BEFORE THE INDEPENDENT COMMISSIONERS APPOINTED BY KAPITI COAST DISTRICT COUNCIL

IN THE MATTER

of the Resource Management Act 1991 (RMA or the Act)

AND

IN THE MATTER

an application for resource consent by M R Mansell, R P Mansell and A J Mansell for a subdivision and to undertake earthworks with a lapse period of 10 years at 48 and 58 Tieko Street, and 131, 139 and 147 Otaihanga Road, Otaihanga, Paraparaumu

(RM210147).

STATEMENT OF EVIDENCE OF ALICE JANE BLACKWELL
ON BEHALF OF NZ CUSTODIAL TRUSTEES (103) LTD AND PENDENNIS CUSTODIAL TRUSTEE LTD THE OWNERS OF 44 TIEKO STREET, ORAIHANGA, PARAPARAUMU

27 JULY 2022

1. INTRODUCTION

Qualifications and Experience

- 1.1 My name is Alice Jane Blackwell. I hold the qualifications of a Bachelor of Arts in Geography and Economics and a Master of Regional and Resource Planning from the University of Otago. I am an Intermediate Member of the New Zealand Planning Institute. I have over 12 years professional planning and resource management experience in New Zealand.
- 1.2 I hold the position of Senior Planner at The Property Group Limited. I have held this position since November 2019. My previous experience includes a Senior Analyst at the Ministry for the Environment (the Ministry), in various resource management teams, including, Planning Practice, Resource Management Tools and Urban and Infrastructure. On behalf of the Ministry, I worked with local authorities to support their implementation of national direction under the RMA, including the implantation of the National Policy Statement on Urban Development Capacity 2016 (which was replaced by the National Policy Statement on Urban Development 2020).
- 1.3 Prior to this I held the position of Resource Consents Planner at the Wellington City Council where I processed hundreds of land use and subdivision consents.

Involvement in the Project

I have been engaged by the owners of the property at 44 Tieko Street, Otaihanga (NZ Custodial Trustees (2013) Ltd and Pendennis Custodial Trustee Ltd) to provide planning advice in relation to the resource consent application lodged for 48 and 58 Tieko Street, and 131, 139 and 147 Otaihanga Road. This led to writing the submission on the application on their behalf and preparing evidence. I have met with Alan Strawbridge who represents the owners of the site, viewed the application site from the submitter's property at 44 Tieko Street, and viewed the site from Tieko Street and Otaihanga Road where it adjoins the subject site. I have read the application, Officers s95 notification report, Officers s42A recommendation report and the applicant's pre-circulated evidence.

Scope of Evidence

- 1.5 In this evidence I address:
 - The site, proposal and the surrounding environment;
 - Reasons for consent;
 - The effects of the proposal on 44 Tieko Street and the surrounding environment;
 - Te Tupu Pai Our Growth Strategy
 - National Policy Statement on Urban Development;
 - The Regional Policy Statement;
 - The Kāpiti Coast District Plan objectives and policies;
 - 104D (RMA) Gateway Test;
 - Other matters;
 - Part 2 of the RMA; and
 - Conclusion.

Expert Witness Code of Conduct

1.6 I confirm I have read the Code of Conduct for Expert Witnesses contained in the Environmental Court Practice Note 2014 and that I agree to comply with it. I confirm I have considered all facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state otherwise.

2. THE SITE, PROPOSAL AND SURROUNDING ENVIRONMENT

- 2.1 I agree with the site description, site history and description of the proposal as outlined in Ms Rydon's s42A recommendation report.
- 2.2 The submitters site is located at 44 Tieko Street and is a 1 hectare site located on the eastern side of Tieko Street, Otaihanga. The application site adjoins 44 Tieko Street on its north-western, north-eastern and south-eastern boundaries. There is an existing single storey dwelling at 44 Tieko Street which is located at a ground

level of approximately 15.7 RL. This dwelling is separated from the subject site by approximately 27 metres. There is an existing right of way that provides vehicle access to both 44 Tieko Street and the application site. Mature pine trees surround 44 Tieko Street, generally following the boundaries of 44 Tieko Street.

3. SCOPE OF EVIDENCE

3.1 The owners of 44 Tieko Street are concerned about the effects on their property resulting from the proposal. As such this evidence will focus on proposed Lots 12 to 19, with particular focus on proposed Lots 13, 18 and 19. Lot 20 also adjoins 44 Tieko Street, however, the wetland extent within proposed Lot 20 helps to ensure that the dwelling on Lot 20 will most likely be sufficiently separated from 44 Tieko Street as it is assumed a dwelling would be located in the south-eastern corner of proposed Lot 20. The following discussion therefore focuses on the effects generated by Lots 12 to 19, where the proposal has the greatest impact on the owners and occupiers of 44 Tieko Street.

4. REASONS FOR CONSENT

- 4.1 I agree with Ms Rydon in her reasons for consent being required under the Kāpiti Coast District Plan as a non-complying activity.
- As a non-complying activity, the matters for consideration are not limited. In addition, before the Commissioners can turn their mind to whether or not consent can be granted, s104D of the RMA requires that the Commissioners must be satisfied that either:
 - (a) the adverse effects of the activity on the environment will be minor; or
 - (b) the application is for an activity that will not be contrary to the objectives and policies of the Kāpiti Coast District Plan.
- 4.3 I am not satisfied that the proposal passes either limb of the s104D gateway test, which I discuss further in section 10 of this evidence.

5. EFFECTS OF THE PROPOSAL ON 44 TIEKO STREET AND THE WIDER ENVIRONMENT

- 5.1 The effects of the proposal on 44 Tieko Street primarily relate to rural character and amenity effects including from the bulk and density of development facilitated by the proposed subdivision. These effects are discussed in more detail below.
- In my discussion below I refer to the 'Rural Residential Zone' of the Proposed District Plan (PDP) and the 'Rural Lifestyle Zone' of the operative District Plan 2021 (District Plan), depending on which document I am referring to. My understanding is that the change in the name of the zone reflects the requirement to align with the National Planning Standards which were effective from 30 June 2021, the same day the PDP was made operative.

Rural Character and Amenity Effects

Subdivision effects

- 5.3 The proposed subdivision will facilitate an increase in the density of development surrounding 44 Tieko Street. The proposed density, particularly of proposed Lots 12 to 19 erodes the rural residential character at 44 Tieko Street and will detract from the existing rural lifestyle character in the wider surrounding area.
- 5.4 Lots 12 to 19 comprise a total area of 2.25ha with lots ranging in size from 2,095m² to 4,660m². This area includes one of the four natural wetlands and an access leg for proposed Lot 19. The average size for these allotments is 2,823m². Taking into consideration the access leg, the average net lot size falls to approximately 2,600m². The District Plan allows for subdivision with an average lot size of 1ha and a minimum individual lot size of 4,000m². The proposal far exceeds the level of development that could be anticipated in the Rural Residential Zone.
- 5.5 Lots 12 to 19 have an average net lot size of 2,600m² and while these proposed lot sizes are larger than those in the southern area of application site, these are still far smaller than anticipated by the District Plan and erode the rural residential character for 44 Tieko Street.

- I am of the opinion that, as currently designed, the proposed subdivision design will facilitate an unreasonable level of development from the perspective of 44 Tieko Street. This is due to the small size and the high number of proposed lots surrounding 44 Tieko Street. Furthermore, I note that the District Plan provides for one residential unit and one minor residential unit per site in the Rural Lifestyle Zone. As such each of the proposed lots could contain two dwellings as a permitted activity (albeit that one will be classified as a 'minor residential unit').
- 5.7 The proposal involves earthworks cuts on proposed Lots 18 and 19 that will essentially result in potential building platforms for proposed Lots 18 and 19 at the same level as the existing dwelling on 44 Tieko Street. With no restriction on dwelling height, these dwellings could be 8 metres in height (the permitted building height in the Rural Lifestyle Zone).
- 5.8 There is also no guarantee that the existing vegetation, that currently provides privacy and amenity screening between 44 Tieko Street and the application site, will be retained or maintained over time.
- I consider that the proposed subdivision layout should be re-designed to reduce the number of lots in the northern area of the site to a maximum of 3 lots.
- In my opinion, given the intensity of development being proposed, further mitigation is required to reduce the adverse rural character and amenity effects on 44 Tieko Street. In particular, the following mitigation would help to reduce the adverse subdivision effects of the proposal:
 - (i) The number of proposed lots reduced so that proposed Lots 12 to 19 is reduced to a maximum of three lots;
 - (ii) Building platforms should be identified on Lots 12, 13, 14, 18 and 19 so as to limit potential amenity effects on 44 Tieko Street. The building platforms should be restricted via a consent notice restriction (notwithstanding the recommendation (i) above to reduce the total number of lots);
 - (iii) Dwellings on proposed Lots 12 19 should be restricted to one dwelling per lot (i.e. no minor dwelling) notwithstanding the recommendation (i) above to reduce the total number of lots);

- (iv) Dwellings on proposed Lots 12, 13, 14, 18 and 19 be restricted to single storey i.e. maximum height of 4.5 metres (notwithstanding the recommendation (i) above to reduce the total number of lots);
- 5.11 For the reasons discussed above I consider that as currently designed the proposed subdivision facilitates a density of development whereby the adverse effects on 44 Tieko Street are not sufficiently mitigated. With the suggested mitigation outlined above I consider that the subdivision in the proposed 'northern area' is acceptable.

Character and Amenity Effects

- 5.12 The proposal will have adverse character and rural amenity effects on 44 Tieko Street and little is proposed to mitigate such effects. As discussed above, the density facilitated by the proposed subdivision erodes the rural residential amenity at 44 Tieko Street.
- 5.13 In relation to the existing pine trees along the boundary between proposed Lot 19 and 44 Tieko Street, it is noted that these trees help to mitigate potential visual and privacy effects on 44 Tieko Street. It is accepted that the removal of the pine trees may be permitted under the District Plan, however, such a removal will result in the proposed subdivision having greater adverse effects on 44 Tieko Street. These pine trees are understood to be near the end of their life and as such are likely to be felled in the next few years.
- As part of discussions with the applicant's planner, Christopher Hansen of Chris Hansen Consultants Ltd, provided (see <u>Appendix 1</u>) an earthworks plan (Drawing No. 22208 SK12) and long-section (Drawing No. 22208 SK12) of 44 Tieko Street and proposed Lots 18 and 19. These plans shows the extent of earthworks on proposed Lots 18 and 19 with a maximum cut depth of 5.58 metres, resulting in a RL of 15. This is marginally lower than the RL of the dwelling at 44 Tieko Street of 15.7.
- As such, as well as the mitigation outlined in paragraph 5.10 (above) it is also recommended that, if the Commissioners were of a mind to grant consent to the proposal, a condition is included in the decision that requires appropriate boundary screening planting (that mitigates potential visual and privacy effects for 44 Tieko Street). Condition(s) could be placed to ensure adequate screen planting is

undertaken and maintained on an ongoing basis by the owner of proposed Lots 19 and 20. I note that Robin Simpson, the Council's Urban Designer / Landscape Architect Advisor, has recommended that discussions with the owners of 44 Tieko Street continue as a potential solution to mitigating potential effects on 44 Tieko Street.

- 5.16 Ms Rydon states that the landscape and visual effects of the proposal will be suitably mitigated by the provision of extensive native planting, particularly along Otaihanga Road. I am not aware of any specific landscaping proposed between 44 Tieko Street and the building platforms within Lots 13, 18 and 19.
- 5.17 With respect to the existing pine trees, I note that without an enduring condition of consent in relation to boundary vegetation, there is no assurance that these trees will be retained or replaced.
- 5.18 For the reasons discussed above I consider that as currently designed, the proposed subdivision and associated earthworks will result in more than minor adverse character and amenity effects on 44 Tieko Street and that these effects are not appropriately mitigated.

6. TE TUPU PAI – OUR GROWTH STRATEGY

The Applicant's evidence from Derek Richard Foy discusses 'Te tupu pai – our growth strategy', Kāpiti Coast District Council's growth strategy published in March 2022. I agree that the subject site is partially located within a Medium Priority Greenfield Growth Area, but do not accept that this means that it is therefore appropriate for the site to be developed for residential purposes at this time. This is a strategic document that does not provide fine grain site by site analysis as to whether residential development is appropriate on the application site.

7. NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT (NPS-UD)

7.1 I agree with Ms Rydon's report in that the National Policy Statement on Urban Development (NPS-UD) applies to urban environments, which is defined under s77F of the RMA as:

any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

- a) Is, or is intended to be, predominantly urban in character, and
- b) Is, or is intended to be, part of a housing and labour market of at least 10,000 people.
- 7.2 Ms Rydon concludes that the subject site is within an area that is predominantly urban in character and therefore considered an urban environment under the NPS-UD. I disagree that the subject site is within an urban environment under the NPS-UD for the reasons discussed below.
- 7.3 Ms Rydon's conclusion that the site is within an 'urban environment' is based on Statistics New Zealand's identified spatial extent of "functional urban areas". This is consistent with Council's draft Proposed Plan Change 2 Intensification (draft Plan Change 2) report, which identifies the area of Otaihanga as being within the Kāpiti Coast Functional Urban Area. The subject site therefore aligns with point (b) above. However, Ms Rydon's report fails to accurately consider point (a).
- 7.4 I refer to the description of urban environments in Council's draft Plan Change 2, where it is accepted that Otaihanga is within the Kāpiti Coast Functional Urban Area, therefore the subject site aligns with point (b) above.
- 7.5 In relation to (a) in draft Plan Change 2, the Council considers the following zones to be within the district's urban environments:
 - 1. the areas of land that are contained within the following zones in the Operative District Plan:
 - Residential Zones;
 - Metropolitan Centre Zone;
 - Town Centre Zone;
 - Local Centre Zone;
 - Mixed Use Zone;
 - General Industrial Zone;
 - Airport Zone;
 - Hospital Zone; and
 - 2. the areas of land proposed to be included in any of these zones as part of this plan change.

- As such, the district's urban environments are considered to be the areas of land contained within the zones identified above. The subject site and its immediate surrounds are not identified as areas subject to zoning changes (in draft Plan Change 2) and the application site continues to be in the Rural Lifestyle zone of the District Plan.
- 7.7 While I acknowledge draft Plan Change 2 does not have statutory weight, it signals that at this time the subject site is not intended to be in an urban environment. The application site, therefore, does not align with point (a) above and on this basis, I disagree with Ms Rydon's statement that application site is within an 'urban environment' as defined by the NPS-UD. I consider that the application site has been consciously excluded from being within an urban environment at this time.
- I consider that at a high level the NPS-UD is relevant to the subject application, particularly given Kāpiti Coast District Council's status as a Tier 1 local authority. However, I do not consider that the objectives and policies where they specifically relate to 'urban environments' are relevant to the subject application.

8. THE WELLINGTON REGIONAL POLICY STATEMENT

8.1 For the sake of efficiency, I have not specifically addressed the Wellington Regional Policy Statement as the District Plan was recently made operative (30 June 2021) and as such incorporated the relevant policies of the Regional Policy Statement into the District Plan.

9. RELEVANT OBJECTIVES AND POLICIES OF THE DISTRICT PLAN

9.1 I generally agree with Ms Rydon's identification of the relevant objectives and policies within the PDP (appeals version 2018) for the proposal. I consider it appropriate to also assess the proposal against the *operative* District Plan objectives and policies, although I note that the differences in the PDP and operative District Plan, as far as I am are aware, are only in relation to alignment with the National Planning Standards. As such I do not consider that there is an issue of weighting with respect to the PDP and the District Plan.

- 9.2 For brevity, I discuss only those objectives and policies that are, in my opinion, relevant to matters raised in this evidence.
- 9.3 Under the operative District Plan the application site is located in the "Rural Lifestyle Zone". The zone has the following description:

"The Rural Lifestyle Zone provides for 'lifestyle' subdivisions in appropriate areas in the District to enable people to live in a rural environment, where this does not compromise the more productive land, but not necessarily on a farm. The land which is considered suitable is characterised by having small scale rural activities such as horse riding, hobby gardening and farming in close proximity to urban facilities. This land will not be zoned residential in future or otherwise used for purely residential uses or be fully serviced. Land has been included in this zone where it is already closely subdivided and developed, and is close to an urban area but physically separated, and is not likely to be suitable for future intensive residential development. The existing character and overall density of development is proposed to be retained."

- 9.4 As currently designed, I consider that the proposed subdivision does not retain the existing character or density of development anticipated in the Rural Lifestyle Zone. The proposed subdivision (northern area) and associated earthworks is more akin to a large lot residential development than to rural lifestyle living.
- 9.5 **Objective DO-03 Development Management** seeks to maintain a consolidated urban form within existing urban areas and a limited number of identified growth areas. The subject site is in a Rural Lifestyle Zone where low density-built form is anticipated. Further, the application site has not been identified as a growth area and it is not integrated with the existing township. The proposal compromises Objective DO-03 as the urban form is creeping out, rather than being consolidated within existing urban areas.
- 9.6 To reinforce the point that the subject site is not in an identified growth area (as discussed above), I note The Council's Draft Plan Change 2 does not propose to rezone the subject site to General Residential. While this plan change has not been notified and does not yet have any statutory weight, it does reinforce the notion that the long term strategic intention for the site is for it to retain its rural lifestyle

character. The proposed subdivision is overly intensive and therefore corrosive to the rule lifestyle amenity provided for in the District Plan.

- 9.7 I consider that the proposal is contrary to Objective DO-03.
- 9.8 **Objective DO-011 Character and Amenity Values** (Objective 2.11 of the PDP) this objective clearly identifies the importance of maintaining and enhancing character and amenity values, as well as ensuring "well managed interfaces between different types if land use areas (e.g. between living, working and rural areas and between potentially conflicting land uses so as to minimise adverse effects)".
- 9.9 I consider that the proposal is not consistent with this Objective DO-011 as it is not managing the interface between the rural lifestyle character and amenity at 44 Tieko Street and the application site, which is proposing a development that is far more residential in character than it is rural lifestyle. To-date, inadequate mitigation has been offered to minimise effects upon 44 Tieko Street.
- 9.10 **Policy RLZ-P2 Rural Character** (Policy 7.11 of the PDP) states that:

Subdivision, use and development in the Rural Zones will be undertaken in a manner that maintains or enhances the District's rural character, including:

- a. the general sense of openness;
- b. natural landforms;
- c. overall low density of development; and
- d. the predominance of primary production activities.
- 9.11 The proposed subdivision will not retain the general sense of openness expected in the Rural Lifestyle Zone, undertakes earthworks that undermines the natural landform adjoining 44 Tieko Street and is too intensive to maintain the rural lifestyle character surrounding 44 Tieko Street. In this respect, I consider the proposal in its current form to be contrary to Policy RLZ-P2.
- 9.12 **Policy RLZ-ZP9 Rural Lifestyle Zone** (Policy 7.11 of the PDP) the proposal is essentially resulting in an expanding urban settlement and as such is inconsistent with Policy RLZ-P9(d).

9.13 Overall, for the reasons discussed above, I consider the proposal is contrary to Objectives DO-03, DO-011, and Policy RLZ-P2 as they relate to effects on 44 Tieko Street, and inconsistent with Policy RLZ-P9(d).

10. SECTION 104D GATEWAY TEST

- 10.1 Under section 104D of the RMA a Non-Complying Activity cannot be granted consent unless it is considered to pass at least of the threshold tests. Namely:
 - Pursuant to Section 104D(1)(a), the adverse effects of the activity on the environment must be no more than minor; and
 - Pursuant to Section 104D(1)(b), the application must not be contrary to the objectives and policies of the District Plan.
- 10.2 For the reasons outlined in this evidence it my opinion that the effects of the proposal are more than minor with particular regard to the rural character and amenity effects on 44 Tieko Street. In addition, the proposal is contrary to Objectives DO-03, DO-011, and Policy RLZ-P2. In my opinion the proposal therefore fails both threshold tests of section 104D and resource consent cannot be granted.

11. PART 2 MATTERS

- 11.1 Notwithstanding my opinion that the proposal fails the section 104D gateway, I will provide comment on Part 2 matters. I find it reasonable to conclude that Part 2 matters are well integrated into the District Plan given it was made operative on 30 June 2021.
- 11.2 For completeness, I accept Ms Rydon's statement that the proposal **does not** mitigate, avoid, or remedy adverse effects on the environment with respect to rural character. Due to the significant adverse effect on the amenity on 44 Tikeo Street the proposal does not meet section 7(c) of Part 2 that concerns itself with the maintenance and enhancement of amenity values.

12. CONCLUSION

- 12.1 For the reasons outlined above I consider the proposal has significant adverse amenity effects on 44 Tieko Street, with particular regard to character and amenity. This is due to the overly intensive subdivision design and earthworks that exacerbate effects on 44 Tieko Street. The proposal is outside the level of development that is anticipated by the District Plan.
- 12.2 I consider that in its current form the proposal does not pass through either limb of the gateway test and therefore cannot be considered for approval.
- 12.3 Whilst I believe there are strong grounds to decline this application, should the commissioner be of a mind to approve the consent I recommend that the that the number of lots in the area containing proposed Lots 12 to 19 be reduced to a maximum of three lots.
- 12.4 In addition to reducing the number of lots, if the Commissioners are of a mind to grant consent I suggest the following mitigation measures imposed as conditions on the subdivision consent:
 - (i) The 'northern area' is redesigned to reduce the number of lots so that the area within proposed Lots 12 to 19 is reduced to a maximum of three lots;
 - (ii) Building platforms are identified and dwelling locations are restricted for proposed Lots 12, 13, 14, 18 and 19;
 - (iii) Dwellings on proposed Lots 12 19 are restricted to one dwelling per lot and no minor dwelling is permitted;
 - (iv) Dwellings on proposed Lots 12, 13, 14, 18 and 19 are restricted to single storey i.e. maximum height of 4.5 metres.
 - (v) The shared boundary with 44 Tieko Street is landscaped for privacy mitigation on an on-going basis and is the responsibility of the consent holder / future landowner.
- 12.5 I accept that the application site represents an underutilised site with some development potential. The physical constraints of the site also mean it may be difficult to develop the site without some non-compliances with the District Plan, particularly with regard to earthworks. The proposal however represents an over development of the site that is not appropriate given the adverse effects on 44 Tieko

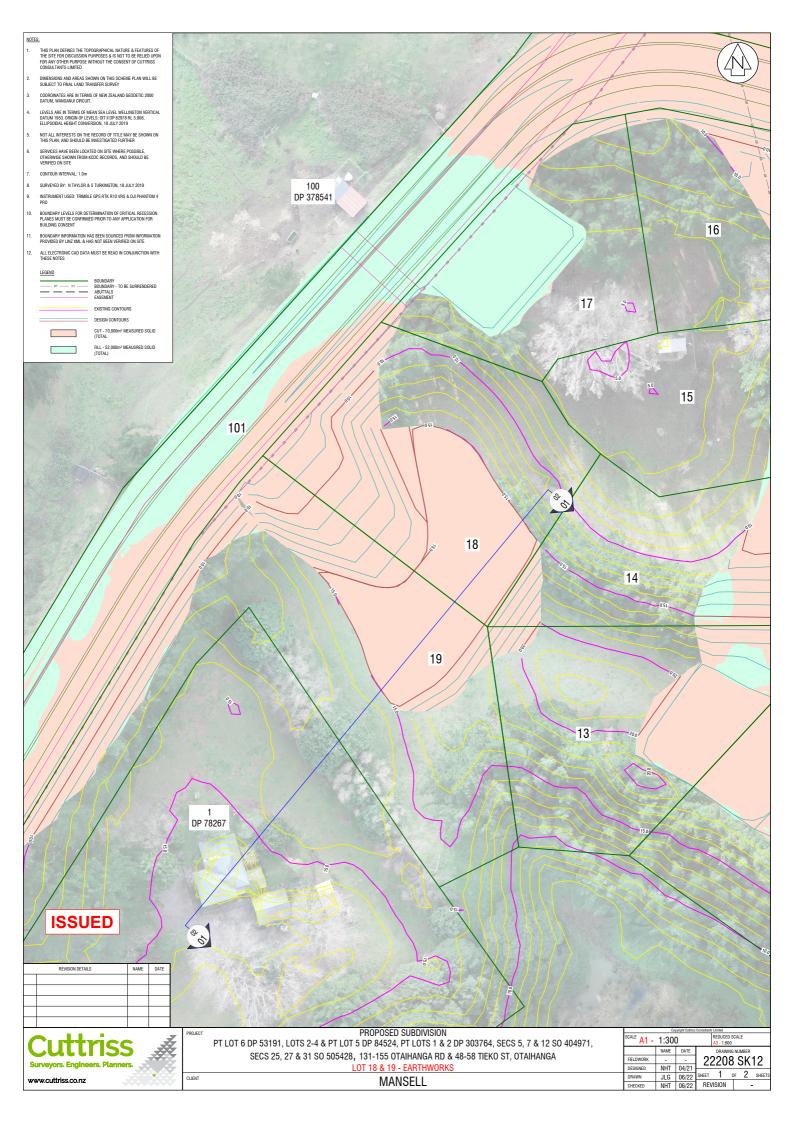
Street that are not, as currently proposed, appropriately mitigated. The granting of this application would undermine the integrity of the District Plan and as such in its current form the application for resource consent should be declined.

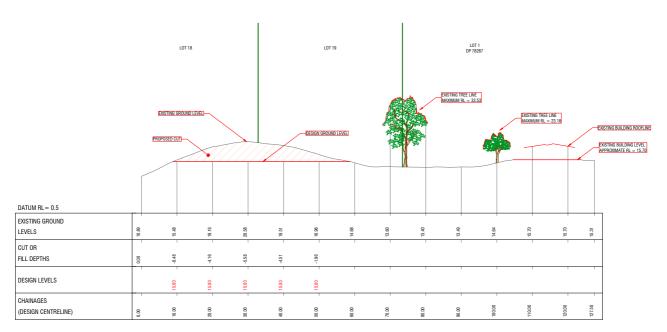
Alice Blackwell

a) Blackwell

27 July 2022

APPENDIX 1 – EARTHWORKS PLAN AND LONG-SECTION





O1 EW CROSS SECTION

SHT 1 HORIZONTAL SCALE: 1:500
VERTICAL SCALE 1:500

ISSUED

REVISION DETAILS	NAME	DATE

Surveyors. Engineers. Planners. www.cuttriss.co.nz

PROPOSED SUBDIVISION

 $PT\ LOT\ 6\ DP\ 53191,\ LOTS\ 2-4\ \&\ PT\ LOT\ 5\ DP\ 84524,\ PT\ LOTS\ 1\ \&\ 2\ DP\ 303764,\ SECS\ 5,\ 7\ \&\ 12\ SO\ 404971,\ ACC \ SCCS\ 5,\ 7\ \&\ 12\ SO\ 404971,\ ACC \ SCCS\ 5,\ 7\ \&\ 12\ SCCS\ 5,\ 7\ \ 12\ SCCS\ 5,\ 12\ SCCS\$ SECS 25, 27 & 31 SO 505428, 131-155 OTAIHANGA RD & 48-58 TIEKO ST, OTAIHANGA

LONGSECTION

MANSELL

SURVEYED BY:	N TAYLOR	& S	TURKINGT

 DIMENSIONS AND AREAS SHOWN ON THIS SCHEME PLAN WILL BE SUBJECT TO FINAL LAND TRANSFER SURVEY COORDINATES ARE IN TERMS OF NEW ZEALAND GEODETIC 2000 DATUM, WANGANUI CIRCUIT. LEVELS ARE INTERMS OF MEAN SEA LEVEL WELLINGTON VERTICAL DATUM 1953. ORIGIN OF LEVELS: OT II IDP 82978 RL 5.806, ELLIPSOIDAL HEIGHT CONVERSION, 18 JULY 2019 NOT ALL INTERESTS ON THE RECORD OF TITLE MAY BE SHOWN ON THIS PLAN, AND SHOULD BE INVESTIGATED FURTHER SERVICES HAVE BEEN LOCATED ON SITE WHERE POSSIBLE, OTHERWISE SHOWN FROM KCDC RECORDS, AND SHOULD BE VERIFIED ON SITE

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