Report of Decision

Of the Expert Consenting Panel into the

Papakāinga Development – Rāpaki, Christchurch

Produced under Clause 37 of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020

BEFORE THE EXPERT CONSENTING PANEL

CONCERNING THE RĀPAKI PAPAKĀINGA NOHOANGA DEVELOPMENT

IN THE MATTER	of the of the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (the Act) and the deliberations and final decision of the Expert Consenting Panel appointed under Clauses 2, 3, and 4 of Schedule 5 of the Act to consider an application for consent for the Papakāinga Development at Rāpaki Christchurch by Te Mahi Korowai Trust
Expert Consenting Panel:	John Hardie (Chair) David Mountfort (Member) Dora Langsbury (Member)
Comments received under Clause 17(4) of Schedule 6 to the Act:	12 October 2020
Details of any Hearing if held under Clause 21 of Schedule 6 of the Action	No hearing was held (refer clause 20, Schedule 6 to the Act)
Date of Hearing if held:	Nil
Date of Decision:	25 November 2020
Date of Issue:	25 November 2020

RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER CLAUSE 37 SCHEDULE 6 OF THE ACT

Produced under Clause 37 of Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020

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Summary of decisions made by the Panel

[1] The purpose of the Act is contained in section 4, which by Clause 29(1) of Schedule 6 (along with Part 2 RMA) is a matter subject to which we are to have regard to together with all other matters described in the Act. Section 4 provides as follows:

> **4 Purpose**
> The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

[2] Papakāinga/Kāinga Nohoanga Development (the Development) is a project listed in Schedule 2 of the Act (LP13). Pursuant to clause 30(7) of Schedule 6 we are required to give consent to the Development unless any of the grounds described in Clause 34 for declining an application apply. We find that none of the grounds in Clause 34 apply.

[3] We therefore grant the application for resource consent subject to the conditions expressed in Appendix 1.

[4] The Panel's reasons for its decisions can be found in each relevant section of this document. Issues raised by those persons invited to comment (the submitters) are dealt with in that section of our decision.

[5] Pursuant to Clause 37(7) of Schedule 6 to the Act, the date on which the resource consents granted in this decision lapse unless first given effect to is 5 years from the date of commencement of the resource consents as defined in clause 37(9) of that Schedule.

The Application

[6] This application is made by Te Mahi Korowai Trust (the Applicant or the Trust). Its purpose is to establish a Papakāinga/Kāinga Nohoanga Housing Development on Māori ancestral land. The site is 2 Rāpaki Drive, Rāpaki. What is proposed is the building of 10 residential units and one community shared use facility, replacing 4 aged residential units in poor condition, which are said to be no longer fit for purpose.

[7] The Trust was established as a Charitable Trust on 15 November 1990, under the name Te Runanga O Rāpaki Trust Board. The change of name occurred on 6 June 2018. The purpose of the Trust is specified in the trust deed as follows:

a) to provide employment, housing and health assistance for the people of Rāpaki marae, and the associated community (trust deed, section 2(a))
b) to carry out services which are beneficial to the members of the Rāpaki marae for the relief of poverty and the advancement of education and in particular to provide accommodation, employment, education, counselling, training opportunities and assistance whether financial or otherwise for helpless and needy persons, the poor, the sick, the infirm, indigent and the young (trust deed, section 2(a).

[8] We felt it important to give some background detail of the proposal as outlined to us in the application. That begins with a quote which we repeat:

"*these are the things which divide the Māori from the Europeans. They feel that the promises made by the Europeans have not been fulfilled, while all that the Māori have promised has been fulfilled.*" Hori Kerei Taiaroa, MHR speaking in New Zealand Parliament; 21 October 1878

[9] We believe this application demonstrates the truth of that statement. There has been an inability to enable Māori to use their land in a meaningful way.

[10] Under the Christchurch District Plan (the CDP), this proposal is classified as a non-complying activity, for which consent might not routinely be expected to be granted. We deal with this later, but because the land has a status known as General Land, the proposed development on the land block does not comply with the Kāinga Nohoanga provisions of the CDP.

[11] The dwellings are to be constructed for the purpose of providing a place of residence for whanau and extended whanau, together with a shared use building. The units are intended to be used by kaumatua, allowing them to live close to their ancestral marae, urupa and whanau.

[12] The application noted that a development of this nature on the site is anticipated by its underlying Papakāinga/ Kāinga Nohoanga Zoning under the CDP.

[13] The site is legally described as Part Rāpaki Māori Reserve 87533 Block, contained in CT475/265. Rāpaki is situated on Lyttelton Harbour midway between Port Lyttelton and Governors Bay. The application notes that as a result of colonisation, there are a number of reserves that were set aside in that Christchurch district for the local iwi Te Rūnanga o Ngāi Tahu (Ngāi Tahu). This site is part of the Rāpaki Native Reserve (number 875) covering in total 850 acres which is referred to as MR875. It was surveyed in July 1849 and was part of the Crown's 1849 Port Cooper Purchase Deed.

[14] The deed states that the land would be set aside for Ngāi Tahu whanau to reside upon for present and future generations. And there is a quote from the deed as follows:

> "*These are the whole of the places reserved for us within the boundary for Her Majesty the Queen of Great Britain, and Mr Mantell Commissioner agrees that these places shall be permanent possessions for us and for our descendants after us for ever and ever.*"

[15] The intention of the deed was to enable Māori to live in traditional communal housing (Papakāinga) and in accordance with tikanga Māori, on their ancestral lands. However, we were told a combination of Native Land Court determinations, central government planning legislation, and local authority statutory planning documents, has restricted such housing developments, effectively limiting Māori from living on their ancestral lands without complex and uncertain planning procedures.

[16] The matter is further complicated by the fact that there was a Status Declaration dated 31 January 1969 which caused the block to be deemed General Land. We are not told how or why this came about. It was this classification which prevents the development of the land in accordance with the Papakāinga/ Kāinga Nohoanga provisions of the CDP.

[17] The proposed units provide two bedrooms, one bathroom, an open plan lounge and kitchen area as well as a small deck area located at the front of each unit. The units, so the application states, are relatively small and they will replace 4 aged residential units constructed from cinder-block and asbestos cladding, all of which are in extremely poor condition and in need of continual repair and maintenance because of their age.

[18] There is to be a communal building with a footprint of approximately 86.5 m² and two deck areas (65.5 m² for the building and 21 m² for the decks). A large kitchen, storage area and wheelchair accessible bathroom are provided. The shared use building is for the residents of the units and will provide an area to comfortably hold whanau gatherings in instances where the living area and kitchen of the dwellings are too small.

[19] There is an existing cycle shared storage area which is to remain, together with an existing retaining wall which is to be added to with an additional area of 59 m². Both are classified as buildings in the CDP.

[20] The total building footprint is 929.3 m², which equates to 33.7% of total structure coverage of the net area of the site.

[21] The buildings are architecturally designed to a 6 Home Star rating, and of course the application attached the architectural plans prepared by Solarchitect Ltd.

Earthworks

[22] Construction of retaining walls is necessary for site stability. The earthworks required for this are detailed in a report from Cosgroves Ltd.

[23] The proposed development will require approximately 500 m³ of cut and 50 m³ of fill. The majority of the earthworks required are not related to the construction of the units; rather they relate to the building of the retaining walls, the entrance into the Development from Rāpaki Drive, and the car parking area. We deal with this aspect in our consideration of appropriate conditions of consent.

[24] An erosion and sediment control plan, utilising site-specific sediment control measures including silt fences and stabilised vehicle entryways, will be maintained during the construction phase. Erosion and sediment control measures will be implemented to minimise sediment effects associated with the earthworks, in accordance with the Erosion and Sediment Control Toolbox for Canterbury.

Transport

[25] The proposal includes 10 car parks and to two assessable accessible parks to provide for the 10 residential units and the shared use building. It is anticipated the residents will generally be above the age of 70, and it is expected that many will not own private vehicles. Hence 12 car parks are considered sufficient to provide for the activity. It is estimated that there will be a maximum of 20-26 vehicle movements per day (10-13 inwards and 10-13 outwards).

[26] The site currently has vehicle access from Rāpaki Drive, approximately 25 m south of the Site. We are advised the distance complies with the minimum distance of vehicle crossings from the Governor's Bay Road-Rāpaki Drive intersection required by the CDP.

Landscaping

[27] The site is to be landscaped using locally sourced native plants, over a three-year period post construction. The landscaping is to be undertaken in accordance with a landscape plan prepared by Matapopore Charitable Trust (Matapopore). This is said to ensure that Ngāi Tahu values and heritage are reflected at the site. An unusual lengthy period of three years is sought to enable sufficient time and resources for the Trust to implement the landscape plan.

[28] This plan details the trees that will be retained as well is the proposed plantings. In addition to local sourcing of all plant species, they have been chosen for their rongoa (traditional Māori medicine) qualities, their contribution to the mahinga kai ecosystems and for their ability to restore the landscape, with the intention that it can contribute to the mental and physical well-being of those who reside on the site or who might visit.

Stormwater

[29] We are told that construction-phase stormwater will percolate naturally to ground for the duration of the construction works, which are estimated to take about 12 months. Contaminants (sediment) are to be captured and managed through erosion and sediment control measures, including silt fences. These details are specified in the engineering design and an Erosion and Sediment Control Plan.

[30] There are 2 streams of operational stormwater, stormwater from the roofs of buildings and sheds, and stormwater from the hard stand areas such as foot paths, car parks and entrance.

[31] The Christchurch City Council (CCC or the Council) owns and operates a reticulated stormwater system involving an open swale along Rāpaki Drive. The swale connects to a gravity-fed 300 uPVC pipe. This system apparently discharges to an overland waterway and into Lyttelton Harbour. The system only accepts appropriately treated and uncontaminated stormwater from the Rāpaki urban area.

[32] The proposed buildings and sheds are to have colour steel roofing and the stormwater discharge is said to be uncontaminated. Any detritus is captured by a leaf deflector on the roof downpipe and the roof stormwater will be discharged directly into the CCC reticulated system.

[33] Accordingly, it is said there will be no contaminated stormwater discharge to ground or to the Council reticulated stormwater system. We are told no consents are needed in relation to that issue.

Status of Māori Land in the CDP

[34] For the sake of completeness, we note that Māori land is defined in the CDP as land with the following status:

> *Māori communal land gazetted as Māori reservation under s338 Te Ture Whenua Māori Land Act 1993 and Māori customary land, and Māori freehold land as defined in s4 and s129 Te Whenua Māori Act 1993.*

[35] The certificate of title shows that the site is fee simple and has a Status Declaration (756895) given by the Registrar of the Māori Land Court dated 3 February 1969. The Declaration of Change of Status of Land confirms that the site ceased to be Māori land on 31 January 1969. As noted earlier, we are not told how or why this came about.

[36] The site is currently classified as General Land, despite ownership by a Māori trust and being located within the original Māori Reserve 875. As noted earlier, for this reason it would have fallen to be considered a non-complying activity under the CDP.

Land Stability, Soil and Geotechnical Report

[37] Apparently a geotechnical report was commissioned and prepared in June 2013. This related to the proposed Development. The report assessed subsoil conditions, site suitability and provided remedial work recommendations for building foundations and the satisfactory development of the property. That report confirmed that the property is suitable for the proposed development, subject to appropriate engineering design for building foundations, retaining walls, stormwater control and reticulated service connections. We are told these are reflected in the plans for the Development.

Surrounding Environment

[38] The surrounding environment is a mixture of residential and small rural land blocks, with some of the adjacent properties containing dwellings. The settlement of Rāpaki sits on the shores of Lyttelton Harbour. It is home to Te Hapū o Ngāti Wheke Inc (the Runanga). The Runanga has recently built a new wharenui named Wheke which records the hapū and iwi history and traditions. The Marae is the heart of the Rāpaki community, and the people and their stories remain the heart of the Marae. At our site visit we saw the Marae, but we could not enter because it was in use.

[39] There is some housing close to the road on the hill side of Governors Bay Road, but beyond that is steep hill landscape which is undeveloped. Governors Bay Road is a minor arterial road in the CDP which adjoins the northern boundary of the site. The Marae is located to the south of the site close to the harbour. There is a hill waterway present on the eastern boundary of the site that flows during rain events.

Background, Lodgement with the Expert Consenting Panel and Procedures

The lodging of the Consent Applications (Section 15(1), (2(a), (3), and Clause 2 of Schedule 6 of the Act)

[40] On 18 August 2020 the Trust lodged this application. It had earlier sought consent from the Christchurch City Council pursuant to a resource consent application, and we were provided with a reasonable amount of information as to what had transpired in relation to that application. Before a final decision, that process was stopped and the matter proceeded under the Act. We have had no regard to what happened with the earlier resource consent application, and consider the matter afresh under the Act, save for some issues concerning consultation which we refer to later.

[41] As noted earlier, the applicant is an incorporated charitable trust which is also registered with the Charities Commission. It is an “authorised person” for the purposes of Section 15 of the Act, applying for consent under this Act instead of the RMA.

EPA Determination (Clause 3 of Schedule 6 of the Act)

[42] On 25 August 2020 the EPA issued its decision about compliance with Clause 3(1) of Schedule 6 of the Act.

Expert Consenting Panel Provisions and Procedures: Schedule 6

[43] Schedule 6 is entitled "Applications and decision making for listed projects and referred projects". There is an important difference between the two types of projects. The ability of a panel to refuse consent to a listed project is more limited than for a referred project.

[44] We describe elsewhere in our decision the provisions in Schedule 6 for inviting comments from certain persons and bodies. We note that there is to be no notification of applications and that hearings are not required. We also note the ability of panels to seek further information of various kinds.

[45] Clauses 29 to 34 contain extremely detailed provisions governing the determination by panels of applications for consent. To some extent the provisions mirror the requirements of earlier clauses in Schedule 6 describing material that must be prepared by applicants.

[46] Clause 30 provides matters relevant to determination of consent applications for listed projects concerning actual and potential effects on the environment of allowing the activity. Sub-clause (2) authorises the panel to disregard an adverse effect if a national environmental standard or relevant plan permits an activity with that effect. Sub-clause (3) raises obligations around customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 which do not arise in the present case. By sub-clause (4) the panel must not have regard to trade competition or the effect of trade competition within the meaning of Part 11A RMA, which issues do not arise in the present case. As noted in our summary, Sub-clause (7) provides that where (as here) an application is for non-complying activity; the Panel must nevertheless grant consent unless any of the grounds in Clause 34 for declining an application apply; and we must not apply the gateway test under s104D RMA.

[47] Clause 34 limits the right of a panel to decline a consent application to two grounds:

a) that the panel considers that granting a resource consent… with or without conditions, would be inconsistent with any national policy statement, including a New Zealand coastal policy statement:

b) that the panel considers that granting a resource consent… with or without conditions, would be inconsistent with section 6 (Treaty of Waitangi).

[48] Clause 35 governs conditions being imposed on consents, generally as a panel considers appropriate, but also applying sections 108, 108A to 112 and 220 RMA as though the panel were a consent authority.

[49] Clause 36 requires a panel to provide copies of draft conditions to the applicant and every person or group who provided comments in response to an invitation under Clause 17(2). We provided draft conditions to such persons in this case on 7 October 2020. The clause makes provision in sub-clause (4) applying sections 123 and 123A RMA requiring the panel to set durations of resource consents.

[50] Clause 37 sets times and procedures for a panel to issue a final decision. It requires a panel to set lapse dates for consents not given effect to.

[51] Clause 38 makes provision for service and publication of a decision.

Requests for Information made to Applicant

[52] On 18 September 2020 the panel issued a Minute to the Applicant seeking further information. It related to design and layout matters and was issued after the Panel had completed a site visit. A response was received on 23 September 2020. We deal with those issues later in our decision.

Invitations to Comment on Listed Project (Clause 17(4) and (6) of Schedule 6 of the Act)

[53] On 21 September 2020 the panel invited comments, to be received by 12 October 2020, from persons and groups described in Clauses 17 and 18 of Schedule 6 of the Act and to other persons and bodies at its discretion (Clause 17(5) of Schedule 6). For the sake of ease in our decision we refer to these persons or entities as submitters.

[54] Sixteen comments were received in total, eight from local and central government organisations and eight from other organisations and individuals.

Pre-hearing processes

[55] We conducted no hearings, so there were no pre-hearing processes.

Site visits

[56] As already noted, the panel completed a site visit. This took place on 17 September 2020.

Statutory applications and approval needed

[57] Although this was a non-complying activity in the CDP, once again we note the provisions of Clause 30(7)(b) of Schedule 6 of the Act:

(b) to avoid doubt, the test under section 104D of the Resource Management Act 1991 must not be applied.

Legal Framework for Deliberations

[58] We provide a brief overview for the benefit of submitters, some of whom do not appear to fully understand the Act.

Legal framework

[59] The statutory framework necessarily starts with the purpose of the Act stated in Section 4, which we quoted in full in paragraph [1] of this decision.

[60] Section 5 provides a useful overview of the main part of the Act, Part 1 (“preliminary provisions”); Part 2 the substantive elements of the scheme for fast-track consenting; Schedule 1 with its transitional, savings, and related provisions; Schedule 2 describing the listed projects; Schedule 3 setting out requirements for referral orders of referred projects; Schedule 4 providing for location requirements, permitted activities and permitted activity standards for work on infrastructure; Schedule 5 relating to expert consenting panels; and Schedule 6 dealing with applications and decision making in relation to listed and referred projects.

[61] Section 6 (“Treaty of Waitangi”) we comment upon later.

[62] Section 12 concerns the relationship between the Act and the RMA, which we discuss later.

[63] Part 2 concerning fast-track consenting is mostly about referred projects. But this is a listed project.

[64] We have had the benefit of reading the Panel’s decision for the Matawii water storage reservoir dated 23 October 2020. That notes that a listed project must meet the purpose of the Act in Section 4. Clause 9(1)(g) of Schedule 6 of the Act nevertheless requires an assessment of the activity against the purpose of the Act, as well as many other matters, and Clause 29(1) of Schedule 6 requires a consenting panel to have regard to numbers of matters, subject to the purpose of the Act.

[65] Assessments against the necessary criteria were provided by the Applicant. We briefly summarise them.

Part 2 Resource Management Act 1991

[66] Section 12(10) of the Act provides:

> (10) The provisions of the Resource Management Act 1991 otherwise apply, to the extent that they are relevant and with any necessary modifications, to a listed project…

[67] Also of relevance is clause 29(1) of Schedule 6 of the Act which provides:

> (1) When considering a consent application in relation to the conditions to be imposed on a listed project, and any comments received in response to an invitation given under clause 17(2), a panel must, subject to <u>Part 2 of the Resource Management Act 1991</u> and the purpose of this Act, have regard to… [emphasis supplied]

[68] For completeness we note that clause 9(1)(g)(i) of Schedule 6 of the Act provides that every consent application for a listed or referred project must include an assessment of the activity against Part 2 of the Resource Management Act 1991.

[69] The application referred to Part 2 of the RMA, starting with section 5. We are told that the development will be undertaken in a way that is consistent with sustainable management. It enables the Trust to provide for the social, economic and cultural well-being, and the health and safety of proposed occupants, by providing safe, warm, dry housing which is close to the Marae. It was also said the proposal will enable the use of the land to meet the needs of future generations of the Runanga

[70] We were then referred to section 6, dealing with matters of National Importance. We find nothing in the proposal to offend paragraph (a). Paragraph (b) relates to protection of outstanding natural features and landscapes from inappropriate subdivision, use and development, but this site is not located within an outstanding natural feature or landscape. Paragraph (c) relating to public access along coastal marine areas, lakes and rivers, is again not relevant.

[71] What is relevant is section 6(e) which relates to the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.

[72] This proposal will enable Māori to reconnect to their ancestral land and live in a community consistent with the tikanga and kawa of Ngati Wheke. The development allows for kuia and koroua to live in close proximity to their marae, urupa and whanau.

[73] It was explained to us that a sense of community and living with kuia and koroua is an integral part of Māori society, as it enables Māori to practice and pass their cultural knowledge to future generations. So clearly this proposal has a strong connection and support within the wording of section 6(e).

[74] Next, section 6(f) refers to the protection of historic heritage from inappropriate subdivision, use and development. We see nothing in that subsection which would suggest that it was inappropriate for the development to take place.

[75] Finally, section 6(g) refers to the protection of customary rights, and section 6(h) refers to the management of significant risks from natural hazards, and nothing offends that provision.

[76] We move on to section 7 of the RMA. Immediately section 7(a) is relevant as it requires particular regard to be had to kaitiakitanga and the ethic of stewardship. We accept that living on ancestral land makes it easier for mana whenua to exercise kaitiakitanga as residents will be living close to their marāe, urupa and its surrounding environment.

[77] We find nothing that offends any of the remaining subsections of section 7, insofar as they may be relevant to this application.

[78] We next turn to section 8, which requires all persons exercising powers or functions under the RMA to take into account the principles of the Treaty of Waitangi. We deal with this under the obligation imposed by section 6 of the Act later in our decision.

[79] If we have not made specific reference to relevant provisions of Part 2 of the RMA, for the sake of completeness we note that nothing in the application offends the relevant sections.

Planning framework

[80] The list below serves to introduce statutory instruments the panel is obliged to have regard to by clause 29 (1) and (2) of Schedule 6. Assessment of the proposal against each relevant instrument is briefly summarised as follows:

National Environmental Standards

[81] In its comments on the application the Canterbury Regional Council said that although there is no evidence of land contamination, we cannot be sure about that. In that case the provisions of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health may apply. In response the Applicant volunteered to include a condition about accidental discovery of contaminated soils but did not provide any suggested text. Accordingly we have inserted an appropriate condition, adapted from the Christchurch City Council's standard conditions template.

Regulations Made Under the Resource Management Act 1991

[82] This is not relevant

National Policy Statements

[83] The National Policy Statement on Urban Development came into effect on 20 August 2020. We have carried out an assessment of the proposal against the relevant objectives and policies of that document, and consider it is consistent with the relevant provisions. No other National Policy Statements are relevant.

New Zealand Coastal Policy Statements

[84] This is not relevant

Regional Policy Statements or Proposed Regional Policy Statements

[85] We have considered the objectives and policies contained within the Canterbury Regional Policy Statement (CRPS) and find that it is consistent with all relevant objectives and policies.

Canterbury Land and Water Regional Plan

[86] In its comments on the application the Canterbury Regional Council stated that it was uncertain whether discharges of stormwater from the site may require a consent under this plan. The Christchurch City Council was satisfied with the proposed discharge into its system. If the Regional Council is unable to work out whether or not any consents are required, then we do not consider that we are in any position to do so either from the information provided. In any case no such application is before us. If the Canterbury Regional Council remains concerned about this it has the ability to follow the matter up with the Applicant directly.

Mahaanui Iwi Management Plan

[87] This is a planning document recognised by Ngāi Tahu that encompasses the environmental aspirations of six Papakāinga in the Canterbury Region. We have considered the Development with respect to the relevant objectives and policies contained in this plan and accept it is consistent.

Christchurch District Plan (CDP)

[88] This became operative on 19 December 2017. We have made reference to this earlier, but the site is located within the Papakāinga/Kāinga Nohoanga Zone as indicated on Planning Map 52. But as we have already noted, the site does not meet the definition of Māori Land under the CDP. In those circumstances rule 12.4.3 states that the rules applicable to the Rural Banks Peninsula Zone apply.

[89] We have considered the application against the relevant objectives and policies of the CDP and find it is consistent.

[90] There are three non-compliances with rules of the Rural Banks Peninsula Zone. The first is rule 8.9.2.1 relating to Earthworks, and because the earthwork volume is 500 m^3 of cut and 50 m^3 of infilling, this exceeds the permitted volume of 100 m^3 and a depth of 0.6 m, thus making it a restricted discretionary activity. This can be dealt with (if necessary) by an appropriate condition.

[91] The second is rule 17.4.1 Rural-residential activity. Because the site is less than 40 ha and will contain 10 residential units, it would make the activity non-complying if that were a relevant test to apply.

[92] The third is rule 17.4.2.5 Rural-Building setbacks from Road boundaries. This would require a setback of 15 m for all buildings, and 30 m from a minor arterial road. The proposed shared space building and units 1-5 are located within 15 m of Rāpaki drive and 30 m of Governors Bay Road, (a minor arterial road). This would have been a restricted discretionary activity. We talk about this further in relation to conditions at a later point in our decision.

Relationship between this Act and Resource Management Act 1991

[93] Section 12 of the Act provides, to the extent relevant to listed projects, as follows:

1. This section applies except as otherwise provided in, or required by the context of, this Act.

   Listed projects and referred projects

2. If an application for resource consent for an activity is made under this Act, —
   a. the process for obtaining a consent under Schedule 6 applies instead of the process for obtaining a consent under the Resource Management Act 1991; and
   b. a resource consent granted under this Act has the same force and effect for its duration, and according to its terms and conditions, as if it were granted under the Resource Management Act 1991…

General

9. Every person who carries out an activity as part of a listed project or a referred project, or in the course of work on infrastructure, is subject to—
   a. the duty to avoid unreasonable noise under section 16 of the Resource Management Act 1991; and
   b. the duty to avoid, remedy, or mitigate adverse effects under section 17 of the Resource Management Act 1991.

10. The provisions of the Resource Management Act 1991 otherwise apply, to the extent that they are relevant and with any necessary modifications, to a listed project or a referred project and to any activity carried out as a permitted activity in the course of work on infrastructure.

Invitations to make written comments and responses (Clauses 17-19, Schedule 6)

[94] Clause 17(1) directs that the panel must not give public or limited notification of a consent application.

[95] Clause 17(2) directs instead that the panel must within a certain timeframe invite written comments on the application from the persons and groups listed in subclauses (4) to (8).

[96] Clause 18 sets the terms and timeframes for invitations and Clause 19 for responses.

[97] Some persons and bodies were the subject of statutory direction for the issue of invitations (sub-clauses (4) and (6)); others were by discretion of the panel. The panel conferred about the latter and its view resulted in the list of responses.

[98] The list of persons and bodies to whom invitations were sent are dealt with in our decision. The invitations were sent on 21 September 2020 inviting responses by 12 October 2020. There was an administrative failure to notify one particular party, and we deal with that shortly. Suffice to say that whilst deeply regrettable, the error was corrected.

[99] Each of the responses are dealt with below.

Christchurch City Council

[100] The comment advised that the key planning issue that we should consider was the scale of the adverse effects associated with the proposed road boundary building setback from Rāpaki drive.

[101] More particularly, the Council considered that the Community Building, and units 1 to 5 were located too close to Rāpaki Drive, so that they will have an adverse effect on the amenity of Rāpaki Drive itself, and the owners and occupiers of 1 and 3 Rāpaki Drive. In particular, the 323 mm setback of the Community Building and the 1.731 m balcony and 3.504 m building set setbacks of units 1 to 5 have the potential to result in an adverse effect.

[102] The comment made reference to the relevant rule in the CDP which we have outlined earlier in our decision. It considered other buildings in the vicinity and noted a number were within the 15 m setback provided for in the relevant Plan rule, and commented that in these circumstances a 15 m building setback is not possible or necessary, but then referred us to information provided by the Council's advising Urban designer John Lonink, contained in an urban design assessment dated 21 April 2020, and prepared for the purposes of the original resource consent application to the Council.

[103] In essence Mr Lonink wanted the units set back further, but they could be within 5 m from Rāpaki drive. We have had the benefit of a site visit. We are not convinced it is appropriate to contemplate buildings being transferred to a different place on the site as a condition of granting consent. We formed the view that this would require a separate and new consent, and of course we are required to give consent to the proposal before us.

[104] But if we are wrong in that as a matter of law, we have formed the view that the setback as provided in the application is appropriate for the circumstances of this site considering the positioning of buildings at 1 Rāpaki Drive, and the fact that there is no development at 3 Rāpaki drive. We do not think that pedestrian traffic on Rāpaki Drive will find the structures offensive so close to the road, and we have determined conditions relating to appropriate landscaping to mitigate the closeness.

[105] The comment also made reference to the occupation of legal road on the verge of Governors Bay Road. The proposed vehicle access, and car parking spaces 1 to 7 and part of car parking spaces 8 and 9 are located on the legal road. But we are advised that necessary documentation to formalise a licence to occupy legal road was sent to the Applicant on 15 May 2020, and once signed and returned, it will formalise a licensing agreement. We were referred to a draft license to occupy legal road. This had been confirmed in the application.

Canterbury Regional Council

[106] The comment made reference to the possibility of contamination, a matter which we have already referred to. It confirmed that no regional land use consent is required for earthworks or any other matter, but recommended that best practice erosion and sediment control measures are undertaken in accordance with the Erosion & Sediment Control Toolbox for Canterbury for the duration of the earthworks. We deal with this in our section on the conditions.

[107] The comment went on to deal with construction-phase stormwater discharges. This was followed by some discussion about operational stormwater discharges. As a result of the comments made by the Regional Council, the Applicant replied and we deal with these issues when we discuss that reply and any necessary conditions.

[108] Next, the comment went on to talk about the possibility of a land use consent if the water body at the southern end of the site is considered a river. We were provided with no evidence as to suggest it is a river, and so take the matter no further.

[109] Finally, the comment talked about sub-soil drainage water take and discharge, relating to the fact that retaining walls are to be installed with subsoil drainage pipes. It referred to the take of groundwater for land drainage purposes and discharge to the Christchurch City Council's reticulated stormwater network and said that this may require resource consents under rules 5.6 and 5.100 of the LWRP, respectively. We find these comments unhelpful in that they do not tell us if such consents are required. But in any event no such proposals are before us, and we cannot refuse consent to this application on the basis that some other consents might be necessary in the future.

Director-General of Conservation

[110] The Director General of Conservation commented that the proposal will not have any significant impact to any conservation or environmental values for which the Department is responsible. It considered that there would be no effects on freshwater habitat or species associated with proposed earthworks or buildings within the specified 10 m setback from the Hill Waterway, and that stormwater will be managed through erosion and sediment control, ensuring that no contaminants or sediment seep into the waterway during construction.

[111] As for terrestrial ecology, the submission noted the site is not located within an area of outstanding natural feature or landscape, or within Public Conservation Land. It did suggest a lizard survey of the site be undertaken by a suitable expert prior to any works being undertaken, so that if indigenous lizards are found to be present, then a Lizard Management Plan should be developed and the appropriate authorisations sought under the Wildlife Act 1953. We have considered the current use of the site and have determined that a lizard survey is not necessary.

[112] The comment supported the use of locally sourced native plants.

[113] Finally, the comment considered section 4 of the Conservation Act, and the effects on mana whenua, and the wider community and the principles of the Treaty of Waitangi. It was supportive of the application in so far as it provides an avenue for mana whenua to continue to have a close connection with their ancestral lands.

Heritage New Zealand Pouhere Taonga (HNZPT)

[114] The comment began by clarifying an incorrect statement made in the AEE which had recorded that a very small section in the south-east corner of the site is located within the M36/731 buffer area. It advised the Panel that HNZPT does not identify archaeological sites. Rather, M36/731 is an identification for an archaeological site recorded in the New Zealand Archaeological Association Site Recording Scheme. And we were told that the sites do not have defined "buffer" areas.

[115] We are also advised the site is also located within the Mahaanui Iwi Management Plan Silent File area 031, which includes places that are considered by Ngāi Tahu to be wahi tapu and/or wahi taonga, and that in some instances, the precise location of the sacred places is not disclosed by whanau.

[116] Under the Heritage New Zealand Pouhere Taonga Act 2014, archaeological sites are defined as any place occupied prior to 1900 that, through investigation by archaeological methods, may provide evidence relating to the history of New Zealand. Under the provisions of that act archaeological sites are protected, and an authority from HNZPT is required for any works that may modify or destroy an archaeological site.

[117] The comment notes that consistent with advice contained in Appendix 3 of the Mahaanui Iwi Management Plan, the Applicant has offered an Accidental Discovery Protocol condition. But in addition to this, HNZPT recommends having the site and proposed works assessed by a suitably qualified consultant archaeologist prior to the commencement of any works. It recommended a condition to be imposed on the granting of consent to deal with the situation.

[118] We have concluded that in the circumstances the Accidental Discovery Protocol will provide sufficient protection, but have added a condition enabling the Runanga to appoint a cultural advisor to monitor or observe the earthworks as they are carried out if they consider it appropriate.

Kitti Kataraina Couch

[119] Ms Couch explained that she had resided at Rāpaki for over 40 years, as do her parents and her tupuna before her. She is one of the majority shareholders in the site known as 3 Rāpaki Drive. From our site visit we know this to be the area of vacant land directly opposite the proposed Development. She explains that number 3 is owned by 27 people in total, in unequal shares as tenants in common, and we understand her to say that she is an owner of 1 Rāpaki Drive. She expressly points out that her comments are her own opinion and in no way does she claim to speak on behalf of any of the other owners.

[120] She opposes the application. She would like the Panel to refuse consent, but for the reasons we have been at some pains to set out in our decision, this is not possible. However, as a matter of courtesy we deal with some matters she has raised in her comments so far as we think they are relevant.

[121] First, she is not convinced that the people who will reside on site will have an ancestral connection to the land. The application is put upon the basis that there will be such a connection. We are satisfied, having read the contents of the Trust deed that such a connection will exist.

[122] She then has further comments in relation to the Trust which are not appropriate for us to comment upon.

[123] Next, she deals with the failure to comply with the CDP boundary setbacks from Rāpaki drive, and a 10 m setback from the internal boundary of the adjoining property. She reflects on the fact that this would have an impact on the property of which she is a part owner. We have already made comment upon this and determined that the adverse effects are minor and would not have been sufficient for us to reject the proposal, had we power to do so. We have considered this issue knowing 3 Rāpaki Drive to be bare land but understanding its future is likely to be housing.

[124] She is concerned that the 10 units will increase the pressure on the reticulated water and sewerage, but we have no evidence to suggest that this would cause a problem for infrastructure. Again, comments about people, noise and vehicle traffic are consistent with the capacity for the area to become more populated. We have no doubt that in the long-term the vacant land of which she is part owner will indeed lead to the same kinds of effects which we hold to be anticipated by such development. She then comments about car parking, but we are not persuaded that the car parking proposals are inadequate. And she comments upon drainage in the context of stormwater, and we are satisfied that these are issues which can be dealt with by appropriate conditions.

[125] Lastly, we note that she refers to a large number of provisions in the CDP which she says the proposal offends, but from a statutory perspective and evidential perspective these are not matters which enable us to refuse consent.

Yvette Couch-Lewis and John Lewis

[126] Ms Couch-Lewis noted that she is a registered whanau member of the Runanga and accordingly holds mana whenua status over the property the subject of the application. The submitters own a property on the hill side of Governors Bay Road and were concerned that the proposed structures might result in a visual obstruction or impediment of their view from the property to the Harbour of Whakaraupo (Lyttelton Harbour). They wanted a visual simulation of the proposed development to be undertaken so as to aid in determining whether or not there might be visual obstruction. Until it was done, they opposed the grant of consent.

[127] No one is guaranteed an unobstructed view by the provisions of the CDP. This proposal does not breach any height restriction rules of the CDP. Having said that, we have had the benefit of a site visit and considered the possibility of visual obstruction and impediment of views to the Harbour. We have formed the view that no such visual simulation is necessary as the distances and heights are such as that no obstruction and impediment will take place.

Marie Duffull

[128] Ms Duffull is currently a resident in flat 1 on the proposed development site. She has been a resident there for over 15 years. Understandably she is concerned about her position once development takes place. She complains about a lack of consultation. Unfortunately these are not matters which are relevant to our determination.

[129] She is concerned about the positioning or lack of clotheslines. She would prefer car parking to be attached to each unit. She is concerned about the common room and who will use it and clean it and whether it is even necessary. She comments about the proposition of a bike shed when elderly residents might be unlikely to use bikes given the terrain and existing environment. She has a further concern about Rāpaki Drive, feeling that as more use is made of the road it will need to be widened. She is concerned there are traffic effects and access to the site is currently dangerous and likely to become more so.

[130] Her next point is that she is concerned about the existing retaining wall, because soil and water come under the concrete drain and in her view it currently needs attention even without any further development. And lastly, she has some concerns about the design of units which we will not set out in detail.

[131] We have endeavoured to summarise the majority of the points she has raised, but find that as a matter of law none of the issues are matters which would justify a refusal of consent even if we had authority to do so. Neither are we in a position to seek that the application be represented in a different design or format. And on matters of infrastructure and safety we have the advantage of knowing that the local authority has either considered there to be no effects or that they can be mitigated by conditions. We do not think that there are additional conditions which we can impose which would meet her concerns.

June and Gerald Swindells

[132] They are the owners of the section adjoining the proposed units. June Swindells also indicated that she is a major shareholder of the vacant site at 3 Rāpaki Drive. She and her husband support the application. She makes reference, using her words, to the fact that “Rāpaki was the most destroyed Pā, with rockfall demolishing 1/3 of Housing”. We assume this is a reference to the Christchurch earthquake sequence. She notes that the list of displaced whanau exceeds the current flats that are available, and that housing is desperately needed for her kaumātua and people who want to come home. Our decision will support that possibility.

Juliet Hendry

[133] Ms Hendry writes on behalf of Generation Zero, a nationwide, volunteer, youth-led organisation formed in 2011 to advocate for New Zealand progressing towards a zero carbon future. Generation Zero supports the Development in that it will increase urban density to make homes more affordable and will support New Zealand's transition to a low carbon economy. Generation Zero also supports the intent of the application which aims to connect the residents with their kaupapa, near their marae.

[134] Generation Zero is clearly concerned about housing costs and the need for affordable housing. It supports the notion of people living close to marae so that this might lead to less use of private transport. The comment also says the site is close to a bus route and with more people living in the area this might have the effect of increasing service. The above is intended but a brief summary of the comment, which is clearly in support of the proposal.

Te Rūnanga o Ngāi Tahu

[135] In summary, the comments say that the Panel does not have sufficient information to determine the application, and seeks that we consult directly with the Rūnanga in order to ascertain the effect of the proposal on that group. The submitter is statutorily recognised as the representative tribal body of Ngāi Tahu Whanui which comprises over 64,000 registered Iwi members. It consists of 18 Papatipu Rūnanga who uphold the Mana Whenua and Mana Moana of their rohe. The comments record that Ngāi Tahu has been informed by the Rūnanga that proper consultation has not been undertaken and that the executive of that organisation were not aware that the proposal was still being advanced. That is followed by a suggestion that there might be separate legal action against the Trust if we approve the application.

[136] Matters were not helped because of an administrative error which meant that the Rūnanga were not notified that they were an entity from whom the Panel invited comment. That mistake has been rectified and we now have the benefit of that comment. We deal with the issue of consultation in our discussion of section 6 of the Act.

Te Hapū o Ngāti Wheke Inc (the Rūnanga)

[137] The comment explains that the Rūnanga is the papatipu rūnanga that represents Ngāti Wheke, the hapū with mana whenua and mana moana status over Whakaraupō Lyttelton Harbour and its surrounding lands. Ngāti Wheke have held the status in their takiwa since the early 18th-century when their ancestor, Te Rakiwhakaputa, cast his Rāpaki (waste mat) upon the sands of the area now known as Rāpaki and claimed the harbour for his descendants.

[138] There are apparently over 9000 whanau of Ngāti Wheke whose names are registered with the Rūnanga. And we are told that their comment should be afforded an appropriate status and weight that recognises the tribal collective that it represents. This was accepted by the Trust.

[139] Apparently the application by the Trust was lodged without the endorsement of the Rūnanga. And quite properly the Rūnanga makes reference to the administrative error which meant that it was only on 2 November 2020 that it was formally informed of the Trust's proposal and its full detail, being left to make comments with just over a week's ability to reply.

[140] The primary concern seems to be that the application is said not to contain the necessary assurance that the proposed facility will be for the benefit of registered Ngāti Wheke. The Trust has responded to this in some detail, but we have already found, in relation to a comment founded on similar grounds, that the terms of the Trust deed satisfy us that this proposal is for the benefit of Ngāti Wheke whanui.

[141] Further, the Rūnanga asked that in the event the panel is of a mind to grant consent that a condition is imposed that means that the Rūnanga's approval must be obtained with respect to occupation of the units so that it can determine that the facility will be for the benefit of the Hapū. We find that would be an ultra vires consent condition, and we are content that the Trust deed will provide the outcome that the Rūnanga seeks.

[142] The Rūnanga have made clear that they wish to endorse the comments of some of the submitters who oppose, such as Kitti Couch. This stance is adopted despite the fact that others have sought to support the application who are similarly linked to the Rūnanga. We answer that by saying that we have dealt with all of those comments in their own right, and find nothing further to add to what we have already said.

The Right Honourable Jacinda Ardern as Minister for Arts, Culture and Heritage

[143] This comment was in support of the application. The Prime Minister had also seen comments from Heritage New Zealand Pouhere Taonga (HNZPT) which recorded that the project site is within an archaeological rich area. That separate comments sought to ensure that archaeological values are appropriately managed and had recommended that the applicant takes a proactive approach. The comment supported the notion of an appropriate condition to that effect as recommended by HNZPT.

The Honourable Nanaia Mahuta

[144] The Minister noted that the intention of the Government in facilitating the Development through the process of fast - track consent is solely focused on removing an unnecessary barrier to the use of this Māori owned whenua for Papakāinga housing purposes. The comment goes on to say that she is aware that there will need to be consultation within the community and that this will be a matter for the land owning community and hapū. There is also a comment about funding of construction, but that is not a matter to which we can have regard. In summary, we take the view that subject to the fact that for the development to proceed there may need to be further consultation, the comment was in support of the granting of consent.

Submitters who wish to make no comment

[145] For the record we note that the following entities were invited to make comment and replied to the effect that they had no comment to make:

- New Zealand Infrastructure Commission
- the Honourable Andrew Little as Minister for Treaty of Waitangi Negotiation
- the Honourable Kelvin Davis as Minister for Māori Crown Relations: Te Arawhiti.

Responses to the comments

[146] By Clause 18(5) the EPA was obliged to forward the comments to the consent applicant. This happened and pursuant to Clause 19 the responses were received on 14 October 2020, save for the Rūnanga which had not then been invited to comment. The Trust made comments on those comments on 20 October and 13 November 2020. We have made reference to those replies where necessary in our discussion of the comments themselves.

Treaty of Waitangi

[147] In the context of the present Act, s8 RMA is effectively replaced by s6 of the Act which provides that: In achieving the purpose of this Act, all persons performing functions and exercising powers under it must act in a manner that is consistent with – (a) the principles of the Treaty of Waitangi; and (b) Treaty settlements.

[148] While the Act contains no list of principles of the Treaty of Waitangi, case law indicates that these may include principles of active protection, good faith consultation and communication, and a spirit of partnership. As discussed above, representatives of tangata whenua have been invited to participate and we make reference to those comments separately when we deal with those issues.

[149] To state the obvious: this Development will enable mana whenua to live on ancestral land which we believe takes into account the principles of the Treaty. The application described a process by which Ngāi Tahu settled its grievances in relation to the Treaty with the Crown after the release of the Tribunal's Ngāi Tahu Land Claims Report. That led to the passage of the Ngāi Tahu Claim Settlement Act on 29 September 1998. We are advised and accept that there are no Treaty settlement provisions that are relevant to the site.

[150] We have noted that the Rūnanga and Te Rūnunga o Ngāi Tahu have expressed concern about the consultation process, the ability of the Trust to make this application, the ownership of the land, and whether or not this proposed development can truly be regarded as a papakāinga/kāinga noahanga in the absence of specific provision that the proposed units would be exclusively occupied by people who whakapapa to Ngāti Wheke.

[151] In its response the Trust has set out the history of its ownership and authority over the land and stated that under its Trust Deed one of its purposes is to meet the housing needs of the people of Rāpaki.

[152] The Trust dealt with issue of consultation at some length, and we set out details of that response because the issue of consultation is particularly important.

[153] As our decision already notes, the Trust began by lodging a resource consent with the Christchurch City Council. It advises us that in consultation with the Council, and for the purposes of consulting with the Rūnanga, it was offered the opportunity of instructing Mahaanui Kurataiao Ltd (MKL) to undertake the consultation on the Applicant's behalf, with those costs covered under a memorandum of understanding between the Council and MKL.

[154] The Trust has a clear understanding that the consultation took place, and we are also advised that using MKL is the standard and preferred process when consulting with any of the six papatipu runanga that hold mana whenua over the Christchurch and wider Christchurch region. Further, that in the context of that consultation, if there were appropriate recommendations designed to avoid,

remedy or mitigate any effects on cultural values, "... then the Rūnanga would not consider themselves an adversely affected party" (Cultural Assessment; MKT, 12 December 2019). Lastly, the response noted that all of the trustees of the Trust whakapapa to the Runanga, and five trustees are kuia or kaumātua of the Rūnanga.

[155] We accept this consultation was done with respect to the previous Council resource consent application. Hence the comment by the Rūnanga that it was not replicated for this Application. But it is the same application made before us. We think in the context of the consultation obligations imposed by the Treaty, this is sufficient to meet the tests suggested by case law.

[156] Even if there have been gaps in consultation, all interested organisations have had the opportunity and the necessary information to respond to the Application, and despite the administrative error in the case of the Rūnanga, have done so. We repeat that we are satisfied that the Trust will ensure that the units are occupied by people of Ngāti Wheke descent.

[157] In conclusion, we find the application to be consistent with the principles of the Treaty and Treaty settlements, meaning there is no barrier to the grant of consent.

Draft Conditions of consent

[158] These were forwarded to the parties for comment on 30 October 2020.

Comments received on draft conditions of consent

[159] We received a number of comments on the draft conditions from the parties, and as a result have made a number of amendments to the conditions, which we discuss bellow.

Christchurch City Council

[160] In a very helpful set of comments the Council suggested technical amendments to General Condition 1 regarding the plans to be approved, that a construction traffic management plan be prepared, and made some suggestions to improve the conditions relating to earthworks and stormwater management. We have accepted most of the Council's suggestions and amended the conditions accordingly. Upon request the Council also provided a draft condition to deal with accidental discovery of contaminated soils. It also suggested a rather fulsome advice note relating to development contributions, but as this matter is outside our jurisdiction we have adopted a much more simplified advice note on this matter.

The Canterbury Regional Council (the Regional Council)

[161] The Regional Council accepted most of the draft conditions. It reiterated concerns expressed previously which we have discussed above. It drew our attention to the correct title of the Canterbury Regional Air Plan which we have adopted.

[162] Of greater concern it said that:

Condition 4 (of the draft conditions) is problematic in its entirety. By merely seeking to prevent flows of muddy water, it appears to authorise the discharge of construction phase stormwater (as defined by the Canterbury Land and Water Regional Plan). As discussed previously we are uncertain whether the discharge is a permitted activity, whether it has been authorised by CCC under their global stormwater consent (CRC190445), or whether a discharge permit is required.

[163] We do not accept that this would amount to authorising a discharge if that consent was required under a Regional Plan. We simply lack the authority to do that and any attempt by us to do so would be ultra vires. In any case no such application has been made. As noted above, if additional regional level consents are required, that is for the Regional Council to identify and follow up. We consider that this is simply the City Council's way of dealing with one the district level implications that can follow from earthworks projects and does not override any regional level consent that may also be required.

[164] We note with some concern that one member of our Panel is aware from other assignments that this is a City Council standard condition which is routinely imposed by it on resource consent applications. If the wording is of such concern to the Regional Council then we suggest that that they raise this with the City Council outside of the current process.

Heritage New Zealand Pouhere Taonga

[165] This comment simply notes that we have not accepted their earlier suggestion of a preliminary archaeological survey, which we discussed above, and drew our attention to the correct contact details for the organisation, which we have corrected in condition 2.

Minister for Māori Development

[166] The Minister, the Hon. Willie Jackson reiterated previous concerns about lack of adequate consultation on this project and suggested the possibility of a Kaitiaki Committee to oversee the project on an ongoing basis, in particular to propose amendments to conditions should the need arise. We have discussed consultation issues above. With regard to a Kaitiaki Committee, we understand that this is a concept that is sometimes used for a consent which has conditions to be observed on an ongoing operational basis. The conditions for this consent apply only to the initial construction phase so there would be little for such a Committee to do, and any breaches of consent would be better dealt with by the Christchurch City Council in its monitoring role and complaints process.

Te Rūnanga o Ngāi Tahu

[167] Ngāi Tahu noted that concerns previously expressed by some of the parties in respect of infrastructure and traffic safety have not been dealt with in the conditions. We note that the CCC as the authority responsible for stormwater and wastewater infrastructure and traffic safety had no concerns with the proposal other than ensuring loading of trucks during the earthworks phase be kept clear of the road carriageways, which we have adopted.

[168] Helpfully they suggested several other amendments to the conditions, which we have adopted. These concern hours of operation, notification of Ngāi Tahu and the Rūnanga before operations commence, use of a cultural monitor for the earthworks, and a procedure to avoid clashes between significant construction activities and events at the marae. They also made suggestions relating to the earthworks and Sediment Control Plan, which we consider were already included in the conditions, and referred to the need for alignment with the Whaka-Ora Healthy Harbour, Ki Uta Ki Tai Whakaraupō/Lyttleton Harbour Catchment Plan March 2018. We have included an advice note to that effect.

The Applicant - Te Mahi Korowai Trust

[169] The Applicant accepted the draft conditions with one minor correction which we have adopted. Of course our decision has changed or added some conditions as a consequence of other responses.

Other responses

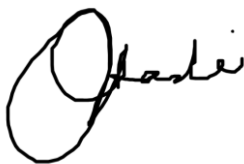
[170] The Minister for Māori Development and the Department of Conservation replied, with no specific comments on the draft conditions.

Final decision of panel (Clause 37 and 38)

The consents granted, and conditions of consent

[171] The complete record of consents and conditions is set out in Appendix 1 to this decision.

[172] As required by Clause 38 of Schedule 6 to the Act, we refer to Clause 45 Schedule 6 which provides a 15-day period for appeal after the persons entitled to appeal (listed in Clause 44) are notified of this decision.



John Hardie (Chair)

David Mountfort (Member)

Dora Langsbury (Member)

Appendix 1: Consent

Consent to the Application is granted subject to the following conditions.

Conditions

1. Except as required by subsequent conditions, the development shall proceed in accordance with the information and plans submitted with the Application, including the further information submitted on 14 February 2020 and amended Site plan contained in the Matapopore Landscape Plan dated 21 April 2020. Details as follows:

   - Resource Consent Set prepared by Solarchitect Ltd
     - Site Plan – Proposed, A1.2 Rev. F
     - Ground Floor, A2.1 Rev. E
     - Ground Floor Back Units, A2.2, Rev. D
     - Ground Floor Front Units, A2.3 Rev. D
     - Ground Floor Community Center Plan, A2.4 Rev. F
     - Typical Ground Floor-End Units, A2.6 Rev. E
     - Typical Ground Floor, A2.7 Rev. F
     - Elevations – South & East – Back Units, A3.1 Rev. F
     - Elevations – North & West – Back Units, A3.2 Rev. F
     - Elevations – South & East – Front Units, A3.3 Rev. F
     - Elevations – North & West – Front Units, A3.4 Rev. F
     - Elevations – Community Centre, A3.5 Rev. F
     - Noise Attenuation – Front Units, A3.6 rev A
     - Noise Attenuation – Back Units, A3.7 rev A

     All dated 10/2/20 14 pages

   - Matapopore Landscape Plans, all dated 21/04/2020 – 3 pages
     - Landscape Concept Plan – Hardscape
     - Landscape Concept Plan – Softscape
     - Planting Palette

   - Cosgrove Ltd, location and details pertaining to the new retaining wall proposed within legal road, Erosion and Sediment Control Plan and the Earthworks Plan, being Sheets 101 Rev B, 102 Rev B, 103 Rev B, and 201 Rev B (4 pages).

   The Approved Consent Plans have been collated in Appendix 2 EP13 (21 pages).

Accidental Discovery - Archaeology

2. Should any archaeological material or sites be discovered during the course of work on the site, work in that area of the site shall stop immediately and the appropriate agencies, including Te Runanga o Ngati Wheke and Heritage New Zealand Pouhere Taonga shall be contacted immediately in accordance with the Accidental Discovery Protocol set out in Appendix 3 of the Mahaanui Iwi Management Plan: http://www.mkt.co.nz/wp-content/uploads/2016/05/Mahaanui-IMP-web_Part32.pdf. Contact details for Heritage NZ are by email to HNZPT Archaeologist: FvanderHeijden@heritage.org.nz–03 363 1884HNZPT and Southern Regional Office: infosouthern@heritage.org.nz–03 363

Communication of Conditions

3. A copy of these conditions is to be provided to any contractors and all key personnel on site are to be made aware of them. A copy of the conditions is to be kept available on site.

Accidental Discovery - Land Contamination

4. In the event that soils are found to have visible staining, odours and/or other conditions that indicate soil contamination, then work must cease until a Suitably Qualified and Experienced Practitioner (SQEP) engaged by the consent holder has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils. The consent holder shall immediately notify the Council Attention: Team Leader Environmental Health, by way of email to rcmon@ccc.govt.nz. Any measures to manage the risk from potential soil contamination shall also be communicated to the Council prior to work re-commencing. The requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health are to be observed.

Earthworks

5. All filling and excavation work shall be carried out in accordance with a site specific Erosion and Sediment Control Plan (‘ESCP’), prepared by a suitably qualified and experienced professional, which follows the best practice principles, techniques, inspections and monitoring for erosion and sediment control contained in ECan’s Erosion and Sediment Control Toolbox for Canterbury http://esccanterbury.co.nz/. The ESCP must be held on site at all times and made available to Council on request.

6. Run-off must be controlled to prevent muddy water flowing, or earth slipping, onto legal road, neighbouring properties and the adjoining waterway. Sediment, earth or debris must not fall or collect on land beyond the site or enter the Council’s stormwater system. All muddy water must be treated, using at a minimum the erosion and sediment control measures detailed in the site-specific Erosion and Sediment Control Plan, prior to discharge to the Council’s stormwater system.

7. The ESCP shall be implemented on site and maintained over the construction phase, until the site is stabilised (i.e. no longer producing dust or water-borne sediment). The ESCP shall be improved if initial and/or standard measures are inadequate. All disturbed surfaces shall be adequately top soiled and vegetated as soon as possible to limit sediment mobilisation. Photographs of the completed site works shall be emailed within 10 working days of completion to rcmon@ccc.govt.nz.

8. Dust emissions shall be appropriately managed within the boundary of the property in compliance with the Regional Air Plan. Dust mitigation measures such as water carts or sprinklers shall be used on any exposed areas. The roads to and from the site, and entrance and exit, must remain tidy and free of dust and dirt at all times.

9. Loading and unloading of trucks with excavation or fill material shall not be carried out within the formed carriageway of Rāpaki Drive or Governors Bay Rd.

10. An approved Traffic Management Plan (TMP) shall be implemented for this earthworks/construction activity and no works are to commence until such time as the TMP has been installed. The TMP shall be prepared by an STMS accredited person, submitted through the web portal www.myworksites.co.nz and approved by the Christchurch Transport Operation Centre – please refer to www.tmpforchch.co.nz.

11. The consent holder must notify Christchurch City Council no less than three working days prior to works commencing, (email to rcmon@ccc.govt.nz) of the earthworks start date and the name and contact details of the site supervisor.

12. The consent holder must notify Te Runanga o Ngati Wheke (by email to rapaki@ngaitahu.iwi.nz) no less than ten working days prior to commencing of earthworks and phases of construction to limit the impacts on events held at the marae, both planned and unplanned (e.g. tangi).

13. If considered necessary by the hapū, they may appoint a cultural advisor to observe the earthworks and appropriate arrangements must be made by the consent holder to enable that to occur.

14. All areas of exposed soils will be grassed as soon as practicable, in order to provide a vegetative cover which mitigates fugitive dust and enhances the amenity of the Site pending completion of the landscape works.

15. Stormwater runoff must be mitigated so that it does not cause a nuisance to neighbouring properties.

16. All concentrated stormwater or collected groundwater, including that from behind the retaining wall(s), shall be discharged in a controlled manner to the Council network.

17. The earthworks and construction work shall be under the control of a nominated and suitably qualified engineer.

18. No permanent unsupported cut or batter shall be formed any steeper than 26° in loess soil, unless approved by a chartered professional engineer.

19. The fill sites shall be stripped of vegetation and any topsoil prior to filling. The content of fill shall be clean fill (as defined by the Christchurch District Plan – Chapter 2 definitions).

20. At the completion of the works:

    (a) Any public road(s), footpath, landscaped areas or service structures that have been affected/damaged by earthwork or vehicles and machinery used shall be reinstated to the relevant Council Construction Standard Specification (CSS) at the expense of the consent holder and to the satisfaction of the Council's Engineer;

(b) Surplus or unsuitable material from the project works shall be removed from site and disposed at a facility authorised to receive such material.

Construction and Earthworks – Hours of Operation

21. Earthworks and Construction activities shall be limited to 7am-7pm Monday to Friday and Sat 7am-noon. Provided that if necessary due to health and safety for the community, work may need to occur outside of those hours. At least 3 working days prior to undertaking work outside these hours the contractors shall advise neighbours, Te Runanga o Ngāti Wheke (by email to rapaki@ngaitahu.iwi.nz) and take into account any concerns expressed.

Landscaping

22. The landscaping shall be established in accordance with the Matapopore Landscape Plan, dated 21 April 2020 (5 pages) but subject to such amendments as are required to meet Condition 23.

23. The subfloor area of Units 1-6 along the southwestern elevation shall be screened from Rāpaki Drive by either additional shrub planting between the structures and the property boundary or with fixed screens such as trellis.

24. The landscaping shall be established on site progressively within the three planting seasons (extending from 1 April to 30 September) following the final, passed building inspection. The landscaping located between units 1 to 6 and the Rāpaki Drive road boundary is to be planted within the first planting season

25. All landscaping required for this consent shall be maintained. Any dead, diseased, or damaged landscaping shall be replaced by the consent holder within the following planting season (extending from 1 April to 30 September) with trees/shrubs of similar species to the existing landscaping.

Advice Notes

Landscape planting

To enhance indigenous biodiversity values, the applicant is encouraged to consider planting locally sourced indigenous vegetation as part of any landscaping planting.

The planting plan and the ESCP should align with the Whaka-Ora Healthy Harbour, Ki Uta Ki Tai Whakaraupō/LyttletonHarbour Catchment Plan March 2018 https://www.healthyharbour.org.nz/the-plan.

Earthworks

The consent holder has advised that no ground disturbance works will start unit such time as building consent has been obtained. On this basis the earthworks exemption under Christchurch District Plan rule 8.9.3 iv has been applied to earthworks within the building footprint (extending to 1.8m from the outer edge of the wall).

It is the consent holder's responsibility to ensure that the activity, including where carried out by contractors on their behalf, complies with the following noise limits:

Rule 6.1.6.1.1 P2 - All earthworks related construction activities shall meet relevant noise limits in Tables 2 and 3 of NZS 6803:1999 Acoustics - Construction Noise, when measured and assessed in accordance with that standard.

Rule 8.9.2.1 P1 Activity Standard e. - Earthworks involving mechanical or illuminating equipment shall not be undertaken outside the hours of 07:00 – 19:00 in a Residential Zone. Between the hours of 07:00 and 19:00, the noise standards in Chapter 6 Rule 6.1.5.2 and the light spill standards at Chapter 6 Rule 6.3.6 both apply.

Acoustic Insulation

The proposal is a sensitive activity located within 40m of Governors Bay Road, a minor arterial Road. Design details in accordance with the construction requirement of Appendix 6.11.4 of the District Plan have been provided. On the basis of these design details, the buildings will comply with the minimum external to internal noise reduction requirements specified in Rule 6.1.7.2.1. Any changes of materials or design will be required to demonstrate compliance with Rule 6.1.7.2.1.

Licence to Occupy Legal Road

This consent seeks to establish vehicle access, car parking spaces 1 to 7 and part of car parking spaces 8 and 9, and a new retaining wall and fencing on legal road (i.e., the verge of Governors Bay Road). The modification and use of this land cannot take place until such time as a licence for occupation of legal road – structures has been obtained from Christchurch City Council. Failure to obtain this licence may result in this resource consent not being able to be given effect to.

Monitoring

The Council will require payment of its administrative charges in relation to monitoring of conditions, as authorised by the provisions of section 36 of the Resource Management Act 1991. The current monitoring charges are:

i. A monitoring programme administration fee of $102.00 to cover the cost of setting up the monitoring programme; and
ii. A monitoring fee of $116.80 for the first monitoring inspection to ensure compliance with the conditions of this consent; and
iii. A monitoring fee of $60.45 for verification of documents / photos submitted to confirm compliance with conditions; and
iv. Time charged at an hourly rate if more than one inspection, certification of conditions, or additional monitoring activities (including those relating to non-compliance with conditions), are required.

The monitoring programme administration fee and initial inspection fee / documentation fee / inspection fees will be charged to the applicant with the consent processing costs. Any additional monitoring time will be invoiced to the consent holder when the monitoring is carried out, at the hourly rate specified in the applicable Annual Plan Schedule of Fees and Charges.

Development contribution assessment

The proposal may require a development contribution under the provisions of the Christchurch City Council Development Contributions Policy. A Development Contribution assessment will be provided separately.

Building Consent

This resource consent has been processed under the COVID19 (Fast-track Consenting) Act 2020 and relates to District planning matters only. You will also need to comply with the requirements of the Building Act 2004 and any other legislative requirements, including but not limited to Environment Canterbury Regional Plans and Record of Title restrictions such as covenants.