

BEFORE THE ŌPŌTIKI DISTRICT COUNCIL

UNDER the Resource Management Act 1991

AND

IN THE MATTER OF a resource consent application by G & S Stilwell for subdivision consent, and land use consent under the National Environmental Standard for Assessing and Managing Contaminants in Soil (NESCS), at 98C Ōhiwa Harbour Road (Onekawa Road), Ōhiwa

REPLY SUBMISSIONS ON BEHALF OF THE APPLICANT

2 SEPTEMBER 2022

Introduction

1. In reply, I address:
 - (a) Key issues;
 - (b) Other issues raised by the Commissioner, submitters or the Council;
 - (c) Conditions;
 - (d) Decision sought.

Key issues

2. In my submission the key issues are as posed in opening, namely:
 - (a) The visual and natural character effects of the proposal; and
 - (b) Whether the proposal is consistent with the objectives and policies of the District Plan (or poses a challenge to the District Plan's integrity).

Visual & Natural character effects of the proposal

3. On this issue, the applicant has called evidence from Chris Campbell, and the Council has produced a peer review from Kim Goodfellow.

Peer review of Landscape and Visual Assessment Report

4. The peer review of the Landscape and Visual Assessment Report has been a disappointing experience for the applicant.
5. Although Mr Goodfellow was at pains to say that he had not carried out a parallel assessment, but rather a peer review, with respect, it would have been more helpful to the Commissioner if he had presented a view than to say that he felt further information was required.

6. Mr Goodfellow's approach relies very heavily on visual simulations to evaluate potential landscape and visual effects, which appears to somewhat remove the judgment of an experienced landscape architect in the absence of visual simulations.
7. Furthermore, Mr Goodfellow did not engage with the evidence from the applicant's landscape architect. For example, Mr Goodfellow would have preferred a viewpoint / visual simulation from Ōhiwa Spit. Mr Campbell clearly explained why he did not prepare one from that location. The reasoning for that was not engaged with by Mr Goodfellow.
8. Mr Goodfellow also stressed at the hearing that there should have been an additional visual simulation from the most visible eastern location. However, this was only raised *at the hearing*, and when the Landscape and Visual Assessment Report is considered, it is clear from the viewpoints, that the eastern locations are very distant from the site.¹ The visual simulation provided from the East was discussed with Mr Goodfellow well in advance of the hearing. It is hard to understand why an additional visual simulation is raised in the hearing, and deemed necessary to make a decision, when the viewpoints and visual simulations were discussed between Mr Goodfellow and Mr Campbell in advance of the hearing.² The applicant and Mr Campbell also find it hard to understand how an additional simulation would add anything to the assessment.
9. Based on Mr Goodfellow's assessment, it appears that he would have required the following detail in the visual simulations:
 - (a) Additional visual simulations from:

¹ See Appendix 3 to the Landscape and Visual Assessment Report, and Appendices 4.1-4.4.

² The request for a visual simulation from Ōhiwa Spit only came two days before the s 42A report was due; the request for a more 'visible' eastern location was raised at the hearing.

- (i) Ōhiwa Spit;³
 - (ii) The ‘most visible’ eastern location (not specified by Mr Goodfellow but nor did he comment on the eastern locations in Appendix 3 to the Landscape and Visual Assessment Report);
- (b) A detailed 3D model;
 - (c) The maximum house size modelled within the visual simulations, complete with colours and windows;
 - (d) All other possible buildings in the area included in the model – from all relevant visual simulation angles;
 - (e) Year 0 and year 5 simulations for all the above re-cast visual simulation perspectives;
 - (f) Further information around the detail of landscaping that the applicant controls and doesn’t control.
10. Again, with respect, it seems incomprehensible that this level of visual simulation would be required in order to come to an assessment. For example, the Commissioner will appreciate that having been to the site, Lots 1-4 and 6-7 sit within a basin like plateau within the property which is nestled into the hillside and sits behind a mature covenanted native bush reserve. Therefore, views from the eastern location looking towards the proposed buildings are unlikely to see any part of the proposed built form. If a small portion of built form is visible this will be set against the backdrop of a hill. With regards to the proposed sites 10-12, these sites sit back on a table land - not on an exposed face or atop *the edge of* a prominent ridgeline.

³ Noting that Mr Campbell provided reasoning why he did not prepare one from that location.

11. The bush on the Mountain Ridge Holdings land (Lot 2 DP 555172) located in the foreground of lots 1-4 & 6-7, is protected via an encumbrance to the Opotiki District Council registered in Instrument 199220.6 and recorded on the Record of Title for the site. That encumbrance (attached at Appendix A) does not permit the removal, trimming, felling or injury of any tree or plant within the area "C" as defined on DP 8269 (also attached). The vegetation can therefore be relied upon to be retained in at least its current form.
12. With respect to house sizes, it is evident within the visual simulations and in Mr Campbell's assessment, that the controls in place will ensure proposed built form is fragmented or entirely obscured by landform, covenanted native bush or proposed native planting, regardless of house size. The visual simulations also confirm that windows are unlikely to be visible from any of these prominent viewpoint locations and the only built form visible is fragmented roof lines, which have a reflective value of <20%.
13. With respect to other houses which are consented but not built, as requested by Mr Goodfellow, where a house is currently under construction or is due to be constructed in close proximity to the proposed development, Mr Campbell has shown a potential house by introducing a box. This is a reasonable response – to require architectural precision is unreasonable.
14. Mr Goodfellow also made an issue about clarifying the numbers of trees and shrubs to be planted. However, it is submitted that the evidence is clear on this:
 - (a) Mr Stilwell refers to native trees.
 - (b) Mr Campbell notes in his evidence that this applicant has gone to the extent of securing native trees given how difficult they are to source – of which there are 655 currently available. Mr Campbell also notes that

the number of native trees sourced by the applicant exceeds the number of trees required to satisfy the landscaping plan.

- (c) Mr Campbell's reference to 10,261 refers to the total number of native trees "and shrubs".

- 15. It is submitted that there is no inconsistency arising.
- 16. Mr Goodfellow would like more detail on the landscape maintenance plan. The applicant has responded to this, and this is addressed under "Conditions" below.

Evidence before the Commissioner

- 17. In terms of the evidence and assessment of effects which the Commissioner does have regarding the landscape and natural character effects of the proposal:
 - (a) Until two days before the s 42A report, Mr Campbell thought he had essentially agreed the visual simulation points with Mr Goodfellow;
 - (b) Mr Campbell has explained why he does not consider a further assessment from Ōhiwa Spit is necessary,⁴ and his report speaks for itself in terms of more eastern "visible" locations;
 - (c) Mr Campbell has formed a view about the existing landscape character of the site, its ability to absorb effects, and the effects of the proposal. The visual simulations are an aide to this, but they are not a replacement for his assessment;
 - (d) Mr Campbell has provided clear reasons to support his view.

⁴ Statement of Evidence, paragraph 58.

18. If Mr Goodfellow does not agree with Mr Campbell then it would be more helpful for him to say so and provide evidence to justify his view, than to raise what he believes is adequacy of information in the hearing forum.

Size of houses

19. The visual simulations use a house size of 200m². This seems realistic given that the applicant's home is 270m² and on a much larger property than the proposed allotments. The 200m² house sizes are also fairly reflective of the recent homes being built in the Ōhiwa Cove development to the West.
20. There appeared to be criticism that the visual simulations should show a maximum house size. In answer to questioning, Mr Campbell said that he thought the 200m² building was accurate because any larger houses will not necessarily be oriented in the same direction and/or will be mitigated by landscaping.
21. The maximum building coverage relates to all buildings. It is submitted that this is appropriate in the rural residential context of the site.

NZILA Guidelines⁵

22. The Commissioner queried how the NZILA scale relates to RMA effects.
23. This is summarised as follows in the Guidelines:⁶

very low	low	low-mod	moderate	mod-high	high	very high
less than minor	minor	more than minor		significant		

⁵ References in this reply are to the 210430_Te Tangi a te Manu Aotearoa New Zealand Landscape Assessment Guidelines [Final Draft].

⁶ At 6.37.

24. For completeness, the surrounding text from the Guidelines is included at Appendix B.
25. On the Guidelines, I also note that visual simulations attract little attention. They are described as “useful tools for pictorially depicting proposed developments – so long as they are properly prepared, and their limitations are understood”,⁷ but their limitations are also described as:⁸

Limitations to bear in mind are that photos are static, have a limited field of view, and tend to flatten perspective. People typically experience landscapes as they move around, and in a range of conditions – somewhat differently from photos that are taken in one set of conditions, from fixed viewpoints, and that do not depict context. Photo simulations can also focus attention to visual matters rather than overall landscape values. The ‘before and after’ format similarly can focus attention on change rather than effects on landscape values. Understanding such limitations is not to discourage the use of photos, but to ensure they are presented and interpreted in the most useful way.

26. It is submitted that Mr Goodfellow has placed too much emphasis on visual simulations in this case.

Summary

27. The Commissioner has ample evidence from the applicant’s landscape architect regarding the landscape and natural character effects of the proposal. No evidence has been produced to the contrary. It is submitted that the information sought by Mr Goodfellow seeks too much, and is not reasonable in the context of the application and the evidence provided. The Commissioner can be satisfied that the landscape and natural character effects of the proposal are acceptable.

⁷ At 6.50.

⁸ At 6.52.

District Plan integrityIs the Coastal Zone a Rural Zone?

28. The essence of Ms Swan's reply, in relation to the Coastal Zone, is that there is really no difference between the Coastal Zone and the Rural Zone, and therefore the Coastal Zone is for all intents and purposes a Rural Zone.
29. There are non-complying activities in both zones. These relate to not meeting the minimum lot size for subdivisions associated with versatile land. The subject site does not contain versatile land as depicted on the District Planning Maps.
30. In my submission it is not an appropriate response to say that the Coastal Zone is effectively a Rural Zone, because the rules and provisions are similar. If the matter were as simple as that, there would be no point to the Coastal Zone.
31. Furthermore, and it is not clear whether Ms Swan was attempting to read down the stated purpose of the Coastal Zone, but the stated purpose of the Coastal Zone in Chapter 1 makes no reference to rural.
32. The issues for the Coastal Zone are also of a much more mixed nature, than those for the Rural Zone.
33. The applicant maintains its submission that the Coastal Zone is a Mixed Zone, for which rural production is not a primary purpose, and that the subdivision has no impact on the integrity of that zone.

Evidence regarding rural productive capability of the site

34. The site is not versatile land, and that does not appear to be in contention.

35. There was no evidence given to the Commissioner which challenged or discredited the evidence given by Mr Stilwell, an experienced farmer and orchardist.
36. Mr Sandom gave evidence about other potential productive uses which the applicant could try. He also referred to the minimum service contracts from Eastpack for gold and green kiwifruit. There is no evidence before the Commissioner that Mr Sandom has experience in horticulture production, whereas there is evidence from the applicant (Mr Stilwell) as to his experience with the horticulture sector (including kiwifruit), and his experience in the Ōpōtiki district specifically.
37. The applicant provided evidence on the current productive areas of the Ōpōtiki District and their future potential. Furthermore, Mr Stilwell has shown the limited extent of the horticultural production within the specific Ōhiwa Spit area.
38. It is submitted that Mr Stilwell's evidence should be preferred on this issue.

Other issues raised by the Commissioner, submitters or the Council

Receiving environment

39. The applicant broadly accepts Ms Swan's description of the existing environment.
40. Mr Crossan queried Ms Swan's reference to *proposed* subdivisions in the context of effects rural production.⁹ No evidence was produced about these; only a list of residential developments in residential areas was provided. These

⁹ Statement of Evidence, at paragraph 37.

residential developments are within zoned residential areas and are not in coastal or rural areas.

Other resource consents required

41. The Commissioner queried what other resource consents would be required, in particular from the Bay of Plenty Regional Council.
42. The applicant does not consider that earthworks consent will be required due to the limited nature and scale of earthworks to facilitate the subdivision, or that consent for on-site effluent treatment systems will be required (as long as permitted activity standards are met, which would be achievable from a single dwelling on each of the new allotments).¹⁰
43. As presently designed, consent would be required for the discharge of stormwater from two of the concept design stormwater culverts within the proposed road to vest. However, if subdivision consent is granted, then detailed design will confirm definitively whether or not consent from the Regional Council is in fact required.
44. It is submitted that none of the above circumstances should cause any concern for the Commissioner. If additional consents are required, it will be incumbent on the applicant to obtain those. They will not affect the subdivision consent granted by the Ōpōtiki District Council.

Survey of paper road

45. The applicant has surveyed the paper road and the survey plan is attached at Appendix C. It confirms that:

¹⁰ It should also be noted that if a purchaser elected to proceed with an on-site effluent system that did not meet permitted activity standards, the responsibility for consenting that should reasonably fall to the purchaser.

- (a) The southernmost area shows that the shelterbelt is largely within the paper road. This is consistent with the applicant's landscape plan showing "off site shelter belt".
- (b) The next portion running northwards is entirely within the applicant's boundary (shown on the survey plan as "2.0m within lot");
- (c) The last portion running northwards is both within the paper road and within the applicant's boundary. This raises two issues:
 - (i) Removal from the paper road where the shelter belt is to be retained;
 - (ii) Removal from the paper road where the shelter belt is to be removed.

46. These scenarios are addressed as follows:

- (a) For replacement planting within the boundaries of the site, should retained shelterbelt within the paper road be removed, a condition is proposed;¹¹
- (b) For the removal of planting within the paper road, the applicant has sought the approval of the Council, and an email dated 1 September 2022 confirming this is included at Appendix C with the survey plan.

47. The applicant regards this issue as low risk to the community and itself. The trees have been in place and maintained by the applicant for over 30 years. The paper road is highly unlikely to be developed as road given the topography of the site, and the paper road is grazed not maintained by the Council. There is no evidence to suggest that the trees (to be retained) would be removed.

¹¹ Condition 33 ix.

Eco sourcing of plant / seeds

48. The applicant supports eco sourcing.
49. As acknowledged by Ms Conning on behalf of Forest and Bird, eco sourced plants locally can be difficult to obtain. The submitter accepts that eco sourcing from within the Bay of Plenty would be sufficient.
50. In this case the applicant has demonstrated significant commitment to planting, as evidenced by the planting already on site, and its commitment to 655 trees which are on hold for it should this consent be granted.
51. The applicant has confirmed that the native trees on order are eco-sourced plants from the Bay of Plenty. In addition, eco-sourced natives from the Bay of Plenty are achievable for the remaining planting.

Compliance with consent conditions

52. Question and answer between the Commissioner and Ms Conning discussed compliance with consent conditions generally.
53. In my submission, the applicant is entitled to have compliance with consent conditions assumed. There is Court of Appeal authority that it is not the role of a consent authority to presuppose non-compliance on the part of the consent holder: see *Barry v Auckland City Corporation* [1975] 2 NZLR 646 at 651 (CA).
54. This decision has been cited with approval by the High Court,¹² where it said with respect to a management plan:¹³

¹² *Guardians of Paku Bay Assn Inc v Waikato Regional Council* (2011) 16 ELRNZ 544.

¹³ At [134].

The base position however remains that the applicant has not sought, and does not hold a discharge permit permitting it to discharge contaminants into the coastal marine environment. It is entitled to be treated on the basis that it will comply with the consents it holds, and with the Act. If it does not comply, it will become liable to enforcement action under Part 12 of the Act. The applicant's principals could become liable personally under s 340, while certain contraventions could be offences of strict liability under s 341.

55. In summary, Mr and Mrs Stilwell are entitled to have compliance with consent conditions assumed and should be treated accordingly.

Cats & Dogs

56. The applicant accepts wholeheartedly that cats should be prohibited as part of the subdivision, and that consent notices should be imposed to secure this outcome.
57. The applicant remains opposed to the prohibition of dogs. Mr Stilwell's experience, articulated through his evidence, is that dogs are not as problematic as cats with respect to native bird life. Mr Stilwell also highlights that dogs can be managed and trained more easily than cats and avian training to all dogs will be encouraged within the subdivision.

Water supply / roading

58. Mr Bertram raised an issue about his water supply.
59. The water supply traverses the applicant's property (including land to become road) and will need to be relocated by Mr Bertram so that it is not in public road to vest. Mr Bertram's water will still be supplied through the applicant's property and covered by easement.

60. Mr Bertram's water supply does also traverse the paper road. The applicant has no control over the paper road and that situation is not affected by the development.

Traffic safety issues

61. Mr Bertram raised traffic safety issues as a concern. The applicant wishes to make clear that any safety issues raised or related to Mr Bertram's unregularized access from the applicant's right of way and over the paper road must be disregarded.
62. The Council's Senior Roding Engineer did not identify any issue with the Onekawa Road/Ōhiwa Harbour Road intersection which is public road owned and maintained by the Council. No further information requests were made of the applicant on this issue. On this basis the Commissioner can be satisfied that traffic *safety* is not in issue.

Position of Te Upokorehe Iwi on the landscape proposals

63. A question was raised as to whether Te Upokorehe Iwi had signed off on the landscape proposal.
64. To avoid doubt, the applicant has secured signed approval to the landscape plans for both the nine and seven lot proposals, which are attached with email correspondence from Te Upokorehe at Appendix D. These have been signed by Upokorehe Iwi kaumatua Mr Wallace Aramoana and Trevor Ransfield.

Conditions

Minimum Floor Level

65. The applicant has reviewed the request to reduce the minimum floor level to 0.3m above natural ground level and will accept a 0.5m requirement as originally proposed by Ms Swan based on the Regional Council's recommendations.

Road to vest

66. The Commissioner asked, with respect to easements over the public road to vest, whether the absence of landowner approval could impose an impediment and if so whether there were any legal procedures available to address that.
67. As confirmed by Ms Swan in her report, this has been addressed through the conditions of consent.¹⁴
68. In addition, section 317 of the Property Law Act makes provision for the consent holder to seek that easements be revoked should those other users not be forthcoming with approval. That provides:

317 Court may modify or extinguish easement or covenant

(1) On an application (made and served in accordance with section 316) for an order under this section, a court may, by order, modify or extinguish (wholly or in part) the easement or covenant to which the application relates (the easement or covenant) if satisfied that—

(a) the easement or covenant ought to be modified or extinguished (wholly or in part) because of a change since its creation in all or any of the following:

¹⁴ Proposed conditions 10 and 11:

Lot 13 shall vest as road with Opotiki District Council free of all encumbrances and covenants.

Lot 13 shall vest as road with Opotiki District Council free of any existing private infrastructure.

- (i) the nature or extent of the use being made of the benefited land, the burdened land, or both;
 - (ii) the character of the neighbourhood;
 - (iii) any other circumstance the court considers relevant; or
- (b) the continuation in force of the easement or covenant in its existing form would impede the reasonable use of the burdened land in a different way, or to a different extent, from that which could reasonably have been foreseen by the original parties to the easement or covenant at the time of its creation;
- or
- (c) every person entitled who is of full age and capacity—
- (i) has agreed that the easement or covenant should be modified or extinguished (wholly or in part); or
 - (ii) may reasonably be considered, by his or her or its acts or omissions, to have abandoned, or waived the right to, the easement or covenant, wholly or in part; or
- (d) the proposed modification or extinguishment will not substantially injure any person entitled; or
- (e) in the case of a covenant, the covenant is contrary to public policy or to any enactment or rule of law; or
- (f) in the case of a covenant, for any other reason it is just and equitable to modify or extinguish the covenant, wholly or partly.
- (2) An order under this section modifying or extinguishing the easement or covenant may require any person who made an application for the order to pay to any person specified in the order reasonable compensation as determined by the court.

69. In the case of existing right of way easements, legal and physical access would be retained and enhanced through the creation and vesting of the public road as proposed.

Amalgamation conditions

70. Ms Swan confirmed in relation to the question of amalgamation conditions, that approval had been sought from LINZ and this is reflected in the proposed conditions accordingly.¹⁵

Landscape maintenance

71. Mr Goodfellow's concern was that the mechanism to secure landscape maintenance could provide more certainty. To address this, the applicant has taken two steps.
72. It has produced a Planting Implementation, Weed Removal, Establishment and Maintenance Specification. This is attached at Appendix E, and referenced in the proposed consent notice conditions.¹⁶
73. It also proposes that there be regular reporting to the Council. It has proposed a condition in these terms:¹⁷

To ensure the maintenance of, and replacement of dead or diseased plants within the landscaped and ecological planting areas, annually for each of the first three years following the planting of the trees a report shall be submitted to Council prepared by a suitably qualified person that confirms maintenance undertaken, any replacement planting needed and compliance of the landscaping.

Shelterbelts

74. The applicant accepts the proposed condition for all remaining shelterbelts to be maintained at 6mtrs (instead of 4-6mtrs).

¹⁵ Proposed conditions 4 and 5.

¹⁶ Condition 33 xxi.

¹⁷ Condition 33 xx (for the proposed lots containing houses). A similar condition is proposed for Lot 14.

Decision sought***Optionality***

75. The Commissioner queried whether it was permissible for the applicant to pursue optionality in the hearing, with respect to the alternative seven lot proposal.
76. Counsel is not aware of any impediment to a resource consent applicant proposing an alternative proposal for consideration through evidence, subject to such an alternative being within the scope of the application, and properly described and assessed.
77. In this case, it is submitted that no scope issues arise, because the alternative proposal is for less lots (and therefore less effect) than the resource consent application. Further, the proposal has been addressed in the evidence (most importantly) of Mr Campbell, as well as that of Mr Crossan.
78. Counsel notes that in Environment Court cases, applicants have advanced alternative proposals. An example where more than one alternative was advanced, and the applicant went so far as to suggest that “the Court should indicate the level of development on this site that was appropriate and the type of controls that should be in place” is *Drive Holdings Ltd v Auckland Council* [2021] NZEnvC 159 where the applicant proposed an alternative three days into an Environment Court hearing. The Court ruled on both, finding that neither proposal met the Auckland Unitary Plan. It also declined to redesign a consentable proposal.
79. On the basis of that case, it is my submission that there is no impediment to the Commissioner considering the alternative proposal. The applicant is not asking the Commissioner to indicate the level of development that is appropriate.

80. I would add that it is consistent with the procedural principle of timely, efficient, consistent, and cost-effective processes,¹⁸ and the duty to avoid unnecessary formality in consent hearings,¹⁹ to afford an applicant the ability to canvas an alternative proposal with the consent authority and submitters through a hearing process.
81. Accordingly, the applicant asks the Commissioner to consider both the nine and seven lot proposals.

Nine or seven lots?

82. There was very little focus during the hearing on the difference between nine and seven lots / house sites.
83. Both Mr Campbell and Mr Crossan acknowledge that the seven lot proposal, which would result in one less house on the ridgeline, may be regarded as more appropriate. The seven lot proposal would also reduce effects on the Bertram submitters, by removing the house site closest to the Bertram lots.
84. The seven lot proposal would also reduce potential traffic movements, a concern raised by Mr Bertram.
85. Although the seven lot proposal has been proposed as an alternative to the nine lot proposal, the applicant accepts that in light of the submitters' and reporting officers' positions, in reality it is the seven lot proposal which is more likely to receive consent. Accordingly, the set of conditions proposed for the two stage subdivision, and attached at Appendix F, has been prepared on the basis of the seven lot proposal.

¹⁸ RMA, s 18A(a).

¹⁹ RMA, 39(2)(a).

Stage 2 conditions on to stage 1 lots

86. If the Commissioner's decision is to decline resource consent for the subdivision, then as discussed in opening, the applicant seeks that consent be granted for the boundary adjustment and the NECS land use consent.
87. Ms Conning for Forest and Bird agreed that it would be appropriate for the Commissioner to grant those consents on the basis that they are controlled activities, but sought that in such an eventuality, the proposed stage 2 consent notices be applied to the stage 1 lots.
88. The applicant accepts that proposition with respect to lot 8.
89. The applicant considers that it is not necessary to impose those consent notices on lot 14, given the topography of that lot (i.e., it is not suitable for building upon).
90. Should the Commissioner find herself granting consent to the boundary adjustment only, then for the purposes of such a decision, a scheme plan of the boundary adjustment, and a set of Stage 1 conditions, are attached as Appendix G.

Conclusion

91. This is a case where the key objections to the proposal from submitters, and concern of the reporting officers, are not made out.
92. The Coastal Zone is clearly a mixed zone. Its purpose makes no reference to rural production. Its issues clearly signal mixed uses. One of six objectives is devoted to rural production. It cannot be held to be the same as the Rural zone given the clear signal to landowners through the District Plan that:²⁰

²⁰ District Plan, at 1.6.1 and 1.6.2.

Zoning is the main technique to manage subdivision, and the use and development of land in the District. Zoning is applied to all land in the District as shown on the Planning Maps and recognises that land needs to be managed for different purposes in the District. Each zone has different objectives, policies and rules, including activity lists and standards to be met.

The main advantages of zones are clarity and certainty for residents and landowners and simplicity through grouping of common standards. In addition, zoning is well understood by most people who will use the Plan.

93. Even if rural production were a dominant consideration, Mr Stilwell's uncontested evidence clearly rebuffs any suggestion that this proposal will fragment valuable rural land resource.
94. Mr Campbell has assessed the natural character values of the site and the impact of the proposal on those values. The Commissioner has no clear evidence to the contrary. Mr Goodfellow's concerns about the adequacy of information, such as visual simulations, go too far in the context of this proposal.
95. In light of the mixed purpose of the Coastal Zone, this proposal does not adversely impact rural character and amenity. It is entirely consistent with similar subdivisions in the general locality (including those in which Mr Sandom and Mr Bertram reside) and cannot be described as a proliferation in the context of the zoning. Ample landscaping is proposed by way of mitigation, as are appropriate building controls.
96. The applicant asks the Commissioner to grant the NECS land use consent, and consent to Stages 1 and 2 of the subdivision (alternative seven lot proposal),²¹ or otherwise, to the Stage 1 boundary adjustment.²²

²¹ Appendix F conditions.

²² Appendix G scheme plan and conditions.

DATED this 2nd day of September 2022



Vanessa Jane Hamm

Counsel for Mr and Mrs Stilwell

Appendices:

A	Encumbrance and plan for Mountain Ridge Holdings protected bush
B	Extract from NZILA Guidelines
C	Survey plan of shelterbelt trees on boundary of paper road and site, and email from Council dated 1 September 2022
D	Email from Te Upokorehe dated 31 August 2022 and attached landscape plans for nine and seven lot proposals
E	Planting Implementation, Weed Removal, Establishment and Maintenance Specification
F	Stage 1 and Stage 2 proposed conditions (seven lot proposal)
G	Stage 1 (boundary adjustment) scheme plan and proposed conditions