

**BEFORE AN INDEPENDENT HEARING COMMISSIONER APPOINTED BY MASTERTON
DISTRICT COUNCIL**

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF Resource Consent Application by East Leigh Ltd to subdivide land at Riversdale (Lot 102 DP517369) to create 21 residential allotments and a local purpose reserve to vest, and to adjust the boundary between Lots 12 and 13 DP383390; and for land use consent to enable development of the allotments for residential use.

Council Reference: RM210207 - East Leigh Ltd

STATEMENT OF HONOR BRIGIT CLARK

31 May 2022

QUALIFICATIONS AND EXPERTISE

1. My name is Honor Brigit Clark, Consultant Planner for the Masterton District Council (MDC or Council). I hold a Bachelor of Resource and Environmental Planning with Honours from Massey University.
2. I have 25 years' experience as a Resource Management Planner, formally working at Dunedin and Wellington City Council's, Tonkin and Taylor Environmental Consultancy, and for the past 13 years as a Consultant Planner, providing a variety of resource management related services to local bodies and private clients. I regularly provide planning expertise and assistance to MDC.
3. My planning experience includes many aspects of plan preparation and review, preparation and lodgement of resource consents on behalf of clients, and processing resource consents working within local authorities or as a Consultant for local authorities. I have experience in Resource Consent and Environment Court Hearings.
4. I live in the Wairarapa and know Riversdale well, having visited there many times since my childhood. I regularly take my children there on holiday, staying with extended family. I have spent many hours enjoying Riversdale Beach, the public reserve and recreation areas, and fishing. I am also a keen golfer and have played many rounds at the Riversdale Golf Club, including Open Days and Interclub competitions.
5. Having said the above, I confirm I have no commercial or financial interest in Riversdale and have no conflict of interest of any kind.

CODE OF CONDUCT

6. Although this is not a hearing before the Environment Court, I am familiar with the Environment Court's Code of Conduct for Expert Witnesses. I agree to comply with the code and am satisfied the matters I address in my evidence are within my expertise, except where I have relied on other experts. I am not

aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.

MY ROLE WITH THIS APPLICATION

7. I was first involved as Consultant Planner for MDC in attending the pre-application meeting with the Applicant's representatives, Ms Foster, and Mr Hudson (via Teams) in March 2021.
8. I have visited the site and viewed the site from numerous viewpoints, including the beach, the Southern Reserve and from numerous locations within the original settlement area.
9. I prepared the s95 Notification Decision report, released by MDC on 7 December 2021, requiring the public notification of the application.
10. I also prepared the s42A Report dated 6 May 2022.
11. This evidence has been prepared in response to planning matters raised at the hearing and in the Applicant's (East Leigh Ltd) expert evidence. I will not repeat the content of the s42A Report here.

UPDATE ON SUBMITTERS

12. I confirm that those parties who wished to be heard, have been heard. Council staff contacted all submitters prior to the hearing who stated within their submission that they either wished to be heard or those submitters where the wish to be heard was unclear or not stated on their submission. It is noted that repeated efforts have been made to contact submitter Collier to ascertain whether they wish to be heard, with no response.
13. Fire and Emergency New Zealand have officially withdrawn their right to be heard, based on the reference to *Appendix E* in part *a.* of the *fire safety* proposed condition on the consent being removed. Correspondence confirming that I was satisfied with this request was circulated prior the

hearing. This has been further addressed by Ms Foster in the amended set of conditions.

CULTURAL IMPACTS

14. I, on behalf of Council, acknowledge the Applicant in commissioning a Cultural Impact Assessment. The Cultural Impact Report (CIR) prepared by Dr Smith, appended to Ms Foster's evidence, does not raise any specific cultural impacts of the application.
15. The CIR suggests that Council rename the reserve at the south end of the beach, currently called Southern Reserve to "Nukutaotaoroa", to highlight its cultural significance. I have spoken with Council's Parks and Open Spaces team, who are currently in the process of renaming many reserves throughout the district, and they welcome suggestions for names. This is a matter outside this resource consent process.

MATTERS IN CONTENTION

16. I believe that the main matters of contention are the effects of the proposal on the visual amenity values and landscape character of the area; and the assessment of the proposal against the Objectives and Policies of the WCDP.
17. A number of the submitters heard from yesterday expressed concerns with traffic-related effects, particularly the parking demand at the southern end of the beach. They also thought this demand will increase as it is unlikely residents and visitors of the additional allotments will walk down to the beach. Mr Clark, Traffic expert for the Applicant, acknowledged this may be the case. There was mention yesterday of the development of a Riversdale Beach Community Plan (Te Kaupapa o Te Hapori a Mōtūwairaka), which can address social and infrastructural issues such as traffic management and parking. I can confirm that the early stages of this Plan development is underway at Council. In addition to this, I believe that Ms Fraser has satisfactorily addressed the relevant transport matters on behalf of Council.

18. With respect to the evidence of Mr Duncan and the questions relating to wastewater connections, I can confirm that there are no issues with the capacity of the Riversdale Beach Wastewater Scheme to dispose of sewerage from all 21 allotments, if granted, and I agree with Mr Duncan's later information that the lots will be serviceable in one way or another. The specifics of the engineering design can be appropriately dealt with through conditions. The existing systems (approved as part of the 2005 consent) were installed and later signed over to Council.

EXISTING ENVIRONMENT

19. The Applicant has raised whether my original assessment and recommendation adequately considered the existing environment. I accept that the existing environment includes the consented development (including the already developed lots as well as those that are yet to be developed) and my s42A Report was prepared on this premise. However, I do not agree with the Applicant's assertion that the presence of the existing lots (developed and yet to be developed) enable or justify the additional allotments.

20. The co-siting of the proposed lots near the existing small lots, and their proximity to an existing settlement, are the only reasons why I believe any development of this type is acceptable in the Rural Zone in this location. I would have recommended that all of the proposed allotments be refused if this had not been the case.

21. The Commissioner has asked whether the yet-to-be built houses on the already consented allotments require Land Use consent under the WCDP. Ms Foster has provided evidence that they do not, and I agree with Ms Foster in this respect. Although, Ms Foster has stated that the 2015 application (RM150004) authorised dwellings and then the subsequent 2020 extension of time through to 2030 (RM150004A) specifically deals with dwellings, these consents are actually related to extending the time and staging of the original subdivision consent. A copy of the consent and time extension are tabled. Having said this, I believe that the consent notices registered against the existing titles of the already consented lots set specific parameters for dwellings on those lots. I

believe therefore, this gives certainty that one dwelling can be constructed on the consented lots. Furthermore, Council has not required Land Use consents for dwellings on any of the consented lots, many of which have been granted building consent since the WCDP became operative.

CONSIDERATIONS UNDER S104 RMA

22. In accordance with S104(1)(a), when considering an application for a resource consent and in forming an opinion as to the actual and potential effects on the environment of allowing the activity, under S104(2) a consent authority may disregard any adverse effect of an activity on the environment if the plan permits an activity. This is otherwise known as a “permitted baseline”. This proposal has no permitted baseline under the current and relevant provisions of the WCDP. Under the WCDP, any subdivision within the Coastal Environment Management Area is at least a Discretionary Activity (Rule 20.1.5(i)(iv)), and that’s only if the minimum lot size of 4 hectares was met. The proposal defaults to a Non-Complying Activity because the proposed allotments are as small as 940m², with the largest proposed allotment being 1746m². An assessment of a Non-Complying Activity is the toughest or most-stringent activity status provided for within the WCDP. There are no Prohibited Activities. In addition to this restrictive subdivision requirement, **any structure** (emphasis added) closer than 50m from the steepest part of a terrace or escarpment or above the 40m contour above MHWS is a Restricted Discretionary Activity (Rule 21.4.3(a)), among other provisions relating to building height and colour. This means that any structure, including something such as a farm shed, requires an individual assessment through a resource consent. Ms Foster stated yesterday that farm sheds in or near the area of the proposed development would be fanciful because of the set up / operation of the farm.
23. I suggest that the applicant has not provided an assessment against a permitted baseline because this would not paint the application in a “positive light”. If the 50m permitted activity setback from the terraced edge provision of the WCDP was depicted on the subdivision plan (similar to how the proposed 8m setback for dwellings was presented on a scheme plan by the Applicant yesterday), this would result in no permitted building area within proposed Lots 304 – 320 at

all. The other allotments, 301-303 and 321-323 are above the 40m coastal contour, which again has no permitted baseline for any structure.

24. The relevant rules of the Rural Zone and the Coastal Environment Management Area (CEMA) overlay are, in my opinion, restrictive, particularly when compared to the superseded Masterton District Plan, which was described in 2005 East Leigh Decision as a “very open-ended and permissive document”. In 2005 there were no minimum lot size requirements for subdivision, or no specific suite of land use requirements applying to buildings that apply today under the WCDP.

25. I acknowledge the application requires to be assessed on its merits, as Mr Davies stated yesterday, and I believe I have done that. The reason for obtaining a peer review of Mr Hudson’s ‘Landscape Character, Natural Character and Visual Amenity Assessment’ was to have a clearer understanding of the level of these effects. Just as the applicant has relied on Mr Hudson’s assessment, I have relied on Ms McRae’s assessment of these matters.

26. Section 104D places particular restrictions over the consideration on Non-Complying Activities, and states that a consent authority may only grant resource consent for a Non-Complying activity only if:

(a) The adverse effects of the activity on the environment (other than the effects on persons who have given written approval to the application) will be minor; or

(b) the proposed activity will not be contrary to the objectives and policies of relevant plans and proposed plans.

27. The applicant has submitted that the environmental effects of the proposal are minor. I have, in the section 42A Report determined that the effects of the proposal, particularly proposed Lots 304-319 and subsequent development are more than minor. In the context of S104D, this assessment that the effects are more than minor, means that the first gateway test under 104D is not met. I believe this is particularly in the case of visual effects and on the character landscape of the coastal environment, even with the proposed mitigation measures.

28. With respect to the second part of the gateway test, the Rural Objectives and the Policies of the WCDP include Objective 4.3.1 – *‘To maintain and enhance the amenity values of the Rural Zone, including natural character, as appropriate to the predominant land use and consequential environmental quality of different rural character areas within the Wairarapa’*, and Policy 4.3.2(d) *‘Maintain and enhance the amenity values, including natural character, of the differing Rural Character areas through appropriate controls over subdivision and the bulk, location and nature of activities and buildings to ensure activities and buildings are consistent with the rural character, including an appropriate scale, density and level of environmental effects’*.
29. The proposal, particularly those lots recommended to be refused, do not in my opinion maintain and enhance the visual amenity of the area, particularly the views of the resultant buildings and the effects these may have on the landscape that is the backdrop to Riversdale Settlement. Furthermore, the policies specifically refer to the use of the bulk, location and nature of buildings and how these can affect the amenity values. It is noted that as the application includes the request to enable the development on the allotments to be in accordance with residential scale and density provisions of the WCDP, in itself undermines the intent of the Rural Objectives and Policies.
30. The relevant Subdivision, Land Development and Urban Growth objectives and policies of the WCDP include Objective 18.3.1 *‘To ensure subdivision and land development maintains the character, amenity, natural and visual qualities of the Wairarapa, and protects the efficient and effective operation of land uses and physical resources’*, and Policy 18.3.2 (a) *‘Manage subdivision and land development in a manner that is appropriate for the character and qualities of the environmental zone in which it is located, while recognising that such change may alter the character and qualities’*, and Policy 18.3.2(b) *‘provide subdivision where it is compatible with the physical characteristics of the site, provided any adverse environmental effects are avoided, remedied or mitigated’*, and Policy 18.3.2(d) *‘Set minimum allotment sizes for the Residential and Rural Zones that provide a baseline for maintaining the character, scale, and intensity of development of their Zones, including their servicing capacity while recognising the differing constraints, qualities and*

characteristics within each Zone’, Policy 18.3.2(h) ‘Allotments below the minimum standards in the Rural Zone shall avoid all of the following outcomes: (ii) the allotment sizes and / or pattern of the subdivision would not maintain the open rural character, particularly from public roads and vantage points, (iii) allotments are unable to accommodate the likely use in accordance with the other requirements of the plan, (viii) the proposal is likely to lead to ad hoc urban development and /or adverse effects on rural character, amenity, and natural values through the cumulative effects of rural – residential development in the vicinity, 18.3.2(i) ‘protect the quality, character and values of the Wairarapa’s Rural environment from the cumulative effects of intensification by limiting subdivision below the rural minimum area standards to situations where there are special circumstances that would not create a precedent.

31. The area proposed to be subdivided falls within the Coastal Environment Management Area (CEMA) and some proposed allotments are also above the 40m Coastal contour. The existence of this management area signals that subdivision and development require additional considerations. The specific rules of the CEMA are intended to protect the special character and qualities of the coastal environment to implement the specific policies. Part of the reasoning for recommending that those allotments nearest the terrace edge be refused, was with these relevant objectives and policies in mind.

32. Moreover, the recognition of the Coastal Environment Management Area within the Subdivision, Land Development and Urban Growth section of the WCDP (Section 18), further reinforces the specific objectives and policies of the Coastal Environment section of the WCDP (Section 13). More specifically, Policy 18.3.2 (j) states *‘In the rural coastal environment management area, allotments particularly where new buildings and structures are likely to be constructed, shall*

- i. Avoid or mitigate any adverse effect on landscape, natural and amenity values from any buildings, structures and accessways.*
- ii. Not degrade the natural character of the Coastal Environment through an inappropriate density, scale and location.*

- iii. *Avoid the formation of new settlements in a Coastal Environment.*
- iv. *Avoid unduly compromising Coastal views and public access to the margins of the coast and rivers.*

33. The Coastal Environment section of the WCDP (Section 13) also provides Objectives and Policies, Objective 13.3.1 – *‘To protect the natural character of the coastal environment by ensuring use, subdivision, and development maintains the comparatively undeveloped nature of the Wairarapa Coast’*, and Policy 13.3.2 (a) *identify the extent of the Coastal Environment based on landscape and ecological principals, (b) Manage the design, location and scale of subdivision and development in the identified Coastal Environment to ensure the special qualities and natural character of the coast are retained and adverse effects are avoided, remedied or mitigated, with priory given to avoid effects, 13.3.2(c) ‘recognise the key role of the subdivision process in establishing the framework for development in the coastal environment, including the siting and design of structures (d) ‘ ensure the adverse cumulative effects of subdivision, land use and development on the special qualities and natural character of the Wairarapa Coast are avoided, remedied or mitigated 13.3.2(e) ‘promote the consolidation of urban development at existing coastal settlements and (f) manage the expansion of existing coastal settlements to ensure the special qualities of each settlement are protected, and (g) ensure the provision of adequate infrastructure, services and on-site mitigation measures as subdivision, land use and development occurs.*

34. The explanation of the Coastal Environment Objectives and Policies specifically refers to the need to manage development carefully so it is designed and located to fit within the coastal environment. The WCDP also says that natural character still dominates the majority of the Wairarapa Coast, even in coastal settlements and the coastal landscape is the prevailing element.

VISUAL AND LANDSCAPE CHARACTER EFFECTS

35. My opinion is that the proposal will have more than minor adverse visual and landscape effects. The importance of the terrace landform as a backdrop to Riversdale Beach remains. The allotments and resulting dwellings on those lots

that are recommended to be refused are considered to be visually obtrusive. This is not because they will be partially visible from the settlement area or the reserve areas or that they will result in a change in the visual environment.

36. I agree with Ms McRae's evidence that extending the area of built development to 8 metres from the terrace edge, as shown in the simulated views, will result in the built development becoming a dominant characteristic of the area, altering the perception of the terrace as a dominant landscape feature. I also agree that, while the proposed planting will have some effect in reducing the level of built development visible, overall, the change in landscape character will be apparent.

CONCLUSION

37. Based on all the evidence provided I still believe my original recommendation within the S42A report is appropriate.
38. To maintain the natural forms and relatively unbuilt appearance of the terraces beyond the main beach settlement, only the less visually prominent lots, Lots 301-303,320 and 323 should be approved. These lots should have specific building locations applied to the approved subdivision plan, together with controls over height and colouration, as recommended by Mr Hudson.

SUGGESTED CONDITONS

39. The applicant has provided an amended set of conditions, which I want to comment on here. Where I agree with the amendments suggested, I have not provided comment.
40. I still believe that an amended plan is necessary which shows specific house locations.
41. An additional condition shall be imposed to require specific Engineering design for the sewerage disposal of the additional lots.

42. Financial contributions: although I agree that specific lots do not need to be listed in relation to the financial contributions payable, the total number of lots is useful in providing certainty for invoicing of said contributions.
43. Reference to firewalls can be removed from the advice note relating to building consent, as it is not relevant.

Honor Brigit Clark

31 May 2022