11. ISSUE 1: RURAL CHARACTER AND AMENITY VALUES

11.1 Chapter 7.4 of the TRMP addresses rural character and amenity values. Two issues are identified:

7.4.1.1 *An appropriate level of protection of rural character, ecosystems and amenity values.*

7.4.1.2 *How to ensure that soil-based productive activities are able to continue to operate without undue constraints in rural areas, including those due to reverse sensitivity.'*

11.2 The sole objective is (7.4.2):

'Avoidance, remedying or mitigation of the adverse effects of a wide range of existing and potential future activities, including effects on rural character and amenity values.'

11.3 Helpfully, the TRMP defines 'rural character' in the following terms:

'Rural character – means the character of the land as shown by the predominance of rural productive activities and includes:

- (a) a high ratio of open space to built features;*
- (b) large areas of pasture, crops, forestry and land used for a productive end;*
- (c) built features associated with productive rural land uses;*
- (d) low population density;*
- (e) predominant form of residential activity directly associated with a productive land use;*
- (f) social and economic activity associated with productive land use;*
- (g) cultural values associated with farming and living on the land.'*

11.4 The TRMP does not include a definition of 'amenity values' but that expression is defined in the RMA. We note that section 7 (c) of the RMA requires us to have particular regard to the maintenance and enhancement of amenity values.

11.5 Ms Owen and the applicant's witnesses considered that the objective and policies are concerned primarily with *rural* character and with amenity values associated with rural production activities and with preventing reverse sensitivity effects that could hamper rural production activities. There is an emphasis, within policies 7.4.3.1 to 7.4.3.10 on providing for rural production activities and maintaining the rural character associated with those. However, Policies 7.4.3.3 and 7.4.3.4 address wider issues:

7.4.3.3 *To provide for the maintenance and enhancement of local rural character, including such attributes as openness, greenness, productive activity, absence of signs, and separation, style and scale of structures.*

7.4.3.4 *To exclude from rural areas, uses or activities (including rural-residential) which would have adverse effects on rural activities, health or amenity values, where those effects cannot be avoided, remedied or mitigated.*

11.6 Policy 7.4.3.3 requires us to consider what local rural character actually is in any particular local situation and expressly includes the notions of openness, greenness, separation and the style and scale of buildings. There is no suggestion in any of the TRMP explanatory text that Policy 7.4.3.4 should be confined to a consideration of amenity values associated with rural (non-residential) activities. The policy requires us to consider potential adverse effects on amenity values – whatever those are in a particular situation.

11.7 Chapter 9.2 of the TRMP addresses rural landscape character. Three issues are

identified:

9.2.1.1 *Opportunities for landscape design and enhancement of visual amenities.*

9.2.1.2 *The need for recognition of local as well as wider landscape character and values as a basis for evaluating the acceptability of proposals for subdivision and development.*

9.2.1.3 *Urbanisation of the rural landscapes through reduced setback distances, urban fencing styles and planting in rural areas. The overall effect has been a loss of open character.*

11.8 The sole objective is (9.2.2):

'Retention of the contribution rural landscapes make to the amenity values and rural character of the District, and protection of those values from inappropriate subdivision and development.'

11.9 The policies flowing from Objective 9.2.2 are:

9.2.3.1 *To integrate consideration of rural landscape values into any evaluation of proposals for more intensive subdivision and development than the Plan permits.*

9.2.3.3 *To retain the rural characteristics of the landscape within rural areas.*

9.2.3.4 *To encourage landscape enhancement and mitigation of changes through landscape analysis, subdivision design, planting proposals, careful siting of structures and other methods, throughout rural areas.*

9.2.3.5 *To evaluate, and to avoid, remedy or mitigate cumulative adverse effects of development on landscape values within rural areas.'*

11.10 One of the methods of implementing the above objectives and policies is the assessment of subdivision proposals against the Design Guide.

11.11 In addition, we note that Chapter 9.1 (which addresses outstanding landscapes and natural features) identifies the following Objective 9.1.2 and Policy 9.1.3.3 that apply throughout the district:

9.1.2 *Protection of the District's outstanding landscapes and features from the adverse effects of subdivision, use or development of land and management of other land, especially in the rural area and along the coasts to mitigate adverse visual effects.*

9.1.3.3 *To ensure that structures do not adversely affect:*

(a) *visual interfaces such as skylines, ridgelines and the shorelines of lakes, rivers and the sea;*

(b) *unity of landform, vegetation cover and views.'*

11.12 Mr Sissons and Mr Carter disagreed about how the 'rural character' of this locality should be defined. Mr Sissons considered that the intensity of residential activity in residential enclaves within a rural productive landscape is not a significant indicator of whether that landscape is predominantly used for rural production and, hence, whether it has a rural character. He considered that the existing residential clusters do not exhibit rural character. It was Mr Sissons' opinion that, similarly, the clusters in the unimplemented consent RM100632 would not exhibit rural character. On this basis, Mr Sissons

considered that more intensive residential development within the clusters would not adversely affect the rural character beyond the clusters.

11.13 What was important, he said, is the way the enclaves are slotted into the productive land. Mr Sissons described the rural character as comprising a matrix or pattern of productive land and residential enclaves, significant riparian planting, pine trees, as well as the irrigation dam and the pastoral and planted common areas within the Appleby Hills subdivision.

11.14 Mr Carter considered that Mr Sissons had adopted a rather narrow interpretation of 'rural character' by excluding the contribution that residential development makes to rural character within the Rural 3 Zone context and by assessing the residential clusters in isolation of their rural setting. Mr Carter, referencing Policy 7.4.3.3, stated that consideration of other attributes is relevant (including the characteristics of the pattern of existing residential development within the Rural 3 Zone). Mr Carter's evidence was that the conceptual framework for the Rural 3 Zone includes a multi-faceted and fine-grained approach in which residential activity is to be incorporated into and itself contribute to defining a changing rural landscape over time. It was his opinion that, in that sense, we cannot ignore the particular characteristics of the residential components of the residential clusters within the wider rural landscape.

11.15 Mr Carter referred us to the RMA definition of 'amenity values' and to the following attributes of amenity described in Chapter 5 of the TRMP which he considered are valid for this locality:

- *Privacy in residential properties and for rural dwelling sites (TRMP 5.2.3.1);*
- *The open space value of rural areas (TRMP 5.3.3.2);*
- *Features that contribute to the identity and visual and aesthetic character of localities (TRMP 5.3.3.5); and*
- *Natural features on individual sites (TRMP 5.2.3.6).*

11.16 Ms Webby and Mr Lile included in their joint statement (resulting from pre-hearing conferencing) a table which clarified that the TRMP objectives and policies refer to 'rural character' and 'amenity values' but do not distinguish 'rural amenity values' or 'residential amenity values'. They agreed that the definition of 'amenity values' is all-encompassing so that the amenity enjoyed by residents is a relevant consideration.

11.17 The evidence presented by and on behalf of submitters⁹ made it clear that the amenity values they experience and value in this particular locality include:

- (a) The views of outstanding landscapes and features described in Policy 9.1.3.3 (a) as well as uncluttered rural views;
- (b) The spaciousness and openness within and surrounding the Appleby Hills cul-de-sac neighbourhoods (discussed in Policy 7.4.3.3);
- (c) Large section sizes that allow owners to develop generous gardens and also to establish orchards and vegetable gardens;
- (d) The relative isolation;
- (e) The separation between individual properties and the low intensity (or scale) of built development (discussed in Policy 7.4.3.3);
- (f) The 'greenness' referred to in Policy 7.4.3.3 and the contribution of green planting to privacy and visual amenities discussed in Policy 7.4.3.4;
- (g) The 'rural feel' or sense that individual properties (rural production and rural lifestyle properties as well as the Appleby Hills properties) are integrally part of the wider rural landscape and the sense of rural character from that connection (that is, that they are part of and not separate from the rural character of the locality

⁹ Including Mr Brian Smith, Mr Andrew Schwass, Mr Kevin Riddle and Mr Gerard Praat (Legal Counsel) on behalf of 26 residents of Appleby Hills

- discussed in Objectives 7.4.2 and 9.2.2 and Policies 7.4.3.3 and 9.2.3.5); and
 (h) General amenity values discussed in Policy 7.4.3.4 including peace and quiet, the absence of suburban-type residential noises, privacy and low traffic volumes.

11.18 Mr Sissons, Mr Carter, Ms Webby and Mr Lile acknowledged that it is the residents of the locality who are best placed to describe to us the actual amenity values of the locality. Ms Owen urged us to be cautious in accepting uncritically the opinions of local residents about amenity. In her closing legal submissions, and drawing on the High Court's decision *Gisborne District Council v Eldamos Investments Ltd*¹⁰, Ms Owen stated that to adopt the views of residents as *determining* the amenity values of the land would amount to an error of law because those views are 'the starting point' and not the end point. Ms Owen stated that the Panel has not only the ability, but also the duty, to undertake our own assessment of the amenity values of the site and that we are not bound by the opinions of Mr Carter or Mr Sissons or by what the residents of Appleby Hills think or value.

11.19 Policy 9.2.3.3 focuses on retention of the *rural* characteristics of the landscape within rural areas. In answer to our question, Ms Webby and Mr Lile agreed that we must consider both the wider rural character and the localised amenity values. Mr Lile did not resile from his evidence that the policy emphasis is on retention of the overall *rural* landscape character. However, Ms Webby considered that the overall policy concern is not *exclusively* with wider rural landscape character.

11.20 Ms Webby referred to TRMP Policy 7.3.3.16 which states:

'7.3.3.16 *To protect from further subdivision and development, land that has been retained as open space either within any allotment or as an allotment, in an approved subdivision in the Rural 3 Zone, for its productive, rural or coastal character, landscape, amenity, or wastewater discharge management value.'*

11.21 Ms Webby and Mr Carter considered that the current proposed (replacement) subdivision layout involves further subdivision of parts of allotments that were left as open space, for landscape and amenity reasons, within allotments that were approved in RM100632. Ms Owen did not agree with that approach. Her view, supported by Mr Lile, was that the words '*open space either within any allotment or as an allotment*' in Policy 7.3.3.16 mean land that has been explicitly set aside for open space purposes. In this respect, they consider, land within approved residential allotments is not '*retained as open space*' – because the allotment's overall purpose is as a private residential (not open space) allotment. However, we note that these differences in interpretation are overcome if, as agreed between the Council's and CBH's witnesses and Ms Owen at the hearing, the approved subdivision layout RM100632 is not included as part of the foreseeable future environment for the purposes of assessing effects.

Finding: Rural Character and Amenity Values

11.22 Our conclusion is that, read as a whole, the policy framework for the Rural 3 Zone requires a focus on both the wider predominantly rural landscape character as well as the actual character and amenity values that are experienced within and contributed by the pockets of existing residential activity within that landscape. We do not read the policy framework as being concerned exclusively with the wider rural landscape character in the way that the applicant's counsel and witnesses contended. Where the expression 'amenity values' is used in the objectives and policies, it is not qualified as being solely 'rural amenity values'.

¹⁰ HC Gisborne CIV 2005-485-1241, judgment of Harrison J 26 October 2005

It is appropriate that we consider the actual existing and foreseeable future amenity values and the potential effects on amenity values within this part of the Rural 3 Zone that are relevant for this application. That includes the potential effects on the amenity values within the existing Appleby Hills residential development. Consistent with that approach, the Design Guide includes consideration of retaining dwelling privacy and outlook to the rural landscape in the selection of building location areas and development of an uncluttered pattern of building location areas.¹¹

- 11.23 We do not accept that it is necessary for us to undertake our own independent *assessment* of the amenity values within the residential areas that were of interest for this application. We agree that is proper for our conclusions about the existence of amenity values and about potential effects on amenity values to be informed by the evidence given by the local residents and by Mr Sissons and Mr Carter. That is the approach we have taken and we discuss our findings in the following sections.

12. ISSUE 2: EFFECTS ON RURAL CHARACTER AND AMENITY VALUES

- 12.1 It is relevant to note, at the outset, that all submitters accepted that the Rural 3 Zone is expressly intended to accommodate additional residential development and that they must anticipate some change throughout the Zone. The disputes aired at the hearing were about whether the subdivision layout proposed by CBH are consistent with the TRMP objectives and policies and with the Design Guide and whether they would achieve the environmental results anticipated for the Rural 3 Zone – for example as articulated in 7.50.4, 7.50.5 and 7.50.7 on page 7/16 of the TRMP:

'7.50.4 Maintenance of rural character and rural amenity values throughout the District's rural areas.

7.50.5 The accommodation of additional residential development with limited adverse effects on productive values, rural character, amenity values and landscape values, in the Rural 3 Zone.

7.50.7 Forms and styles of residential and rural residential development which are consistent with the 'Coastal Tasman Area Subdivision and Development Design Guide'.

- 12.2 We note that anticipated environmental result number 7.50.5 is not confined to *rural* amenity values and, consistent with our earlier finding, requires us to consider potential effects on the amenity values that will actually exist in the affected parts of the Rural 3 Zone environment.
- 12.3 We also note the statement in clause 7.2.20.1 (v) of the TRMP which describes the Rural 3 Zone as having been created to meet the demand for *'residential living in a rural context'*. The other relevant policies and the provisions of the Design Guide suggest that *'residential living in a rural context'* means something different from typical urban-type residential development and, instead, something more the 'rural'.
- 12.4 The evidence discussed effects on rural character and on amenity values in the following potentially affected areas:
- (a) The public travelling on SH60;
 - (b) Existing rural and rural lifestyle properties adjoining the site accessed from Redwood Valley Road and Maisey Road;
 - (c) The Rural 3 zoned land within Stages 7 to 16;
 - (d) Existing Appleby Hills properties.

¹¹ Section 3.10 of the Design Guide *'Building Location Areas'*

As viewed from SH60:

- 12.5 All relevant witnesses agreed that any views of the proposed subdivision from SH60 would be very fleeting and that no material adverse effects would result.

Adjoining rural and rural lifestyle properties:

- 12.6 Opposing submissions were received from the owners of six rural and rural lifestyle properties adjoining the site¹² raising concerns about the prominent visibility of the future built development and the loss of rural character, adverse impact on rural views (including the placement of dwellings on the ridgeline of the north-south spur), privacy, peace and quiet that would result for them.
- 12.7 Mrs Hodgkinson has lived on her property, at 285 Coastal Highway, for 23 years. Mrs Hodgkinson is concerned about the increasing urbanisation of the CBH site and the visibility of the proposed residential properties from her property.
- 12.8 Mr and Mrs Busby have lived at their property, at 247 Coastal Highway, for 15 years. As already noted, theirs is a rural lifestyle property with a growing production hazelnut orchard and other production activities that is separated from the CBH land by a mature shelterbelt. Mrs Busby stated her concern that CBH appear to rely on that shelterbelt to obscure the view from her property into the area of the proposed subdivision. Part of the shelterbelt has recently been trimmed and Mrs Busby clarified that the shelterbelt must also be trimmed in order to operate effectively. If it is left to grow higher, it will create wind flow and shading problems on the Busby property that are sub-optimal for orchard growth. The trimmed height is necessary to optimise rural production. Mrs Busby stated that the balance of the shelterbelt will be trimmed when finances permit. Whilst the shelterbelt appears to be a way of avoiding views into the residential subdivision, reliance on the shelterbelt conflicts with the Busby family's orchard productivity.
- 12.9 Mrs Busby stated that the proposed subdivision, at the density proposed, will have an undesirable effect on the view from their property and the rural character of the outlook from their property. Mr Sissons and Mr Carter agreed, in their third conferencing statement, that the southernmost cluster of allotments would be obscured from view from the Busby property by the shelterbelt. However, when the shelterbelt is trimmed, all east-facing parts of the proposed subdivision would be visible. Mrs Busby made the point that the large grassed common areas and the planted gullies, which CBH relies on as providing the site's rural character, are largely not visible from her property – whereas the built residential properties will be highly visible.
- 12.10 CBH included in the application a number of photographs taken from viewpoints on some surrounding properties adapted to illustrate the likely location of dwellings on the proposed allotments. Equivalent adapted photographs were not presented illustrating the reduced number of allotments proposed following the hearing.
- 12.11 Mr Sissons' assessment was that any potential adverse visual impacts would be mitigated by the controls on development proposed by the applicant and by distance and intervening existing vegetation. Mr Carter considered that there is some scope for intensification of allotments in the western valley, particularly on the gentler slopes around the irrigation dam, but that this needs to be considered with reference to the potential effects on the McMeeking/Creed property. Our site visit confirmed that views from adjoining properties into the area nearest the irrigation dam are limited by topography and vegetation although some of that vegetation is mature and it is possible that it may fall or be felled in future. By contrast, there are relatively open views from the McMeeking/Creed property into the nearest part of the proposed subdivision of the western valley where seven allotments are proposed on the western slope of the spur (compared with three in RM100632).

2.1 ¹² Submissions numbered 6 (McMeeking/Creed), 21 (Barnett/Richards), 23 (Hodgkinson), 29 (Busby), 32 (Eden), 34 (Toms)

The impact on the character of the Rural 3 zoned land within the site:

- 12.12 Mr Sissons and Mr Carter disagreed about the extent to which the proposed subdivision layout would maintain the overall rural character of the site. Mr Sisson's opinion was that, as long as the large pastoral common areas are retained, the proposed development at the density proposed will not adversely affect the rural character of this part of the site or the Rural 3 Zone.
- 12.13 Mr Carter considered that the proposal, at the density proposed, will erode the open space and rural amenity values of this part of the Rural 3 Zone. In his opinion, the small allotment sizes and layout will erode any sense of spaciousness (in contrast to the spaciousness that has resulted in the existing Appleby Hills development) and will result in closely-spaced built structures more usually seen in medium density urban situations and not at all consistent with the surrounding rural character. He expects this will result in the residential clusters being less integrated with the surrounding rural and open space areas and dominating, rather than being complementary to, the rural and open space areas.
- 12.14 Mr Carter was particularly concerned about the placement of building location areas on or near the ridge of the north-south spur with the result that future buildings would be visible above the ridgeline. Mr Carter stated that there is minimal visual screening on or of this ridgeline. CBH proposes to limit the heights of buildings on ridgelines. However, Mr Carter did not consider this would be sufficient to fully mitigate the adverse effects created by the presence of buildings on and near ridgelines. We note that Policy 9.1.3.3 is particularly concerned to avoid adverse effects associated with building on ridgelines.
- 12.15 Mr Sissons' opinion was that, once the north-south spur is built on and gardens are established, it will become a verdant landscape of dwellings nestled in gardens with a treed backdrop. Mr Sissons was involved in designing and assessing the potential effects of the original proposal (RM030922). At that time, Mr Sissons' expectation had been that the generous size of proposed allotments and the planting that would be established by owners would provide a 'verdant character combining grass, trees, bush and production land' being a 'natural or rural character rather than a built or urban character'. However, since then, Mr Sissons has observed the residential development at Appleby Hills and elsewhere and concluded that even those parts of the residential properties unoccupied by buildings have a residential, rather than a rural, character. In his opinion, the large gardens have failed to provide the degree of rural character that he had expected ten years ago. This is due to the selection of plant species and the neat and tidy appearance of those gardens compared to the generality of rural production land and plantings. On that basis, it was Mr Sissons' opinion that the proposed (smaller-sized) allotments in Stages 7 to 16 would similarly be read as distinctly residential in character with no connection to the surrounding pastoral common areas or the surrounding rural landscape. It was his opinion that, essentially, it did not matter what size the proposed residential allotments are because they would inevitably read as a mass of residential development with no natural connection to the surrounding rural landscape.
- 12.16 Mr Carter's opinion was that allotment size and spaciousness between dwellings will influence the rural character of a locality. He explained¹³ that development proposals that include buildings which do not clutter the landscape or the application site will ensure that those areas can contribute positively to the perception of open space and rural character in this Rural 3 Zone. It was his view that enhancing and augmenting the role of productive land can be achieved by emphasising unbuilt open space elements including lawns and gardens around dwellings and the open spaces between them. He stated that '*residential development and the density at which it will be introduced is directly linked to the perception of open space and whether buildings will be perceived as cluttering the landscape*'. It was Mr Carter's opinion that the proposed layout for the north-south spur would be dominated by residential development and would appear cluttered, particularly as

¹³ In the third agreed landscape witnesses' conferencing statement

viewed from the existing Appleby Hills properties that face that north-south spur. Mr Carter considered that the perceptual quality of spaciousness can, and in this case should, be achieved through means other than just setting aside productive land (for example, in the pastoral common areas).

- 12.17 Mr Carter considered that the smaller site areas and large rural setbacks, particularly on the steeper slopes, will constrain flexibility by reducing the space within which to fit houses and the earthworks required to establish building platforms and access driveways. He acknowledged that, on flatter slopes, these constraints would be lessened. It was his expectation that earthworks on individual sites would encroach into the yard setbacks with the effect that the natural landform will likely be largely modified within one cut and fill slope merging into the neighbouring cut and fill.
- 12.18 Mr Sissons considered that there would be adequate room on each site for a reasonable house plus 5-metre-wide side yards and garden plantings. In support of his opinion, he tabled at the hearing some examples of how the building platforms might be formed and showing 5-metre side yard setbacks and 10-metre setbacks from road boundaries. Mr Carter commented that those examples confirmed the concerns he has that vehicle turning areas and utility areas are not identified and it is not clear where they are to be located. He expects that there would be an absence of the perceptual value of spaciousness and the continuity between areas of open space. In this respect, he considers the proposed density contrasts and compares unfavourably with the allotment size and layout of the existing Appleby Hills development. Mr Sissons' opinion was that the controls on built development on individual sites have worked to date and that this is evidenced by the high quality of development which will only be enhanced over time as established planting matures. Mr Carter disagreed that the existing development should be relied on as exemplifying the long-term result that would be achieved for the proposed Stages 7 to 16 development. That is because of the substantive differences in proposed allotment size and the resultant close juxtaposition of built development between proposed allotments.
- 12.19 As earlier noted, the applicant proposed to reduce by two the number of allotments and to identify 'building location areas' on more allotments than originally proposed. We note that the proposed building location area on Lots 77 and 78 accommodates the 20-metres setback previously agreed with the adjoining landowner, Mrs Hodgkinson.
- 12.20 The applicant also proposes conditions of consent requiring the construction of building platforms prior to completion of the section 224 certificate¹⁴. Ms Owen contended in her closing statement that these changes would combine to provide more open space within the east-facing allotments of concern to some submitters. However, the changes were not accompanied by any assessment. We have no basis for drawing those conclusions. We observe that building platforms would not be pre-formed on the smallest allotments proposed near the irrigation dam. The applicant also proposes to limit maximum building coverage to 400m² on 19 of the proposed allotments. On the others (including some of the smallest allotments), building coverage would be limited by the 5-metre and 10-metre setbacks.

Impacts for properties within the existing Appleby Hills development:

- 12.21 Opposing submissions were received from the owners and occupiers of 23 of the 33 residential properties within Appleby Hills. Most of those submitters were concerned about the proposed increase in allotment density compared with the original consent and with the advertising material that they had relied on prior to purchasing their properties. In addition, Mr Eder (submitter number 17) raised concerns on behalf of existing residents within the Appleby Hills development.

¹⁴ Proposed Condition 30A of the revised suggested conditions accompanying Ms Owen's closing legal submissions.

- 12.22 Resident submitters also raised concerns about the adverse impact that the proposed allotments on the east-facing slopes would have on views from their properties and on the visual and aural privacy of their properties. Whilst most of the existing properties have views towards the coast, many rooms and outdoor living areas are also oriented to the west with views directly onto the east-facing slopes of the north-south spur. Submitters are particularly concerned about the addition of allotments, and future dwellings, on or near ridgelines in a way that would protrude above the ridgeline. The submitters who spoke at the hearing acknowledged that RM100632 would result in three allotments on the eastern side of the extension to Ridgeview Road (nearest their properties) and three allotments on the western side of the road. However, the three allotments on the eastern side of the road are substantially lower than the visible ridgeline and lower than the nearest existing properties and therefore not dominant in the view. The three allotments on the western side of the road would result in dwellings spaced so that there is generous open space between them with views through and over them to the hills behind. Only one of those allotments would have resulted in a dwelling on or near the ridgeline of the spur. Submitters are concerned that the proposed replacement subdivision would result in more closely positioned buildings, with little open space and few gaps between buildings and with four dwellings on or near the ridgeline.
- 12.23 Submitters¹⁵ did not agree with Mr Sissons' opinion that a more compact residential development will have no adverse effect on the visual amenity of views from existing residences in any appreciable way. They consider that the proposed density of allotments will create a built form that is dominant in the prime western views from many parts of their properties. They consider this will have a material adverse effect on the amenity values and outlook they presently enjoy and which they could reasonably have anticipated under the Rural 3 Zone provisions in terms of CBH's stated intentions when they purchased their properties.
- 12.24 We note that CBH now proposes one less allotment in each of the clusters on the ridgeline of the north-south spur that are nearest the existing Appleby Hills properties. The joint statement that resulted from the 2013 discussions between Mr Carter and Mr Sisson noted the differences in their opinions about the effect of allotment size on rural character, the weight to be given to visual impacts on existing Appleby Hills residents and the impact of building on the ridgeline of the north-south spur. The meeting resulted in agreement on a layout that is shown in Mr Sissons' Figure 2 (the '*2013 joint statement layout*'). That layout has more allotments than authorised by RM100632 but less than applied for by CBH in RM130922.
- 12.25 The 2013 joint statement layout was not discussed with any potentially affected landowners when it was agreed between Mr Carter and Mr Sissons in 2013 and it has been superseded by the current RM130922 proposal. Mr Carter was careful to state, at the hearing, that his 2013 support for the greater density of allotments was made without the benefit of having undertaken an assessment of visual impact on adjoining rural properties and without the benefit of hearing the Appleby Hills residents' views about amenity and visual impacts. His written statement of evidence and oral evidence to the hearing were, however, informed by the descriptions of amenity provided by submitters. The amended layout now proposed by CBH for the ridgeline and east-facing slopes of the north-south spur more closely resembles the 2013 joint statement layout. For example, both layouts show 6 allotments in the nearest cluster, with two on or near the ridgeline, and six allotments on the northern cluster (although there are three instead of two allotments on or near the ridgeline).
- 12.26 Many of the submitters also raised concerns about the potential adverse impact of additional noise created by vehicle movements to and from the additional proposed 18 allotments.

¹⁵ For example, Mr Riddle who is currently having a house built at number 120 Ridgeview Road (the nearest property to this cluster of proposed allotments) and Mr Schwass (who lives at 3 Ribbonwood Lane) and Mr Brian Smith who lives at number 10 Kapuka Lane

Findings: Effects on Rural Character and Amenity Values

- 12.27 We are satisfied that the proposed subdivision will not give rise to any material adverse effects on views from SH60.
- 12.28 Much was made, in the applicant's evidence, of the alleged good alignment between the proposal and the provisions of the Design Guide. Whilst we agree that the proposal aligns well with many of its provisions, we have concluded that some aspects of the proposal align poorly with, or are inconsistent with, some important outcomes sought by the Design Guide. We are not satisfied that the proposed location of buildings will achieve an integrated and coherent outcome or complement other existing development or the amenity values of this part of Rural 3 Zone as intended by the Design Guide.
- 12.29 Section 7.4 of the Design Guide acknowledges that purchasers of allotments will be seeking a rural outlook and privacy and recommends that potential building sites must incorporate purchaser expectations as well as environmental and productive value considerations. The proposed allotment size will not, in our view, fit with the intended rural character or facilitate rural outlook for the allotments in the western valley around the irrigation dam. Rather, the proposal will create there a medium density suburban style enclave with a high degree of uniformity of allotment shape and size which will contrast with, rather than complement, the rural character. We consider this to be inconsistent with the intended outcome for the Rural 3 Zone of providing for *'residential living in a rural context'*.
- 12.30 Neither does the proposed design consider the reasonable expectations of existing residents of rural properties (for example the Hodgkinson, McMeeking/Creed, Barnett/Richards and Busby properties) and of existing Appleby Hills residential properties in terms of sensitive positioning of buildings and rural character.
- 12.31 We consider that it will be difficult to minimise the visible effects of allotment shape and boundaries for all of the reasons explained by Mr Carter. The proposed allotments are, in our view, simply too small to allow for open space buffers between buildings. Our expectation is that, even the proposed amended (18-lot) layout will result in clusters of residential development that are viewed from beyond, and from within, as tightly-built forms with few gaps between buildings and poor outlook over and between dwellings to the surrounding rural and open space areas. Although CBH proposes to pre-form some building platforms, we note that this is not proposed for the smallest allotments in the western valley. There, we expect that the result will be a continuum of unnatural landform created by individual earthworked building platforms, vehicle access and turning areas with few opportunities to moderate this unnatural landform by planting or by blending landform between allotments. Houses will face directly onto one another and exhibit little rural character or context.
- 12.32 The dwellings on the east-facing slopes of the north-south spur will face directly onto the existing dwellings (particularly in Ribbonwood Lane). We acknowledge that RM100632 would create allotments with dwellings facing Ribbonwood Lane properties. However, the current proposal lacks the large allotment size, careful placement of buildings and generous open space between buildings that might be said to mitigate the impact of that layout and contribute to the rural context of the residential enclaves. Whereas the view of RM100632 would have been of three dwellings in a cluster with one on the ridgeline and generous views between retaining outlook to the hills beyond, the current proposal places building location areas in a way that 'plugs' any gaps between buildings. The result, in our view, significantly intensifies the built form such that residential buildings will be visually obtrusive and dominant in the view in a manner that is completely at odds with maintaining or respecting rural character and with maintaining the privacy and outlook from other residential properties. The proposal deliberately creates building sites on ridgelines which

are viewed as skylines. This is directly contrary to the Design Guide.

- 12.33 For the reasons explained here, we also conclude that the proposed subdivision layout is contrary to Objectives 7.4.2 and 9.1.2 and Policies 7.4.3.3, 9.1.3.3, 9.2.3.3, 9.2.3.4 and 9.2.3.5. A grant of consent would, in our view, result in urbanisation of this part of the Rural 3 Zone that the TRMP seeks to avoid. Refusal of consent for the proposed subdivision is, in our view, consistent with avoiding the adverse effects on amenity values discussed in Policy 7.4.3.4.

13. ISSUE 3: TRAFFIC SAFETY

- 13.1 We discussed earlier the concerns raised by several submitters about the potential for the additional vehicle movements generated by the additional allotments to create greater safety risks on Ridgeview Road. As noted, Mr Thompson is particularly concerned about the short vertical and horizontal sight distances in relation to the entrance to his property. The entrance driveway is at the top of a curve and at a bend in the road where visibility is limited. Submitters' concerns are that more vehicles will exacerbate the safety risk.
- 13.2 Other submitters also raised concerns about road safety generally along Ridgeview Road, the absence of safe crossing places, erosion of the road pavement along parts of the road and what they called 'blind spots' created at the bends in the road. Particular concerns related to the potential safety risks posed by additional construction vehicles and the likelihood that new people would speed along the road.
- 13.3 Ridgeview Road has a 100kph posted speed limit. However, the road's geometry (it is narrow and has a number of curves) means that actual speeds are generally much slower. Some submitters requested that the posted speed limit be reduced to 50 kph in keeping with the residential nature of the neighbourhood.
- 13.4 Mr Thompson and other submitters explained that school-age children from within Appleby Hills catch buses to school. Primary-aged children are collected by a bus that enters Ridgeview Road in the mornings and are dropped off at the intersection of Ridgeview Road and SH60 in the afternoons (this avoids them having to cross SH60). Secondary school students catch buses that stop at the intersection of Research Orchard Road and SH60 in the morning. The buses drop them off at the intersection of Ridgeview Road and SH60 in the afternoon. There is a 1.4-metre-wide footpath along the northern side of Ridgeview Road between the existing residential clusters and SH60. Submitters were concerned about the safety of the morning bus pick-up of secondary school students from the intersection across SH60. We understand from answers to our questions that there are currently about 6 to 10 secondary school aged students who cross SH60 to wait for the morning bus. Submitters' concerns were that more residential allotments would increase the number of students and heighten the safety risk.
- 13.5 Some submitters had also raised concerns about the impact of increased traffic from the subdivision on the safety and convenience of SH60.
- 13.6 Mr Ley described Ridgeview Road as being an access road with carriageway of generally 6-metre to 7-metre width and a 2-coat chip seal which is the normal surfacing texture for new roads in Tasman District. Mr Ley stated that there are two 'squeeze treatments' within the carriageway. These involve narrowing the carriageway to two 2.7-metre lanes to constrain traffic speeds. Mr Ley estimates the comfortable driving speed along Ridgeview Road to be a maximum of 45 kph. Mr Ley stated that the SH60 intersection is a fully compliant intersection design approved by NZTA which has two offset left-turn lanes (giving access to Ridgeview Road and Research Orchard Lane).
- 13.7 Mr Ley estimated that the additional traffic generated by households on the proposed allotments would be in the order of 6 vehicles per day per household. On that basis, there could be a total of $85 \times 6 = 510$ vehicles per day generated by the existing and proposed

Appleby Hills residential clusters. Mr Ley stated that the design attributes for Ridgeview Road (taking into account carriageway width, shoulder construction and design speed), place it in the classification of 'access road'. According to the Council's standards, an 'access road' can accommodate traffic movements up to approximately 500 vehicles per day. Mr Ley estimated that a maximum of 83 dwellings should usually be expected on a road such as Ridgeview Road. Mr Ley stated that the proposed number of allotments is at the higher limits of Council's standards but that the carriageway has capacity for increased traffic.

- 13.8 Mr Ley stated that Ridgeview Road has been specifically designed for a maximum traffic speed of 50 kph and considered that actual travelling speeds should not be allowed to increase but stated at the hearing that the road geometry should continue to constrain actual speeds. Mr Ley stated that the Council is open to undertaking a speed review and to install speed restriction signs on the road but had received no formal request from any residents to do so.
- 13.9 Mr Ley acknowledged the wear and tear to the sealed road edge and noted that it had been repaired. He explained that the Council is reluctant to widen the curves further (to reduce such damage) because this will only encourage increased speeds. Mr Ley noted that there have been no recorded safety incidents since Ridgeview Road was commissioned and did not agree with submitters that the traffic associated with the proposed additional allotments would present a material traffic safety risk.
- 13.10 As already explained, Mr Edwards' assessment was based on a greater number of additional residential allotments than actually proposed by RM130922. Mr Edwards had undertaken a survey of actual vehicle movements into and from Ridgeview Road. His survey data indicated that the dwellings in existence at the time of his survey generated 8 vehicle trips per day (including 0.7 trips per dwelling during the morning peak period and 1 vehicle trip during the afternoon peak period). Applying those trip generation rates to the total number of allotments proposed at the time of the hearing (87), he estimated that future traffic volumes at the SH60 end of Ridgeview Road would be in the order of 700 vehicles per day with 61 vehicles during the morning peak period and 87 vehicles during the afternoon peak period. He emphasised that these would be the traffic volumes at the SH60 end of Ridgeview Road and that volumes would decrease as one heads west along the road. For example, volumes at the Bright Lane intersection would reduce to approximately 640 vehicles per day, at Ribbonwood Lane to 520 vehicles per day and at the proposed Stage 7 subdivision to 400 vehicles per day. Ridgeview Road will carry less than 500 vehicles per day along most of its developed length west of Toe Toe Lane. He considered that the section of Ridgeview Road east of Toe Toe Lane that would carry more than 500 vehicles per day (and up to 700vpd) is appropriately constructed for that volume of traffic.
- 13.11 On the basis of these traffic volumes (which we note were slightly higher than would be generated by amended layout with two less allotments), Mr Edwards concluded that:
- Traffic volumes would be low in absolute terms;
 - Good levels of service would be achieved at the SH60 intersection and no reduction in levels of service would result;
 - Sight distances for the SH60 approaches to the Ridgeview Road intersection are appropriately conservative;
 - The intersection has spare capacity to absorb additional traffic from Ridgeview Road;
 - Although he considered the offset SH60 intersection to be 'unusual', vehicles appear to be using the intersection safely in all directions and there will be gaps in the traffic enabling safe vehicle movements into and from Ridgeview Road.
- 13.12 Mr Edwards did not consider the potential numbers of additional secondary-aged students

crossing SH60 to catch school buses would create a material adverse effect. He had observed students being delivered to the bus stop in cars. We observed students walking from Appleby Hills and carefully crossing SH60 as well as students being delivered in cars from Ridgeview Road and from Research Orchard Road.

- 13.13 Picking up Mr Edwards' comments about the 'unusual' and 'flawed' marking of the offset unopposed right turn bays, Mr Ley stated that he would raise this matter with NZTA and suggest that the marking be altered when NZTA next refreshes the road marking on this section of SH60.
- 13.14 Mr Edwards observed that the edge wear on Ridgeview Road has only occurred on a section of the road that has no concrete edge restraint. He suggested it has probably occurred as a result of heavier vehicles cutting the corner and he observed that the restoration work has been done poorly. He stated that the lesson to be learnt is that the concrete edge restraint provides a superior cross-sectional design with long term maintenance benefits for the road controlling authority.

Findings: Traffic Safety

- 13.15 We are satisfied, based on the evidence presented and our own site visits, that the generation of additional vehicles from the proposed subdivision will not give rise to any material adverse traffic safety effects or adversely affect the functioning or convenience of the local road network. We are satisfied that the current design of Ridgeview Road is appropriate to safely accommodate the proposed additional allotments. We do not expect that the addition of households in the upper Ridgeview Road area will create or worsen any safety risks for school students crossing SH60. Whilst the practice is less than ideal, there are sufficient gaps between platoons of vehicles during the morning peak traffic flows to allow students to safely cross.
- 13.16 It is a matter for the Council to determine whether a speed review should be undertaken or to make any changes to the speed environment of Ridgeview Road.

14. ISSUE 4: AMENITY EFFECTS OF ADDITIONAL TRAFFIC

- 14.1 Several submitters raised concerns about the potential for additional noise caused by additional traffic on access roads and about the potential for headlight glare.
- 14.2 No expert noise evidence was presented in relation to vehicle noise and no evidence detailing potential headlight sweep.
- 14.3 Mr Edwards suggested that there is a school of thought that amenity effects do not start to occur until vehicle volumes are in the order of 2,000 vehicles per day. Mr Riddle did not accept that assertion. He estimated that there would be a 67% increase in traffic and therefore traffic noise passing his property which he expects will result in a significant erosion of amenity values. Other submitters echoed his concern.
- 14.4 Mr Thompson, in answer to our questions on this, clarified that he currently sees the flash of vehicle lights as they pass the property at night (rather than direct headlight sweep over his house windows) and that he expects to see more lights with more proposed allotments.

Findings: Traffic Amenity Effects

- 14.5 No persuasive evidence was presented to support the concerns of residents about traffic noise. Current traffic volumes are very low (in the order of 200 vehicles per day). The roads are all cul-de-sacs and the catchment of households is small. We have no basis for concluding that the proposed additional 52 allotments would create additional unacceptable traffic noise. However, we note that this is but one aspect of amenity values and our conclusion in this regard does not erode our conclusion, above, about effects on

amenity values generally.

SSUE 5: STORMWATER

- 14.6 Several submitters raised concerns that formation of the proposed subdivision would generate additional surface water run-off that could adversely affect their downstream properties or the downstream estuary of the Waimea Inlet.
- 14.7 No submitters presented any specific evidence clarifying their concerns.
- 14.8 Mr Vellupillai clarified in evidence that currently stormwater run-off from the southern and western catchments is conveyed through the property in open gully channels into the irrigation dam. Overflows from the irrigation dam flow down an open channel into a wetland area upstream of SH60 and then through a culvert under SH60. The eastern catchment drains into an open gully channel and then through a 600mm-diameter culvert under SH60. Mr Vellupillai stated that the proposed subdivision would affect stormwater flows to the southern, western and eastern catchments. Mr Vellupillai had developed a computer model to assess stormwater flows from the catchments in the pre-development (existing) and post-development scenarios. Mr Vellupillai had modelled the scenarios for 1 in 50-year return period rainfall events. His modelling demonstrated that, given the storage volume and spillway characteristics of the dam, outflows from the dam will be less than inflows for 1 in 50-year events. As already noted, Mr Vellupillai considered that the dam provides little freeboard to the dam crest and recommended that further work, such as spillway enhancement or dam crest improvement, may be required to ensure adequate freeboard.
- 14.9 In response to our questions at the hearing, Mr Pigott stated that the conditions of consent proposed by CBH require compliance with the Council's *Engineering Standards and Policies 2013*. According to Mr Pigott, these standards specify the 1 in 100-year event as the design standard. In response, CBH proposed conditions that would specify the 1 in 100-year design standard for all stormwater facilities. Mr Vellupillai clarified that this would achieve hydraulic neutrality (that is, no net increase in stormwater outflows above the pre-development scenario) in the 1 in 100-year design event.

Finding: Stormwater

- 14.10 We are satisfied that the proposed 1 in 100-year design standard is an appropriate standard and that design of all necessary stormwater facilities to this standard will appropriately avoid or mitigate any potential adverse effects of stormwater disposal from the proposed subdivision.

15. OTHER POTENTIAL EFFECTS

- 15.1 In addition to the primary issues in contention, discussed above, the following concerns were raised in submissions or at the hearing and we record our conclusions in respect of each:

Water Supply

- 15.2 Several submitters raised concerns that the water supply available to CBH may be insufficient to fully serve the proposed subdivision and that water shortages have been experienced already from time to time.
- 15.3 CBH draws water for the Appleby Hills development from a metered groundwater bore. RM130144, granted in July 2013, authorises the abstraction of 145m³ per day (145,000 litres per day) of groundwater from the Moutere Gravel Aquifer at maximum abstraction rates of 1.68m³ per second, 6m³ per hour and 1015m³ per week. The water is pumped to storage tanks and reticulated to individual properties. In addition to the Appleby Hills

residential properties, the supply also feeds some properties in Research Orchard Road.

- 15.4 According to Mr Edmonds, properties within the Appleby Hills development are permitted up to 1,000 litres per day of water from the communal supply. However, because only Stages 1 to 6 of the subdivision have been completed, there has been little overall demand for water and some individual properties have exceeded the nominal 1,000 litre/day limit on occasion. He stated that, as the number of properties in the next stages of the subdivision increases, the Residents Association will have to enforce the daily limit by some means.
- 15.5 Mr Born stated that CBH's water use data show that daily water use last summer was in the range 600 litres/dwelling/day to 2,800 litres/dwelling/day. Mr Born stated that average water use during winter 2012, when garden watering would have been at a minimum, was approximately 623 litres/dwelling/day. Mr Born stated that if water use is limited to 1,000 litres/dwelling/day, the RM13044 supply will be sufficient for the proposed allotments in addition to existing water users – provided there is no significant leakage from the reticulation system and provided the system is suitably configured to manage demand variations over the day. Mr Born recommended that additional buffer storage will be required to accommodate variations during the day and over the course of a week and to cope with maintenance shutdowns.
- 15.6 According to Mr Edmonds there is no auxiliary power supply for the pumped water supply system. When the power fails, no water can be pumped or supplied. He attributes the water shortage incidents raised by submitters to electricity outages.
- 15.7 We are satisfied that the existing groundwater source is sufficient for the proposed number of allotments in addition to the other existing users supplied by CBH. However, we note Mr Born's recommendation that additional buffer storage is necessary and that leaks in the reticulation have the potential to waste water and compromise the supply available to residents. We also note that the water appears to be used for watering domestic decorative gardens. That seems, to us, to be a poor end use of a valued natural resource especially when there is an alternative of harvesting rainwater on individual sections for this purpose. Our conclusion is that requirements ought to be included in any consent addressing:
- Regular leak detection programmes;
 - Immediate repair of any leaks in the communal reticulation and on private properties;
 - Additional buffer storage;
 - Enforcement of the daily limit of 1,000 litres/dwelling/day and water demand management; and
 - Efficiency of the end use of the water in meeting essential household needs and requiring supplementary supply (such as rainwater harvesting tanks) for garden watering.

Wastewater Disposal:

- 15.8 Some submitters were concerned that the proposed additional allotments would put pressure on the communal wastewater treatment and disposal system. Wastewater from all of the properties in the existing and proposed Appleby Hills subdivision(s) is collected and reticulated to a central wastewater treatment plant operated by the Residents Association. The treated wastewater is irrigated to land (authorised by discharge permit RM050727V5). As with water supply, CBH also provides wastewater connections to properties in Research Orchard Road.
- 15.9 Mr Born presented, in evidence, averaged flow data from CBH's wastewater treatment plant for the period 01.09.11 to 29.04.13. The flow is measured at the outlet from the

treatment process into the holding tank prior to land irrigation. There is no meter measuring inflows to the treatment plant. Mr Born's figures represented average flow per dwelling calculated by dividing total outflow by the number of households. Mr Born explained that outflow does not accurately represent inflow because of the balancing effect within the treatment process. However, it gives an indication of inflows. It is clear from Mr Born's figures that there have been wet weather inflow issues. Mr Born stated that, with the pressurised PE pipes, the risk of infiltration via the reticulation pipes is very low. However, he and Mr Edmonds explained that there have been some issues with inflow via gully traps, waste pipes and pump stations on private properties. CBH proposed a condition of consent that would require all future wastewater connections to be overseen by a representative of the Residents Association to minimise the risk of this occurring in future.

15.10 Mr Born's figures suggest the average dry weather flow is in the order of 400 to 600 litres per day. The flow data also shows a marked cycling between high output days followed by low output days which Mr Born says cannot be completely explained as rainfall peaking. Mr Born expects it may be attributable to how the storage in the balancing tanks is managed. Mr Born recommended that this cycling should be eliminated so as to avoid a high load in the cycle coinciding with wet weather which would compound the matter. Mr Born stated that, with dependable measures put in place to minimise stormwater inflows the treatment plant should be able to be constructed to cater for lower wet weather flows than historically experienced. On the basis of a design (peak or wet weather) flow in the order 1,000 to 1,200 litres/dwelling/day, the maximum discharge permitted by RM050727V6 (90,000 litres per day) would not be adequate for the existing authorised connections as well as the connections proposed in Stages 7 to 16. Mr Born stated that it would be necessary to reduce the peak day design flow to approximately 825 litres/dwelling/day to comply with the limits of RM050727V5. Mr Born was confident that such a reduction should be attainable through a combination of improved balancing facilities at the treatment plant and more targeted control of stormwater inflows. He recommended:

- Specific requirements with respect to on-site stormwater control (including any changes made by on-site landscape planting and ground re-contouring by private owners);
- Testing of wastewater systems between the house and the pump station on private properties at the time of installation and any change to the on-site wastewater facilities;
- Flow monitoring from pump stations on private properties (although he acknowledged that would be costly) or some proxy test such as pump run-time testing of on-site pump stations;
- Metering of inflows to the wastewater treatment plant so as to better understand balancing needs;
- Throughput capacity should be calculated, for the purposes of determining required balancing, based on the lowest flow point in the operational curve (that is, accommodating potential clogging of the treatment membrane causing reduced through-put).

15.11 Mr Born confirmed that the available 5 hectares for land irrigation will be adequate for disposal of treated wastewater from the existing and proposed development.

15.12 Provided average wet weather flows are reduced to 825 litres/dwelling/day and all of Mr Born's recommendations are adopted as conditions of consent, we are satisfied that the wastewater that is expected to be generated by the existing and proposed allotments can be accommodated within the limits of RM050727V5 (i.e. 90,000 litres/day at a maximum discharge rate of 3.6mm/day).

15.13 We note that discharge permit RM050727V5 contained an error – limiting discharge rate to

a maximum of 2mm/day. We understand that the rate of 2mm/day was inserted in error in the most recent variation of RM050727 (V5) and that the rate should have been 3.6mm/day.

Loss of Rural Production:

- 15.14 The proposed subdivision does not extend the footprint, of the already-approved RM100632. The decision on RM100632 acknowledges, on page 10, that the expanded development footprint at that time would have an inevitable adverse effect on the versatility and ongoing viability of the land. Notwithstanding that effect, the consent authority was able to reconcile the proposal with TRMP Policy 7.3.3.5 (which seeks to protect land of higher production values) and grant the consent. CBH contended that, because the current proposal does not expand the development footprint beyond that occupied by RM100632, no additional loss of production values will result. We can't fault that logic.
- 15.15 There seems to be an inherent conflict between the Rural 3 Zone's purpose in providing for residential development in a rural setting and Policy 7.3.3.5's aim of 'protecting' land of higher productive values. Areas within the Rural 3 Zone that are attractive for residential development may not always be areas of lowest productive values (as is apparent in the present case). Some loss of the versatility or physical area of productive land may be the inevitable result.
- 15.16 For the purposes, of this decision, we are satisfied that the current proposal will not exacerbate any loss of productive values compared with loss already authorised.

Dam Safety:

- 15.17 As already noted, Mr Vellupillai's assessment of the dam concluded that there is little freeboard to the dam crest in a 1 in 50-year flood event. He recommended that further work may be required to ensure the freeboard complies with relevant standards. He stated that the dam is a 'classifiable dam' in terms of the *Dam Safety Scheme* under the Building Act which is due to come into effect on 31st March 2015. That will require an assessment to determine the *Potential Impact Classification*. He expects the design flood for this assessment will be the 1 in 100-year return period flood event. He and Mr Pigott agreed that CBH's acceptance of the Council's *Engineering Standards and Policies 2013*, including the 1 in 100-year design standard, is sufficient to address the question relating to freeboard and general dam safety in the interim period until the Building Act amendments come into force.

Potential Precedent:

- 15.18 Some submitters raised a concern that a grant of consent would set a precedent for other similar re-subdivision within the Rural 3 Zone. No specific arguments were presented, at the hearing, to explain why a grant of consent for this particular proposal would result in this particular subdivision layout being replicated elsewhere in the Rural 3 Zone. No explanation was given, either, for why a grant of consent could or would influence the determination of future Rural 3 Zone subdivision applications.
- 15.19 We therefore have no evidential basis for concluding that 'precedent' is relevant at all for this application. For there to be an issue of potential precedent we would need to have compelling evidence that this proposal is similar to or representative of other similar proposals waiting in the wings for the Rural 3 Zone. No such evidence was presented.

16. ALIGNMENT WITH RELEVANT DISTRICT PLAN POLICY

- 16.1 For the reasons explained in part 11 of this decision, we find that the proposed subdivision is directly contrary to important objectives and policies of the TRMP relating to the rural character and amenity values of the Rural 3 Zone. Whilst the proposal is benign in terms

of many TRMP objectives and policies (for example, relating to traffic safety and productive land), we have concluded that it directly challenges and is contrary to important policies that are central to achievement of the objectives for the Zone. Our conclusion is that a grant of consent would compromise the integrity of those objectives and policies.

ECTION 104D CONCLUSION AND REASONS

- 16.2 Our conclusion is that the proposed subdivision will have effects on the environment that are significantly more than minor (for the reasons explained primarily in part 11 of this decision). The proposal, in our view, fails the first threshold of section 104D. The proposal also fails the second threshold of section 104D for the reasons summarised in paragraph 17.1 above. The requirement of Section 104D (1) prevents us granting consent.
- 16.3 The Rural 3 Zone subdivision rules are structured in the traditional ‘cascade’ format: proposals that comply with the 50-hectare and 100-metre frontage requirements of Rule 16.3.7.1 (amongst other requirements) can be considered as controlled activities and must be granted consent. Proposals that fail the controlled activity standards fall to be considered as restricted discretionary activities under Rule 16.3.7.3 provided three conditions are met:
- Condition (a) is that every allotment must show a ‘building location area for a future dwelling.
 - Condition (b) requires that the subject land must not have been the subject of a subdivision consent granted after 20th December 2003. The Rural 3 Zone was introduced by Variation 32 in December 2003 which accounts for the threshold date of 20th December 2003 in Rule 16.3.7.3 (b).
 - Condition (c) pertains to land at Ruby Bay and is not relevant to the CBH proposal.
- 16.4 Proposals that fail Rule 16.3.7.3 could be considered as discretionary activities if, either, the subdivision does not create any additional residential allotments or the site has a minimum of 50 hectares. CBH’s proposal fails the conditions of Rules 16.3.7.1, 16.3.7.3 and 16.3.7.4 and therefore falls (in the cascade) to be considered as a non-complying activity under Rule 16.3.7.5.
- 16.5 Ms Webby stated in her evidence that the shift of consent status to non-complying activity status *‘provides a signal, a warning if you like, that a more stringent consideration should be applied.* Ms Webby’s approach was that the TRMP’s non-complying activity status encourages a *‘do it right – do it once’* expectation and there was a theme of criticism in her evidence that CBH has sought to change its original approved concept. Ms Owen stated that there have been variations for every Rural 3 subdivision consent that has been granted¹⁶. It was her submission that it is appropriate for the Council to consider such variations and that they should not be frowned upon or treated in a different manner purely because the variation seeks to alter a consent previously granted or because an applicant changes its mind. Mr Praat’s submission was that CBH is entitled to make whatever subdivision application it wants for the land in question.
- 16.6 The rule cascade is clearly intended to ensure that new allotments that were created after 20th December 2003 would not be progressively re-subdivided for residential use without careful scrutiny. That is reflected in the non-complying activity status for particular proposals. However, we agree with Ms Owen that this does not mean that we should automatically take a dim view of the proposal.
- 16.7 It is notable that, *had* CBH proposed its current layout at the time of the original subdivision in 2005, and *if* it had then shown building location areas on all proposed residential allotments, the proposal would have (then) been considered as a restricted discretionary

¹⁶ Paragraph 23 of Ms Owen’s opening legal submissions

activity. There is a substantial difference in the statutory tests between the consent status of the proposal as a first subdivision in 2005 (restricted discretionary) and as a re-subdivision of the balance area (non-complying). The threshold test of section 104D (1) (a) is whether the effects of the proposal will be 'minor'. We have carefully considered the significance of the anticipated environmental effects of the proposal in terms of the objectives and policies for the Rural 3 Zone and the emphasis given to amenity values in section 7 of the RMA.

- 16.8 Our conclusion is that the potential adverse effects of the proposed subdivision on the amenity values and rural character of the locality surrounding this Ridgeview Road site will be materially more than minor and will be significant. Those potential adverse effects are not mitigated by the proposed conditions of consent. The purported benefits of the proposed subdivision layout do not, in our view, outweigh the significantly adverse effects on amenity values and rural character. Even if we were able to contemplate granting consent under section 104D of the RMA, our conclusion is that a grant of consent would be contrary to the sustainable management purpose of the RMA and contrary to the relevant objectives and policies of the TRMP for the Rural 3 Zone that are applicable in terms of the restricted discretionary matters.
- 16.9 A grant of consent would enable CBH to provide for its economic wellbeing and would enable 52 additional families to enjoy living in Appleby Hills. However, our conclusion is that this would also create adverse effects on the environment that would impair the amenity values of a significant number of families within and surrounding the Appleby Hills development could expect to enjoy in providing for their social, economic and cultural wellbeing. In this way, a grant of consent would, in our view, significantly *disenable* those other people in the terms expressed in section 5 of the RMA.
- 16.10 We agree with the landscape and RMA planning witnesses who presented evidence to the hearing that there may be scope for some greater density of residential development in the northern valley of the site, near the dam. However, our conclusion is that the sizes of the allotments on the amended proposed layout are too small to meet the objectives for the Rural 3 Zone (in this northern valley and throughout the proposed subdivision).
- 16.11 All consents applied for are inter-related. Accordingly, our decision applies to the entire bundle of consents.

17. OTHER MATTERS

- 17.1 In addition to the primary issues in contention, discussed above, the following issues were raised in submissions or at the hearing and we record our conclusions in respect of each:

The 'Boomerang' Decision:

- 17.2 Ms Owen sought to draw parallels between CBH's current proposal and a 2012 decision of the Council in the case of *Boomerang Farms Ltd* (also a Rural 3 Zone subdivision proposal). Having read that decision, we find no direct comparisons with CBH's current proposal. Primarily, *Boomerang* is a Council-level decision (not a Court decision) made on a particular set of circumstances quite different from CBH's proposal. *Boomerang* was determined on a discretionary activity basis. Although Ms Owen suggested this must have been in error, Ms Webby clarified that *Boomerang's* consent status was correctly applied at the time because the proposal involved land having over 50 hectares so the requirements of Rule 16.3.7.4 were met. By contrast, CBH's proposal is for a non-complying activity. *Boomerang* involved a reduction in proposed allotments. CBH's application proposes additional subdivided allotments. We do not find the *Boomerang* decision particularly pertinent to the current proposal.

The 'King Salmon' Decision:

- 17.3 The *King Salmon* decision involved a plan change and the requirements of section 67 of the RMA that a regional plan must *give effect to* higher order policy statements. That legislative requirement does not apply to this application for resource consent for a non-complying activity. The actual requirement under section 104D is that the application will *not be contrary to* the relevant objectives and policies. We agree with Ms Owen that there is no analogy between CBH's application and the *King Salmon* proposal.

Rural Character and Successive Rural 3 Zone Subdivision:

- 17.4 As earlier discussed, Mr Lile was resistant to giving much weight to the effects on amenity values of existing residents of the Appleby Hills development. It was his opinion that, if excessive weight is given to the local residents' opinions on amenity effects on them, this will make it difficult for the Council to achieve clustered residential development throughout the Rural 3 Zone as intended by the TRMP. That is because, in his view, local residents will inevitably argue against change and in favour of protecting the status quo amenity values that they enjoy. This concern underlies his reasoning that we should focus on the broader *rural* amenity values of the Rural 3 Zone and maintenance of the *rural* character of the Rural 3 Zone.
- 17.5 We understand his concern but we do not agree with him that the Rural 3 Zone policies invite or allow us to ignore or override the amenity values legitimately enjoyed within parts of the Rural 3 Zone that have been created by the very type of subdivision the Rural 3 Zone seeks to encourage. The existing Appleby Hills residential clusters were authorised by the TRMP provisions and are now a legitimate part of the Rural 3 Zone environment. The Rural 3 Zone objectives and policies and the provisions of the Design Guide apply equally to that part of the environment as to the wider rural and open space areas.
- 17.6 Our understanding of submitters' responses to questions is that they accept the density of development that was originally proposed when they purchased their properties, which is comparable to that of their own properties and in their minds determines the future character of the Appleby Hills development. They are not opposing development of the balance land per-se or seeking to protect the current status quo. Rather, they oppose the denser development proposed by CBH.
- 17.7 Much of the focus of the Rural 3 Zone policies and of the Design Guide is on comprehensive analysis and integrated subdivision design for large landholdings that have generous setbacks from neighbours. There is little attention given to how to implement the guidelines on smaller fragmented landholdings or in situations where new subdivision proposals will adjoin other existing residential clusters or existing rural residential enclaves. Over time, as the Rural 3 Zone objectives are achieved and more and more residential clusters develop, the dilemma Mr Lile highlighted is exactly the challenge that developers will face. Currently, that dilemma has to be reconciled under the current TRMP provisions and in terms of the actual circumstances and amenity values and rural character present in each case. It may be that the policies will need some fine tuning to better reconcile these values. We have applied the provisions as they currently stand to the actual and foreseeable circumstances of this proposal.

Unfulfilled Agreements:

- 17.8 Counsel for Mrs Hodgkinson drew to our attention a number of matters that had been agreed between CBH and Mrs Hodgkinson, by way of a private agreement, at the time of the earlier application RM100632. According to Mrs Hodgkinson, CBH has not fulfilled a number of the commitments made in that agreement. However, we note that Mr Edmonds stated at the hearing that CBH would volunteer all of those matters as conditions of consent. No further action is required by us. The matters referred to are contained in a

private agreement and it is appropriate that they are enforced separately.

Restriction on Future Re-Subdivision:

- 17.9 Many submitters complained, in their submissions and at the hearing, that the proposed subdivision breaches the conditions of the previous consents that prevents further subdivision of any of the allotments in the authorised subdivision unless that subdivision is a boundary adjustment that does not result in additional allotments. That is, Condition 36 of RM030632 and Condition 41 of RM100632. The conditions are to be secured by a consent notice issued pursuant to section 221 of the RMA. We also note that as stages 7 – 13 have not been implemented and therefore no allotments have been created. Therefore, no consent notices will have been placed on the unsubdivided land at this time.
- 17.10 A consent holder is entitled to apply to alter the terms of a condition that is the subject of a consent notice. A consent holder is also entitled to apply for a consent to replace a consent earlier granted. CBH has done exactly that. The fact of the section 221 consent notice conditions is not reason in itself for declining consent. CBH is entitled to make the application it made and to have it considered properly in terms of the relevant RMA provisions.

Breach of Contract:

- 17.11 Most of the submitters opposed to CBH's proposal were critical of CBH's actions in seeking to change the layout of the future stages of the Appleby Hills subdivision by increasing the number and decreasing allotment size compared with the plan that was advertised at the time those submitters had purchased their own allotments. The submitters stated that they had relied on the earlier plan in forming their expectations about neighbourhood size and amenity values and attractiveness (and therefore value) of the sections they purchased. Many cast CBH's actions as a 'breach of contract'.
- 17.12 Mr Praat stated that the earlier plan had actually been attached to the sale and purchase agreements. However, Mr Praat also stated that CBH is entitled to make whatever application it wants for the subdivision of this land. Mr Praat stated that, while the residents may be disappointed that the proposal is contrary to the assurances earlier given them by CBH, this is not in itself a basis for us to determine the application. We have no jurisdiction to adjudicate allegations of 'breach of contract'. Our decision has addressed only the relevant matters referred to in sections 104, 104D and in Part 2 of the RMA.

18. CONSENTS ARE REFUSED

- 18.1 In accordance with the authority delegated to us by Tasman District Council and pursuant to section 104D of the Resource Management Act 1991, consents for the subdivision of land within computer freehold registers 544040 and 544029 to create 52 residential allotments and supporting infrastructure and associated land use consents and discharge permits (referenced RM130922, RM130923, RM130931, RM130932 and variations to RM050727V5 and NN990445 and NN990446) **are refused** for the reasons summarised in part 17 of this decision.



Graham Taylor (Independent
Commissioner)



Christine Foster (Independent
Commissioner and Chairperson)

9th July 2014

The meeting concluded on 17 June 2014

Date Confirmed:

Chair:

CONFIRMED