BEFORE THE HEARING COMMISSIONER APPOINTED BY TAUPO DISTRICT COUNCIL

IN THE MATTER	of the Resource management Act 1991 (the Act)
AND	
IN THE MATTER	An application for land use consent [RM240388], subdivision consent [RM240389] and variation to subdivision consent RM200118B 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
BETWEEN	Seven Oaks Kinloch Limited (Applicant)
AND	Taupō District Council (Consent Authority)

SYNOPSIS OF OPENING LEGAL SUBMISSIONS ON BEHALF OF SEVEN OAKS KINLOCH LIMITED

Dated: 26 AUGUST 2025

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MAY IT PLEASE THE COMMISSIONER:

INTRODUCTION

1. These submissions are made on behalf of Seven Oaks Kinloch Limited (**Seven Oaks or Applicant**). Seven Oaks has sought subdivision resource consent to create 83 residential lots, 4 reserves, and 5 roads over six stages; and related land use consent for earthworks to implement the proposed subdivision, together with consent for additional building coverage, plot ratio and building setbacks in relation to the relevant standards under the Taupō District Plan. In addition, the Applicant has sought to vary a previous subdivision consent, RM200118B, to integrate Stage 9 of that previously consented subdivision with the current application. These resource consents are together referred to as the **Proposal**.

2. The subject land is the third "block" of land owned by Seven Oaks which, if consent is granted, will complete the development of its landholding in Kinloch. This is reflected in the staging numbers outlined in the AEE and s42A report. As demonstrated by the consented developments which have been established and/or are under construction, Seven Oaks has an established track record of producing high quality, high amenity residential developments within Kinloch. It is committed to ensuring that this last phase of its development will be implemented to the same high standards.

3. As Mr Rielly states in his evidence, he and Mr Bartley saw the Seven Oaks land as an opportunity to showcase the merging of residential and environmental objectives in a quality and sustainable development proposition.[1] Indeed, some of the submitters on this Proposal are residents or landowners within the completed parts of the Seven Oaks development. Seven Oaks has now completed the development of 134 residential lots within stages 1 – 7 (to the southwest of the Proposal site),

[1] Statement of evidence of Phil Rielly, 12 August 2025, paragraph 9.

and 25 residential lots at Seven Oaks Terraces stages 1 & 2 (to the north/northeast of the Proposal site).[2]

4. This Proposal represents the final tranche of the overall vision of Seven Oaks. Despite its activity status as "non-complying" it is a straightforward residential subdivision which will integrate with the existing environment and provide a logical transition of density of development between stages 1 to 7 through to "The Terraces".[3] A comprehensive suite of conditions is proposed, including changes to minimum building setbacks and earthworks disturbance in response to concerns raised by submitters noted in further information requests from Taupō District Council.[4]

5. As I will expand on later in submissions, the concerns raised by submitters, including those described in the statement of evidence of Maree Drury for the Te Kowhai Residents' Association (**TKRA**), are unfounded and have no evidential basis. Fundamentally, the Kinloch Community Structure Plan (**KCSP**) is just that – a structure plan. It is implemented by the provisions of the Taupō District Plan (**TDP**) which sets out the general and specific zone standards for development. The KCSP is not a set of rules, nor does it (or the TDP) establish a *de facto* prohibited activity status for development which does not comply with controlled activity standards for subdivision.[5]

6. It is trite law, unless classified as a prohibited activity, that if a proposed activity does not comply with the standards prescribed in a district plan it simply triggers the need for resource consent. In this case, the non-complying activity status of the Proposal is ostensibly due to the proposed lot sizes within the Low-Density Residential Zone (**LDZ**) part of the site.

[2] Statement of evidence of Phil Rielly, 12 August 2025, paragraph 10.
[3] Statement of evidence of Michael Graham, 12 August 2025, paragraphs 18 and 19.
[4] Statement of evidence of Sarah Hunt, 12 August 2025, paragraphs 24 and 25.
[5] The implication of some submissions in opposition is that any development that is not "in accordance with" the KCSP cannot and should not be consented, effectively making such development prohibited.

7. The expert evidence for the Applicant demonstrates that the effects asserted by submitters will be minor or less than minor, including cumulative effects. As Ms Hunt explains, a sensitive design approach has been taken through the protection of the scenic reserve edge, limiting building height, providing stormwater treatment and planted local purpose reserves, and limiting outdoor lighting.[6] This, together with the proposed conditions relating to ecological mitigation, construction management, and provision of roading infrastructure mean that the Proposal's effects will be minimised to the fullest extent and ultimately result in a development which will bring positive effects to the Kinloch community.

8. The section 42A report author has recommended that consent be granted. Ms Wood's report is comprehensive and balanced. Relevantly, to the extent that TDC sought technical input from independent experts (LVA, transportation), there are no outstanding issues as between the experts for the Applicant and TDC. Ms Hunt largely concurs with Ms Wood and there are no outstanding issues as between the Applicant and TDC.

9. The Waikato Regional Council (**WRC**) has granted the associated regional resource consents to Seven Oaks.[7] Furthermore, the WRC has advised TDC that it does not wish to be heard and that it supports the Proposal.[8] In my submission, that support is notable considering the nature and scope of its submission.

10. Finally, by way of introduction, none of the submitters has presented expert evidence. I will address the law regarding consideration of lay witness evidence later in submissions. However, of particular note is the

[6] Statement of evidence of Sarah Hunt, 12 August 2025, paragraph 11.
[7] Attachment E to the statement of evidence of Sarah Hunt, 12 August 2025, paragraph 11.
[8] Letter from the Waikato Regional Council, 15 July 2025: https://www.taupodc.govt.nz/rules-regulations-and-licenses/resource-consents/notified-consents/seven-oaks#toc-link-4 – Letter to be Tabled for Minute 1 Seven Oaks Hearing - WRC no longer has concerns.pdf (PDF, 247.6KB)

total lack of evidence in support of the assertion from that there will be adverse effects on the "night sky" – despite the TKRA's members (assuming they own land or reside in the Te Kowhai Ridge development area), being unable to see the development and that lighting restrictions are proposed within the areas adjacent to the reserves, as well as controls over outdoor lighting.[9] To be blunt, this is not Mt John. There are no planning overlays or other restrictions in the TDP regarding "night sky" protection.

11. Further to this, the concern about adverse noise effects from the use of roads within the development area of the Proposal has no evidential basis. The TDP does not include noise limits for residential traffic. Moreover, it is not anticipated that these residents will be subject to unacceptable noise effects from additional vehicle movements on Oakdale and Whangamata Roads. As Ms Makinson states in her evidence, Whangamata is an arterial road (which I understand means that these are designed to carry high volumes of traffic) and traffic levels will remain within acceptable limits.[10] Ms Makinson will respond further when she gives her evidence.

12. I do not traverse the detail of the rule triggers in the TDP or the relevant objectives and policies. In that regard, I refer the Commissioner to the AEE, section 42A report and the evidence of Ms Hunt.

13. To summarise, in my submission:

    (a) The Proposal's actual and potential effects on the environment are acceptable, ranging from less than minor to minor, and can be effectively mitigated via appropriate conditions.

    (b) Based on a fair appraisal of the objectives and policies read as a whole, the Proposal is not contrary to and is generally consistent with the relevant objectives and policies of the PDP.

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[9] Statement of evidence of Sarah Hunt, 12 August 2025, paragraph [146].

[10] Statement of evidence of Judith Makinson, 12 August 2025, paragraph [22].

(c) The Proposal will achieve the purpose of the Resource Management Act 1991 ("RMA").

SCOPE OF SUBMISSIONS

14. These submissions focus on the key issues in dispute as between the submitters in opposition to the Proposal and the witnesses for the Applicant and Ms Wood for the Council. Based on submissions and the written statement received as at the time of preparing these legal submissions, the key issues in contention are:

(a) Consistency with the KCSP (noting that this is implemented through the provisions of the TDP, including the relevant objectives and policies).
(b) The effects of the Proposal on landscape and visual amenity values.
(c) Cumulative effects.
(d) Precedent/plan integrity.

15. Accordingly, these submissions:

(a) Recap the Proposal.
(b) Set out the principles for assessing and weighting evidence.
(c) Address the test under section 104D of the RMA.
(d) With reference to the evidence, address the effects of the Proposal on the environment in contention, in particular:
  (i) Landscape and visual amenity.
  (ii) Ecology
  (iii) Transportation
  (iv) Engineering considerations/infrastructure capacity
  (v) Cumulative effects.
(e) Briefly consider the relevant objectives and policies of the PDP.
(f) Address the issue of "precedent" effect and/or concerns about the integrity of the district plan.

(g) Address section 104(1)(c) – anomalous zone boundary.

(h) Address Part 2 of the RMA.

(i) Provide a conclusion.

OUTLINE OF PROPOSAL

16. The evidence of both Ms Wood and Ms Hunt provide a description of the Proposal. I do not intend to expand on their descriptions, except to note the key components which are:

(a) Application for subdivision and land use consent for 83 new lots and associated provision of reserves, roading, and earthworks.

(b) A variation to conditions of the earlier consent RM200118B.

(c) Amendment to consent notices, associated with (b) above.

WEIGHTING AND CONSIDERATION OF EVIDENCE

17. While the weight to be given to any evidence, including expert evidence, is a matter for the Commissioner, the following factors may guide a decision:[11]

(a) The extent of an expert's recent experience directly relevant to the specific matter in issue.

(b) The expert's independence in the present case.

(c) Evidence that the expert has reviewed all the relevant material or provisions, and that she or he has drawn attention to any relevant matters that have not been reviewed or any necessary research that has not been undertaken.

(d) The extent of independent analysis or research, to support any conclusions reached in any statement of evidence, including clearly setting out the basis for why she or he does not agree

[11]See generally *Briggs v Christchurch City Council*, C45/2008, 24 April 2008 (EnvC), Environment Court Practice Note 2023, and *The Warehouse Limited v Dunedin City Council*, C101/2001, 22 June 2001 (EnvC), about the role of expert evidence.

with another expert's position, and the overall clarity of the reasoning provided.

(e) Whether the evidence is presented in an objective impartial manner, appropriately making any necessary concessions or qualifications relative to the opinions reached by other experts and drawing appropriate attention to aspects of the Proposal that might ameliorate issues about which they are concerned.

(f) The consistency of the evidence, both during the hearing, as well as between evidence given for the Proposal and evidence given or not given (as the case may be) for other projects or planning processes raising similar issues.

(g) The absence of any unsupported assertions, and the absence of any flavour of advocacy in the language used.

(h) Whether the expert has read and confirmed that they have read and agree that they have complied with the Environment Court's code of conduct in preparing their evidence, and that they will continue to do so when presenting their evidence.

18. Many of these factors arose from the (now relatively old but still cited) decision of *Shirley Primary School v Telecom Mobile Communications*,[12] one of the first significant "cell site" cases. In that decision, the Court made the following observations:

> [144] In assessing the expert evidence (including rebuttal and cross-examination) on any issue we have to take into account and evaluate (inter alia) the following factors:
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> (1) the strength of the qualifications and the duration and quality of the experience of each witness;
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> (2) the reasons for each witness' opinions (and their **consistency, coherence and presentation**);
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> (3) the **objectivity and independence** of each witness and the comprehensiveness of their evidence - for example **whether they have identified and taken**

[12] *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66.

into account matters which do not favour their opinion;

(4) there is an identification of and general acceptance of the science of methodology involved; and

(5) Especially for 'hard' science - the research or papers referred to by the witnesses in reaching their opinions, with respect to whether"

(a) the techniques used are reliable

(b) the error rates are known and published (and the research is shown to be statistically significant)

(c) the research or papers have been published

(d) the research or papers have been subject to peer review

(e) the research is repeatable (and has been replicated).

[145] Not all those aspects or even all parts of them need to be met – they are criteria for measuring the weight to be given to the specific evidence when making findings. Factors (1)-(3) may be the only relevant ones for expert opinions which are only "science" in the softest sense eg town planning and resource management. Factor (4) comes into play more for the social sciences, physicians, epidemiologists and ecologists. All of factors (1)-(5) are necessary in the evaluation of some ecological evidence and all hard science.

19. The evidence for the Applicant is consistent with these principles. It is consistent, coherent, objective, and independent. Its witnesses have genuinely considered the submissions on the Proposal and the section 42A report.

20. As noted at the outset of these submissions, none of the submitters has presented expert or other persuasive statements which support the assertions they make regarding LVA (adverse lighting effects on night sky), road/traffic noise, or plan integrity matters (noting the latter is not an effect). Their concerns are entirely subjective. It is somewhat ironic that many live within developments that were either granted prior to the KCSP (and required non-complying resource consent) or post-KCSP and which are inconsistent with the KCSP. All were assessed and granted consent as a non-complying activity under the TDP.

21. In my submission, the evidence for the Applicant ought to be given significant (if not determinative) weight, alongside that of the section 42A author.

Expert and lay evidence

22. Following on from the above, as with conflicting expert evidence, the weight to be given to lay evidence, particularly where that lay evidence conflicts with expert evidence, is a matter for the Commissioner (and Court). Evidence from submitters is relevant for the Commissioner's consideration of the nature and extent of effects on them from their personal perspective. However, all evidence, including lay evidence, must ultimately be objectively weighed against the criteria in the TDP, and the RMA. Considerable care should also be taken to accord due weight to independent expert evidence when faced with conflicting evidence from witnesses who make assertions which are inconsistent with one another.

NON-COMPLYING ACTIVITY STATUS – S104D

23. Regarding the "effects" test in section 104D, the question is whether the effects are "no more than minor". There is no requirement to demonstrate that the effects are "less than minor". There is no requirement that all effects must be no more than minor. Effects are to be considered holistically when assessing whether they are no more than minor. In this case, based on the evidence for the Applicant and TDC, there is no question that the Proposal passes the "effects gateway" in section 104D. As the evidence for the Applicant and TDC states, the effects of the Proposal will be minor at worst.

24. While there may be some marginal points of disagreement between Ms Hunt and Ms Wood as to whether the Application is consistent with some of the objectives and policies of the TDP, neither has assessed it to be contrary to any of these. In that regard, when assessing whether a non-

complying activity is contrary to the objectives and policies of a plan, a broad judgement should be made.

25. As the Court of Appeal stated in *Arrigato,* the nature of a non-complying activity means that it is unlikely to find direct support from any specific provisions of the plan. Yet it may be granted, provided that it will not be contrary to the objectives and policies of the plan.[13] This requires more than just isolating out one or two policies with which the activity is contrary.[14] The evaluation under section 104D must be undertaken on a "holistic basis, looking over the entire application and a range of effects, not individual effects".[15]

26. Based on a fair appraisal of the objectives and policies as a whole, in the context of the existing environment and the Proposal's effects on that environment as assessed by the Applicant and TDC, the Proposal is generally consistent with the relevant objectives and policies of the TDP. Accordingly, the Proposal may be assessed under sections 104 and 104B of the RMA. In that regard, in my submission there is no basis for declining the Proposal pursuant to section 104 based on an assessment of the Proposal against the objectives and policies of the TDP.[16]

EFFECTS OF THE PROPOSAL

Existing environment

27. Pursuant to section 104, when considering an application for a resource consent, the Commissioner must have regard to any actual and potential effects on the environment that allowing the activity would have.[17] *Hawthorn* is the leading case on the existing environment against which

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[13] *Arrigato Investments Ltd v Auckland RC* [2002] 1 NZLR 323.
[14] *Kuku Mara Partnership (Forsyth Bay) v Marlborough DC* EnvC W025/02, paragraphs [727] – [728]. Based on the evidence of Ms Field and Ms Helme, the Proposal is not contrary to any of the relevant objectives and policies of the PDP.
[15] *SKP Inc v Auckland Council* [2018] NZEnvC 81.
[16] Given the date of the KCSP and when it was implemented through the TDP (2007), the NPS-UD must be given weight and recourse to Part 2 of the RMA is appropriate.
[17] RMA, section 104(1)(a).

effects must be assessed.[18] It remains authority for the proposition that the "existing environment" includes the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity or an unimplemented resource consent that is likely to be implemented.[19]

28. It follows that the existing environment against which the Application ought to be assessed is the environment including the existing and consented residential development likely to be given effect to within Kinloch. The effects on this existing environment have been assessed by the expert witnesses for the Applicant as documented in the reports prepared in support of the Application and in evidence prepared for this hearing.

Landscape and visual amenity values (LVA)

29. Mr Graham's evidence is that the Proposal will have a ***very low*** adverse effect on existing landscape character and visual amenity values[20] and meets the overall intent of the relevant landscape and amenity objectives, policies, and rules of the TDP and section 6 (a), 6 (b), 6 (c) and 7 (c) of the RMA.[21] This equates to a less than minor effect on the landscape character and amenity of the receiving environment.[22]

Submitter concerns

30. With respect to the issues raised by submitters and addressed in the statement of evidence of Ms Maree Drury, I note that Mr Graham's uncontested evidence is that the elevated topography of the site, surrounding reserve planting, shelter belts, amenity planting and existing residential development, mean that the views of the subdivision will be

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[18] *Hawthorn-Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299.
[19] *Hawthorn-Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299.
[20] Statement of evidence of Michael Graham, 12 August 2025, paragraph [16] (summary).
[21] *Ibid*, paragraphs [13],[15], [20].
[22] *Ibid,* paragraph [20].

obscured from many surrounding locations.[23] Mr Graham's evidence is that the visual effect of the Proposal is very limited and, in particular, elevated viewing locations are some 2kms away.[24] In my submission, this undermines the assertions from the Te Kowhai Residents' Association that there will be adverse "night sky" effects from residential lighting within the Proposal site.

31. As Mr Graham opines, the same standard of road lighting is to be applied as per the previous stages of the Seven Oaks subdivision. Moreover, conditions are proposed to control outdoor lighting in relation to reserves. Mr Graham further states that:

> […] The additional potential lighting from residential houses within this development, where seen this will form part of the overall nighttime lighting generated by the village of Kinloch and result in a similar visual coherence with respect to the distribution of the wider night lighting of Kinloch.

32. With respect, the submissions and the statement of evidence of Ms Drury do not consider the existing environment and its landscape and visual amenity values. They reflect a subjective opinion based on their personal views. However, the analysis must be reflective of an appropriate section of the community – not just a selective group of private views.

33. The legal principles for assessing amenity effects are well established. That is, a decision maker should apply an objective assessment whilst understanding the subjective. This is captured in the following excerpt from the Environment Court's decision in *Schofield v Auckland Council*:[25]

> [51] The topic of amenity can be emotionally charged, as this case has revealed. People tend to feel very strongly about the amenity they perceive they enjoy. Whilst s 7(c) of the RMA requires us to have

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[23] *Ibid*, paragraph [16] summary).

[24] Statement of evidence of Michael Graham, 12 August 2025, paragraph [114]. As Mr Graham will explain when he gives his evidence, the term "ridgeline" has two different technical meanings. Mr Graham's use of the term "ridgeline" is in reference to a ridgeline as "higher ground between two adjacent watersheds" (the Proposal site). This should not be confused or conflated with the alternative meaning being the "highest line of a ridge or mountain range", which appears to be how the TKRA have erroneously characterised the Proposal site.

[25] *Schofield v Auckland Council* [2012] NZEnvC 68, at para [51].

> particular regard to the maintenance and enhancement of amenity values, assessing amenity values can be difficult. The Plan itself provides some guidance, **but at its most fundamental level the assessment of amenity value is a partly subjective one, which in our view must be able to be objectively scrutinised**. In other words, the starting point for a discussion about amenity values will be articulated by those who enjoy them. This will often include people describing what an area means to them by expressing the activities they undertake there, and the emotions they experience undertaking that activity. Often these factors form part of the attachment people feel to an area or a place, but it can be difficult for people to separate the expression of emotional attachment associated from the activity enjoyed in the space, from the space itself. **Accordingly, whilst the assessment of amenity values must, in our view, start with an understanding of the subjective, it must be able to be tested objectively.**
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> [Emphasis added.]

34. This approach was reiterated in *Wilson v Waikato Regional Council,* where the Court cautioned against elevating "separate and distinct individual and family experiences" to a level of a wider, yet undefined, "community" experience.[26] Knowing an activity exists and potentially being able to "see" it does not constitute an effect on amenity values which is unacceptable. Such a proposition is fraught and would lead to development paralysis whereby nothing could occur where a neighbour or any person just didn't like the idea of it.

35. In that regard, it is well-established that there is no entitlement to a view. As the Court in *Re Meridian Energy*[27] stated:

> [112] When dealing with landscape and visual amenity issues several basic legal principles need to be remembered. The first is that there is no right to a view. Even though we must have particular regard to the **maintenance and enhancement of amenity values, this is not the same thing as saying there is a right to a view**. The second is that a landowner is permitted to use their land as they see fit, providing that the use of it does not breach any legal requirement. It follows that the **use of land by a neighbour in some circumstances can lawfully change an existing view.**

36. Ms Hunt's assessment relies on the evidence of Mr Graham's objective opinion. Based on the legal principles discussed above, Ms Hunt's evidence and that of Ms Wood should be afforded significant weight. For

[26] *Wilson v Waikato Regional Council*, [2021] EnvC 131, at para [171].
[27] [2013] NZEnvC 59.

completeness, if the Commissioner considers it appropriate or necessary to have recourse to Part 2, there are no section 6 landscape matters in play and the requirements of section 7(c) and 7(f) are met.

Ecological effects

37. Dr Mueller's evidence is that the overall effect of the proposed works is expected to be low, if all recommendations to avoid and/or minimise effects are implemented.[28] As confirmed in Ms Hunt's evidence, Dr Mueller's recommendations will be implemented through the proposed conditions of consent.[29] These include:

> (a) Fauna management protocols to be applied only if required to avoid direct effects;
> (b) Sediment control and stormwater management (including treatment of stormwater prior to entering the watercourses
> (c) Buffering of lighting and noise effects on the adjacent reserve areas from development through setbacks;
> (d) The consideration of wildlife-sensitive features for outdoor lighting to minimise lighting effects; and
> (e) Establishment of corridors as part of the subdivision reserves to enable movement of fauna species across the Site.
> …
> A restoration planting plan for the subdivision reserve areas is recommended to guide restoration and habitat replacement in the proposed reserves and corridors (Annexure A) with suitable plant species for the Site context.

38. Dr Mueller's evidence is uncontested and, in my submission, should be given determinative weight in relation to actual and potential ecological effects of the Proposal. Moreover, I note Dr Mueller's recommendations regarding sensitive outdoor lighting and buffering of lighting adjacent to reserves which reiterates the proposition that the assertions made by submitters regarding night sky and lighting effects are unfounded.

[28] Statement of evidence of Dr Hannah Mueller, 12 August 2025, paragraph [14].
[29] Statement of evidence of Sarah Hunt, 12 August 2025, paragraphs [64] – [66].

Transportation

39. The evidence of Ms Makinson is uncontested. Ms Hunt addresses the transportation effects in her evidence and relies on Ms Makinson's evidence. I do not repeat this analysis in submissions.[30] In short, the traffic and transportation effects of the proposed development are assessed to be less than minor. Indeed, Ms Makinson's opinion is that the increased density from the development is likely to assist the viability of local services and provision of public transport.[31]

40. Ms Makinson will present a supplementary statement of evidence at the hearing on 27 August 2025 which summarises her evidence. This will include a response to the statement of evidence of Ms Drury regarding potential noise effects. In summary, Ms Makinson's evidence is that the level of increase in traffic demand generated by the Proposal is unlikely to change the level of noise experienced at a given property, particularly when considering that the nature of the traffic is consistent with the existing residential environment around Oakdale Drive and that Whangamata Road is collector Road to the west of Kinloch Road and has the function of connecting areas of activity to the arterial road network.

41. Considering this evidence, in my submission any additional traffic noise effects on the environment, including the submitters, resulting from the Proposal will be negligible (noting that the relevance of noise from residential use on a public road is irrelevant).

Three waters and engineering matters

42. Mr Brand's evidence is uncontested. Ms Wood for the TDC considers that the potential effects of the Proposal in relation to servicing and infrastructure will be no more than minor and that the concerns raised

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[30] *Ibid*, paragraphs [70] – [77].
[31] Statement of evidence of Judith Makinson, 12 August 2025, paragraph [23].

by submissions on those matters have been resolved.[32] Ms Hunt relies on the evidence of Mr Brand and concurs with the section 42A author.

43. Regarding earthworks, Mr Brand's evidence is that earthworks will be minimised and will consist of general recontouring of existing undulating land. As such, the effects of the proposed earthworks are minimal (minor or less than minor).[33] Moreover, robust erosion and sediment controls have been proposed which meet or exceed the WRC guidelines.[34] The Applicant has been granted the relevant resource consents from the WRC and the WRC supports the Proposal.

44. Similarly, in relation to stormwater effects, the WRC has granted consent for stormwater diversion (for completeness I note that the discharge of stormwater is a permitted activity under the Waikato Regional Plan), and there are no outstanding issues in this regard.[35] There is sufficient capacity in the TDC network for water supply and wastewater disposal.[36] In short, any actual and potential effects in relation to three waters, earthworks, and roading construction will be minimal (minor or less in terms of section 104D).

CUMULATIVE EFFECTS

45. There is no evidence of any cumulative effects of the Proposal which are unacceptable and could warrant decline of consent.[37] Both Ms Hunt and Ms Wood conclude that any cumulative adverse effects of the Proposal will be less than minor. Ms Drury appears to opine that there will be unacceptable cumulative amenity, character, and traffic effects. That is

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[32] Section 42A report, paragraph 13.112.
[33] Statement of evidence of Thomas Brand, 12 August 2025, paragraph 8(b).
[34] *Ibid,* paragraph 8(e).
[35] *Ibid,* paragraph [10].
[36] *Ibid,* paragraphs [11] and [12].
[37] Refer to *Stallard v Nelson CC* EnvC C160/06 where the Court also applied the decision in *Dye v Auckland RC*, holding that a finding of a cumulative effect requires evidence of a particular effect that would be cumulative on an effect of the same kind arising from other activities, past or present.

despite the expert evidence of Mr Graham, Ms Makinson, Ms Hunt, and Ms Wood.

46. In my submission, the concerns raised by submitters, included the Te Kowhai Residents' Association, are unfounded and contrived. It would be novel to suggest that having assessed effects individually as less than minor/no more than minor, those "added together" generates an unacceptable cumulative effect in the context of the relevant existing environment. This Proposal is not a tipping point and inconsistency with a 20+ year old structure plan does not equate to unacceptable cumulative effects.

TDP OBJECTIVES AND POLICIES

47. Ms Hunt and Ms Wood address these in their evidence and I do not intend to expand on their assessment in submissions. Neither Ms Hunt's nor Ms Wood's evidence is contested by an independent expert witness. As noted above, the Proposal is largely consistent with the relevant objectives and policies. Accordingly, the Proposal passes the section 104D(1)(b) gateway. Moreover, there is no policy basis on which the Proposal can be declined under section 104.

PRECEDENT/INTEGRITY OF THE DISTRICT PLAN

48. There are no precedent or plan integrity issues arising from the Proposal. The "horse has bolted" in Kinloch and that is demonstrated by the map attached to Ms Hunt's evidence. In my submission, that reiterates the point that the KCSP is out of date, is based on arbitrary zone boundaries, and does not reflect the existing environment. The evidence that the Proposal is largely consistent with the relevant objectives and policies of the TDP further emphasises the absence of any precedent or plan integrity concerns.

49. Furthermore, under the RMA, there is no precedent in the strict sense. Every case must be considered on its merits, and no two applications are

likely to be the same.[38] Most importantly, having passed both "gateway" tests of section 104D, there is no risk that the Application could be said to undermine the integrity of the TDP. Inconsistency with a very limited number of relevant objectives and policies does not equate to an unacceptable "precedent" if consent is granted.[39]

50. The legal principles regarding precedent/plan integrity are captured in the following excerpt from the decision in *Blueskin Bay Forest Heights Limited v The Dunedin City Council*[40]:

> [44] The issue of what was argued as plan integrity, sometimes rather unhelpfully described as precedent effect, can also be considered under this head.
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> [45] We have said before (see, for instance *Beacham v Hastings DC* W075/2009) and I must say again, that the plan integrity argument does tend to be **somewhat overused**, and needs to be treated with some reserve. The short and inescapable point is that each proposal has to be considered on its own merits. **If a proposal can pass one or other of the s104D thresholds, then its proponent should be able to have it considered against the s 104 range of factors**. If it does not match up, it will not be granted'. If it does, then the legislation **specifically provides for it as an exception** to what the District Plan generally provides for.
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> [46] Cases such as *Dye* v *Auckland RC* [2001] NZRMA 513 make it clear that while there is no precedent in the strict sense in this area of the law, there is an expectation that like cases will be treated alike and that the Council will consistently administer the provisions of the Plan. And cases such as *Rodney DC* v *Gould* [2006] NZRMA 217 also make it clear that it is not necessary for a proposal being considered for a *non-complying* activity to be truly *unique* before Plan integrity ceases to be a potentially important factor. Nevertheless, as that Judgment goes on to say, a decision maker in such an application would look to see whether there might be factors which take the particular proposal outside the generality of cases.
>
> [48] **Only in clear cases, involving an irreconcilable clash with the important provisions, when read overall, of the District Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow**, will it be that Plan integrity will be imperilled to the point of dictating that the instant

[38] *Auckland Council v Matvin Group* [2023] NZHC 2481.

[39] *Gray v Dunedin CC [2023]EnvC 45*, at paragraph [219]: "However, we have found that the proposal is not contrary to the "avoid" directive in Policy 16.2.1.7, even if that is Ms Peter's position. Importantly, the proposal is able to bypass that directive by coming within the Y exception. Accordingly, and based upon the court's findings, questions of plan integrity and precedent do not arise if consent is granted to this proposal. If any precedent is set by a grant of this consent, it is not an undesirable precedent in our opinion".

[40] [2010] NZEnvC177.

> application should be declined. In such a case it is unlikely in the extreme that the resource consent would be granted in any event.

51. As submitted previously, read overall, based on the evidence of Ms Hunt and Ms Wood, there is absolutely no "irreconcilable clash" with the relevant provisions of the ODP and PDP. While it is unnecessary to go further than that conclusion, there is no "clear proposition that there will be materially indistinguishable and equally clashing further applications to follow".

52. To further address any potential concerns about precedent and plan integrity as a consequence of granting the Application, the High Court in *Auckland Council v Matvin Group*[41] made the finding that:

> [77] The granting of a resource consent has no precedent effect in the strict sense. In factual terms, no two applications are ever likely to be the same, although one may be similar to another. It is also not necessary for a proposed non-complying activity to be truly unique before planning integrity ceases to be a potentially important or decisive factor in granting an application.

53. In any event, there is very little area within Kinloch which remains to be developed which undermines the relevance of precedent. There are no precedent or plan integrity issues arising from consent being granted for the Proposal.

SECTION 104(1)(C)

<u>Arbitrary location of LRZ/GRZ boundary</u>

54. In my submission, the apparent anomaly of the arbitrary location of the LRZ/GRZ boundary is a relevant matter under section 104(1)(c). As stated in Mr Graham's evidence on the appropriateness of the boundary from an LVA perspective[42]:

> [18] I support the proposed increase in extent of *Kinloch GRZ* standards and controls to a greater portion of the site. I consider that the existing location of the *Kinloch GRZ Kinloch LRZ transition,* as shown within the TDC planning maps (and the KCDP) occurs arbitrarily

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[41] [2023] NZHC 2481.
[42] *Ibid*, paragraphs [18], [19], [105].

> at a narrow neck within the proposed residential area. In my opinion, from a landscape character perspective, this density transition creates an imbalance, as the western transition does not align with the general density transition expressed on the valley floor.
>
> [19] In my opinion, the most appropriate density transition line would occur at, or about, the cadastral line that corresponds with the alignment of Kahikatea Drive site access and the Kinloch Golf Course /Bode Lane boundary on the east. I consider the proposed more northern extent of the of Kinloch Residential Area enhances the overall legibility of the village, improves its coherence and aesthetic appeal through balancing the distribution of density of development within the village, and providing a less abrupt transition from the *Kinloch GRZ to Kinloch LRZ* than may otherwise occur.

55. Mr Rielly further elaborates on this point in his evidence.[43] The short point is that the boundary between the zones doesn't make sense from a resource management perspective and reflects an approach dating back 20+ years. In my submission, this together with the evidence of Mr Graham and Mr Rielly supports the proposition that the boundary between the LRZ and GRZ is not appropriate and that ought to be considered pursuant to section 104(1)(c).

PART 2 OF THE RMA

56. The KCSP was implemented through the Taupo District Plan in 2007. Several developments have been consented and implemented since that time which are not "consistent" with the TDP framework. While there is no obvious conflict between the Proposal and relevant higher order policy documents, based on the existing environment, and the evidence of Mr Graham and Mr Rielly regarding the arbitrary boundary between the LRZ and GRZ, in my submission it is appropriate for the Commissioner to have recourse to Part 2 in the current context.

57. The evidence for the Applicant[44] and that of Ms Wood for the Council demonstrates that the Proposal is consistent with Part 2, and, in my submission, the Proposal achieves the sustainable management purpose

[43] Statement of evidence of Phil Rielly, 12 August 2025, paragraphs [27] to [29].
[44] Statement of evidence of Sarah Hunt, 12 August 2025, paragraphs [135] to [138]. Note that Mr Graham's evidence states that the proposal is consistent with section 6 and section 7(c).

of the RMA. Accordingly, consent should be granted, subject to the proposed conditions which have been agreed between Council and the Applicant.

CONCLUSION

58. Subject to the conditions attached to Ms Hunt's evidence, the effects of the Proposal will be minor at worst and passes both "gateway" tests in section 104D and may be assessed pursuant to section 104. Having regard to the relevant matters under section 104, the Proposal will achieve the purpose of the RMA. There is nothing to preclude grant of consent.

EVIDENCE FOR SEVEN OAKS

59. I will call the following witnesses for Seven Oaks:

(a) Phil Rielly, CEO of Seven Oaks and shareholder: corporate witness providing commentary on history and ethos of Seven Oaks and the KCSP.

(b) Michael Graham: landscape character and visual amenity.

(c) Dr Hannah Mueller: ecology.

(d) Judith Makinson: transportation.

(e) Thomas Brand: three waters and engineering.

(f) Sarah Hunt: planning.

M Mackintosh
Counsel for Seven Oaks Kinloch Limited

26 August 2025