

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKAU**

**Decision [2023] NZEnvC 192**

IN THE MATTER OF an appeal under clause 14 of  
Schedule 1 to the Resource  
Management Act 1991

BETWEEN P D AND K J SIELING  
(ENV-2016-AKL-000137)

Appellants

AND THAMES-COROMANDEL DISTRICT  
COUNCIL

Respondent

Court: Chief Environment Court Judge D A Kirkpatrick sitting  
alone under s 279 of the Act

Last case event: 29 August 2023

Date of Order: 7 September 2023

Date of Issue: 7 September 2023

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**CONSENT ORDER**

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A: Under sections 279(1)(b) and 290 of the Resource Management Act  
1991, the Environment Court, by consent, orders that:



PD and KJ Sieling v Thames-Coromandel District Council

- (1) the appeal is allowed to the extent that the Thames-Coromandel District Council is directed to amend the provisions of the Proposed Thames-Coromandel District Plan by inserting into section 27 of that Plan and the Ohuka Farm Structure Plan as set out in Appendix “A” attached to and forming part of this consent order; and
- (i) in all other respects the remainder of the appeal is dismissed.

B: Under section 285 of the RMA, there is no order as to costs.

## **REASONS**

### **Introduction**

[1] This proceeding concerns an appeal by P D and K J Sieling in relation to the decisions of the Thames-Coromandel District Council on their submissions to the Proposed Thames-Coromandel District Plan (**PDP**). The Appellants sought a range of amendments to the PDP including the making of provision for the subdivision of their property known as Ohuka Farm located north of Whitianga and comprising 716 hectares.

[2] The New Zealand Transport Agency/Waka Kotahi, Federated Farmers of New Zealand, John Sanford, Sue Edens, Keith Vernon, Waiomu Valley Heights Ltd and Northern Land Property Ltd have given notice to become parties under section 274 of the Act.

[3] A number of issues arising from the appeal have been resolved following a mediation agreement, a decision of the Court and other consent documents.<sup>1</sup> Issues relating to access and safety on the intersection of Ohuka Farm Drive and State Highway 25 have remained outstanding.

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<sup>1</sup> *PD and KJ Sieling v Thames-Coromandel District Council* [2022] NZEnvC 256

**Agreement reached**

[4] Following several discussions, the parties have now reached agreement on the terms and conditions on which the remaining issues can be resolved.

[5] The relief agreed by the parties includes particular designs for the proposed access to the structure plan area as shown in Diagrams B and C attached to the structure plan provisions.

[6] All parties, including the New Zealand Transport Agency/Waka Kotahi as the road controlling authority, have agreed that the Appellants have provided sufficient information to support this access from State Highway 25, including the addition of a pedestrian accessway within the Structure Plan. This will provide safe and efficient access into and egress from the Structure Plan area and does not compromise the safe and efficient operation of State Highway 25, as sought by Policy 4a of the structure plan provisions.

[7] The changes are described and shown in Appendix "A" to this consent order.

**Consideration**

[8] The Court has read and considered the joint memorandum of the parties dated 29 August 2023.

[9] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction and conform to

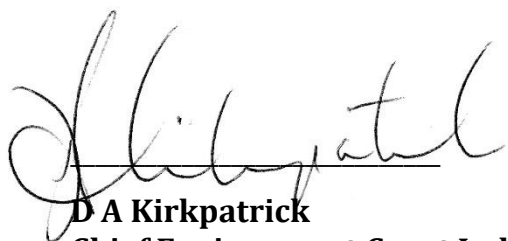
the relevant requirements and objectives of the Act including in particular its purpose and principles in Part 2.

### **Order**

[10] The Court therefore orders by consent that the appeal is allowed, and Thames-Coromandel District Council is directed to amend the provisions of the Proposed Thames-Coromandel District Plan by inserting into section 27 of that Plan the Ohuka Farm Structure Plan as set out in Appendix "A" attached to and forming part of this consent order.

[11] In all other respects the remainder of the appeal is dismissed.

[12] Under s 285 of the Act, there is no order as to costs.



**D A Kirkpatrick**  
**Chief Environment Court Judge**



# “A”

## **27.11 OHUKA FARM STRUCTURE PLAN**

### **27.11.1 Description**

The Ohuka Farm Structure Plan covers approximately 716 hectares of land located on the northern side of Whitianga.

The land has road access to State Highway 25 (Buffalo Beach Road), Moewai Road and Tarapatiki Drive in Whitianga. Part of Council's designation (TC218) for a proposed road to link Racecourse Road to Moewai Road adjoins the southern boundary.

The topography of the structure plan area consists of flat to undulating pastoral land with steeper slopes adjacent to production forest adjoining the northern boundary. A significant area of the structure plan is in pasture and is a productive dairy farm. Other areas of the land in the structure plan are in production forestry and indigenous forest. An area of indigenous forest is located towards the northern boundary and adjoins a significant area of Council owned indigenous forest. Smaller areas of indigenous forest are scattered throughout the structure plan with some of these areas subject to covenants administered by the QEII National Trust.

The structure plan includes land lying between the Moewai Road industrial area; the residential and rural areas to the south; the low-density residential land in the Tarapatiki Drive area; and the plantation forest adjoining the northern boundary.

The entire Tarapatiki Stream is located within the property as is a section of the Taputapuatea Stream.

### **27.11.2 Purpose**

The purpose of the Ohuka Farm Structure Plan is to protect and enhance the landscape and natural features of the site and to provide for future rural and residential development with appropriate levels of connectivity with the wider township, whilst retaining areas of open space and conservation values.

To achieve the purpose, the Structure Plan shall achieve the following outcomes:

- (a) Development and subdivision shall:
  - (i) Ensure legal protection of indigenous vegetation in a 'Conservation' area shown in Diagram A;
  - (ii) Actively protect or enhance areas of indigenous vegetation;
  - (iii) Utilise existing infrastructure where practicable;
  - (iv) Utilise the land contours to minimise adverse visual impact and keep land disturbance to a minimum, where practicable;

- (v) Establish a safe and efficient roading network within the Structure Plan Area with connections to existing roads;
  - (vi) Ensure the access onto State Highway 25 does not compromise the safe and efficient operation of State Highway 25;
  - (vii) Provide for residential development in the 'Future Development' area of the structure plan as shown in Diagram A;
  - (viii) Establish a pedestrian access from the Tarapatiki Residential Area along with a cycle way to connect with State Highway 25.
- (b) Existing indigenous vegetation shall be protected or enhanced to ensure:
- (i) Stewardship over the protection, ongoing enhancement and management of areas with indigenous vegetation;
  - (ii) Retirement and legal protection of 'Conservation' areas identified within Diagram A;
  - (iii) Residential dwellings and accessory buildings shall visually integrate with existing vegetation, new plantings and the landscape.

### **27.11.3 Issues**

1. Subdivision should be carefully managed to mitigate, remedy or avoid adverse effects on those areas of the structure plan that provide a natural character backdrop to Whitianga.
2. A framework is necessary to guide and direct growth for integrated environmental management to ensure protection of indigenous vegetation.
3. Maintaining amenity values of adjoining and adjacent residential areas.
4. The existing property access onto State Highway 25 currently does not have adequate capacity to safely accommodate significant levels of development and opportunities to improve capacity are constrained.
5. Solutions to provide safe and efficient vehicle, pedestrian and cycling access between new development within the structure plan area, adjoining residential areas and State Highway 25 may not meet the minimum standards within the plan or Code of Practice for Subdivision and Development.

### **27.11.4 Objectives and Policies**

#### **Objective 1**

Maintain the natural character backdrop to Whitianga.

#### **Policy 1a**

Residential development shall not occur within the 'Conservation' areas identified within Diagram A in order to maintain the natural character values of the area.

## **Objective 2**

Existing indigenous vegetation shall be protected and maintained in a healthy and functional state and restored or enhanced where appropriate.

### **Policy 2a**

Protection of indigenous vegetation shall be achieved by stock exclusion and control of weeds, including wilding pines, in the 'Conservation' areas.

### **Policy 2b**

Subdivision, use and development shall protect areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation by:

- a) Avoiding the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation;
- b) Avoiding the loss of habitat that supports or provides a key life function for Threatened or At Risk indigenous species;
- c) Preventing the spread of kauri dieback disease; and
- d) Requiring that any unavoidable adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna are remedied or mitigated.

More than minor residual adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna, outside the Coastal Environment, that cannot be avoided, remedied or mitigated in accordance with a) - d) above shall be offset, or if biodiversity offsetting cannot be reasonably achieved, shall be addressed through environmental compensation.

## **Objective 3**

Residential development is provided for where amenity values and character are maintained.

### **Policy 3a**

Residential Activity should be consistent with the existing residential area character and the built environment, and amenity values of the local environment should be maintained.

### **Policy 3b**

Subdivision shall maintain a low-density character within areas of open space maintaining the rural landscape character.

## **Objective 4**

Provide for a safe and efficient transport network within the Structure Plan area and connections to existing roads.

### **Policy 4a**

Ensure that the transport infrastructure is developed so that the design, location, alignment and dimensions of new roads, walkways and cycleways provides safe and efficient vehicle, pedestrian

and cycling access within the Structure Plan area, and does not compromise the safe and efficient operation of State Highway 25.

#### **Policy 4b**

Construct a safe pedestrian access from the Tarapatiki Residential Area along with a cycle way alongside new roading through the Future Development Area to State Highway 25.

#### **27.11.5 Ohuka Farm Structure Plan Rules**

All subdivision and development of the land within the Structure Plan area shall give effect to the purpose of the Structure Plan and shall generally be in accordance with Diagram A.

##### **RULE 1 Subdivision creating one or more lots in the 'Future Development' area shown in Diagram A**

1. Subdivision creating one or more lots in the 'Future Development' area shall be a **restricted discretionary activity** provided:
  - a)
    - (i) The standards in Section 38 Table 3 are met; or
    - (ii) On-site servicing for wastewater, water supply, stormwater, power supply and telecommunications is an appropriate method to service the development;
  - and
  - b) The minimum net lot area is 3,000 m<sup>2</sup>; and
  - c) The total number of lots created under this rule does not exceed 100; and
  - d) The subdivision of the 'Future Development' area is in general accordance with Diagram A; and
  - e) Legal pedestrian and cycling access must be provided as follows:
    - (i) On subdivision of more than 21 additional lots, a safe pedestrian access and cycleway must be provided in conjunction with vehicle access to State Highway 25, as required under f) (i) below and a cycle way thereafter established to be vested in Council and providing access within the Future Development Area; and
    - (ii) On subdivision of more than 40 additional lots, a safe pedestrian access from the Tarapatiki Residential Area (shown on Diagram A) to connect with the cycle and pedestrian access established under (i) above must be established.
  - and
- f) Vehicle access within the 'Future Development area' shall comply with the District Plan's transportation standards and the Code of Practice for Subdivision and Development (October 2013) except:
  - (i) For the vehicle access from the State Highway 25, where the edge of the carriageway lies within 2.0 metres of the true right bank of the Tarapatiki Stream and a carriageway

width meeting the standards above is unable to be achieved within the available land area, the carriageway width shall be reduced to a minimum of 3.5 metres between carriageway or kerb lines with a 1.8-metre-wide shared pedestrian access; and

- (ii) Where a bridge for the purpose of vehicle access crosses the Tarapatiki Stream or its tributaries, the carriageway width shall have a minimum width of 3.5 metres, with a 1.8-metre-wide pedestrian access and cycleway, i.e., be a single lane bridge and shared pedestrian access and cycleway where the crossing provides access to more than 40 additional lots.
- 2. The Council restricts its discretion to Table 2 and matters 1-10 in Section 38 Table 5, excluding:
    - a) Any assessment using the Rural Subdivision Design Principles and Guidelines in Appendix 4 of the District Plan; and
    - b) Matter 5(d) for the State Highway entrance where the requirements of Rule 6 are met.
  - 3. A resource consent application under Rule 1.1 shall be assessed without public or limited notification under Sections 95, 95A and 95B of the RMA.
  - 4. Subdivision that is not a restricted discretionary activity under Rule 1.1 is a **discretionary activity**.

**RULE 2 Subdivision creating one or more lots in a 'Conservation' area shown in Diagram A**

- 1. Subdivision creating one or more conservation lots in a 'Conservation' area shown in Diagram A shall be a **controlled activity** provided:
  - a) The subdivision standards in Section 38 Table 2 are met; and
  - b) The minimum net lot area shall be:
    - (i) 20 ha in 'Conservation' areas '1' and '2' shown in Diagram A; or
    - (ii) The entire 'Conservation' area in other 'Conservation' areas shown in Diagram A; and
  - c) No dwelling shall be constructed in any 'Conservation' area shown in Diagram A; and
  - d) An Ecological Restoration and Management Plan is included in the subdivision application to give effect to the purpose of the structure plan. The Ecological Restoration and Management Plan must:
    - (i) Identify existing areas and types of indigenous vegetation within the site; and
    - (ii) State the means by which the on-going protection and maintenance of the new and established plantings will be ensured; and
    - (iii) Set out methods and timeframes for the removal of the pine trees and for ongoing management; and
    - (iv) Ban the grazing of stock within the identified conservation area; and

- (v) Include measures for the eradication and ongoing control of weed and plant pest species; and
  - (vi) Include ongoing monitoring and management in the form of a covenant or other suitable legal mechanism that ensures the purpose of the structure plan is upheld in perpetuity.
- 2. The Council reserves its control over matters 1, 2, 6, 7, 9 and 13 in Section 38 Table 4.
- 3. Subdivision that is not a controlled activity under Rule 2.1 is a **restricted discretionary activity** where lots are created under this rule in 'Conservation' areas and the 'Future Development' area shown on Diagram A, provided:
  - a) A maximum of 15 lots may be created under Rule 2.3 in the 'Future Development' area subject to:
    - (i) An equivalent number of lots created in the 'Conservation' area; and
    - (ii) The standards in Rule 2.1 a) - d) are met; or
  - b) A maximum of 15 lots may be created under Rule 2.3 in the 'Future Development' area subject to:
    - (i) 'Conservation' areas '1' and '2' being retained as separate lots or amalgamated with an allotment or amalgamated with a conservation allotment; and
    - (ii) 'Conservation' areas other than '1' and '2' are to be retained in their entirety as separate lots or amalgamated with a conservation allotment; and
    - (ii) The standards in Rule 2.1 a) - d) are met;

and

  - c) The standards for subdivision the 'Future Development' area shall either:
    - (i) Meet standards in Section 38 Table 3; or
    - (ii) Provide for on-site servicing for wastewater, water supply, stormwater, power supply and telecommunications to service the development;

and

  - d) The minimum net lot area is 3000 m<sup>2</sup>; and
  - e) The Conservation areas must be legally protected by an appropriate legal mechanism to secure the obligations of the relevant Ecological Restoration and Management Plan in accordance with Rule 2.1 d) vi); and
  - f) The subdivision layout and accessways are in general accordance with Diagram A; and
  - g) It must be a condition of consent, to be secured by way of consent notice pursuant to s 221 of the RMA on the relevant title of any new lots established within the 'Future Development' area that adjoin a Conservation area, that no stock shall be allowed to

enter any 'Conservation' area.

4. The Council restricts its discretion to matters 1-5 (excluding matter 5 (d) for the State Highway entrance where the requirements of Rule 6 are met) and 7 -12 in Section 38 Table 5.
5. Subdivision that is not a restricted discretionary activity under Rule 2.3 is a **discretionary activity**.

**RULE 3 Subdivision creating one or more lots in a 'Dairy Farm' area shown in Diagram A**

1. Subdivision creating one or more lots in a 'Dairy Farm' area shall be a **controlled activity** provided that the subdivision standards for the Rural Zone in Section 38 Tables 2 and 3 are met.
2. The Council reserves its control over the following matters 1, 2, 4, 6, and 7 in Section 38 Table 4 in regard to one or more lots in a 'Dairy Farm' area.
3. Subdivision that is not a controlled activity under Rule 3.1 is a **discretionary activity**.

**RULE 4 Buildings and structures in an 'Open Space' overlay shown in Diagram A.**

1. A building or structure in an 'Open Space' overlay is a **permitted activity**, provided;
  - a) The building or structure has a maximum height of 4 m; and
  - b) The building or structure is not a dwelling, minor unit or an accessory building to a dwelling.
2. A building or structure that is not a permitted activity under Rule 4.1 is a **non-complying activity**.

**NOTE**

1. *A structure can include a watertank.*

**RULE 5 Any other activity in the Ohuka Farm Structure Plan**

1. Any other activity in the Ohuka Farm Structure Plan that is a **permitted, controlled, restricted discretionary or discretionary activity** in the district-wide or overlay rules or in Section 56 Rural Zone, retains its activity status provided:
  - a) That in the event of a conflict between the zone, overlay or district-wide rules and the Ohuka Farm Structure Plan, the rules of the Ohuka Farm Structure Plan shall prevail.
  - b) All lots shall have a minimum front yard of 10m except for a single lot with a front boundary adjoining SH 25 which shall have a minimum front yard of 5m.
  - c) One dwelling per lot and Minor units shall be a permitted activity within the Coastal Environment, subject to meeting Section 56 Table 6 - Specific Standards.
  - d) The telecommunication mast shown on Diagram A is subject to the rules in Section 56 Rural Zone.

- e) It is demonstrated that an access complying with upgrade (c) in Table 1 can be achieved (i.e. any activity or development does not preclude the practicable relocation of the existing access as could be achieved as at 17 June 2019).

2. Any other activity in the Ohuka Farm Structure Plan that:

- a) Does not retain its activity status under Rule 5.1; or
- b) Is a building located within the unformed legal road, Tarapatiki Stream or the marginal strip or esplanade reserve adjoining the Tarapatiki Stream; except for a bridge, culvert or ford approved as part of a prior subdivision consent granted under Rules 1-3;

is a **non-complying activity**.

## **RULE 6 Access to State Highway 25**

1. Any subdivision within the Structure Plan shall retain its activity status in accordance with Rules 1-5, provided:
  - a) The access upgrade requirements described in Table 1 are completed prior to section 224(c) being issued for the respective subdivisions; and
  - b) It is demonstrated that an access complying with an upgrade for 22-115 lots in Table 1 can be achieved (i.e. any subdivision does not preclude the practicable relocation of the existing access as could be achieved as at 17 June 2019).
2. Any subdivision that does not retain its activity status under Rule 6.1 is a **non-complying activity**.

Table 1 - State Highway 25 entrance		
Number of additional lots** created with access to State Highway 25 (via 'Ohuka Farm Drive' or alternative)	State Highway 25 upgrade requirement	Access upgrade requirement
1 – 2 lots	No upgrade requirement	No upgrade requirement
3 – 21 lots	<p>A left turn taper shall be constructed to the south of the existing accessway to State Highway 25 in general accordance with Diagram B.</p> <p><b>Note:</b></p> <p>1. It is probable that one or more existing power poles (or power pole support poles) to the south of the</p>	Final access road centreline angle of approach to be confirmed following completion of vehicle tracking paths but to be no less than 70 degrees.

	<p><i>accessway will need to be relocated to accommodate the left turn taper.</i></p> <p><i>2. The detailed design of any works within the State highway to meet the requirements of this rule will require prior written approval from the NZ Transport Agency, with any detailed design to be in accordance with any relevant NZ Transport Agency network standards and guidelines.</i></p>	
22–115 lots	<p>The existing accessway to State Highway 25 shall be relocated and reconstructed in accordance with Diagram C.</p> <p><b>Note:</b></p> <p><i>1. The applicant will be required to obtain all necessary resource consents for the enabling works of the relocated accessway.</i></p> <p><i>2. The detailed design of any works required by this rule within the State highway will require prior written approval from the NZ Transport Agency, with any detailed design to be in accordance with any relevant NZ Transport Agency network standards and guidelines.</i></p>	<p>Final access road centreline angle of approach to be confirmed following completion of vehicle tracking paths but to be no less than 70 degrees.</p>

\*\* Additional lots mean lots created after November 2021 (except conservation lots as required by Rule 3.b)

#### **NOTES**

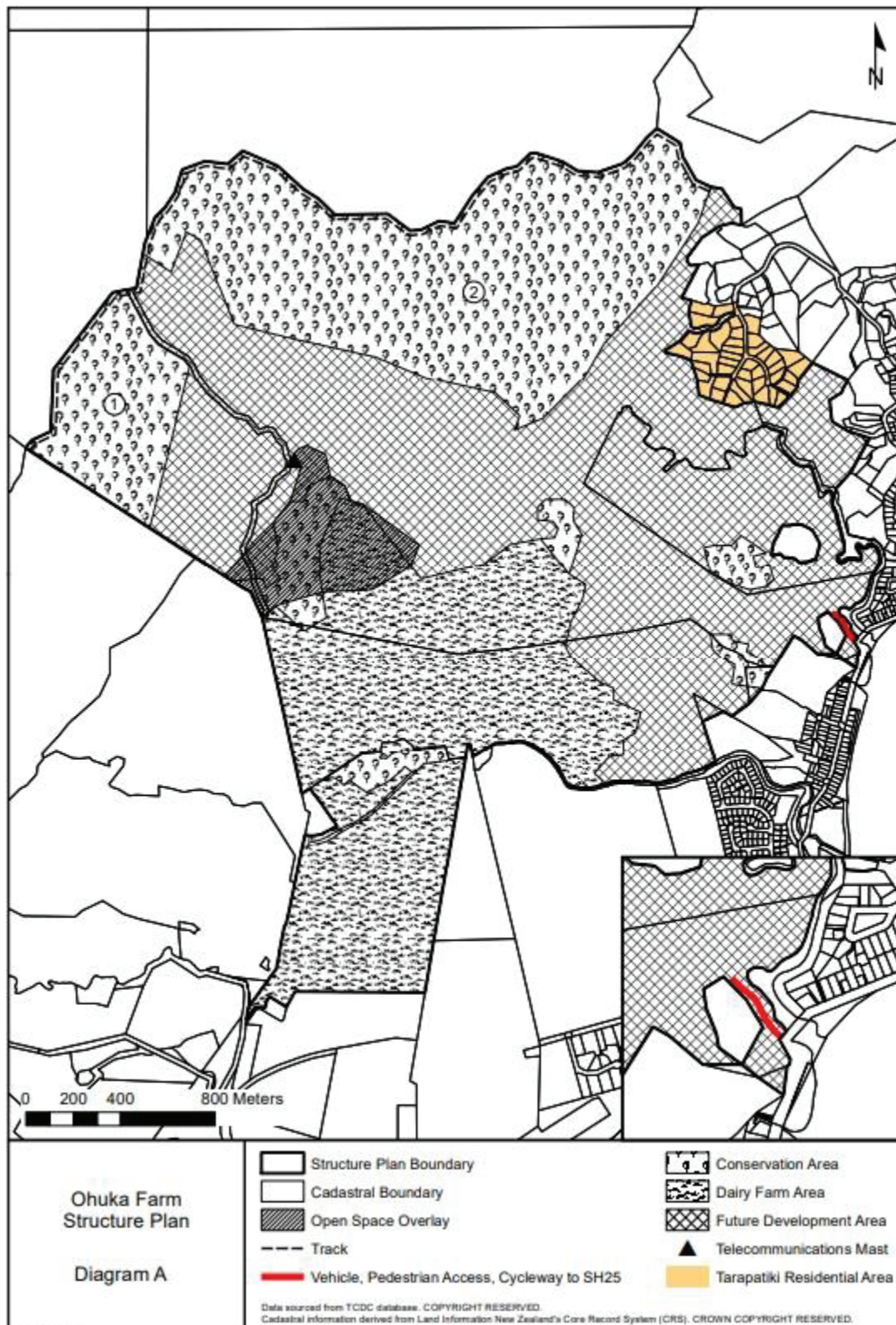
- Rules controlling vehicle parking, access and manoeuvring are in Section 39 Transport. Provided Rule 6 is met, Rule 11 of Section 39 shall not apply to any development on sites created following subdivision within the Ohuka Farm Structure Plan.*
- In the Coastal Environment where one dwelling per lot is proposed the Council will not publicly notify the application or serve notice on affected parties unless in the Council's opinion there are special circumstances that warrant notification.*

3. *The 'Future Development' area that has not yet been developed will retain the Rural Zone.*
4. *The land within the Ohuka Farm Structure Plan includes:*
  - a) *An unformed legal road;*
  - b) *Tarapatiki Stream;*
  - c) *A marginal strip on the Tarapatiki Stream boundary;*
  - d) *A track on the northern boundary with an undetermined width;*
  - e) *A telecommunication mast located within the 'Future Development' area.*

Table 2 - Restricted Discretionary Matters			
Matter		Assessment Criteria	
1.	Site access from State Highway 25 (via 'Ohuka Farm Drive')	a)	Whether the intersection of the site access with State Highway 25 is to be constructed in accordance with Diagrams B and C to ensure the safe and efficient operation of State Highway 5.
		b)	Subject to a), the extent to which earthworks are minimised to ensure that there is no earthworks incursion into Significant Natural Areas 1 and 3 identified in Diagram C.
		c)	The extent to which the clearance, disturbance or trimming of any trees in Significant Natural Areas 1 and 3 identified in Diagram C is undertaken by a suitably qualified arborist in accordance with appropriate arboriculture practice.
			The extent to which the work will affect the longevity, health, vigour and stability of any trees in Significant Natural Areas 1 and 3 identified in Diagram C.
		d)	The extent to which the 'Planting and Weed Control Plan' is adequate for weed control and to restore exposed earth batters and cuts with suitable native coastal plants.
2.	Pedestrian and cycle access	a)	Whether a safe pedestrian access and cycleway is constructed to connect the Tarapatiki Residential Area to State Highway 25.

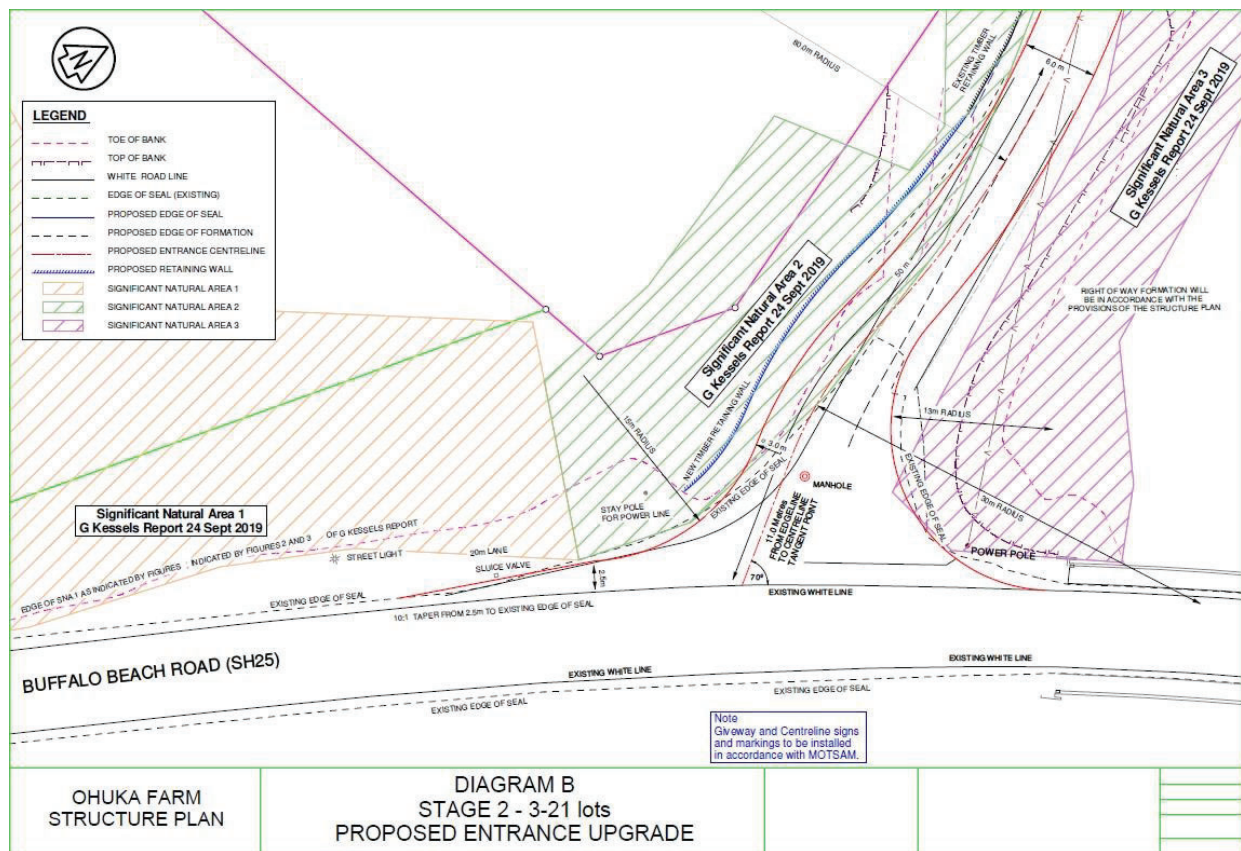
		b)	Whether safe and convenient pedestrian and cycle access to the lots within the Future Development Area is provided, in accordance with Rule 1 (e ).
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Diagram A Ohuka Farm Structure Plan



Date: 13/06/2023

### Proposed Entrance Upgrade SH 25 Intersection for 3 – 21 lots



### Proposed Entrance Upgrade SH 25 Intersection for 22 - 115 lots

