

TAUPŌ DISTRICT COUNCIL

DECISION OF INDEPENDENT COMMISSIONER

IN THE MATTER OF: The Resource Management Act 1991

And

An application for a land use and subdivision consent pursuant to Section 88 of that Act and a change of conditions to subdivision consent RM200118B pursuant to Section 127 of that Act

APPLICANT: Seven Oaks Kinloch Limited (the Applicant)

SITE: The site is located at Kahikatea Drive, Kinloch

PROPOSAL: Consent is sought for:

- Subdivision consent for 83 residential lots, 4 reserves, 5 road and over 6 stages.
- Land use consent for earthworks and for additional building coverage, plot ratio and building setbacks.
- Variation to Stage 9 of the previous subdivision stage.
- Cancellation of consent notices on Lots 1 and 2 DP 514174

COUNCIL REFERENCE: RM240388, 240389 and VarRM200118C

HEARING DETAILS: The publicly notified application was heard by Independent Commissioner Gina Sweetman, under authority delegated by Taupō District Council, on Wednesday 27 August 2025 in Council Chambers, He Whare Hono ō Tūwharetoa, Horomātangi Street, Taupō.

Commissioner Sweetman undertook a site visit before the hearing.

The hearing was adjourned on Wednesday 27 August 2025 and closed on 21 October 2025.

Consent is approved.

**HEARING
ATTENDANCE**

The following people attended and presented evidence at the hearing:

For the Applicant:

- Marianne Mackintosh, Legal Counsel
- Sarah Hunt, Planning
- Phil Rielly, Applicant – CEO and shareholder of Seven Oaks
- Hannah Mueller, Ecology
- Judith Makinson, Transportation
- Thomas Brand, Threewaters and engineering
- Michael Graham, Landscape character and visual amenity

For Taupo District Council (the Council):

- Louise Wood, Planning
- Mike Keys, Infrastructure

Submitters:

- Maree Drury, Te Kowhai Ridge Residents Society (TKRRS)
- Bruce Campbell
- Ron McPhail and Mrs Alexander, Kinloch Community Association (KCA)
- Laurie Burdett

Others in attendance:

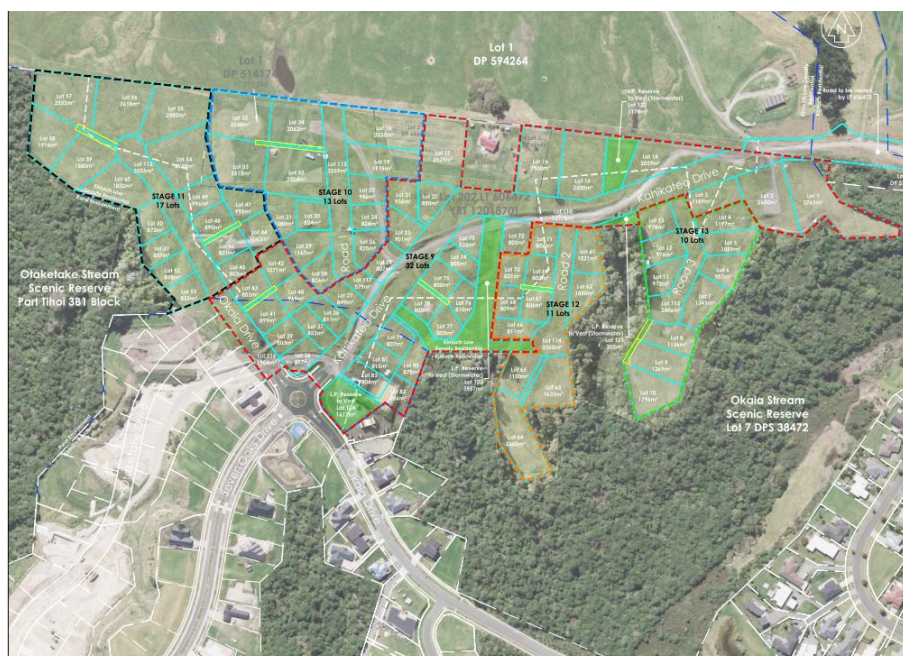
Heather Williams, Manager Resource Consents provided support.
There were also a number of spectators to the hearing.

1 Description of the proposal

- (1) The applicant's assessment of effects on the environment (AEE) includes a description of the proposal in Section 3. Ms. Wood's s42A report also addresses the proposal in Section 3. In summary, the application as it stood at the time of the hearing is described as follows:
- To subdivide and develop a 14ha site into 83 residential lots, along with roads and reserves to be carried out over six stages (Stages 16, and 9 to 13)
 - Residential lots would range from 800m² to 3,763m², with an average lot size of 1,300m²
 - The subdivision would be serviced by road by extensions from Kahikatea Drive to the northeast and Okaia Drive to the South. The Kahikatea Drive extension would connect to the existing intersection with Okaia Drive and Seven Oaks Drive. Three new public roads would be formed internal to the subdivision
 - Earthworks to enable the subdivision would be undertaken to smooth hillocks and hollows, with maximum cuts of 3.5m and fills of 4m. Earthworks would also be required for land use development stage
 - Water and wastewater would be connected into Council's reticulated network. The Lisland Drive pump station would require an upgrade.
 - Stormwater would be managed on-site, with catchpits and soakholes serving private rights of ways and roads being serviced by soakage and attenuation ponds. Secondary flowpaths would be available within road corridors then stormwater reserves

- Four reserves are proposed, comprising three stormwater reserves and one recreation reserve. The stormwater reserves would be landscaped in agreement with the Council.
- Each lot would be serviced by power and phone connections.
- Lots located within the Low Density Zone would have particular building controls applied by way of consent notice to generally align with the General Residential Zone. These are set out in paragraph 3.25 of the s42A report and again in Appendix A and Appendix J of that report
- The boundaries (lot and reserve) with the scenic reserve would be fenced with non-climbable pool type fencing
- A 10 year lapse period is sought
- Changes to conditions 1, 2, 11 and 12 of RM200118A is sought to withdraw Stage 9 of that consent, as that area has been configured to accommodate proposed stages 9 and 11 of this application
- Cancellation of consent notices on Lots 1 and 2 DP 514174 which noted that there are no wastewater connections, no power or telecoms and no building can occur on Lot 1 until a wastewater connection is provided.

(2) The proposed scheme plan is shown below:



(3) I have made my decision based on the proposal as set out above.

2 The Site, Surroundings and Relevant Background

- (4) The applicant's AEE includes a description of the site, surroundings and the background in Section 2. Ms. Wood's s42A also describes this in Section 8. Pursuant to s113(3) of the RMA, I adopt these descriptions and do not repeat them.
- (5) What I do highlight and what was evident from my site visit, is that this site is largely screened from much of the Kinloch urban area by the Okaia Stream Reserve to its east.

However, there are views into the site from the Seven Oaks Terraces and Lochridge Estate to the north and some of the lots in Seven Oaks stages 1 to 9 to the south. There are more distant views to the site from sites to the east and north-east.

- (6) Ms Wood spends some time on the background to Kinloch itself along with Seven Oaks in section 9 and Appendix C of her s42A report. I found this background very useful context, in particular the Kinloch Community Structure Plan (KCSP) which was raised in the majority of the submissions. I asked questions during the hearing of the chronology of events and the KCSP, both of which I discuss later in this decision.

3 Relevant Planning Provisions

- (7) The relevant district plan is the Operative Taupō District Plan 2007 (the District Plan). In paragraph 9.1 of the s42A report, Ms. Wood explains that the District Plan was updated in May 2025 to implement the National Planning Standards 2019. The table set out in paragraph 9.3 explains the change to zoning names, standards and rule references relevant to this application since notification. Of particular relevance are the following changes:
- The Kinloch Residential Environment is now the General Residential Zone (GRZ)
 - The Kinloch Low Density Environment is now the Low Density Zone (LDZ)
 - The Kinloch Rural Residential Environment is now the Rural Lifestyle Zone (RLZ)
- (8) Kinloch is a Development Area, with some specific provisions relating to it being set out in Section 14 of the District Plan. These specific provisions are policies relating to the Kinloch Landscape Policy Area, Table 4 setting out minimum and average lot sizes for density areas and a plan titled “KCSP Density Areas”. The site is not located in the Kinloch Landscape Policy Area. There is a Kinloch specific objective and policy in the Low Density Residential Zone chapter and Kinloch-specific policies in the Subdivision Chapter. I was advised by Ms. Hunt that the specific Kinloch provisions were included in the District Plan in 2007 and have not been amended subsequently. This was confirmed by Ms. Drury for the TKRRS and Ms. Mackintosh in her verbal closing.
- (9) As outlined in Section 4 of the AEE and section 10.1 of the s42A, the site has a split zoning between Low Density Residential Zone and the General Residential Zone. The majority of the site is in the Low Density Residential Zone.
- (10) The site is not subject to any overlays; however, it adjoins the following:
- Significant Natural Area 170 – Okaia Stream Scenic Reserve to the east
 - Significant Natural Area 152 – Otaketake Stream Scenic Reserve to the west, which is also subject to the Outstanding Natural Feature and Landscape Area ONFL28 – Northwestern Bays Whakaroa Point to Otuparae Point to the west and south.
- (11) Under Table 4 of the Kinloch Development Area, a minimum lot size of 800m² and average lot size of 1,000m² applies to the GRZ. A minimum lot size of 1 hectare and average lot size of 1.5 hectares applies to the LDZ. Under the Zones there is potential for 10 GRZ lots and six LDZ lots. The Applicant proposes 83 new lots, an additional 67 lots than that anticipated.
- (12) As outlined earlier, the Applicant is seeking both subdivision and land use consent for the proposed development, along with a s127 change of conditions to existing consent RM200118A and cancellation of consent notices on Lots 1 and 2 DP 514174. I set these out below.

Reasons for Resource Consent under the District Plan

- (13) The following table contained in paragraphs 10.7 and 10.9 of the Council's s42A report sets out the reason for the subdivision and land use consent. Section 4.1 of the AEE also sets out the reasons for consent. There being no evidence to the contrary, I accept these as being the reasons for consent:

SUBDIVISION - 11		
Rule	Requirement	Proposal
SUB-R8.2 Restricted Discretionary Activities GRZ, MRZ, LRZ	Any subdivision within unserviced areas of the residential zones, or any activity which results in a new public road or extension to existing public roads, water, stormwater or wastewater utility services.	The proposed subdivision will create new public roads and will extend existing water and wastewater utility services to service the proposed lots, therefore this rule <u>is</u> applicable.
SUB-R26.1 Non Complying Activity DEV1-Kinloch	Any subdivision within DEV1-Kinloch, which is not identified as a controlled or discretionary activity.	The proposed 83 residential lots will have a minimum lot size of 800m ² , being 9,200m ² less than the minimum lot size of 1ha. The proposed 83 residential lots will have an average lot size of 1,300m ² , being 1.37ha less than the average lot size of 1.5ha. As all of the proposed lots will be less than the minimum and average lot sizes for the DEV1-Kinloch Low Density Zone, this rule <u>is</u> applicable.
LOW DENSITY RESIDENTIAL ZONE – DEV1 KINLOCH DEVELOPMENT AREA (Section 13)		
Standard	Requirement	Proposal
LRZ-R5.1 Maximum Combined Coverage	5%	<i>Future development on Lots 3-6, 8, 11-13, 20-31, 40, 42-53, 61, 62, 65-79</i> 30% - exceeding the limit by an additional 25% <i>Future development on Lots 1, 2, 7, 9, 10, 14-19, 32-35, 54-60, 63, 64</i> 20% or 315m ² whichever is the greater - exceeding the limit by an additional 15%
LRZ-R5.2 Maximum Plot Ratio	7.5%	<i>Future development on all Lots</i> No limit on plot ratio, exceeding the 7.5% limit

LRZ-R5.4 Minimum Building Setback – Front Boundary	10m	<i>Future development on lots with frontage onto Roads 2 & 3, being Lots 3-8, 11-13, 61-63, 67, 69, 71</i> 3m for dwelling façade - encroaching into the required 10m setback by 7m 5m for garage façade – encroaching into the required 10m setback by 5m <i>Future development on Lots 1, 2, 14-16, 17, 20, 23, 25, 27-30, 43-49, 50-53, 79 with frontage onto all other Roads</i> 5m – encroaching into the required 10m setback by 5m.
LRZ-R5.5 Minimum Building Setback – All other Boundaries	10m	<i>Future development on Lots 1, 2, 7, 9, 10, 14, 17-19, 63-65</i> 1.5m – encroaching into the required 10m setback by 8.5m. <i>Future development on Lots 1, 2, 14, 17-19</i> 5m – encroaching into the required 10m setback by 5m. <i>Future development on Lots 11-13, 50-53, 61, 62, 64, 65</i> 7.5m – from reserve boundaries, encroaching into the required 10m setback by 2.5m.
LOW DENSITY RESIDENTIAL ZONE – DEV1 KINLOCH DEVELOPMENT AREA (Section 13)		
Standard	Requirement	Proposal
LRZ-R5.1 Maximum Combined Coverage	5%	<i>Future development on Lots 3-6, 8, 11-13, 20-31, 40, 42-53, 61, 62, 65-79</i> 30% - exceeding the limit by an additional 25% <i>Future development on Lots 1, 2, 7, 9, 10, 14-19, 32-35, 54-60, 63, 64</i> 20% or 315m² whichever is the greater - exceeding the limit by an additional 15%
LRZ-R5.2 Maximum Plot Ratio	7.5%	<i>Future development on all Lots</i> No limit on plot ratio, exceeding the 7.5% limit

LRZ-R5.4 Minimum Building Setback – Front Boundary	10m	<i>Future development on lots with frontage onto Roads 2 & 3, being Lots 3-8, 11-13, 61-63, 67, 69, 71</i> 3m for dwelling façade - encroaching into the required 10m setback by 7m 5m for garage façade – encroaching into the required 10m setback by 5m <i>Future development on Lots 1, 2, 14-16, 17, 20, 23, 25, 27-30, 43-49, 50-53, 79 with frontage onto all other Roads</i> 5m – encroaching into the required 10m setback by 5m.
LRZ-R5.5 Minimum Building Setback – All other Boundaries	10m	<i>Future development on Lots 1, 2, 7, 9, 10, 14, 17-19, 63-65</i> 1.5m – encroaching into the required 10m setback by 8.5m. <i>Future development on Lots 1, 2, 14, 17-19</i> 5m – encroaching into the required 10m setback by 5m. <i>Future development on Lots 11-13, 50-53, 61, 62, 64, 65</i> 7.5m – from reserve boundaries, encroaching into the required 10m setback by 2.5m.
GENERAL DISTRICT WIDE MATTERS (Section 12)		
Standard	Requirement	Proposal
EW-R1.1 Earthworks within the LRZ, GRZ, NCZ	a. Disturbance of the allotment at any one time while redeveloping – 50% maximum or if in DEV1-Kinloch LRZ 10% maximum b. 1.5m vertical ground alteration outside the minimum building setback in a new face or cut and / or fill c. 0.5m vertical ground alteration within the	<i>Future development on Lots 36-39, 41, 80-83</i> a. 70%, exceeding the limit by an additional 20%. <i>Future development on Lots 3-6, 8, 11-13, 20-31, 40, 42-53, 61, 62, 65-79</i> a. 70%, exceeding the limit by an additional 60%. <i>Future development on Lots 1, 2, 7, 9, 10, 14-19, 32-35, 54-60, 63, 64</i> a. 40%, exceeding the limit by an additional 30%.

	minimum building setback requirement d. No dust or silt nuisance beyond the boundary of the allotment e. Compliance with standards from Other Plan Matters	<i>Subdivision earthworks on application site</i> b. Earthworks cut / fill of up to 4m will be required to construct the new roads and to shape the proposed lots / reserves, exceeding the 1.5m vertical ground alteration by an additional 2.5m. c. Earthworks cut / fill of up to 4m will be required to shape the proposed lots / reserves, exceeding the 0.5m vertical ground alteration by an additional 3.5m.
EARTHWORKS RULES		
Rule	Requirement	Proposal
EW-R3.2 Discretionary Activities	Any activity within the MRZ, GRZ, LRZ and MUZ which does not comply with two or three standards for PER activities including (where a standard contains more than one control) two or three parts thereof, or is not a PER, CON or RDIS activity.	Earthworks to implement the subdivision and for future development on the lots within GRZ and LRZ infringe three of the earthworks standards of EW-R1.1, therefore this rule is applicable.
GRZ & LRZ RULES		
Rule	Requirement	Proposal
LRZ-R4.1 Non Complying Activities	Any activity which does not comply with four or more standards for permitted activities including (where a standard contains more than one control) four or more parts thereof.	<i>Future development on all Lots within Low Density Area</i> The proposed future land use on the Kinloch Low Density Zone infringes four standards, as noted above, therefore this rule is applicable.

- (16) In both instances, the most restrictive activity status for subdivision and land use consent is non-complying. I concur with Ms. Hunt and Ms. Wood that it is most appropriate to bundle the activity status together, given the interdependencies between the different reasons for consent.
- (17) Pursuant to sections 127 and 221 RMA, a change of consent conditions and the cancellation of consent notice conditions are both assessed as a discretionary activity.

Overall activity status

- (18) Overall, taking a bundling approach, the proposal is assessed as a non-complying activity.

Waikato Regional Council (WRC) Consent

- (19) The Applicant has already obtained land use consents from the WRC for earthworks and stormwater overland flow diversion (APP147276).

4 Notification and Submissions

- (20) The Council publicly notified the application on 5 March 2025.
- (21) Submissions closed on 3 April 2025, and the Council received 33 submissions. Of the submissions, 28 were in opposition, three in support and two were neutral. The following table sets out the submitters' names and their position on the Application.

Submitter	Support/ Oppose
George Muir	Oppose
Keiron Adlington	Oppose
Foye Bailey	Oppose
Michael Bailey	Oppose
Larissa Bendall	Oppose
Katey Coubrough	Oppose
Lisa Curley	Oppose
Murray and Jocelyn Dalziel	Oppose
Beverley George	Oppose
Brian Gray	Oppose
Nina Han	Oppose
Jeremy Jiang	Oppose
Marie-Clare Jones	Oppose
Malcolm Keith	Oppose
Fiona Kettlewell	Oppose
Abbey McMonagle	Oppose
Jade McNally	Oppose
Jeremy Talbot	Oppose
Natalija Talbot	Oppose
Brigid Eady	Support
Tessa Knight	Support
Alan Melody	Support
Fire and Emergency NZ	Neutral
Waikato Regional Council	Neutral
Laurie Burdett	Oppose
Bruce Campbell	Oppose
Kinloch Community Association (KCA)	Oppose
Jane Penton	Oppose
Taupo Lakes and Waterways Trust	Oppose
Te Kowhai Ridge Residents Society (TKRRS)	Oppose
Tukairangi Trust	Oppose
Anna Te Ata	Oppose
Linda Vosper	Oppose

- (22) At the time of lodging their submissions, nine of the submitters wished to be heard.
- (23) During the hearing and in a follow up Minute, I requested a map showing the location of submitters' properties in vicinity to the site. This was provided to me on 2 September 2025 and is set out below.



Key:

Red Triangle – Individual Submission in opposition¹

Orange Triangle – Individual Submission in support

Blue Triangle – Group Submission in opposition [Kinloch Community Association & Te Kowhai Ridge Residents Society]

¹ Three of the red triangles represent six individual submissions [three couples submitted individually]

- (24) Ms. Wood sets out the key points in opposition as follows:
- Concerns about the greater density of development
 - Inconsistency of the proposal with the Kinloch Community Structure Plan (KCSP)
 - Undermining of integrity of District Plan
 - Increased demand for wastewater and water services, roading infrastructure
 - Impact on the reserves from reduced setbacks and greater density
 - Adverse effects of greater density on Kinloch's character and amenity 'village feel'
 - Adverse effects of additional light on the night sky and noise pollution
 - Inadequate stormwater management measures
 - Precedent effects if development approved
 - Cumulative adverse effects
- (25) The key points of the submissions in support are as follows:
- There is increased demand for residential properties in Kinloch
 - The subdivision is beneficial for Kinloch
 - Development in Kinloch is inevitable, and proposal practical and necessary use of the land.
- (26) The Council received a letter from the Waikato Regional Council dated 15 July 2025, which set out that:
- They no longer oppose the proposal on the grounds of stormwater management or indigenous biodiversity
 - They withdraw their request for a bird and lizard management condition
 - They no longer consider it necessary to be heard.
- (27) Appended to a s92 RMA response to the Council from the Applicant is an email correspondence with Fire and Emergency NZ (FENZ). This email says that subject to a condition of consent, FENZ confirmed that the issues raised in its submission have been resolved and that they no longer wish to be heard at the hearing. This condition was included in the Applicant's recommended conditions.

5 Statutory Framework

- (28) Section 104D of the RMA sets out what are known as the "gateway tests" or particular restrictions which apply to granting consent to non-complying activities. Specifically:
- (1) *Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
- (a) *the adverse effects of the activity on the environment (other than any effect to which [section 104\(3\)\(a\)\(ii\)](#) applies) will be minor; or*
- (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
- (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
- (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
- (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

(2) To avoid doubt, [section 104\(2\)](#) applies to the determination of an application for a non-complying activity.

(29) That is, if it can be found that either the adverse effects will be minor (or less) or the application will not be contrary to the district plan, I am able to grant consent to a non-complying activity. There were a number of submissions that raised the non-complying activity status as a reason the consent should be declined. Accordingly, I spend some time on how these tests have been interpreted and implemented.

(30) In terms of the first legal test, case law has confirmed the meaning of minor. In *Elderslie Park*,² the High Court stated:

“The word ‘minor’ is not defined in the Resource Management Act. It means lesser or comparatively small in size or importance. Ultimately an assessment of what is minor must involve conclusions as to facts and the degree of effect. There can be no absolute yardstick or measure.”

(31) In *Saddle Views*,³ the Environment Court approached the test this way:

“Turning to the dictionaries we find that the adjective “minor” is defined in the New Zealand Oxford Dictionary of “lesser or comparatively small in size or importance”. According to the Shorter Oxford English Dictionary “minor” means “...lesser....opposite to major...comparatively small or unimportant”. We hold that those meanings are what is intended in section 104D(1)(a). The reference to “comparatively” emphasises that what is minor depends on context – and at least all the authorities agree on that.”

(32) Under the second test of section 104D(1)(b), in order to be “contrary to” the objectives and policies of the relevant plans, an activity must be “opposed to” or “repugnant to” the objectives and policies.⁴

(33) Case law generally confirms that the objectives and policies must be considered as a whole. However, it is possible for one objective or policy to trump all others, albeit such situations would be rare. In that regard, the Environment Court has stated:⁵

*“..if a proposal is to be stopped at the second gateway it must be contrary to the relevant objectives and policies as a whole. We accept immediately that this is not a numbers game: at extremes it is conceivable that a proposal may achieve only one policy in the district plan and be contrary to others. **But the proposal may be so strong in terms of that policy that it outweighs all the others if that is the intent of the plan as a whole.** Conversely, a proposal may be consistent with and achieve all bar one of the relevant objectives and policies in a district plan. **But if it is contrary to a policy which is, when the plan is read as a whole,***

² *Elderslie Park Limited v Timaru District Council* [1995] NZRMA 433 (HC) at 445-446

³ *Saddle Views Estate Limited v Dunedin City Council* [2014] NZEnvC 243 at [78]

⁴ *NZ Rail v Marlborough District Council* [1994] NZRMA 70 (HC) at [80]

⁵ *Akaroa Civic Trust v Christchurch City Council* [2010] NZEnvC 110 at [74]; see also *Re Waiheke Marinas Ltd* [2015] NZEnvC 218

very important and central to the proposal before the consent authority, it may be open to the consent authority to find the proposal is contrary to the objectives and policies under section 104D. We add that it is rare for a consent authority, or the court, to base its decision either way, on a single objective or policy. The usual position is that there are sets of objectives or policies either way, and only if there is an important set to which the application is contrary can the local authority rightly conclude that the second gate is not passed.
(my emphasis)

- (34) This passage signals to me that while the general approach is that objectives and policies should be read as a whole, there may be some occasions when a particular part of a plan, or even one objective or policy, provides clear and indisputable direction on the intent for the zone or sub-zone and the land use activity to occur there. There may be specific objectives and policies that direct land use and which should take precedence over more general plan provisions. The important point is that the plan must be read as a whole in undertaking that assessment.

- (35) As noted by the Environment Court in *Lightening Ridge Partnership v Hastings District Council*⁶

“It is self-evident that a non-complying activity will rarely, if ever, find direct support in the objectives and policies of a plan, but an absence of support does not equate to the activity being contrary to those provisions – contrary to in this context means... repugnant to... or ... opposed to... the objectives and policies considered as a whole; see Monowai Properties Limited v Rodney District Council (A215/03). Further, as we have noted, the Council’s position, as advanced before us, was that the proposal is inconsistent with the objectives and policies of the District Plan. The point may be a somewhat fine one, but inconsistent with is not necessarily contrary to.

- (36) Similar sentiments were expressed by the Environment Court in *Outstanding Landscape Protection Society Incorporated v Hastings District Council*⁷ and in *Pencarrow Hills Limited v Hastings District Council*.

- (37) Ms. Mackintosh addressed the tests in s104D in paragraphs 23 to 25. Having reviewed this, I accept her submissions in respect to the approach to be taken to assessing a non-complying resource consent application.

- (38) As noted by the Supreme Court in the *King Salmon* decision,⁸ it is important to interpret objectives and policies within their proper context and to give words in planning documents their plain and natural meaning. In that case, where the term “inappropriate” was used in the context of protecting areas from inappropriate subdivision, use and development under section 6(a) of the Act, the natural meaning was that “inappropriateness” should be assessed by reference to what it was that was sought to be protected.⁹

⁶ [2002] para 323

⁷ [2008] NZRMA 8

⁸ *Environmental Defence Society Inc v Marlborough District Council* [2014] NZSC 38

⁹ At paragraph [101]

- (39) Likewise, the Supreme Court noted that the language of relevant policies is important. The use of the word “avoid” meant “not allow” or “prevent the occurrence of”. The word “inappropriate” was to be assessed against the characteristics of the environment the relevant policies sought to preserve.¹⁰ While some policies left some room for flexibility, others were more directive and specific in their terms. The differences in approach mattered.¹¹ The opening words of a policy were also relevant in understanding the reference to “avoid adverse effects”.¹²
- (40) I have adopted this approach in my assessment of the relevant objectives and policies of the District Plan. I highlight here that the assessment under s104D(1)(b) is I am limited to considering the objectives and policies of the District Plan only, even if that has yet to be amended to give effect to higher level planning instruments or any legislative changes. Ms Mackintosh submitted in her closing legal submissions that this is the correct legal position to take.
- (41) Should I find that the Application can pass either of the gateway tests under s104D of the RMA, s104 of the RMA sets out the matters I must have regard to when considering the application, the relevant parts of which are set out below:

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard:*
 - (ii) *other regulations:*
 - (iii) *a national policy statement:*
 - (iv) *a New Zealand coastal policy statement:*
 - (v) *a regional policy statement or proposed regional policy statement:*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
- (3) *A consent authority must not, —*
- (a) *when considering an application, have regard to—*
 - (i) *trade competition or the effects of trade competition; or*
 - (ii) *any effect on a person who has given written approval to the application:*

¹⁰ At paragraph [126]

¹¹ At paragraph [127]

¹² At paragraph [145]

- (c) *grant a resource consent contrary to—*
 - (ii) *an Order in Council in force under section 152:*
 - (iii) *any regulations:*
- (4) *A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.*
- (5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.*
- (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*
- (7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*

6 HEARING, APPEARANCES AND SITE VISIT

- (42) The Hearing was held on Wednesday 27 August 2025 in Council Chambers, He Whare Hono ō Tūwharetoa, Horomātangi Street, Taupō.
- (43) I visited the site and the surrounding area on the afternoon of Tuesday 26 August 2025, before the hearing.
- (44) In her s42A report, Ms. Wood recommended that the Application be approved, subject to conditions of consent. Ms. Wood specifically addressed the following effects in her report:
 - (a) character and amenity
 - (b) landscape/visual impacts
 - (c) privacy and outlook
 - (d) ecology
 - (e) transportation
 - (f) services/infrastructure
 - (g) earthworks/construction
 - (h) tangata whenua/cultural values
 - (i) change of conditions and cancellation of consent notices
 - (j) positive effects
 - (k) cumulative effects.
- (45) I found Ms. Wood' s42A report to be thorough and comprehensive in its coverage and assessment.
- (46) Evidence and submissions from the Applicant and presentations from submitters were pre-provided in conformance with Minute 1. Copies of the briefs of evidence and submissions and submitter presentations are held by the Council.
- (47) The Hearing focused on all of the matters raised through the submissions, as set out above. I heard from those parties who are listed at the beginning of this decision. I have referred

to or quoted from that material as appropriate in the remainder of this decision. In addition, I took my own notes through the Hearing.

- (48) After hearing from the Applicant and Submitters, Ms. Wood maintained her recommendation that consent should be granted.
- (49) In providing preliminary closing comments, Ms. Mackintosh for the Applicant proposed to provide an additional visual simulation taken from the north of the site and sought information from the Council about the Kinloch Golf Course development, granted consent in December 2002. I also sought a map of Kinloch showing the location of properties of submitters. I adjourned the hearing at the end of the day and subsequently sent out Minute 2 reflecting this further information and evidence. This included providing parties to the hearing with an opportunity to comment on the visual simulation and Kinloch Golf Course consent.

Post-hearing

- (50) All parties to the hearing received the information regarding the Kinloch Golf Course and submitter property locations in a timely manner. The additional visual simulation and evidence from Mr. Graham was provided on 11 September 2025. Ms. Wood responded to the Kinloch Golf Course and supplementary visual simulation on 22 September 2025. Of particular relevance to this application, in respect of the Golf Course, she advised that:
- There are still up to 110 house sites that are consented but not yet constructed.
 - This figure is six house sites less than the figure of 116 quoted at 13.38 of her s42A report.
 - This reduces the number of consented lots still to be developed to 234, rather than 240.
- (51) In respect of the additional visual simulation and evidence, Ms. Wood advised that she relied on Mr. Graham's expertise and concurred with his conclusions that any adverse effects on visual and amenity values from Lochridge to the north would be very low, or less than minor. She also noted that no submissions had been received from landowners within Lochridge. Her position remained that consent be granted.
- (52) Comments were also received from Bruce Campbell, the KCA and TKRRS on 22 September 2025. Mr. Campbell raised concerns with the accuracy of the visual simulation, where it had been taken from and Mr. Graham's conclusions about the extent of adverse effects. He also queried why an independent peer review was not undertaken. The TKRRS expressed that the supplementary landscape report raises inaccuracies and a lack of thoroughness in the initial report, relating to where the most prominent views of the site are from, distances to Lochridge, impact on the lake view, accuracy of the montage, and the partiality of Mr. Graham. The KCA also raised concerns with the accuracy of Mr. Graham's evidence, his conclusions that this area is anticipated for normal residential activity and queries why an independent peer review was not undertaken.
- (53) Following my review of the supplementary evidence, information and feedback, I issued Minute 3 on 23 September 2025. In this, I requested that the Applicant agreed to the Council commissioning an independent peer review of the Landscape and Visual Amenity Assessment, including the supplementary evidence. This was a request, rather than a direction, as s41C of the RMA is clear that a hearing authority can only commission a report where the Applicant is notified in advance and does not refuse to agree to its commissioning. The other requirement is where there may be a significant adverse effect.

In this instance, I was concerned that the initial Assessment had not addressed potential effects arising from the north, I had noted the submitters' concerns, and I considered a peer review would be appropriate.

- (54) The Applicant confirmed their agreement to the commissioning of a peer review on 25 September 2025. I acknowledge the concern raised by the Applicant for the late commissioning of this peer review and thank them for their agreement to do so, so as to assist me in my decision-making. The Council commissioned Ms. Julia Wick of Boffa Miskell to undertake the peer review, and this was provided on 8 October 2025. In summary, Ms. Wick concluded that the landscape and visual effects of the proposal are less than minor, and that the draft conditions would provide additional certainty regarding landscape effects and further support integration of the development into the surrounding environment. The parties to the hearing were then provided five working days to provide any comments on the peer review.
- (55) The KCA, TKRRS, Mr. Campbell and Ms. Wood all provided comments by 15 October 2025. I find it relevant to state now that while I have read through all the comments received, I have limited my consideration to those comments that specifically refer to Ms. Wick's independent peer review report, as this was what I sought feedback on.

Close of the Hearing

- (56) I received the Applicant's closing legal submissions on 20 October 2025. Ms. Intosh's submission covered questions I had raised at the hearing relating to s104D(1)(b) and the weighting of dated objectives and policies, the weight of the NPS-UD and a future development strategy under s104 and development contributions payable for Kinloch. Submissions also traverse consideration of the existing environment, the potential for future intensification, the relevance of the golf course consent, road noise, visual amenity effects on sites to the north, the relevance of public behaviour in reserves, impacts on the boat ramp, comments on submitter representations, and final conclusions.
- (57) Having reviewed the closing submissions, I closed the hearing on 21 October 2025.

Approach to this decision

- (58) I have taken what I call an "exceptions" approach to this decision. That is, my decision adopts s113(3) in that where I adopt all or part of the AEE, the s42A Report and any evidence, then I cross-refer to that material accordingly. Further, I have focused this decision on the matters that remained in contention between parties at the time of the Hearing, and have similarly focused on the evidence, information and submissions presented before, at and after the hearing.

7 SECTION 104 and 104D ASSESSMENT

Section 104D(1)(a) and 104(1)(a) Effects on the Environment Assessment

- (59) As I have set out earlier, a non-complying resource consent may only be granted if it meets one of the two tests under s104D. In considering the effects on the environment, I firstly address the magnitude of any adverse effects so as to determine if they are no more than minor (s104D(1)(a)), then secondly, if I find them to be acceptable (s104(1)(a)). In

considering the magnitude of any adverse effect, I have considered any mitigation offered or agreed to by the Applicant.

Existing environment and permitted baseline

- (60) I accept Ms. Wood's position, which is articulated in paragraph 19.3 of the s42A report, that the permitted baseline to not be useful in the circumstances of this application.
- (61) In respect of the existing environment, I accept Ms. Mackintosh's submissions that the existing environment against which this Application ought to be assessed is the environment including the existing and consented residential development likely to be given effect to within Kinloch. This includes earlier stages of the Seven Oaks development itself which have been consented but yet to be fully implemented.
- (62) There was discussion during the hearing of the relevance of the Kinloch Golf Course "master plan" consent and its relevance to determining the existing environment. Ms. Wood and Mr. Keys had considered the 226 house sites in particular in respect to infrastructure capacity. Accordingly, I requested that the Council provide information for hearing parties to comment on. In closing submissions, Ms. Mackintosh queried the vires of the Kinloch Golf Course consent in respect to the 226 house sites being part of the existing environment and considered it speculative that more than 100 houses being built without a subdivision. However, in any event, she considered this a moot point, given the Council's calculations had demonstrated that there was sufficient water and wastewater capacity to accommodate both the Application proposal and the full Golf Course master plan consent.

Effects in contention

- (63) After analysis of the application and evidence (including the offered and proposed mitigation measures), reviewing the s42A Report, reviewing the submissions, hearing from Submitters and receiving the additional evidence, comments and closing right of reply and concluding the Hearing process, I consider that the proposed activity raises the following outstanding effects in contention:
 - (a) character and amenity
 - (b) landscape/visual impacts
 - (c) ecology
 - (d) transportation
 - (e) services/infrastructure
 - (g) cumulative effects
- (64) I address these matters in turn. As I outlined above, as I do so I focus on the evidence, submissions and presentations presented before, at or after the hearing.
- (65) There was no additional evidence presented at the hearing in respect of the matters of privacy/outlook, tangata whenua/cultural values, earthworks/construction and the change of conditions and cancellation of consent notices. Having reviewed the s42A report, relevant evidence and the submissions, I adopt and agree with Ms. Wood's conclusions in respect of s104D(1)(a) that any adverse effects in respect to these matters will be less than minor or negligible. In respect of s104(1)(a), I consider any effects arising from these matters to be acceptable. I do not address them further.

- (66) I accept the evidence of Ms. Wood¹³ and Ms. Hunt¹⁴ of the positive effects that would arise should I grant consent. I have considered these positive effects when considering whether the effects are acceptable under s104(1)(a) and in making my decision.

Character and amenity

- (67) As set out in paragraph 13.8 of Ms. Wood's s42A report, many of the submissions in opposition raised concern about the impacts on Kinloch's character and amenity. She summarised comments as including:
- residents value the village feel and environment of Kinloch
 - the proposal is inconsistent with other larger lot development in Kinloch, like Oakdale
 - the proposal will generate additional light, night sky effects and traffic noise nuisance
 - the proposal will erode Kinloch's low density character
 - Kinloch's unique and quiet community should be protected
 - there will be impacts on Kinloch's community amenities particular at busy summer season
- (68) With the exception of the third bullet point, I address these matters in this section of my decision. Light and night sky form part of the assessment of landscape and visual amenity effects and traffic noise is addressed under transportation.
- (69) Ms. Wood's s42A report provides helpful background context about the original establishment of Kinloch in the 1960s and 70s, how different areas within Kinloch have been established, the KCSP and its partial inclusion in the District Plan and more recent development. She identifies that the Lisland, Locheagles, Kinloch Golf and Te Kowhai Ridge developments were all consented through the 1990s and early 2000s prior to the KCSP being partially incorporated into the District Plan.
- (70) Ms. Wood acknowledged that the proposal would result in a much higher density than anticipated by the District Plan, resulting in a different form of character with greater built form and reduced open space. She concluded however that the character and amenity effects in respect of the form of development and reserves would be no more than minor because:
- The proposed layout pattern of lots, planting design and layout and framing of the site by the reserves provide an appropriate transition between the residential area to the south and the larger low density lot development to the north
 - The layout locates larger sized lots adjoining the reserves, with setbacks that will maintain open space to the reserves, maintaining the considerable natural character and amenity of the reserves
- (71) In respect of the impact on the Kinloch Village, she also concludes that any adverse character and amenity effects would be no more than minor because:
- Residents within the central and eastern areas of Kinloch will not directly see the built form, with public vantage points only available from the top of Okaia Drive or from upper Locheagles
 - The number of additional lots does not exceed the estimated figure of 1,825 households in the KCSP area

¹³ Paras 13.136 and 13.137 of the s42A report

¹⁴ Para 98 of Ms Hunt's statement of evidence

- The application site is the second to last greenfield site within the KCSP area, with the other one being the Hunt Club site, which is zoned Rural Lifestyle
- Traffic generated would disperse over different roads, rather than being concentrated through a particular area of Kinloch
- Some of Kinloch's amenities are congested during summertime and are relatively quiet during winter. The development would be staged over several years, with a long lapse period, meaning its effects would be staggered. The effects on traffic and on Kinloch's amenities would not be noticeably greater as a result.

(72) Ms. Hunt agreed with Ms. Wood, also setting out her opinion that:

- Any adverse effects of earthworks on character and amenity would be temporary, and that there would not be any significant change in landform.
- The majority of existing development in Kinloch was consented prior to the KCSP, do not comply with the required lot sizes, and Kinloch's existing character is not consistent with the character expected by the KCSP.
- There is no clear rationale for the boundary between the GRZ and LRZ and a more logical boundary would be one that corresponds with the alignment of Kahikatea Drive site access and the Kinloch Golf Course boundary on the east.
- The natural character and amenity of the Reserves would be protected by restricting buildings on adjacent lots to 4.5m and installing pool type fencing around the perimeter of the reserves, alongside conditions on outdoor lighting and access to reserves.
- The boat ramp at Kinloch Marina is private infrastructure and its owners are responsible for its management during peak summer periods. Queues at the boat ramp are not an RMA issue.

(73) Ms. Hunt's evidence included an attachment showing where there are existing lots that are inconsistent with the KCSP lot sizes.

(74) The submissions and presentation from the KCA, TKRRS and Mr. Campbell at the hearing reflected the wider submissions. Matters raised traversed:

- The proposal does not meet the requirements of the KCSP as embedded in the District Plan and must be declined
- The proposal would be completely out of character with the overall development of Kinloch to date
- The proposal does not provide sufficient open space, relies on the adjacent reserves for amenity and offers no mitigation of significant vegetation enhancement
- There will be a significant change in the anticipated character and amenity with no ability to mitigate these changes, and as such these are more than minor
- There is sadness that the village feel of Kinloch and its special charms are being lost completely due to urbanisation
- Kinloch has reached a tipping point for its shared spaces, such as the beach fronts and marina being very congested, and insufficient public toilets provided
- The proposed built form provisions for the Application are suitable for urban residential development, rather than the low density zone, which is intended to form a transition zone visually and for character
- Other developments have required significant planting, clustering and vesting of reserves to offset higher density to maintain character and amenity. There is a significant change with no appropriate mitigation

- More demand for limited foreshore reserve space and parking does not enhance community wellbeing
 - The community is not supportive of additional growth beyond that supported by the KCSP
- (75) From the notes I personally took at the hearing, I also have Mr. McPhail from the KCA verbally stating in response to my questions that “Kinloch is not going to get geographically bigger, but its dynamic will change with more homeowners who choose to live and stay in the Village” and “visual amenity is not the key point, it is the increase in residents and the impact of that on facilities”. Ms. Mackintosh records the same answers in her closing submissions. I received an email from Mr. McPhail just before I closed the hearing asserting he had been misquoted and other attendees at the hearing agreed he did not make these statements. In respect of the “bigger” aspect, I note Ms. Wood’s earlier advice that this is the second to last greenfield area within the KCSP area, except for the Hunt Club site. I address both visual amenity and impact on facilities in this decision.
- (76) Ms. McIntosh’s closing submissions cover the following matters in respect to character and amenity:
- There is no evidence that the proposal would cause adverse effects on boat ramp users, with the boat ramp and marina being privately owned facilities
 - The scope for further development of Kinloch is constrained by its geography and topographic features
 - The Applicant will contribute to public infrastructure through development contributions.
- (77) I have carefully considered all the evidence and information before me. The submitters’ concerns and positions appear two-fold to me; firstly that the adverse effects on character and amenity are more than minor because the Application does not comply with the District Plan and/or KCSP and is a different form than that anticipated by those documents; and secondly that the additional population would place additional pressures on existing community and privately-owned facilities.
- (78) In respect of the first matter, that an application does not comply with the District Plan or is a non-complying activity and the anticipated character and amenity will be different does not automatically mean that its adverse effects are more than minor. That there is a change in character and amenity is also not an adverse effect in itself. That is why the tests under s104D of the RMA and subsequently under s104 exist. I am required to objectively determine and decide whether there will be more than minor adverse effects on character and amenity arising from the proposed development.
- (79) I concur that there will be a change to the existing character of the site, above what is expected through the zoning. However, for the reasons given by Ms. Wood and Ms. Hunt, I consider that there are circumstances regarding the layout and design of the development, its location and the mitigation offered, that mean that any adverse effects on character and amenity would not be more than minor. In terms of the impact on the Village feel of Kinloch, the site is on the outer edge of the Village and is generally not visible from the Village area due to the reserves and topography. I had no objective evidence how this development would change the Village feel of Kinloch as such, beyond introducing additional residents/people into the area. I prefer the two planners and the landscape architects’ positions that the density sought is an appropriate transition between the areas

to the south and north of the site. I address visual effects further in the next section of this decision.

- (80) I turn to the pressures placed on existing community and privately-owned facilities. I asked questions through the hearing about development contributions, as these are used to pay for upgrades to existing and new infrastructure as a result of additional demand from growth. I also received evidence and submissions that the provision of community facilities are beyond the scope of what an Applicant can do and that there is no determinative evidence about what the extent of effect would be regardless, which I accept. I am satisfied that any pressures placed on community facilities will not result in more than minor adverse effects, and rather are a Council matter to address, with the community. Turning to pressures placed on the boat ramp and marina, these are also outside the scope of the Applicant's control, and I also did not receive any determinative evidence that would lead me to conclude that any adverse effects arising would be more than minor.
- (81) I turn to the separate matter of consistency with the District Plan and plan integrity later in this decision.
- (82) I accept the planning experts' conclusions and advice and find that any adverse effects on character and amenity arising would be no more than minor in respect to s104D(1)(a) and acceptable in respect to s104(1)(a).

Landscape and visual effects

- (83) Many of the submission received expressed concerns regarding the landscape and visual effects, including on the adjacent reserves. The Application was accompanied by a Landscape and Visual Assessment Report (LVA), prepared by Mansergh Graham. That report concluded that any adverse effect of the proposal on the existing landscape character and visual amenity values would be very low and would have less than minor adverse effects.
- (84) Ms. Wood had not commissioned a peer review of the LVA on the basis that:
- Previous Seven Oaks applications had been accompanied by LVAs from the same expert and had been peer reviewed, with conclusions reached that the LVA had sufficiently assessed effects and had concluded that effects would be no more than minor.
 - The site has the same site characteristics as the other Seven Oaks sites and the LVA had been prepared by the same expert.
- (85) Regardless, Ms. Wood undertook her own review of the LVA and assessment of landscape character, natural character and visual amenity, including temporary effects. Ms. Wood's conclusion was that:
- The LCA concludes that due to the visually and physically contained nature of the site, with the densely vegetated reserves framing it, there will be very low adverse effects on existing landscape character and visual amenity values. As such, based on the findings of the LCA and recommended conditions of consent (should consent be granted), I consider that the potential landscape and visual effects of the proposal will be no more than minor and any concerns raised in submissions on this matter are adequately addressed.*
- (86) During the hearing, Ms. Drury for TKRRS set out their concern about potential effects of lighting on the night sky and on the ridgeline. In respect of the ridgeline, the TKRRS was

concerned that the ridgeline area would become dominated by the proposed development and would not provide a green backdrop to the Kinloch residential area. In response to questions, Ms. Drury articulated concerns about views from Lake Taupo, the reserves, Locheagle and Lochridge. She accepted that light standards would be met for a residential zone, but the resultant lighting effects would be greater than from a complying development, resulting in cumulative effects of ambient lighting.

- (87) The submission from Mr. McPhail and Ms. Alexander for the KCA raises concern about there being no peer review of the Applicant's Landscape and Visual Assessment (LVA) report, its arbitrary line for residential zoning and its suggestion that the development would be a transition zone for density. They were concerned the same argument could be used elsewhere in Kinloch. Orally, Mr. McPhail stated that the visual impact is not really the key impact for them, it is rather the increase in residents.
- (88) Mr. Bruce Campbell's submission expressed concern with the LVA conclusions that there is a need for an increased lot density within Seven Oaks to balance the symmetry with the eastern side of Kinloch and that moving the density transition line is necessary to make the development more appealing. He also expressed the view that the development would not be visually appealing when viewed from Lochridge Estate, to the north of the site. His submission included a photo taken from Lochridge Estate looking down across the site.
- (89) My observation from the submitters' presentations is that some of their concerns relate more to the impact on the KCSP and zoning boundaries and potential precedent effects. This is a matter I address in respect to the District Plan, rather than the landscape and visual amenity effects arising from the development. Mr. Graham addressed the matter of lighting and the night sky in his evidence¹⁵, concluding that lighting from residential housing in the development would form part of the overall nighttime lighting generated by Kinloch and result in a similar visual coherence to the distribution of night lighting within Kinloch.
- (90) I noted during the hearing that I had visited the site and the wider Kinloch area and accepted that the site is generally well screened from Kinloch by the reserves, except for longer distance views, and some immediate views from that part of the Seven Oaks development to the south of the site.
- (91) However, it became evident from Mr. Campbell's photo that there would be views down to the site from Lochridge Estate that had not been covered in the LVA. I appreciated Ms. Mackintosh's offer of a supplementary LVA to address this effect.
- (92) In his supplementary LVA evidence¹⁶, Mr. Graham assessed the landscape and visual amenity effects from the Lochridge Estate (view location 12 VL12). Some of the key points from his evidence were:
- Given the site is located amongst other parts of Seven Oaks that have already been consented (and form part of the existing environment), as viewed from VL12 it will appear as an extension of the existing distant residential development.
 - The development will not break the skyline
 - The development will integrate with its surroundings

¹⁵ Paragraph 166

¹⁶ Dated 1 September 2025

- The consented Terraces Development, in combination with the transect approach of lot development within the proposal visually sleeve the proposal from VL12, largely mitigating the effect of increased density
 - The level of adverse effects on visual and amenity values is considered to be very low and within acceptable levels.
- (93) Ms. Wood accepted Mr. Graham's advice and conclusions. However, Mr. Parsons for the TKRRS, Mr. Campbell and Mr. McPhail for the KCA expressed concerns about the adequacy and approach taken to the supplementary LVA. My subsequent request for the commissioning of a peer review of the original and supplementary LVAs was accepted by the Applicant and Ms. Wick's peer review provided.
- (94) Ms. Wick reviewed both the LVA and supplementary evidence and supported Mr. Graham's findings and conclusions in all respects with only minor discrepancies of no consequence and concludes that any landscape and visual effects of the proposal are less than minor. She recommended that the conditions are updated to reference the landscape planting plans and recommendations around lighting.
- (95) The KCA agreed with Ms. Wick's recommendation regarding an updated set of conditions. They expressed surprise Ms. Wick had not undertaken a site visit and provided substantial commentary critiquing her peer review approach and findings. In their conclusion, they reiterated their position on the Application in respect to the District Plan, confirmed their disagreement with Ms. Wick's assessment, and sought that the Application be declined or withdrawn. Mr. Campbell provided a substantial response, critiquing Ms. Wick's approach and conclusions, and setting out his own opinion in respect to the points Ms. Wick makes and his own findings. He concluded that the Application should be declined, including for the reason that the proposal could be modified as there is greater supply than demand at present, that the integrity of the District Plan be upheld, and that the Council could change the District Plan. Mr. Campbell also included an addendum seeking to clarify matters raised in his submissions and those of Ms. Wood and Mr. Keys regarding water and wastewater capacity. The TKRRS provided a briefer response, outlining their concern that Ms. Wick's review had not addressed their concerns about the impact from the north, in terms of viewing locations and impacts on lake reviews. They expressed Ms. Wick's report had not changed their opposition.
- (96) Ms. Wood concurred with Ms. Wick's conclusions, provided an updated set of conditions that addressed matters in Ms. Wick's report, and confirmed her recommendation to approve the Application.
- (97) In closing, Ms. Mackintosh submitted that the submitters misunderstood the role of a peer reviewer and that Ms. Wick had adhered to the methodological approach for an LVA. She submitted that the submitters' opinions reflect their personal and subjective view of the LVA effects. In particular, she submitted that the LVA will not interrupt the lake view from Lochridge Estate, noting as well that there were no submissions received from its developer or owners. In respect to Mr. Campbell, she submits that it should be treated with caution as he lacks qualifications and subjectivity. She also submits that if the submitters were sufficiently concerned, they should have engaged a suitable expert to assist them. She finally submitted that the only reliable and cogent evidence was that of Mr. Graham, supported by Ms. Wick, and his conclusions that any adverse effects will be very low/less than minor.

- (98) I accept that Ms. Wick followed the relevant methodology to peer review an LVA. I place less emphasis on Ms. Mackintosh's submission that it was open for the submitters to engage their own expert if sufficiently concerned, given I understand the expense that such engagement would bring. However, I do put weight on her submissions regarding the lesser weight to be given to the concerns expressed by the submitters, given these are not informed by independent expert advice, but rather their own personal positions.
- (99) I have carefully reviewed the LVA, supplementary evidence and peer review and considered the submitters' concerns and advice from Ms. Hunt and Ms. Wood. While the proposal would result in a density greater than permitted by the District Plan, I am satisfied that the site's location which is largely screened from Kinloch, topography, its proximity to the reserves, the proposed pattern of lot distribution and proposed landscaping, planting, reserves and light management provide appropriate mitigation. In terms of the views to the site from the north, I accept both landscape experts' advice that the development will sit within earlier stages to the north and south of the Seven Oaks development, without interrupting any views to the Lake. As identified by the Applicant, there were no submissions received from any owners or the developer of Lochridge Estate. While the development will look different to what is permitted by the District Plan, I do not find this to be an adverse effect in itself that is more than minor. I address District Plan matters separately in this decision.
- (100) I accept the landscape and planning experts' conclusions and advice and find that any adverse landscape, natural character and visual amenity effects arising would be less than minor in respect to s104D(1)(a) and acceptable in respect to s104(1)(a).

Ecology

- (101) As outlined in paragraph 13.85 of the s42A report, a few submissions raised concerns about ecological effects on the adjacent reserves. The Application included an Ecological Report and the AEE included conditions relating to effects management measures and restoration planting. Submissions sought that the recommendations included in the Ecological Report and in the AEE be carried out in the development. Ms. Wood concluded in her s42A report that any potential adverse effects on ecology would be no more than minor and that the submitter's concerns were addressed.
- (102) Dr. Mueller presented evidence on behalf of the Applicant. Her overall conclusion was that any expected adverse effects on ecological values and habitat present on site will be adequately addressed, with no residual effects anticipated.
- (103) I note the Regional Council's tabled letter that they no longer had any ecological concerns.
- (104) I asked Dr. Mueller about the *Dactylanthus*. She did not expect any adverse effects on these, as there are no effects on the reserves. Her view was that the proposed fences along the boundaries would avoid people accessing the reserves. I also asked her about the setbacks, and whether a 10m setback would have a notable different effect than the 7.5m sought through the application. Her view was colour temperature of any lighting was more important than any setback. She also advised that the Applicant had a close working relationship with the Department of Conservation.
- (105) Ms. Burdett was particularly concerned about the protection of the vegetation within the reserves, and particularly about the protection of *Dactylanthus* plants. She spoke of the damage that has happened in the reserves and the need for fencing of the reserves. She

sought conditions that the fences proposed in the consent conditions do not have a smooth top surface or rail, that the lots adjoining the Otaketake Reserve have a 10m building setback, and that there be no access from the subdivision into the reserves.

- (106) I asked Ms. Burdett whether it was relevant that the Department of Conservation had not submitted on the Application and whether I could construe that to be that they accepted what was proposed. Her position was that the Department is overwhelmed and that they are no longer submitting on applications the way they used to. I note here that Ms Burdett was formerly a Waikato Regional Councillor.
- (107) Ms. Mackintosh submitted in opening and closing that the Applicant is not responsible for people's behaviour in reserves, and that all the boundaries are to be fenced. She was not sure that a 10m setback would have any different impact on behaviour of people wanting to access the reserve compared to a 7.5m setback. I accept Ms. Mackintosh's submissions. I find that the Applicant has addressed Ms. Burdett's and other submitters concerns to the extent relevant to what is within scope of the Application and the Applicant's responsibility.
- (108) Having considered the evidence in front of me, I am satisfied that any potential adverse ecological effects have been satisfactorily addressed and mitigated through the conditions of consent and that any adverse effects would be no more than minor in respect to s104D(1)(a) and acceptable in respect to s104(1)(a).

Transportation

- (109) Some submissions raised concerns about the potential traffic effects arising from the development, including adverse effects on Kinloch's roading network as well as the wider roading network of Whangamata Road and Poihipi Road through to the Taupō township. Concerns included impacts on existing parking issues associated with boating activities at the boat ramp and marina. The application was accompanied by a Traffic Assessment prepared by CKL. The Assessment had been peer reviewed by Abley Consultants in relation to the greater density of development and potential effects at the northern entrance into Taupō. While the peer reviewer did not attend the hearing, Mr. Keys for the Council had reviewed the Applicant's Assessment and the peer review and attended the hearing and was able to hear evidence and respond to questions.
- (110) In her s42A, Ms. Wood conclude that the proposal will maintain safety and efficiency of the Kinloch roading network and within the wider network of Whangamata and Poihipi Roads, through to the Taupō township. She noted that the Council has set funding aside in both its long term and annual plans to consider options for a second bridge crossing over the Waikato River. She concluded any transportation effects would be no more than minor.
- (111) In evidence, Ms. Drury for the TKRRS expressed concern that there had been no assessment of operational noise effects. They sought that should consent be granted, that a condition be imposed requiring low noise road surfacing of dense or porous asphalt on Whangamata Road and Oakdale Drive. The reason given was that Whangamata Road is operating as a regional arterial with the increased density, and this would assist to mitigate the cumulative effect of an increased population. They also sought that some developer contribution go to installing the low noise road surfacing. In the hearing, she expressed the view that while Whangamata Road is an arterial road it is behaving as a residential road and its surfacing should be in line with residential surfacing.

- (112) The KCA raised concern that more vehicle movements does not enhance the well-being of the community. Mr. McPhail and Ms. Alexander expressed their concern about the increased demand that would be placed on the marina and boat ramp facilities, which are already more than stretched over the summer period.
- (113) Ms. Makinson provided both primary evidence and a summary statement, responding to the pre-circulated submitter evidence. She noted that Mr. Keys, Mr. Smith from Abley and she all agreed in respect to the technical analysis of traffic effects. Taking into account capacity, safety and function within Kinloch, she was satisfied that there would not be a notable drop in level of service. Any impact on delays at the Taupō intersections would be negligible. Development contributions would be taken towards a future upgrade at the Control Gates Bridge (CGB). In respect to submitter concerns, her position is that existing and proposed infrastructure would meet applicable standards and traffic levels would remain acceptable. Her view was that the development would have little effect on parking issues associated with boating activities.
- (114) Ms. Makinson also addressed the TKRRS' concern regarding traffic noise. While acknowledging she is not an acoustic expert, she advised that the traffic generated by the development would likely equate to approximately one additional vehicle approximately every 72 seconds. Her view was that this would be unlikely to change the level of noise experienced. She reiterated the position in her evidence that the traffic effects are less than minor.
- (115) I queried what the development contribution payable for roading would be for each lot. Ms. Hunt advised that it was \$12,000 per lot, and that the new CGB was expected to be constructed in 2030. Ms. Mackintosh submitted that while noise is a relevant effect under the RMA, there is no evidence that traffic would result in an unacceptable adverse effect. She also submitted that roads are controlled by the road controlling authority (the Council), and any upgrades are a matter for the Council to address, not the Applicant.
- (116) Mr. Keys advised he did not support the TKRRS request for a condition of consent for low noise road surfacing as this would not be appropriate to impose on a developer. Rather, it is for the Council to consider when they set their roading programme for what development contributions are used for. He also advised that the surfacing of Oakdale Drive and Whangamata Road is up to standard. He noted that the Council's current code of practice requires asphalt for new residential areas but that there are still old areas with chipseal. He also advised that the second Waikato River crossing was scheduled by 2031 in the 2024-2034 Long Term Plan.
- (117) I can appreciate the submitters' concerns about potential increases in traffic as a result of the denser form of development. Having reviewed the expert traffic evidence, I am satisfied that the impacts of the development on the roading network have been thoroughly assessed and that there is sufficient capacity within the network, within Kinloch and to Taupō, so that any adverse effects would be less than minor. In terms of the impact on parking at the boat ramp and the marina, I rely on the expert advice that there would be little impact as a result of the development. While I appreciate that there is an issue with existing parking pressures at the boat ramp and marina, I note that the marina and its boat ramps, are a privately-owned and managed facility, and therefore is not a matter that the Applicant can influence. I also accept the evidence of Ms. Makinson that any increase in road noise is likely to be indiscernible and along with Ms. Mackintosh and Mr. Keys, that

road surfacing is not within the scope of the Applicant to influence, rather it falls within the Council's role as road controlling authority.

- (118) I find that any adverse traffic effects are less than minor under s104D(1)(a) and acceptable under s104(1)(a).

Services/infrastructure

- (119) There were a number of submissions raising concern whether there was sufficient infrastructure capacity (excluding roading which I have already addressed) to service the Application. Submitters' primary concerns related to water and wastewater capacity.
- (120) Ms. Wood addressed servicing and infrastructure capacity in paragraphs 13.103 to 13.113. Relying on Council's Development Engineer's advice, Ms. Wood concludes that there is sufficient water and wastewater capacity to accommodate the proposal along with remaining consented by not yet implemented lots and potential future development. Stormwater would be able to be appropriately managed.
- (121) The KCA's position was that if the site was developed as zoned, it would have little impact on water and wastewater. In respect to the Application, they were concerned that while the Council had confirmed that there is capacity for 83 lots, this was dependent on the number of infill lots being reduced, which may alter significantly with RMA changes. They were also concerned that using capacity for this development would take away from the opportunity to develop more appropriate areas in close proximity to facilities. I questioned Mr. McPhail on what he meant regarding infill and he said it was in respect of the proposed national environmental standard on granny flats.
- (122) Mr. Campbell stated that he was okay with water and wastewater and that a fully developed Kinloch would have enough water connections.
- (123) Mr. Keys for the Council confirmed that all engineering and infrastructure matters have been identified and addressed. He confirmed his comfort with there being adequate water and wastewater capacity to accommodate the proposal.
- (124) Ms. Wood advised that she had not considered the proposed national environmental standard on granny flats as it is still proposed. She noted that the District Plan only provides for one dwelling per site, so infill development is not a relevant consideration. Ms. Mackintosh submitted at the hearing and in closing submissions, that the proposed national environmental standard on granny flats is not relevant to this matter. I concur. Case law is clear that proposed national environmental standards that have not been gazetted, or any proposed changes to legislation, have no legal weight. Ms. Mackintosh also submitted at the hearing that the Council would need to deal with the impact of intensification if it happens, and that this is not a matter for the Applicant to be responsible for. Again, I concur. Ms. Wood also advised that the proposal site is the second to last greenfield site that does not have a consented development on it, the only other being the Hunt Club site to the north.
- (125) In her response to Minute 2 regarding the Kinloch Golf Course development, Ms. Wood confirmed that there are still up to 110 house sites that are consented but not yet constructed. She confirmed that these authorised house sites have been included in her calculations in paragraph 13.38 of her s42A report, noting that the 110 house sites is less than the 116 stated in her report, reducing the number of consented lots/households still

to be developed to 234, rather than 240. From this, I can then assume that provides greater headroom in terms of servicing. In closing submissions, Ms. Mackintosh submitted a contrary view to Ms. Wood in respect to the Golf Course, that it is only those that have been granted subdivision consent and have been given effect to that can be considered part of the existing environment. However, she submitted that the likelihood of the Golf Course consent being fully implemented is moot, because there is sufficient infrastructure capacity regardless.

- (126) There is no evidence in front of me that there is not sufficient capacity in respect to water and wastewater to accommodate the proposed development. I find that any adverse servicing or infrastructure effects are less than minor under s104D(1)(a) and acceptable under s104(1)(a).

Cumulative effects

- (127) Some of the submissions raise concerns regarding the cumulative effects of the development.
- (128) Ms. Wood's opinion, agreed to by Ms. Hunt, was that there would be cumulative effects relating to traffic generation, density and built form, but that these were considered to be no more than minor.
- (129) Ms. Drury for the TKRRS submitted at the hearing that the proposal does not adequately address adverse amenity and character and road traffic noise. Concerns raised through the submission traverse impacts on the ridgeline, detracting from character, dominance from those viewing the site from high points and the lake, increased road noise. In paragraph 44, she sets out the position that the scope and scale of the change from 16 to 83 residential lots (more than 5 x increase in intensity) cannot have less than minor effects and that cumulative effects had not been adequately addressed.
- (130) Ms. McIntosh responded to submitter concerns in her opening and closing submissions. In opening, she submitted that it would be novel to suggest that having assessed effects individually as being less than minor or no more than minor, that these added together become an unacceptable cumulative effect. In closing, she confirmed her opening statement position that the concerns raised about the level of adverse effects and cumulative effects are unfounded and represented a 'not in my backyard' position rather than one based on objective consideration of the actual and potential effects.
- (131) I have traversed the potential effects of the proposal in this decision already, and have found that in each instance, any adverse effects will be no more than minor, and effects overall would be acceptable. There is no evidence in front of me that the aggregation of the effects arising from the proposal would result in adverse cumulative effects. I note that submitters also raised the issue of District Plan integrity. That is another matter to cumulative effects, which I address later in this decision.

Conclusion – Section 104D(1)(a) and s104(1)(a) Effects Assessment

- (132) Based on my evaluation above, I prefer the evidence of the Council and the Applicant and find that the overall adverse effects arising from the proposal are no more than minor, and are overall acceptable. Accordingly, having found that any adverse effects will not be more than minor, the Application can proceed to be considered under s104 of the RMA.

Section 104(1)(ab) Ensuring Positive Effects Through Offsets and Compensation Assessment and Conclusion

- (133) The applicant did not offer or agree to any measures for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

Section 104D(1)(b) and s104(1)(b) Relevant Planning Documents Assessment

- (134) While I have already found that any adverse effects arising would be no more than minor in respect of s104D(1)(a) of the RMA and that the Application can proceed to be considered under s104, I have also considered the Application in respect of 104D(1)(b).

District Plan

- (135) In respect of s104D(1)(b), my consideration is limited to whether the Application is contrary to the relevant objectives and policies of the District Plan. Both the AEE and the s42A report traverse the objectives and policies in some detail. Submissions in opposition to the Application also raised consistency with the objectives and policies as a significant consideration, with the KCA, TKRRS and Mr. Campbell all submitting that the Application is contrary to the District Plan and the KCSP. The KCSP is a matter I come back to under s104(1)(c) of the RMA, as it is not a planning document produced under the RMA. I do consider, however, the specific Kinloch Development Area provisions.
- (136) Ms. Wood identified the following objectives and policies as being relevant to the Application:
- Strategic directions relating to land development, natural environment values, tangata whenua and urban form and development
 - LD-O3 – LD-O5, LP-11 – LP-14 and LP-17 and LP-18
 - NEV-O1 and NEV-O2 and NEV-P1
 - TW-O1 and TW-P1 and TW-P6
 - UFD-O1, UFD-O3, UFD-O4, UFD-O6 and UFD-O7 and UFD-P2, UFD-P3, UFD-P5, UFD-P6, UFD-P10 and UF-P13
 - Transport
 - TRAN-O1, TRAN-P1, TRAN-P2, TRN-P13 and TRAN-P14
 - Subdivision
 - SUB-O1 RESZ, SUB-P1 RESZ, SUB-P2.a DEV1-KINLOCH and SUB-P2.b DEV1-KINLOCH
 - Low Density Residential Zone (Kinloch Development Area)
 - LRZ-O1, LRZ-O2 and LRZ-O4, LPZ-P1, LPZ-P6 and LPZ-P9
- (137) Ms. Wood concluded in her assessment that she considered the proposal to be consistent with the majority of the above objectives and policies with the exception of UFD-P10, SUB-P2.a DEV-1 KINLOCH and LRZ-P9 which she considered the proposal to have a moderate inconsistency with, but not contrary to. This was for the reason that:
- Under UFD-P10 the proposal is not in keeping with the intent of the planned urban built form of the site – clause c)
 - Under SUB-P2.a DEV-1 KINLOCH the proposal is not clustered and does not have a strong framework of tree and vegetation planting
 - Under LRZ-P9 the proposal does not reflect the intent of the KCSP

(138) I find it useful to set out these three policies.

Policy UFD-P10

Manage subdivision use and development of land to ensure that it will not:

- a) have an adverse effect on the functioning of the environment where it is located,*
- b) unduly conflict with existing activities on adjoining properties and the surrounding area,*
- c) compromise development consistent with the intent and planned urban built form of the zone where it is located, and*
- d) give rise to reverse sensitivity effects on existing uses.*

Policy SUB-P2.a DEV1-KINLOCH

Subdivision, and resulting development, that creates lots which are smaller than the minimum lot size than specified in Table 4: Minimum and average lot sizes for density areas of this plan for DEV1-Kinloch, should be designed so that the resulting development is clustered and is integrated into the landscape, coupled with a strong framework of tree and vegetation planting.

Policy LRZ-P9

Enable and encourage development in the Kinloch Low Density Residential Areas to be carried out in a manner which reflects the intent of the Kinloch Community Development Plan Area.

(139) In evidence, Ms. Hunt focused on the above three policies, outlining why she had a different opinion. In summary:

- UFD-P10(c) is inconsistent with the NPS-UD as it is restricting density. The NPS-UD is clear in the objectives and policies about improving housing affordability by supporting competitive land and development markets and enabling more people to live in urban areas where there is a demand for housing and supporting infrastructure
- The development is at least partially consistent with SUB-P2.a DEV1-KINLOCH as it will create lots smaller than the minimum size, and half of the resulting development is clustered and integrated into the landscape with a strong framework of vegetation, especially in respect to the reserves. While the subdivision is not a clustered development, the outcomes are the same. The intent of the KCSP is achieved as there will still be a rural outlook from the valley floor. She also addresses p41 of the KCSP which sets out the purpose of the clustering and planting, to retain the rural outlook from the Valley floor within areas identified for medium and low density.
- In respect of LRZ-P9, while the proposal has a higher density than allowed, the intent of the Kinloch Community Development Plan Area is still achieved for a number of reasons.

(140) Ms. Hunt also identifies UFD-O2 as being relevant and the proposal being consistent with it. Ms. Wood did not consider it to be relevant as the site is not a rural zone. I do not find that the determination of this Application turns on this objective, and I do not consider it further.

(141) Ms. Drury, who is a qualified and experienced planner but acting as a lay person, in her statement for the TKRRS identified LD-O5 and LD-P17 and LD-P18 and NEV-O1 and O2 and

NEV-P1 as being of relevance. Her position was that the density of the proposal would alter the amenity values within Kinloch with an expansion to the scale of residential development, and that views from adjoining reserves would be adversely impacted. She also submitted that natural values within those reserves would be depleted with the introduction and intensification of pests who predate on native fauna. In paragraph 45 of her statement, she stated how she considers the proposal is contrary to, and undermines, the objectives and policies of the District Plan.

- (142) The KCA's hearing statement also provided an assessment against the objectives and policies of the District Plan, focusing on SUB-O1 and SUB-P2 and LRZ-O4, LPZ-P1 and LRZ-P9, concluding that the proposal is contrary to the District Plan. Their position was that these strongly focused preserving the low-density character and amenity of the zone, the proposal being at a density and form that is completely contrary, the proposal has no characteristics that support the anticipated low-density amenity and values, that where additional density is proposed the provisions anticipate clustered lots which are integrated into the landscape with landscaping as has occurred elsewhere in Kinloch¹⁷, and an urban like environment would be created with little to no mitigation. They also sought that the density of development complies with the relevant zones and did not support the proposed development being a transition zone for density.
- (143) Mr. Campbell's hearing statement outlines that the proposal does not meet the requirements of the KCSP as embedded in the District Plan rules and so must be declined. His position was that the proposal does not provide sufficient open spaces, relies on the reserves to provide amenity value, and is too proximate to reserves. He did not identify or assess any specific objectives or policies.
- (144) I have focused my evaluation on the objectives and policies in contention between the parties. I have already set out UFD-P10, SUB-P2.a DEV-1 KINLOCH and LRZ-P9. The other objectives and policies in contention are:

LD-O5

Ensure [land](#) development does not detract from the amenity value or qualities of the local [environment](#).

LD-P17

Ensure that proposals for the [subdivision](#) and development of [land](#) assess the particular [amenity values](#) of the area including the physical characteristics of the [land](#) and avoids, remedies or mitigates any adverse [effects](#).

LD-P18

[Subdivision](#) and subsequent development shall either maintain or enhance, but not detract from, the significance of features or areas of cultural, spiritual, historical, landscape or natural value, (as identified through the provisions of this Plan).

NEV-O1

Recognise the importance of the District's natural values and landscapes and their significance to the Taupō District's communities and identity.

NEV-O2

¹⁷ Locheagles, Poplars, Kinloch Golf Course, Te Kowhai and Oakdale

The protection of areas of significant [indigenous vegetation](#) and significant habitats of indigenous fauna from the adverse [effects](#) of inappropriate development.

NEV-P1

Protect areas of significant [indigenous vegetation](#) and significant habitats of indigenous fauna from [subdivision](#), [land](#) use and development activities that will have more than minor [effects](#) on the ecological values and processes important to those areas.

SUB-O1 RESZ

To ensure that development in the Residential Zones takes into account the capacity of the supporting [infrastructure](#).

SUB-P2.b DEV1-KINLOCH

[Subdivision](#) within DEV1-Kinloch should only occur where the resulting lots will be connected to community [wastewater](#) network [infrastructure](#)

LRZ-P1

Maintain and enhance the character and amenity of the LRZ by controlling the bulk, location and nature of activities, to ensure activities are consistent with a residential scale of development, including an appropriate density and level of environmental [effects](#).

- (145) I have grouped the objectives and policies in my assessment.
- (146) In respect of UFD-P10(c), I have not considered Ms. Hunt's evidence in respect to inconsistency with the NPS-UD for the purpose of determining whether the proposal is contrary to this objective. The clause reads "manage subdivision use and development of land to ensure that it will not compromise development consistent with the intent and planned urban built form of the zone where it is located". I find this slightly unclear as on first reading it appears to say "ensure new development does not compromise other development that is consistent with the zone". I accept Ms. Wood's advice that the proposal is not in keeping with the intent of the planned urban form of the site, albeit I am unclear that is what the clause actually says. In that regard, I agree that the proposal is inconsistent with this clause of the policy, but not the whole policy itself. I also do not find that the proposal is contrary to this policy.
- (147) In respect of LD-O5, LD-P17 and LD-P18, I have found earlier that the proposal will have no more than minor adverse effects on character and amenity values. The Applicant has undertaken an assessment of the amenity values of the area, including the characteristics of the land. I am satisfied that any adverse effects are appropriately managed. I have also received no expert or definitive evidence that the proposal would not maintain and would detract from the values of the adjacent reserves nearby streams or Lake Taupō. I accept and agree with Ms. Wood's assessment in her s42A report. I find that the proposal is not inconsistent with or contrary to this objective and policies.
- (148) In respect to NEV-O1, NEV-O2 and NEV-P1, I have accepted the Applicant's expert ecology advice and landscape architecture advice. I accept and agree with Ms. Wood's assessment

in her s42A report. I find that the proposal is not inconsistent with or contrary to these objectives or policy.

- (149) In respect of SUB-O1 and SUB-P2a and SUB-P2b, I have found that there is adequate infrastructure capacity to accommodate the proposed development. The lots would be connected to the community wastewater network infrastructure. In respect to SUB-P2a, I would find it very problematic to conclude that a development is contrary to a policy that includes the word “should”, as the KCA would seek me to do. In approaching this policy, I am guided by the Supreme Court’s findings in decisions relating to how policies are to be interpreted, which I address in paragraphs 38 to 40 of this decision. This policy is not definitive, where development “must be designed” or that increased density is avoided unless it is clustered. I concur that the whole development is not clustered, but it does include landscaping and will generally integrate between the two approved subdivisions to the north and south, and the reserves to the east and west. I accept Ms. Wood’s advice that the proposal is somewhat inconsistent with this policy. I do not find that it is contrary to this policy.
- (150) Finally, turning to LRZ-O4, LRZ-P1 and LRZ-P9. I have previously found that the proposal will not impact on the existing amenity and character of the Kinloch residential area. I concur with Ms. Wood’s assessment in paragraphs 14.48 to 14.50 of her s42A report. In respect of LRZ-P9, I concur with the parties that the proposed development does not reflect the intent as set out in the KCSP density plan in the Kinloch Development Area chapter. However, taking direction from the Courts, I also would find it problematic to conclude that a development is contrary to a policy that starts “enable and encourage”, as the KCA seeks. Simply, this policy does not require development to be consistent with the Kinloch Community Development Plan Area, and hence the KCSP, nor does it say that development is to be avoided unless it is consistent with the KCSP. I find that the proposal is not inconsistent with or contrary to LRZ-O4 or LRZ-P1, but that it is somewhat inconsistent with LRZ-P9. Simply, the submitters’ assertions that the District Plan requires strict compliance and adherence with the KCSP does not bear out in the District Plan objectives and policies themselves. Rather, the District Plan provides flexibility and a case-by-case assessment.
- (151) Overall, I find that the proposal is not contrary to the objectives and policies of the District Plan, and it passes through the s104D(1)(b) gateway. In respect to s104(1)(b), while there are some areas of inconsistency with policies, these are not strongly directive in themselves and do not lead me to determine that the proposal is inconsistent with the District Plan. In all, I agree and adopt Ms. Wood and Ms. Hunt’s advice and find that the proposal is overall generally consistent with the District Plan.

S104(1)(b) assessment

- (152) In accordance with section 104(1)(b)(i)-(iv) of the RMA, I must also have regard to any relevant standards, policy statements and plan provisions.
- (153) I note that Ms. Wood addresses national policy statements (NPS) in section 16 of her s42A report. She identifies five NPSs¹⁸, with only the NPS-UD as being relevant. The AEE identifies eight, the three additional being the NPSs on Highly Productive Land, Indigenous Biodiversity and Greenhouse Gas Emissions from Industrial Process Heat. I concur with the AEE that there are eight NPSs, and I also concur with Ms. Wood and the AEE that those on

¹⁸ The NPS-UD, and those relating to freshwater management, renewable electricity generation, electricity transmission and the New Zealand Coastal Policy Statement.

electricity transmission, renewable electricity generation and the NZ Coastal Policy Statement as not being relevant. I also concur with the AEE that those on greenhouse gas emissions and highly productive land as not being relevant.

- (154) The AEE identifies the NPS on freshwater management as being relevant and does not raise any issues of inconsistency, while also noting that it directs regional councils on freshwater management. I note that the Regional Council has granted relevant resource consents for the proposal. I therefore consider that there are no relevant matters to consider in respect to this NPS.
- (155) Neither Ms. Wood nor the AEE identifies whether the NPS on indigenous biodiversity is relevant. I note that there are no significant natural areas (SNAs) identified on the site; but effects on indigenous biodiversity in the SNAs were raised as a concern. I have addressed this earlier, where I found that any adverse effects would be able to be appropriately managed, the effects overall were acceptable, and the proposal is consistent with the District Plan.
- (156) Both Ms. Wood and Ms. Hunt agree that the only national environmental standard that may be relevant is the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, but that it does not apply to this Application. I accept their advice on this matter.
- (157) Section 8.6 of the AEE and section 17 of the s42A report address the Waikato Regional Policy Statement 2018 (RPS). I found section 8.6 to be a thorough analysis of the RPS. I note that it identifies that Change 1 to the RPS incorporated the requirements of the NPS-UD, decisions were notified on 15 November 2023, and that this change is subject to appeal. The s42A report briefly addresses the RPS but does not traverse those objectives and policies relating to urban development.
- (158) As already addressed, the Applicant has obtained necessary regional council consent approvals, and accordingly, I can proceed based on consistency with the Waikato Regional Plan.
- (159) To that end, I have focused on the NPS-UD and the RPS. For ease and brevity, I have not repeated the relevant objectives and policies verbatim, except where I consider it has been necessary to do so for emphasis. Rather, I have focused on the overall intent of the objectives and policies. Full versions, which I have reviewed, can be found in the AEE and both expert planners' evidence and in the higher order documents themselves.

NPS-UD

- (160) Ms. Drury was the only submitter who addressed the NPS-UD at the hearing. She submitted that the NPS-UD must be complied with by territorial authorities and that Kinloch is not the right place to encourage high density housing outside of what is covered by the KCSP because of its distance from Taupō and meaningful services, with no public transport. She also opined that there was already sufficient capacity within Kinloch to provide at least sufficient development capacity to meet short-, medium- and long-term demand, with many sections on the market already. She suggested it would be more appropriate to fill capacity available in Taupō. Ms. Drury agreed that the District Plan has yet to be amended to give effect to the NPS-UD.

- (161) Ms. Wood's opinion was that the proposal is consistent with the NPS-UD, that it will provide a well-functioning urban environment, is an appropriate use of the land, increases the supply of housing including increased and varied housing density and types, with access to natural and reserve spaces and transportation links. In answers to my questions, she expressed the view that the District Plan policy is not inconsistent with the NPS-UD. She advised that Taupō is a Tier 3 Council, with Taupō being the largest settlement, followed by Kinloch.
- (162) Ms. Hunt also considered the proposal to be consistent with the NPS-UD. I was informed that resource consent had recently been approved for a small commercial centre in Kinloch, which will provide some of the day-to-day services that residents would otherwise seek in Taupō. Ms. Mackintosh in closing submissions traversed the timing of the KCSP, the District Plan, RPS and the NPS-UD. She submitted that there is no irreconcilable tension between the District Plan and the NPS-UD, but that the NPS-UD carries more weight as a higher order policy document yet to be given effect to in the context of the KCSP area. She also submits that the Council's recent Future Development Strategy (FDS), promulgated under the NPS-UD, acknowledges that the KCSP is outdated and needs to be reviewed as part of the process of giving effect to the NPS-UD. She quotes the Implementation Plan from the FDS, which includes that the KCSP will be reviewed and revoked.
- (163) I prefer the planners' expert advice and Ms. McIntosh's submission. There is no evidence in front of me that the proposal is inconsistent with the NPS-UD. It will provide additional housing supply within an existing urban environment.

Regional Policy Statement

- (164) None of the submitters specifically raised the RPS at the hearing. Both planners considered that the proposal is consistent with the relevant provisions and intent of the RPS, as assessed in section 8.6 of the updated AEE. With no evidence to the contrary, I accept and adopt their advice.

Conclusion – Section 104(1)(b) Objectives and Policies

- (165) Overall, for the reasons articulated above and in the effects assessment, I find that the proposal is generally consistent with the relevant planning documents.

Section 104(1)(c) Other Matters

- (166) The KCSP and District Plan integrity and precedent were the significant other matters consistently raised by the submitters. As I have identified earlier, the KCSP is not an RMA planning document, but I do consider it to be a relevant other matter. It was very clear through the submissions and at the hearing that it is a keystone document for them and they sought adherence with it. I address these together, as submitters sought the application be declined on it being inconsistent with or contrary to the KCSP and the District Plan.
- (167) Ms. Drury for the TKRRS considered that granting the consent would set a precedent, with the integrity of the objectives, policies and structure plans being undermined. The KCA sought the integrity of the District Plan be upheld, given there had been so much community involvement in the planning process (to include the KCSP in it). The KCA and Mr. Campbell covered the history of the KCSP and sought continued adherence to it.

- (168) It was agreed through the hearing that the District Plan had been amended in 2007 to include the KCSP and that this part of the District Plan had not been reviewed since. I heard through the hearing how Kinloch has grown and developed, which included substantial development both before the KCSP was introduced into the District Plan and after.
- (169) Ms. Hunt's view that the proposal is within a part of Kinloch where there is already existing substantial development that is inconsistent with the District Plan's lot sizes for the zone. Ms. Hunt's evidence included a plan showing locations within the KCSP area where existing development is inconsistent with KCSP and District Plan densities.
- (170) Ms. Wood did not consider granting consent would create a precedent for a number of reasons, including the Site's unique position as a transition between consented residential subdivision to the south and low density to the north, no other site having the same site area, location or characteristics and it being the second to last greenfield site in the KCSP area with the other being Rural Lifestyle Zone. In Appendix E of her s42A report, Ms. Wood helpfully included a Kinloch Subdivision Areas Map which shows all the different existing and approved developments within Kinloch. This clearly demonstrates that there is little to no opportunity for further greenfield development. Any redevelopment or reconsenting of existing development areas, such as Kinloch Golf Course, would be considered on their own merits.
- (171) In legal submissions, Ms. Mackintosh submitted that there are no precedent or plan integrity issues arising, as the horse has already bolted in Kinloch, the KCSP is out of date and based on arbitrary zone boundaries and does not reflect the existing environment. She also submitted that there is no precedent under the RMA in a strict sense, with each case needing to be assessed on its merits. Also, if an application passes the s104D tests, there is no risk that an application may undermine District Plan integrity. Ms. Mackintosh usefully included relevant case law, which supported her submissions that:
- There is absolutely no irreconcilable clash with the provisions of the ODP and PDP [sic].
 - There is no clear proposition that there will be materially indistinguishable and equally clashing further applications to follow
 - There is very little area within Kinloch available to be developed.
- (172) I accept the Council and Applicant's position and advice in respect to both the KCSP and plan integrity and matters of precedent. While I appreciate that the proposed development does not implement the density of development indicated in the KCSP, I do not find that these are of such consequence that they break or undermine the document itself. I accept Ms. Hunt's advice in paragraph 99 of her evidence that the Site will be adequately serviced by infrastructure, will generally not be visible from the rest of the Kinloch Village or the valley floor, does not affect or significantly change any landforms, provides new reserves and connected green corridors and uses green engineering approaches.
- (173) I also accept and adopt Ms. Wood's advice in her s42A report and Ms. Hunt's advice in her evidence in respect to the FDS and the two iwi management plans.

Subject to Part 2

- (174) Both Ms. Wood and Ms. Hunt provided assessments of the Application against Part 2, both concluding that the proposal achieves its purpose and principles. With no evidence to the contrary, I accept and adopt their advice.

Section 106 RMA

- (175) I accept and adopt Ms. Wood's advice that s106 of the RMA is not relevant to this Application.

Change of conditions and cancellation of consent notices

- (176) I accept and adopt Ms. Wood's advice that the effects of the proposed change of conditions and cancellation of consent notices to be negligible, and an administrative exercise of no consequence.

Lapse period

- (177) I accept and adopt Ms. Wood's advice that a 10-year lapse period is acceptable in the circumstances.

Conditions of consent – s108, s220 and s221

- (178) I have carefully reviewed the final set of recommended consent conditions appended to Ms. Wood's final comments on the LVA independent peer review. Having done so, I am satisfied that these conditions are thorough and comprehensive, will ensure that the development is undertaken in accordance with the resource consent and will appropriately manage any potential adverse effects.

Parties' assistance

- (179) I would like to thank all parties for the assistance they gave to me in considering and deciding on this Application.

9 Overall Conclusion and Reasons

- (180) For the reasons contained in this decision, I find that the Application meets both tests under s104(1)(a) and (1)(b) of the RMA and can proceed to be granted under s104 and s104B.

- (181) I find that the effects of the proposal are acceptable under s104(1)(a).

- (182) I find that the proposal is overall consistent under s104(1)(b) with the relevant provisions in the Operative District Plan being the most relevant planning document. I have also found the proposal to be consistent with the other two most relevant documents, the NPS-UD and RPS.

- (183) Further, I am satisfied that there are no matters under s104(1)(c) that would lead me to decline consent.

- (184) I am also satisfied that the proposal is consistent with Part 2 of the RMA.

- (185) Therefore, for the reasons articulated in this decision, I grant consent under s104B, s104D and s104.

10 Grant of Consent

Pursuant to the authority delegated to me by Taupō District Council and pursuant to sections 104, 104B, 104D, 108, 220 and 221 of the RMA, for the reasons given in this decision, I **hereby grant consent** to the Applications by Seven Oaks Kinloch Limited to:

- a) Land Use Consent for earthworks cut and fill to construct roads and to shape the proposed lots in excess of the 1.5m and 0.5m vertical ground alteration limits outside and within setbacks; for future development on the residential lots to exceed the provisions in relation to building coverage, plot ratio, building setbacks; and
- b) Subdivision Consent to create 83 residential lots, four reserves and five roads over six Stages that will be less than the minimum and average lot sizes for the Kinloch Low Density Environment; and to construct roads, extend water and wastewater infrastructure to service the lots; and
- c) Change of Conditions Consent to change conditions of Subdivision Consent RM200118A to remove Stage 9 from this consent to incorporate this area into the proposed subdivision
- d) Cancellation of consent notices on Lots 1 and 2 DP 514714

On the application sites of:

- Lot 202 DP 606472 contained within Record of Title 1201870, 14.71ha in area [Otaketake Drive - no address]
- Lot 1 DP 514174 contained within Record of Title 797345, 1ha in area [27 Kahikatea Drive]
- Lot 2 DP 514174 contained within Record of Title 7877571, 1ha in area [25 Kahikatea Drive]

And that the consents be subject to a 10-year lapse period.



Commissioner Gina Sweetman

Date: 29 October 2025