

Notice is given that an ordinary meeting of a Resource Consent Hearing will be held on:

**Date:** **Thursday 25 February 2021**  
**and Friday 26 February 2021**

**Time:** **9.30 am (day one)**

**Meeting Room:** **Richmond Room**

**Venue:** **Club Waimea, 345 Queen Street,  
Richmond**

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## **Commissioners (Resource Consent) Hearing**

### **AGENDA**

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Commissioners: Christine Foster (Chair)  
Matt Riley

Council Staff: Jennifer Lancashire, Consultant Planner  
Jenna Wolter, Senior Planner  
Dugald Ley, Development Engineer  
Rosalind Squire, Reserves Planner (contract)

Alastair Jewell, Principal Planner (Hearing Facilitator)

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**Note:** The reports contained within this agenda are for consideration and should not be construed as Council policy unless and until adopted.

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## AGENDA

### 1 OPENING, WELCOME

### 2 REPORTS

- 2.1 The Integrity Care Group Limited’s resource consent application at Olive Estate Lifestyle Village on Hill Street (between Brenda Lawson Way and Fairose Drive), Richmond - Council reference RM190790 and ors.....5

#### Resource consents applied for:

Land use consent RM190790 - to construct a compact density development (the residential villas and apartments) and a community activity (the care facility) off Hill Street, while not providing public reserve to the standard of the Tasman Resource Management Plan (TRMP).

RM120928V2 – Change to conditions of land use consent RM120928V1 under s127 of the Act to allow for the relocation of the care facility building, the construction of additional residential units and an amended site layout.

Subdivision consent RM190789 - boundary adjustment to provide for:

- care facility on Lot 6,
- to amalgamate Lots 5, 7 and 8 with Lots 2 and 3, and
- to create a new Lot 9 to vest as road (extension of Fairose Drive).

Also included is the associated land disturbance, and the change of use and subdivision of the land under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

Land use consent RM190791 - to undertake land disturbance for the bulk earthworks in the Land Disturbance Area 1. These are associated with the construction of the compact density development and care facility, and include the decommissioning and filling of an existing pond.

Water permit RM191308 - to ‘take’ water associated with the de-watering of the pond.

#### Submissions:

This application was limited notified in June 2020 and 76 submissions were received.

Of these received 37 submitters asked to be heard at a hearing (two subsequently changed their minds), with 14 in support, 60 in opposition and one neutral.

#### Purpose of report

This report is not the decision on the application - it contains advice and recommendations from a planning consultant and other experts. This report has yet to be considered by the independent Hearings Commissioners delegated by Tasman District Council to decide this resource consent application. The decision will be made after the Commissioner has considered the application and this report, and heard from the applicant and submitters.

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## 2.1 THE INTEGRITY CARE GROUP LIMITED'S RESOURCE CONSENT APPLICATIONS AT OLIVE ESTATE LIFESTYLE VILLAGE ON HILL STREET (BETWEEN BRENDA LAWSON WAY AND FAIROSE DRIVE), RICHMOND

### COUNCIL REFERENCE RM190730 AND ORS

**Decision Required**

|                       |  |
|-----------------------|--|
| <b>Report To:</b>     | Commissioner (Resource Consent) Hearing  |
| <b>Meeting Date:</b>  | 25 - 26 February 2021  |
| <b>Report Author:</b> | Alastair Jewell, Principal Planner - Resource Consents   |
| <b>Report Number:</b> | REPC21-2-25  |
| <b>Attachments:</b>   | <ol style="list-style-type: none"> <li>1. Section 42A report and recommendation by J Lancashire, consultant planner</li> <li>2. Masterplans</li> <li>3. Care facility building plans and cross-sections</li> <li>4. Memo on reserve provision by R Squire, contract planner</li> <li>5. Subdivision plan</li> <li>6. Planning and aerial maps</li> <li>7. Memo on servicing, access and traffic by D Ley, development engineer</li> <li>8. Memo on land disturbance (land use consent RM190791) and water take (water permit RM191308) by J Wolter, senior planner - subdivision</li> <li>9. Recommended draft conditions</li> </ol> |

#### **Report and recommendation.**

The main section 42A report and recommendation on the resource consent application hearing report is attached (Attachment 1). It has been prepared by Jennifer Lancashire, consultant planner.

Jenna Wolter, Council's senior planner subdivision, has provided a report and assessment on land use consent RM190791 and water permit RM191308. (Attachment 8)

The following memorandums, prepared by Council officers and referenced in the section 42A report are attached also:

- Rosalind Squire, a contract planner with Council's Community Development department, on the reserves provision (Attachment 4)
- Dugald Ley, development engineer, on the servicing and traffic (Attachment 7)

Further documents referenced in the Section 42A report are also attached accordingly.

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## Report under section 42A of the Resource Management Act 1991

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|--|--|
| Application for resource consent by:   | The Integrity Care Group Limited   |
| Application numbers:                   | RM190790, RM190789, RM190791, RM191308 & RM120928V2  |
| Site address:                          | Land at Langdale Road, comprising the existing Olive Estate development on Lots 1-4 of RM130346V1; and Land at Hill Street, in Richmond South.   |
| Legal description:                     | Lot 2 DP 511511 (CT 785433) and Lots 2 and 3 Deeds 1763 (CT56/85)  |
| Location co-ordinates (NZTM):          | 5422102.12 N 1615192.33 E (being the approximate co-ordinates for the centre of the site that is subject to the proposed variation); and<br>5421935.43 N 1615221.03 E (being the approximate co-ordinates for the centre of the site that the Olive Estate development would be extended into) |
| Report and recommendation prepared by: | Jennifer Lancashire – Consultant Planner   |

**Note:** This report sets out the advice and recommendations of the reporting planner. The independent commissioners delegated by Tasman District Council to decide this resource consent application have not considered this report yet. The independent hearing commissioners will only make a decision after they have considered the application and heard all evidence from the applicant, submitters and council officers.

### 1 Overview

- 1.1 This is a report prepared under section 42A of the Resource Management Act 1991 (the Act) on the resource consent applications made by Integrity Care Group Limited (the Applicant) for the following activities associated with expansion of the Olive Estate Retirement Village in Richmond South:
- 1.2 RM120928V2 – Change to conditions of existing land use consent RM120928V1 to allow for the relocation of the care facility building, the construction of additional residential units and an amended site layout; and

- 1.3 RM190790 - Land Use consent to construct a Compact Density Development (**CDD**) (comprising residential villas and apartments) and a community activity (care facility building), including associated infrastructure, to extend the existing retirement village; and
- 1.4 RM190789 – Subdivision boundary adjustment of the underlying allotments to provide for the care facility building on proposed Lot 6 and to amalgamate Lots 5, 7 and 8 with Lots 2 and 3 and to create a new Lot 9 to vest as road, including consent for subdivision under regulation 9 of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES CS**); and
- 1.5 RM190791 – Land Disturbance to undertake bulk earthworks across the site in association with the construction of the CDD and care facility building and associated infrastructure, including decommissioning and filling an existing pond; and disturbance of potentially contaminated soil in accordance with Regulation 9(1) of the NES CS; and
- 1.6 RM191308 – Water permit for the ‘take’ of water associated with the de-watering of the existing stormwater irrigation pond.
- 1.7 The purpose of this report is to summarise the applications, the actual and potential effects, and how the proposal fits with the planning framework provided by the relevant statutory planning instruments.

#### **Reporting planner**

- 1.1 My name is Jennifer Lancashire. I am employed by Beca as a Senior Planner and in this role I process resource consent applications on behalf of the Tasman District Council, Marlborough District Council and the Nelson City Council. I have a Bachelor of Arts (Hons) from the Manchester Metropolitan University (UK) and a Masters in Planning (MPLAN) from the University of Manchester (UK). I am a full member of the New Zealand Planning Institute (NZPI) and a Certificate Holder of the Ministry for the Environments’ Making Good Decisions Programme.
- 1.8 I have previously been employed by the Nelson City Council as a Senior Planner and a Team Leader – Resource Consents. I have practiced as a Planner in New Zealand for seven years and have experience processing a variety of resource

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consent applications under the Resource Management Act, the Local Government Act and the Housing Accords and Special Housing Areas Act.

- 1.9 I have a unitary authority background and experience processing and applying for resource consents for regional and district activities across the top of the south region. I also have experience processing publicly notified resource consent applications including the preparation and presentation of evidence at hearings and the environment court.

## 2 Background

### Overview

- 2.1 The applicant has applied for a suite of resource consents to enable the layout of the existing Olive Estate development (which I refer to in this report as a retirement village) to be amended and extended into an adjacent block of land on Hill Street. Resource Consent has previously been granted to the applicant for the construction of a retirement village, comprising residential apartments, villas, communal lakehouse and a care facility building (CFB) with access onto Wensley Road and Fairrose Drive via Langdale Drive (see RM120928V1).
- 2.2 The construction of that stage of the retirement village is well underway. Internal roads and greenspaces have been formed, a number of apartments and villas have been constructed and are occupied, and the lakehouse has been built. However, the consented development has not been completed, a number of apartments and villas have not yet been constructed, the extension to Langdale Drive has been formed but not yet vested as legal road, and work on the CFB has not commenced.
- 2.3 The applicant has acquired the adjacent block of land to the south-east (Lot 2 DP 511511) and seeks to expand the retirement village (which currently encompasses an area of land measuring approximately 8.8ha), so that it will encompass an area of land totalling approximately 11 ha. An overview of the proposal is provided in the Master Plan copied in **Attachment 2** to the agenda.

### 3 Proposed Activity

#### Overview

- 3.1 To enable the expansion of the retirement village the applicant proposes to alter the layout of the consented development, including in relation to the location of the CFB, internal roads and greenspaces and to increase the number and change the layout of the apartments and villas. This aspect of the application is considered under RM120928V2.
- 3.2 The expansion of the retirement village requires land use consent (RM190790) for the following key aspects:
- i) A compact density development (**CDD**) that will provide a total of 245 residential units of different types (e.g. villas, apartments, terraced and semi-detached houses).
  - ii) A community activity – the CFB - that will provide 20 serviced apartments, 16 dementia suites 16 hospital beds and 16 rest home beds in a purpose built facility which is to be relocated from its consented location into the eastern corner of the application site (closer to Hill Street).
  - iii) New roads, including an extension to Fairrose Drive that will vest with Council and connect onto Hill Street via a new intersection.
  - iv) New internal roads which will not vest with Council but which the applicant intends to keep open to the public and which would provide access throughout the development and onto Langdale Drive.
  - v) New walkways and greenspaces that will not vest with Council but that the applicant intends to keep open to the public, subject to conditions (and not just the residents of the retirement village).
- 3.3 Bulk earthworks will be undertaken across the site in order to facilitate the construction of the development, including roads, green spaces, residential units, services, and the CFB (RM190791).
- 3.4 The construction of the CFB will also require an existing pond which is located on the site to be dewatered and any freshwater species to be transferred to a suitable waterway (RM191308).

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3.5 Lastly the applicant seeks resource consent for an associated subdivision and amalgamation of the underlying titles to reflect the changes to the Olive Estate development (RM190789). The subdivision (and earthworks) trigger the standards of the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NЕСS) due to the previous horticultural use of the site (which is an activity listed on the Hazardous Activities and Industries List [HAIL]). The applicant has also applied for an associated resource consent under the NЕСS.

3.6 Each key aspect of the proposed activity is considered in more detail below.

**Compact density development, community activities and the Integrity Care development**

3.7 The Tasman Resource Management Plan (TRMP) defines a compact density development (CDD) as:

**Compact density development** – means residential development in the Richmond South, Richmond West and Mapua Special development areas and the Motueka West Compact Density Residential Area that is two or more dwellings on any site, and where the buildings and open space, parking, storage, and amenity values, including privacy and outlook, have been planned and designed comprehensively<sup>1</sup>.

3.8 The TRMP defines a community activity as:

**Community activity** – means the use of land and buildings for the primary purpose of health, welfare, care, safety, education, culture or spiritual well-being, but excludes recreational and temporary military training activities. A community activity includes schools, preschools, day-care facilities, hospitals, doctors' surgeries and other health professionals, churches, halls, libraries, community centres, stations (including police and fire stations), courthouses, and probation and detention centres<sup>2</sup>

3.9 The applicant describes the activity as a multi-generational style community/ village comprising villas, townhouses and apartments for fit and active residents

<sup>1</sup> Operative TRMP: Chapter 2: Meaning of Words

<sup>2</sup> Operative TRMP: Chapter 2: Meaning of Words

(retirement living for people aged 55 and over) through to those that need an increasing level of care<sup>3</sup>. The development provides for different residential accommodation types and a CFB which includes a dementia ward, hospital beds and the facilities needed to provide health and medical assistance for those residents that need an increased level of care.

3.10 The existing retirement village (as authorised by RM120928V1) was considered by the Tasman District Council at that time to be a community activity. The applicant has adopted this same interpretation in its current application for resource consent as it considered this to be consistent with the approach that had previously been accepted by the Council.

3.11 However, the nature of this development (and other retirement village developments) is that it comprises elements that are both residential and non-residential in nature.

3.12 The TRMP defines residential activity as:

**Residential activity** – means the use of land and buildings by people for the purpose of living accommodation, including:

(a) the use of a dwelling, including any secondary self-contained housekeeping unit and all associated accessory buildings,

(b) leisure activities,

(c) the keeping of domestic livestock, and

(d) emergency and refuge accommodation but does not include workers' accommodation.

3.13 Section 95A(6) of the Act defined Residential Activity as:

*An activity that requires resource consent under a regional or district plan and that is associated with the construction, alteration, or use of 1 or more*

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<sup>3</sup> Application for Resource Consent: 28 June 2019; p.g. 7 paragraph 1.2

*dwellinghouses on land that, under a district plan, is intended to be used solely or principally for residential purposes<sup>4</sup>.*

- 3.14 Dwellinghouse is defined in section 2(1) of the Act as:

**Dwellinghouse** means any building, whether permanent or temporary, that is occupied, in whole or in part, as a residence; and includes any structure or outdoor living area that is accessory to, and used wholly or principally for the purposes of, the residence; but does not include the land upon which the residence is sited.

- 3.15 This type of development does not fit squarely with any one single activity description provided for by the TRMP or the Act. The apartments and villas that this application proposes are a compact density development as per the meaning given by the TRMP as they are dwellinghouses in the Richmond South area.
- 3.16 However, I do not consider the CFB to be a compact density development, or a residential development, as per the meanings given above (because it will provide health, welfare and care / hospital type services for people that will live in the CFB). For this reason, and after considering the relevant provisions of the TRMP and Act, it is my interpretation that this retirement village development constitutes both a **community activity** (in respect of the CFB which provides for health, welfare and hospital-type services) and a **compact density development** (CDD) in respect of the residential apartments and villas that are to be constructed in the Richmond South area.
- 3.17 The implications this has in respect of the relevant planning framework is considered further in Section 5 of this report.

#### **Care facility building**

- 3.18 The applicant is proposing to relocate the care facility building (CFB) from its consented location to the upper edge of the site closer to Brenda Lawson Way and Hill Street. The CFB will have a dementia ward with 70 beds, a dining room, laundry facility, kitchens, club room, restaurant and 20 serviced (partial care)

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<sup>4</sup> Section 95A(6) of the Act has been repealed by the Resource Management Amendment Act 2020 (after the date the applications were notified).

apartments. The proposed CFB will have a smaller footprint than the previously consented CFB with a footprint measuring 4400m<sup>2</sup>. At its tallest point the CFB will measure 10.5m in height (towards the centre of the building). The CFB will be set back between 14.3m and 24.5m from Brenda Lawson Way and 8m – 19.4m from Hill Street. The CFB will be accessed from the proposed extension to Fairrose Drive, and it will have a car park (providing 30 car parks) and a CFB residence car parking garage will be provided at basement level (providing an additional 19 car parking spaces on the CFB site). A masterplan and cross section plans of the CFB are provided in the plan set contained in **Attachment 3** to the agenda.

### **Compact density development**

- 3.19 The consented CFB will be replaced with 25 new villas and 12 new townhouses which will form part of the overall CDD. Other changes to the consented development, including in relation to access roads, lanes and greenspaces will also be required in order to service the additional villas and townhouses. Langdale Drive and Olive Terrace will also be reconfigured to connect to the adjacent block of land on Hill Street.
- 3.20 The applicant proposes to extend the retirement village into the adjacent block of land on Hill Street and construct an additional 36 villas and 11 townhouses, associated access roads and lanes, greenspaces and landscaping.
- 3.21 The consented development authorised 119 villas, 32 townhouses, 2 apartments (containing 16 units) and 4 carriage houses. The proposed amendment and extension to the retirement village will provide for a total of 172 villas, 53 townhouses, 2 apartment blocks containing 16 units and 4 carriage houses (across the entire retirement village development). A masterplan of the overall site and building type and numbers is provided in the plan set contained in Attachment 2 of this agenda.

### **Extension to Fairrose Drive**

- 3.22 The applicant will extend Fairrose Drive as is required by a consent notice condition on the property title. This road extension will vest with Council and connect to Hill Street via a new intersection. The applicant proposes to adopt the road design philosophy of the existing Olive Estate development into the design of the extension to Fairrose Drive. The applicant wants to create a slower speed environment and proposes to extend Fairrose Drive such that it will have a 6m

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wide carriageway, a footpath measuring 1.4m in width on one side and a 2.5m wide shared path on the other, and a road reserve measuring 15.5m in width.

3.23 In contrast the existing portion of Fairrose Drive has an 8m wide carriageway, a road reserve width of 19m and a footpath on either side measuring 2.5m in width.

3.24 The extension to Fairrose Drive will be narrower than the existing portion of Fairrose Drive and the design standards contained in the TRMP. In its TIA the applicant states that a carriageway width of 6m will provide an appropriate level of continuity and that the design will meet the needs of its residents and the residential environment the road will go through. The addendum to the TIA (dated 22 August 2019) states:

*Providing an 8m wide road would be inconsistent with the road design philosophy of Olive Estate, inconsistent with the NTLDM, will lead to a poor residential outcome and will be unsafe.*

3.25 The applicant has indicated that it will form a 'right turn' bay on Hill Street<sup>5</sup>. This will enable vehicles travelling from Nelson to turn right onto Fairrose Drive without obstructing the flow of traffic on Hill Street. The provision of 'no stopping' lines within the vicinity of the intersection may also be required. It is expected that the details of this 'right turn' bay and associated works at the Hill Street / Fairrose Drive intersection would need to be agreed with by the Council.

#### **Internal access roads and lanes**

3.26 The applicant describes the road design philosophy for the Olive Estate development as one that provides 'liveable streets' that reduce speed and create a safer environment for pedestrians and motorists. The applicant intends to achieve this in a number of ways, including forming narrower streets, inset parking bays, strong vertical treatments and high-quality landscaping (as examples). Evidence of this design philosophy can already be seen in the completed portion of the retirement village.

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<sup>5</sup> Plan no. 17115-8-01 – June 20149

### Publicly available open green space

- 3.27 The applicant is proposing to provide 'publicly available' open green space within the development which will have a combined total area measuring 8,600m<sup>2</sup>. This open green space comprises 6,100m<sup>2</sup> of open green space within the existing site subject to RM120928V1 and 2,500m<sup>2</sup> of open green space within the proposed Hill Street site. The location of this publicly available open green space is shown in the Open Space Masterplan, which is included in the plan set contained in **Attachment 2** of this agenda. The open green space comprises planted seating areas, pocket parks, a variety of trees and planted garden areas, 'activity spaces' and a walking path that will meander through the centre of the site alongside the stormwater swale to the existing Lakeside pond (which functions as a detention pond).
- 3.28 The applicant describes what it means by 'publicly available open green space' in its application and in its response to the Council's request for information under s92 of the Act<sup>6</sup>. In summary the applicant will not vest this open green space with the Council as reserve. Instead it volunteers a condition (and is open to considering other legal mechanisms) that will make the land available for public use subject to certain conditions (which are summarised as follows):
- (a) The design, construction and maintenance of the open green spaces are the responsibility of the applicant; and
  - (b) In recognition of the proximity of the open green spaces to the villas and CFB the applicant retains the right to ask individuals to leave if they are behaving anti-socially or causing a nuisance to residents; and
  - (c) The applicant retains control over the timing when public access to the green spaces is made available so that it is consistent with its construction and operational schedule; and
  - (d) That there is no reserve vested with Council and that the applicant is given an appropriate offset when calculating the reserve fund contributions payable.

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<sup>6</sup> RM190790 Integrity Care Group – Olive Estate, Response to RFI: 12 November 2019; pgs. 5 & 6.



- 3.29 The applicant suggests that a condition requiring this land to be available for public use could be required as a condition of the land use consent (pursuant to s108(1) of the Act), or as a covenant to be registered on the title in favour of the Council (pursuant to s108(2)(d) of the Act). It has also confirmed that it would consider another type of legal agreement (such as a Heads of Agreement).
- 3.30 This aspect of the application is considered more fully in the memorandum that has been prepared by Ms Squire and which is attached in **Attachment 4** to this agenda.

#### **Earthworks**

- 3.31 Bulk earthworks will be undertaken across the site in order to accommodate the construction of the retirement village and its associated infrastructure. The earthworks are described fully in the report from Tasman Consulting Engineers (provided with the suite of application documents). In summary the earthworks include approximately 13,000m<sup>2</sup> of cut and 8,000m<sup>2</sup> of fill across the site. The maximum cut depth is 5m (at the eastern end of the CFB and where the existing pond will need to be filled). It is expected that the earthworks would be staged and undertaken using sediment and erosion control measures appropriate to the site and the NTLDM standards.

#### **De-watering the irrigation pond (water take)**

- 3.32 There is an existing historic irrigation pond at the north-eastern end of the site. The pond is shown in **Figure 1**.



Figure 1: Existing pond, facing south towards Hill Street.

- 3.33 The pond is an old irrigation pond fed by stormwater from the uphill catchment and is not a 'natural' feature. The pond is mapped as a stormwater irrigation pond on the TRMP planning maps with a TDC asset ID of SWT 44795. The irrigation pond, while artificially constructed, is expected to have some ecological values. For example, it is expected that the irrigation pond provides habitat for birds and it may contain some freshwater species, such as eels.

#### **Subdivision**

- 3.34 The applicant is applying for a boundary adjustment subdivision of the underlying titles. No additional titles will be created by the subdivision and the applicant does not seek consent for a freehold subdivision for each of the dwellinghouses (because the retirement village operates on a Licence to Occupy basis). The proposed boundary adjustment subdivision plan is shown in Attachment 5 of this agenda and shows the existing lakehouse on proposed Lot 1, the CFB on

proposed Lot 6 and the balance of the development on Lots 5, 7 and 8 (which are to be amalgamated with proposed Lots 2 and 3 of RM130346V1). Land Information NZ (LINZ) has confirmed that the proposed amalgamation is practicable<sup>7</sup> noting that Lots 2 & 3 of RM130346V1 currently held in RT NL56/85 as Lots 2 & 3 Deeds Plan 1763 will be required to have title issued and have the *Limitation as to Parcels* uplifted prior to the subdivision creating Lots 5, 7 & 8.

### Services

- 3.35 The applicant has provided an Infrastructure report with the application which has been prepared by Verrall & Partners Ltd. This Infrastructure report sets out how the development will be serviced with reticulated water and waste-water infrastructure. The infrastructure report also includes a stormwater assessment, with the applicant providing additional stormwater management analysis following a request from the Council.<sup>8</sup> In summary the development is to be serviced as follows:

#### Water

- 3.36 There are existing 150mm high pressure water mains within the existing Olive Estate development that will be extended and connected to the lower portion of the Hill Street block and to the end of Fairrose Drive and connect to the water mains in Hill Street. The development can be appropriately serviced with water for potable and fire-fighting purposes.

#### Wastewater

- 3.37 As above. There are existing 150mm water pipes in the existing Olive Estate development that will be extended to service the expanded development.

#### Stormwater

- 3.38 Stormwater is to be connected to the existing reticulated network. The stormwater solution proposed by the applicant for the total expanded area of the retirement village will drain stormwater in three directions, Wilkinson Place (4%), Fairrose Drive (13%) and to the current detention pond in Olive Estate (83%).

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<sup>7</sup> Linz Ref: 1608263

<sup>8</sup> Section 92 letter and response

- 3.39 The stormwater network below the applicant’s site has limited capacity and therefore stormwater detention is required to ensure there are no downstream effects from the increased stormwater run-off created by the proposed development. Detention capacity for the subject development has previously been included in the construction of the detention pond below the Lakehouse and in the detention basin in the neighbouring ‘Trek’ development. The applicant has provided a stormwater assessment showing that no further detention is required to mitigate the increased run-off from this development, although there are some changes to the drainage areas previously adopted by Council in 2013 for designing the detention features. This assessment also accounts for future residential development of the “Nicoll Home Block (0.66 ha) that will drain to the Trek detention basin. These stormwater drainage proposals have been accepted by Council’s Engineering Services Manager subject to final approval of design details with the engineering plans.
- 3.40 A consent notice condition on the property title requires the applicant to pay a development contribution as a cost share for “Trek” detention basin. The cost share was determined in March 2015 at 8%, being \$59,000 plus Construction Price Index (CPI) adjustments since March 2016. A financial contribution can also be imposed on this development in accordance with Rule 16.5.6.1 of the TRMP; and this has been included in the recommended conditions of consent.

**Power and telephone**

- 3.41 The development can be connected to the power and telephone mains in Fairrose Drive.

**Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011**

- 3.42 The Hill Street block was used for many years for horticultural purposes which is an activity included on the HAIL. The applicant has provided a Detailed Site Investigation (DSI) with the application that has been prepared by Contract Environmental. The DSI confirms that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land (regulation 8(4)(b) of the NESCS). However, a DSI has been prepared, rather than a Preliminary Site Investigation (PSI) as required by regulation 8(4)(a) of the NESCS. A DSI is a more intrusive and comprehensive investigation than a PSI, and under

Regulation 8(4) of the NESCS I would therefore consider the subdivision to be a permitted activity. However, the applicant has taken a precautionary approach and applied for consent under the NESCS because regulation 8(4) requires a PSI (as opposed to a DSI) to have been undertaken in order that the subdivision can be considered a permitted activity.

- 3.43 I don't necessarily agree with this interpretation of the NESCS, but regardless and notwithstanding the DSI I note the associated earthworks are unlikely to comply with the permitted activity standards in regulation 8(3)(b), (c), (d) and (f) of the NESCS and for this reason agree with the applicant that a resource consent for a controlled activity under regulation 9 of the NESCS is required.

#### **4 Site description**

- 4.1 The site is accurately described in section 2 of the applicants Assessment of Environmental Effects (AEE) and in paragraphs 10-16 of the Landscape and Visual Assessment report prepared by Canopy Landscape Architects Ltd. In the interests of brevity those site descriptions are not duplicated here. In summary the Hill Street block is currently undeveloped, but the surrounding area is otherwise characterised by established residential development.
- 4.2 The legal description of the site is Lot 2 DP 489806 contained within Certificate of Title 705790, Lot 2 DP 511511 contained within Certificate of Title 785433 and Lot 2-3 DP 1763 contained within Certificate of Title NL56/85. The parcels of land contained within these titles equate to approximately 12ha total area.

#### **5 Status of application**

- 5.1 The application was lodged with Tasman District Council on 27 November 2019.
- 5.2 The Operative Tasman Resource Management Plan (TRMP) zoning and overlay areas are as follows:
- Zoning: Residential (Richmond South Development Area)
- Areas: Land Disturbance Area 1
- Indicative Road and Reserve

- 5.3 A plan showing the zoning of the site and surrounding areas is attached in **Attachment 6**.
- 5.4 I mostly agree with the TRMP rule assessment provided in tables 1 – 4 of section 5 of the applicants AEE, except that is for the applicable activity description (as detailed in paragraphs 3.7–3.16 of this report). The TRMP contains different rules for different types of activities and as such the following permitted activity rule assessment is slightly different than the applicants. My summary of the TRMP permitted activity rules contravened by the proposed activity and the resulting activity status is presented in **Table 2**.

**Table 2:** TRMP Permitted Activity rule assessment

| Permitted Activity Rule    | Description  | Activity Status   |
|----------------------------|--|---|
| 17.1.2.1(a)(viii) Land Use | <p>An activity is permitted in the Residential zone if it is not a community activity where the total vehicle movements in combination with any other permitted activity on the site exceed 30 per day on any one day.</p> <p>The CFB is a community activity that will itself (and in combination with the residential use of the site) will result in an excess of 30 vehicle movements per day.</p> | Restricted discretionary in accordance with rule 17.1.2.5 of the TRMP |
| 17.1.2.1(h) Animals        | This permitted activity rule requires that <i>no more than 2 dogs are kept</i> . The permitted activity rule does not state if this in respect of each dwelling or each site. The nature of this development means that a  | Discretionary in accordance with rule 17.1.2.6 of the TRMP            |

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|                          |  |   |
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|                          | <p>number of dwellings will be located on one title. The applicant is not applying for consent to enable more than 2 dogs to be kept in each dwelling.</p> <p>However, a resource consent will be required if this permitted activity standard is considered to apply to each residential site (as there may be more than 2 dogs kept within the whole site).</p>  |   |
| <p>17.1.2.1(m) Noise</p> | <p>The Environmental Noise Assessment provided with the application identified a potential breach of the applicable night-time noise standards for the residential zone in respect of the closest residential neighbours on Brenda Lawson Way and the vehicle use of the CFB service access lane onto Brenda Lawson Way.</p> <p>The applicant had therefore applied to breach this permitted activity rule.</p> <p>However, the applicant has since revised the proposal and removed the service access lane from Brenda Lawson Way. The site layout around the CFB has also been amended.</p> <p>It is therefore assumed that this permitted activity rule may no</p> | <p>Discretionary in accordance with rule 17.1.2.6 of the TRMP</p> |

|   |  |  |
|---|--|--|
|   | <p>longer be breached, and the development may comply with the permitted day time and night time noise standards for the Residential zone.</p> <p>However, this needs to be confirmed by the applicant. If the permitted noise standards of the Residential zone are not met then a resource consent is required for a Discretionary activity.</p> |  |
| 17.1.3.1(b) Building Construction or Alteration | <p>Construction of a building in the Residential zone is permitted if it is not located within 10m of any indicative road or reserve in the Richmond South Development Area.</p> <p>The applicant is proposing to construct buildings within 10m of the indicative reserves and roads that are shown on the TRMP planning maps.</p>                | Restricted discretionary in accordance with rule 17.1.3.4B of the TRMP |
| 17.1.3.1(h) Maximum Dwellings per Site          | <p>This permitted activity rule only permits one dwelling per site. This application proposes 245 dwellings across three titles.</p>   | Restricted discretionary in accordance with rule 17.1.3.4B of the TRMP |
| 17.1.3.1(i) Outdoor Living Space                | <p>This permitted activity rule requires each dwelling to have an outdoor living space measuring 60m<sup>2</sup>. Not all of the dwellings will comply with this standard.</p>   | Restricted discretionary in accordance with rule 17.1.3.4B of the TRMP |



|                             |  |  |
|-----------------------------|--|--|
| 17.1.3.1(i) Walls           | This permitted activity rule requires detached residential units on a site that are separated by less than 6 metres are arranged on the site so that the alignment of outside walls is stepped at least 2.5 metres relative to each other. This standard will not be met in all instances.   | Restricted discretionary in accordance with rule 17.1.3.4B of the TRMP |
| 17.1.3.1(p)(ii) Height      | The maximum permitted height for buildings in the Residential zone is 7.5m. The CFB will measure 10.56m above ground level at its highest point.   | Restricted discretionary in accordance with rule 17.1.3.4B of the TRMP |
| 17.1.3.3(ga) Fences         | <p>This permitted activity rule requires fences, walls or screens in the front yard to be no more than .8m in height.</p> <p>The boundary wall along the Hill Street frontage in part measures 1.4mm in height and atop this will be a visually permeable fence. These details are shown on the Hill Street elevation plans provided with the application (plan no. 045)</p> | Restricted discretionary in accordance with rule 17.1.3.4B of the TRMP |
| 18.5.2.1(q)<br>Recontouring | This permitted activity standard permits cut batters, excavation and infilling associated with recontouring the land providing it is no more than 1m in height or  | Controlled in accordance with rule 18.5.2.3 of the TRMP                |

|   |  |   |
|---|--|---|
|   | <p>depth and is no more than 1ha within any 12-month period.</p> <p>The earthworks that will be undertaken on the site exceed 1m in depth and will extend over an area in excess of 1ha and as such will not comply with these permitted activity standards.</p>   |   |
| 16.3.2.1 Subdivision  | No subdivision is permitted in any zone.   | discretionary activity in accordance with rule 16.3.3.4 of the TRMP |
| 16.3.2.4 Subdivision of Hazardous Activity and Industries List land | Subdivision of land identified as currently or previously containing, or potentially containing, hazardous activities or industries must comply with the Resource Management (National Environmental Standard on Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.  | Controlled activity in accordance with regulation 9 of the NESCS    |
| 16.3.3.1(ii)(a)(b)(d)(i) Allotment Access and Road Network          | This permitted activity rule requires all roads to be constructed in accordance with the standards set out in section 18.8 (Road Area rules) of the TRMP. This includes the roads that will not vest with the Council. The design philosophy of the Olive Estate development is based on narrower roads that create a slower speed environment. This permitted | Discretionary activity in accordance with rule 16.3.3.4 of the TRMP |

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|                              |   |   |
|------------------------------|---|---|
|                              | activity rule also requires every road is through-connected, unless it is a cul-de-sac of 80 metres or less and no road in the Richmond South Development Area is permitted to connect directly with Hill Street. The proposed extension to Fairrose Drive does not comply with these permitted activity standards  |   |
| 16.3.3.1(iii)(a)<br>Reserves | Land that is subject to a notation on the planning maps as indicative reserve is required to be set aside as reserve and vested in the Council upon subdivision in general alignment with the indicative reserve areas shown on the maps and dimensions (where specified). This land is subject to an indicative reserve and the applicant has applied for resource consent to not vest a reserve with Council. | Discretionary activity in accordance with rule 16.3.3.4 of the TRMP     |
| 31.1.2.1(n)(iii)             | The proposed take of water associated with dewatering the stormwater irrigation pond does not comply with permitted activity rule 31.1.2.1(n)(iii) of the TRMP which requires water to a depth of 1 metre to be retained over 5% of the impoundment area to provide for eel survival. The applicant proposes to fill the  | <b>Controlled</b> activity in accordance with rule 31.1.2.4 of the TRMP |

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|                 |  |                        |
|-----------------|--|------------------------|
|                 | stormwater irrigation pond in its entirety.  |                        |
| S127 of the Act | The variation to RM120928V1 requires resource consent as if it was a discretionary activity, pursuant to s127 of the Act | Discretionary activity |

**Summary of Resource Consents Required**

5.5 In summary **land use consent** is required for the following key elements:

- A compact density development that will provide a total of 245 residential units of different types (e.g. villas, apartments, terraced and semi-detached houses).
- A community activity that will provide 20 serviced apartments, 16 dementia suites 16 hospital beds and 16 rest home beds in a care facility which is to be relocated from its consented location into the eastern corner of the application site (closer to Hill Street).
- New roads, including an extension to Fairrose Drive that will vest with Council and connect onto Hill Street via a new intersection.
- New internal roads which will not vest with Council but that are intended to be open to the general public and which would provide access throughout the development and onto Langdale Drive and Wensley Drive.
- New public walkways and greenspaces that will not vest with Council but which the applicant intends to be open to the general public.
- Bulk earthworks will be undertaken across the site in order to facilitate the construction of roads, green spaces, residential units, services, and the care facility building and which will also breach the applicable permitted activity standards of the NESCS.

5.6 A **water permit** is required because the construction of the care facility building will also require an existing pond to be dewatered and any eels transferred.

- 5.7 A **subdivision consent** is required for the boundary adjustment and amalgamation of the underlying titles to reflect the consequential changes to the Olive Estate development
- 5.8 A **variation** (under s127 of the Act) is required to reflect the consequential changed to the existing consented development.
- 5.9 The suite of applications have been bundled because they are intrinsically linked to one another and because subdivision condition 16.3.3.3(a) of the TRMP requires that for CDD both the land use and subdivision consents are lodged with the Council at the same time and assessed together.
- 5.10 This development is therefore assessed in this report as a **discretionary activity**.
- 5.11 As a discretionary activity the Council must consider all effects associated with the activity (and not just the non-conforming aspects of the activity). The Council may grant or refuse an application for a discretionary activity and may impose conditions if it chooses to grant the resource consent.

#### **Applicable engineering standards**

- 5.12 This application was received on 1 July 2019 and is subject to the rules and Engineering Standards current at that time. This application pre-dates the legal implementation of the Nelson Tasman Land Development Manual 2019 (NTLDM) and the standards of the NTLDM do not therefore apply to this proposal.

## **6 Notifications and submissions**

### **Notification**

- 6.1 The application was publicly notified on 30 May 2020 pursuant to sections 95A(8)(b) and 95D of the Act and submissions closed on 29 June 2020.
- 6.2 It is noted that Council rejected the applicant's argument that the entire proposal met the definition of "residential activity" in section 95A(6) of the Act which would have precluded public notification.
- 6.3 The Council, in accordance with regulation 10(2)(a) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003, served notice of this application

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on the land owners of 189 properties in the area around the subject site, being those properties adjoining or in close proximity to the proposed new location for the CFB and properties within the local user catchment for the indicative neighbourhood reserve shown on the TRMP Planning Maps, as the Council deemed those persons to be affected persons under sections 95B and 95E of the Act.

#### **Written approvals**

- 6.4 Prior to public notification, written approval was obtained from Alison Mary Glenn Nicoll and David Bracken Nicoll of Lot 1 DP 511511 (376 Hill Street, Richmond).

#### **Submissions**

- 6.5 In total 76 submissions were received within the statutory submission period and one submission was received after the closing date. The late submission was accepted by the Council in accordance with sections 37 and 37A of the Act. A brief summary of these submissions is outlined below:

- (a) 60 oppose the application;
- (b) 14 support the application;
- (c) two indicate they are neutral to the application;
- (d) 37 indicated in their submission that they wish to be heard; and
- (e) 37 indicated in their submission that they do not wish to be heard; and
- (f) two did not confirm in their submission if they wanted to be heard.

- 6.6 Full copies of the submissions have been made available to the Commissioners. Given the relatively high number of submissions, it is not practical to outline every submission issue in detail in this report. However, I have reviewed them all and I consider the matters arising from the submissions can be broadly summarised as follows:

- 6.7 a. A development that does not provide a public reserve which will vest with the Council and the adverse effects this will have on the community in respect of the following:
- (i) Community dislocation, wellbeing (mental, social, physical, community, health) and a reduction in recreational opportunities; and

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- (ii) An increased burden on other nearby public reserves.
- b. The CFB, including its location, height, scale, length, commercial use and window placement and the adverse effects this will have on the neighbours and the community in respect of the following:
  - (i) Loss of outlook and views (in respect of the properties above the CFB); and
  - (ii) Loss of Privacy (for the properties adjacent to and down-hill from the CFB); and
  - (iii) Loss of daylight (and shading effects) including in relation to the proposed landscaping around the care facility building; and
  - (iv) Noise (from mechanical plant, vehicle movements, and staff shift changes); and
  - (v) Reduction in residential character; and
  - (vi) Visual and landscape effects (including in respect of the design, dominance and scale of the building and its elevation and proximity to the boundaries); and
  - (vii) Light pollution.
- c. Ecological effects, including:
  - (i) Positive ecological effects in respect of the flora & fauna that has been created in the existing green spaces and pond that have already been established in the Olive Estate development; and
  - (ii) Adverse ecological effects resulting from the decommissioning and filling of the pond and removal of habitat and trees in the location of the proposed CFB.
- d. Earthworks, including dust effects, and the potential for sediment laden water to enter freshwater.
- e. Traffic safety effects, (which includes vehicular and pedestrian safety effects) in respect of:

- (i) The proposed intersection off Hill Street and Fairrose Drive; and
  - (ii) The design of the extension to Fairrose Drive (namely its reduced width); and
  - (iii) The service road from the care facility building onto Brenda Lawson Way; and
  - (iv) The intersection of Hill Street and Brenda Lawson Way and the proximity and alignment of the service road to the CFB and the ability for service vehicles to manoeuvre safely and without adverse effects to other motorists or pedestrians; and
  - (v) The width and geometry of Hill Street and the ability for vehicles to travel in both directions along Hill Street if vehicles are parked on both sides of the road.
- f. Traffic volumes arising from the proposal, including the effects this will have in respect of:
- (i) A reduction in residential character and amenity (including in relation to headlight glare and noise); and
  - (ii) An increased demand for on street parking in the surrounding area and the associated traffic safety effects that may be associated with this.
- g. Stormwater and Water effects, including in relation to:
- (i) A proposal that will create an increased risk of stormwater runoff and potential flooding effects in the down-stream catchment; and
  - (ii) Ensuring there is an adequate supply of potable water for this development and the wider community.
- h. Submissions requesting mitigation included:
- (i) Ensuring that the Councils Daylight Admission rules are met in respect of the residential villas which share a boundary with neighbouring properties; and



- (ii) Changing the spacing and maturity height of the landscaping around the CFB to reduce shading effects, improve privacy and protect the outlook for the properties above; and
- (iii) Reduce the height of the CDB; and
- (iv) Introduce 'no parking' lines on Hill Street; and
- i. Positive matters arising from submissions included:
  - (i) Recognition that the proposal creates high quality publicly accessible greenspaces; and
  - (ii) The application represents best practice in the retirement village industry; and
  - (iii) The developer is a local family owned business which supports the local community; and
  - (iv) Employment and economic opportunities arising from the proposal; and
  - (v) A proposal that is integrated with the community; and which
  - (vi) Provides a high-quality urban development for the benefit of the elderly; and
  - (vii) Provides more housing in the region which in turn frees up other houses for families; and
  - (viii) Will attract people to the region.

#### **Comments on submissions**

- 6.8 I have grouped the submissions according to themes in the body of this report and have provided responses to those themes throughout. To assist the Commissioners, I have identified some specific submissions in the body of this report, although I have identified where more submitters than those listed have submitted on a particular matter.

- 6.9 There was one matter that was identified in the submissions which is not relevant to the consideration of this resource consent application. This matter is summarised below:

**Property value**

- 6.10 A small number of submissions in opposition to the application contend a perceived financial effect (loss of property value). However, the Act is directed at considering the environmental effects of an activity. Actual and potential (including perceived) effects on property value are not a relevant consideration under the Act. However, effects on amenity values are a relevant consideration and are addressed further in Section 9 of this report.

## 7 Statutory considerations

### The Resource Management Act 1991 (the Act)

- 7.1 The Act sets out the resource management principles in a national framework, guiding regional and district statutory provisions to manage the actual and potential effects of the use of natural and physical resources.

### Part 2

- 7.2 Part 2 matters are relevant to this application, as follows.

- 7.3 Section 6 - Matters of national importance:

There are no matters of national importance that apply to this proposal

- 7.4 Section 7 - Other matters, specifically

*7(b) the efficient use and development of natural and physical resources.*

*7(c) the maintenance and enhancement of amenity values.*

*7(d) intrinsic values of ecosystems*

*7(f) maintenance and enhancement of the quality of the environment.*

*7(g) any finite characteristics of natural and physical resources.*

- 7.5 Section 8 - Treaty of Waitangi:

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*

- 7.6 The issues in the following sections of this report identify any aspects of the activity which are considered to be inconsistent with the principles of Part 2 of the Act. Where no Part 2 assessment is made, those aspects of the activity are considered to be consistent with the principles.

### Section 104

- 7.7 A decision on this application must be made under section 104 of the Act, subject to Part 2 (Purposes and Principles). The matters for the Council to consider are:

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- a. Any actual and potential effects on the environment of allowing the activity; and
- b. The relevant provisions of the:
  - (i) National Environmental Standards for Managing Contaminants in Soil; and
  - (ii) National Policy Statement on Urban Development Capacity 2016; and
  - (iii) National Policy Statement for Freshwater Management 2014; and
  - (iv) Tasman Regional Policy Statement; and
  - (v) Tasman Resource Management Plan; and
  - (vi) Any other matter relevant and reasonably necessary to determine the application; and
  - (vii) Statutory Acknowledgement Areas.

**The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS)**

- 7.8 The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) is a nationally consistent set of planning controls and soil contaminant values. It ensures that land affected by contaminants in soil is appropriately identified and assessed before it is developed - and if necessary, the land is remediated, or the contaminants contained to make the land safe for human use.

**National Policy Statement on Urban Development Capacity 2016 (NPSUDC)**

- 7.9 The National Policy Statement on Urban Development 2020 (NPSUD) took legal effect in August 2020, after the date the resource consent applications were lodged with the Council. The National Policy Statement on Urban Development Capacity 2016 (NPSUDC) was in effect at the time the resource consent applications were lodged, and it set out the objectives and policies for providing development capacity under the Resource Management Act 1991.

**National Policy Statement for Freshwater Management 2017 (NPSFWM)**

- 7.10 The NPSFWM 2020 came into force on 3 September 2020, after the date the resource consent applications were lodged with the Council. The NPSFWM 2017 was in effect at the time the resource consents were lodged, and it introduced a national objective framework as a way to help regional councils apply the requirements of the Freshwater NPS in a consistent way across the country. It:

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- a. introduced national targets for swimmable lakes and rivers.
- b. increased direction for Te Mana o te Wai in freshwater management
- c. provided direction for monitoring macroinvertebrates, managing nitrogen and phosphorus, and considering economic well-being
- d. required regional councils to improve water quality in terms of human health.

### **Tasman Regional Policy Statement**

- 7.11 The objectives and policies in the Tasman Regional Policy Statement (TRPS) relevant to the proposed activity are reflected in the provisions of the Tasman Resource Management Plan (TRMP). The relevant objectives and policies of the TRMP are identified in the following assessment of effects.

### **Tasman Resource Management Plan**

- 7.12 The TRMP is a Unitary Plan. The TRMP objectives and policies relevant to the proposed activity are also identified in the following assessment of effects.

### **Statutory Acknowledgement Areas**

- 7.13 The application site is not located in a Statutory Acknowledgement Area, and there are no known mapped cultural or archaeological sites within the vicinity of the area.
- 7.14 Prior to the notification of the resource consent application, notice of the application was sent to Te Tau Ihu iwi. No issues were raised.

### **Section 127 of the Resource Management Act**

- 7.15 A decision on this application must also be made under section 127 of the Act because the applicant is proposing to make changes to the consented development (RM120928V1).
- 7.16 The key issues for this application are considered in turn below. The following sections of this report include an assessment of the actual and potential effects (including the matters raised in the submissions), and the relevant TRPS and TRMP objectives and policies and Part 2 principles.
- 7.17 The key issues for this resource consent application (and as detailed in the relevant sections of this report following) are:

- a. Section 9: The non-provision of a public reserve that will vest with Council
- b. Section 10: Care Facility Building (and the impacts this will have on amenity values)
- c. Section 11: Traffic and Access
- d. Section 12: Ecology
- e. Section 13: Positive Effects

### **Permitted baseline**

- 7.18 Section 104(2) of the Act allows a consent authority, when forming an opinion on the actual and potential effects on the environment of allowing an activity, the discretion to “...*disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.*” This concept is referred to as the ‘permitted baseline’. The application of the permitted baseline is at the discretion of the Council.
- 7.19 Compact density residential development in the Richmond South Development area can be undertaken as a permitted activity (subject to compliance with certain design, bulk, scale and coverage outcomes).
- 7.20 The TRMP anticipates and permits the effects associated with a compact density residential development in the Richmond South Development area. However, the TRMP does not anticipate or permit the effects associated with the construction and use of the CFB in the Richmond South area. Further it does not anticipate or permit the effects associated with this particular compact density development as there are several aspects to the development which do not comply with the permitted activity standards of the TRMP. For these reasons I have not considered the permitted baseline in my assessment of effects which follows later in this report.

### **Receiving environment**

- 7.21 The receiving environment is the existing environment upon which the effects of the proposed activity must be considered. The existing consent (RM120928V1) forms part of the existing environment. It authorises 119 villas, 32 townhouses, 4 carriage houses and two apartment blocks containing 16 apartments in total, a CFB a commercial and community precinct (lake house development) and associated green spaces and internal access roads. It has partially been given

effect to. That consent however is limited to the lower portion of the site (Lot 2 Deeds 1763).

- 7.22 The receiving environment also includes the future environment as it might be modified by the utilisation of peoples' rights to carry out a permitted activity.
- 7.23 On this basis I have considered and assessed the effects of the proposed activity on a receiving environment which includes an existing retirement village development which is currently under construction across part of the site, including a CFB and other non-residential aspects. The remainder of the site is currently vacant.

## 8 Non-provision of a public reserve

### Overview

- 8.1 Of the 76 submissions that were received 47 (61%) raised an objection to the development not providing a reserve that will vest with Council. The submitters identified the different effects this may have on the community (as summarised in section 6.5 (a) of this report and in the Memorandum prepared by Ms Squire in **Attachment 4**). I note that a number of submissions in opposition to this aspect of the development are 'pro-forma' and not all the submitters live in Richmond.
- 8.2 The location of the submitters that oppose the application on the basis that it does not provide a reserve that will vest with Council are identified in the Memorandum which has been prepared by Ms Squire (Attachment 4). Ms Squires' memorandum also captures the key themes and comments from the submissions in respect of the development not providing a reserve that will vest with Council. I have adopted Ms Squires' summary for the purposes of this report.
- 8.3 The effects that have been identified in the submissions can be broadly grouped into two key themes (**Community wellbeing** and **Community need**) which I consider in turn below.

### Community wellbeing

- 8.4 One of the key themes from the submissions in opposition to this application is the importance for the communities' wellbeing that this development incorporates well designed and located publicly accessible green space. A number of

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submitters described the mental, physical and social benefits of having such space within the community.

### **Community need**

8.5 The other key theme from the submissions in opposition to this application is that the needs of the community (in respect of the provision of reserves) are reflected in the TRMP policies and objectives and its setting aside of the land as indicative reserve in its planning provisions. The submitters state that the non-provision of a reserve would be inconsistent with the Councils policy framework and that there is no reason for the Council to accept an exemption to its requirements. The submitters state that the indicative reserve creates an expectation within the community that the community can use it and that the applicant's proposed green spaces are fragmented, serve different functions (i.e. stormwater management as opposed to a park where children can play) and would be inconsistent with the character of Richmond.

8.6 Some submitters also state that the open space proposed by the applicant will not feel or appear to be publicly accessible (and the developer has only offered for the spaces to be publicly accessible subject to conditions). As a consequence of this, the non-provision of a reserve will likely place an increased burden on other Council owned reserves in the area to the detriment of the wider community.

### **Provisions of the relevant Policy Documents**

8.7 The Memorandum prepared by Ms Squire identifies the Councils' policy documents relevant to the provision of reserve and opens spaces in the Tasman District. These include the Councils Long Term Plan (LTP), Reserves Activity Management Plan and Open Space Strategy. I have adopted Ms Squire's assessment of these policy documents for the purposes of this report and do not duplicate that assessment here.

8.8 In summary Ms Squire is of the opinion that the development does not achieve the outcomes sought by these policy documents. Ms Squires' position is that a recreation reserve is required in the general location shown on the TRMP planning maps, at the intersection of Fairose Drive and Iris Drive where it would be visible and accessible. Only on this basis would the development achieve the outcomes sought by these policy documents, which is for a reserve that has

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unrestricted access, is appropriately located and managed while protecting public connectivity through the site.

- 8.9 The following assessment focuses on the relevant policies and objectives of the Tasman Regional Policy Statement (TRPS) (where applicable) and the Tasman Resource Management Plan (TRMP) relative to this matter.

#### **Relevant Objectives and Policies of the TRMP**

- 8.10 Chapter 14 of the TRMP contains the objectives and policies that relate to the provision of reserves and open space in the Tasman district. The introduction to chapter 14 states:

*Reserves and open space provide for people's recreational interests, amenity values, protection of landscape and ecosystems, and recognise historic and cultural values. Provision for, and maintenance and enhancement of, the recreation and open space resources to meet the needs of the present and future District residents (the District's resident population is projected to increase from 37,973 in 1996 to 58,100 by the year 2031) and visitors are an essential part of sustainably managing the natural and physical resources of the District. The health and wellbeing of the District's residents and visitors will be enhanced by adequate opportunity to use recreational reserves and open space.*

- 8.11 Objective 14.1.2 of the TRMP seeks an *adequate area and distribution of a wide range of reserves and open spaces to maintain and enhance recreation, conservation, access and amenity values.*

- 8.12 Policy 14.1.3.3 seeks to:

*Identify potential open space areas in advance of urban subdivision in order to provide for the open space needs of the future residents and workers in the area.*

#### **Assessment**

- 8.13 The TRMP has identified a potential open space area in advance of the urban subdivision of this land in order to provide for the open space needs of the future residents and workers in the area. The non-provision of a reserve in this location will undermine the outcome sought by this policy.

- 8.14 Policy 14.1.3.4 seeks to:

*Provide for new open space areas that are convenient and accessible for users, including the provision of walking and cycling linkages in and around townships, between townships and between reserves.*

**Assessment**

8.15 The applicant is proposing to provide open space areas within the development, including the provision of walking and cycling linkages. However, these open spaces will not vest with the Council and will not be accessible to the public without restriction (eg. the applicant seeks to retain the ability to remove people from its open space if they are behaving anti-socially). A number of submitters also contend that the fragmented nature and location of the open spaces means they are not convenient or accessible. The proposal is therefore considered to be contrary to this policy.

8.16 Policy 14.1.3.9 seeks to:

*Encourage effective and efficient design and establishment of parks and reserves that can integrate multiple uses and functions of open space, including for network infrastructure.*

**Assessment**

8.17 The applicants' proposed open spaces do integrate multiple uses and functions of space (e.g. walkways, seating areas, landscaped garden areas and stormwater management functions). However, the location of these spaces is fragmented and to some members of the community may outwardly appear to be private spaces (particularly in respect of the open space around the CFB). Furthermore, the open space will not incorporate a children's park, with children's playground equipment that is usually found in the district's neighbourhood reserves. In this respect the proposal is not considered to be 'effective' or 'efficient' and it does not establish a park or reserve (as is anticipated by this policy).

8.18 Method of Implementation 14.1.20.1(b) is of relevance to this proposal and the principal reasons and explanations for the objectives and policies of the TRMP are identified in 14.1.30 which states:

*An adequate amount and equitable distribution of open space across the District is necessary to ensure all residents have easy access to open space. A standard of provision helps ensure adequate distribution. The Council will acquire new reserves primarily at the time of subdivision.*

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*Easy access to reserves is particularly important in urban areas where there is a higher density of population and individual recreation needs cannot be met on small urban allotments. It is also especially necessary for the younger and older residents of the District, who are less mobile. A range of reserves is needed to cater for the different activities favoured by the varying age groups in the population: for example, play areas, sports fields, walkways and nature areas.*

### **Cumulative Effects**

8.19 While each application/consent on their own may not give rise to significant adverse environmental effects, cumulatively they can result in a significant change in the environment.

8.20 Section 3 of the Act states:

#### **Meaning of effect**

*In this Act, unless the context otherwise requires, the term effect includes—*

- (a) any positive or adverse effect; and*
- (b) any temporary or permanent effect; and*
- (c) any past, present, or future effect; and*
- (d) any cumulative effect which arises over time or in combination with other effects—*

*regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*

- (e) any potential effect of high probability; and*
- (f) any potential effect of low probability which has a high potential impact.*

#### **Meaning of cumulative effect**

8.21 Cumulative effects are included in the definition of effect given in the Act. Whilst the term cumulative effects is not defined, it is apparent from the context that it encompasses two concepts:

- Effects arising over time; and
- Effects arising in combination with other effects.

- 8.22 The leading case on cumulative effects is the Court of Appeal decision in *Dye v Auckland Regional Council*<sup>9</sup>. *Dye* concerned an application for a non-complying activity to subdivide a rural section into five lots. It was argued that granting consent would create a precedent effect that would result in adverse cumulative effects on the environment from similar subdivision proposals that would likely follow.
- 8.23 The Environment Court found that the proposal would not result in either an actual or actual cumulative loss of rural character. However, on appeal, the High Court ruled that the cumulative waste-water, stormwater, ecological and roading effects that might result from the subsequent development proposal which might follow from the grant of consent had not been appropriately considered.
- 8.24 In overturning the judgement of the High Court, the Court of Appeal began by looking at the definition of 'effect' in Section 3 of the Act. The Court observed that a cumulative effect is not the same as a potential effect, based on the inclusion of potential effects separately within the definition.
- 8.25 Discussing the characteristics of cumulative effects, the Court concluded:  
*A cumulative effect is concerned with things that will occur rather than with something which might occur, that being the connotation of a potential effect...*  
*The concept of cumulative effect arising over time is one of a gradual build-up of consequence.*  
*The concept of combination with other effects is one-off effect 'A' combining with effects 'B' and 'C' to create an overall composite effect 'D'. All of these are effects which are going to happen as a result of the activity which is under consideration.*<sup>10</sup>
- 8.26 The Court also noted that 'potential effects' are effects which may happen, or they may not. Accordingly, it found that the precedent effect resulting from the grant of a resource consent did not fall within the concept of cumulative effect.
- 8.27 The Court of Appeal held that the precedent of granting a resource consent is a relevant matter for consideration to take into account when considering an application under s104(1)(c) of the Act, but that it is not a cumulative effect.

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<sup>9</sup> [2002] 1 NZLR 337

<sup>10</sup> [2002] 1 NZLR 337: Paragraph 38

- 8.28 On that basis this section of the report only considers the actual and potential effects of the activity in respect of the development not providing a public reserve (as anticipated by the relevant policy documents).
- 8.29 The matter of the development setting a precedent (in terms of it not providing a reserve where the requirement for one is identified in the TRMP) is still an important consideration in this instance, and it has also been raised as a matter of concern by the submitters. The precedent of granting the consent will therefore be considered separately in this report under the assessment of other matters (s104(1)(c)).
- 8.30 However, turning back to the effects of this proposal, it is my opinion that there may be some adverse effects on the amenity values of the wider area that may occur as a result of the development not providing a public reserve.
- 8.31 This is because the applicant does not guarantee unrestricted public access to its open spaces and the open spaces will not be managed or maintained by the Council (rather they will be maintained and controlled by a third party). Further from a design, appearance, location and management perspective the open spaces may not look or feel like a public reserve. This means that the spaces may not be fully utilised by the community which may result in some loss of the positive community wellbeing effects that the submitters have explained are achieved when there are accessible reserves in their communities. It might also result in the community needing to rely on other public reserves in the area which might have a consequential effect on the amenity values and maintenance requirements of those other reserves.

### Summary

- 8.32 For the reasons given above and for the reasons stated in the Memorandum prepared by Ms Squire it is concluded that the proposal is not consistent with the relevant Objective and Policies contained in chapter 14 of the TRMP. The non-provision of a reserve will result in potential and actual adverse effects on the community as the community wellbeing benefits that would otherwise be promoted through the provision of a public reserve (as identified in the submissions and the relevant policy documents) will be compromised.

## 9 Care facility building

- 9.1 The next key theme to arise from the submissions relates to the proposed CFB, particularly in respect of its location, height, scale, length, commercial use and window placement and the adverse effects this will have on the neighbours and the community in respect of the following:
- a. Loss of outlook and views (in respect of the properties above the CFB); and
  - b. Loss of Privacy (for the properties adjacent to and down-hill from the CFB); and
  - c. Loss of daylight (and shading effects) including in relation to the proposed landscaping around the care facility building; and
  - d. Noise (from mechanical plant, vehicle movements, and staff shift changes); and
  - e. Reduction in residential character; and
  - f. Visual and landscape effects (including in respect of the design, dominance and scale of the building and its elevation and proximity to the boundaries); and
  - g. Light pollution.

- 9.2 The effects that have been identified in the submissions in respect of the proposed CFB can be broadly summarised under the heading ‘amenity values’, which I consider next.

### Amenity Values

- 9.3 Amenity values are those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.<sup>11</sup>
- 9.4 The concerns that have been raised by the submitters with respect to the CFB and the effects this has on their amenity values have been considered in the context of the receiving environment as described in Section 9 of this report. The existing consent forms part of the receiving environment against which the proposal and the effects this has on people’s amenity values must be considered.

<sup>11</sup> Part 1 Interpretation and Application of the Act and Chapter 2 Meaning of Words of the TRMP

- 9.5 The existing consent authorised the construction of a CFB. It had a larger footprint, and a maximum consented height of 10m. The consented CFB was however sited at a lower elevation, more centrally within the site and set back further from the external site boundaries.
- 9.6 I also note that the site layout around the CFB has been amended since the application was publicly notified. After considering the submissions, the applicant amended the layout around the CFB<sup>12</sup> in respect of the landscaping, vehicle access, and parking layout; reduced the height of the retaining wall on the north-eastern side of the CFB to create a more gently sloping bank, and reduced the size of the café decking. These measures will go some way to mitigate the adverse amenity effects that have been identified in the submissions. I also note the removal of the proposed service access lane onto Brenda Lawson Way, in which this aspect of the proposal was particularly concerning to a number of the submitters (both from an amenity values and a traffic safety perspective).

#### **Assessment of effects on amenity values**

- 9.7 The following section of this report considers the effects of the construction and use of the CFB on the amenity values of the area in the context of the receiving environment (which includes the effects of the activity that has been authorised by the existing consent (RM120928V1).
- 9.8 The applicant has provided a Landscape and Visual Assessment (LVA) which has been prepared by Canopy NZ Ltd. The LVA considers the landscape and visual effects of the proposal and it states that the following key elements will result in visual effects and a loss of residential character:
- The over-height component of the care facility building.
  - The bulk, scale and continuous façade of the care facility building in comparison to the existing residential character on Hill Street.
  - The visibility of the care facility building from the dwellings on Brenda Lawson Way and Fawdon Way.
- 9.9 The conclusions reached in the LVA in respect of each of these elements are summarised below:

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<sup>12</sup> See amended plan set dated 18 September 2020

## Height

- 9.10 In relation to the height of the care facility building, the LVA considers the effects of this are mitigated because that part of the care facility building which is 10.5m in height is set back 50m from the closest neighbour on Brenda Lawson Way. Additionally, the LVA states that the care facility building is terraced and there is a change in topography which will also mitigate the visual effects of the building height.

## Bulk, scale and continuous façade

- 9.11 At paragraph 42 of the LVA, it states that despite the variation in height of the care facility building along its approximate length of 100m on Hill Street it will differ in character when compared to the surrounding residential development. I agree and consider the loss of residential character (and the consequential adverse effects on amenity values will be most noticeable to the closest neighbours on Brenda Lawson Way, Fawdon Way, the neighbours on Hill Street (which are afforded an outlook over the top of the care facility building) and to pedestrians and motorists on Hill Street.
- 9.12 At paragraph 43 of the LVA it states that the continuous length of the care facility building will create the appearance of a larger bulkier building than would normally be expected in this residential environment but the use of landscaping, timber screens and fences will help to visually 'break up' the façade.

## Visibility of the care facility building

- 9.13 This is considered at paragraph 45 of the LVA. In summary it is concluded that the change in topography, the use of retaining walls, a building off-set of 14.3m (in relation to Brenda Lawson Way) and the use of acoustic fences<sup>13</sup> and planting will provide separation and privacy.
- 9.14 The LVA states that the CFB will result in the main change in residential character in this area because of its height (10.5m at its highest point compared to the 7.5m permitted by the TRMP) and its continuous façade. I agree and consider the CFB is larger and bulkier compared to a permitted development in

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<sup>13</sup> Acoustic fences are no longer proposed since the proposed service access lane onto Brenda Lawson Way has been removed from the proposal.



the residential zone. However, it is not considerably larger or bulkier than the CFB that has already been approved in the lower portion of the site (and which forms part of the receiving environment).

- 9.15 Notwithstanding the mitigation measures described in the LVA (and summarised above), it is my opinion that there will be some actual and potential adverse effects on amenity values as a result of the location and size of the CFB. The relocation of the CFB from its consented location will have some adverse bulk and visual dominance effects, and the resultant effects on amenity values will be most noticeable to the closest neighbours on Brenda Lawson Way, and to a lesser degree the neighbours on Hill Street which are afforded an outlook over the top of the care facility building and to pedestrians and motorists on Hill Street. However, the applicant has amended the application in order to mitigate these effects.
- 9.16 The consented CFB is not as high as the proposed CFB, it is sited at a lower elevation and centrally within the development with housing proposed around it. Access and parking for the consented CFB is also provided for internally within the development, and away from the external site boundaries. As such there would be a greater degree of separation between the consented care facility building (including the associated vehicle movements and parking) and the surrounding residential development. The applicant has also reduced the size of the café decking which will help to reduce the adverse effects on the adjacent neighbours on Brenda Lawson Way and Fawdon Way (in respect of privacy).
- 9.17 The proposed CFB is 500mm taller than the consented CFB and the building and its associated access and car parking areas are at a higher elevation. The proposed CFB is also sited next to established residential development. However, the CFB will be set back at least 25m from the boundary with 3 Brenda Lawson Way and 19.5m from the boundary with 5 Brenda Lawson Way (the closest neighbours). This provides some mitigation of effects.
- 9.18 It is acknowledged that the proposed landscaping will also provide some mitigation of effects in the long term (once it is established and reached maturity). However, the landscaping is unlikely to provide a significant amount of mitigation in the short term (by way of screening and visually breaking up the height, bulk and continuity of the building façade). The care facility unit plans provided with the application illustrate the mitigation that can be expected to be achieved

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through landscaping in the longer term. However, the plans note the landscaping plans are based on 10 years of growth from the time of planting.

- 9.19 In my opinion it is not just the visual and landscape effects of the CFB that will result in some loss of residential character and amenity values but also the parking and traffic associated with its use. The CFB will employ a number of staff that will travel to / from the site on a daily basis, during the day and night. The care facility provides a car park with 30 car parking spaces.
- 9.20 The comings and goings associated with the use of this building as a community care facility, which will include residents, patients, visitors, staff (including in relation to building maintenance, laundry, ambulance, medical and cleaning services etc) café and other similar non-residential uses will result in some loss of residential character and amenity values. The intensity and volume of the traffic and parking associated with the use of the CFB, together with the scale, bulk and height of the building will result in some loss of residential character and amenity values in this location which will be particularly noticeable to the closest neighbours on Brenda Lawson Way and Fawdon Way. However, in my opinion these adverse effects have been mostly mitigated as a result of the applicant's removal of the service access lane onto Brenda Lawson Way. The CFB car park and residence car park will be accessed via Fairrose Drive and the intervening CFB building will further help to mitigate the traffic effects (from an amenity perspective) associated with the use of the CFB.

#### **Relevant objectives and policies of the TRMP**

- 9.21 Chapters 5 and 6 of the TRMP contain the objectives and policies that relate to site amenity and urban environment effects in the Tasman district.
- 9.22 Objective 5.1.2 of the TRMP seeks the *avoidance, remedying or mitigation of adverse effects from the use of land on the use and enjoyment of other land and on the qualities of natural and physical resources.*

#### **Assessment**

- 9.23 The applicant has proposed a number of design features and incorporated the recommendations contained in the LVA so as to mitigate the adverse effects of the CFB on the use and enjoyment of the surrounding land.

- 9.24 Policy 5.1.3.1 of the TRMP seeks to ensure that any adverse effects of subdivision and development on site amenity, natural and built heritage and landscape values, and contamination and natural hazard risks are avoided, remedied, or mitigated.

**Assessment**

- 9.25 The CFB is consistent with this policy as the adverse effects of the development on site amenity and landscape values will be mitigated (as advised by the LVA provided with the application). There are no known natural hazard risks associated with this development.

- 9.26 Policy 5.1.3.8 of the TRMP states that development must ensure that the effects of land use or subdivision activities on stormwater flows and contamination risks are appropriately managed so that the adverse environmental effects are no more than minor.

**Assessment**

- 9.27 Tasman Consulting Engineers Limited undertook a peer review of stormwater discharge from the original Olive Estate Main Block and also the additional Hill St Block, with allowance for future addition of the Nicol Home Block. This review confirmed that the original pond design and construction along with the Trek detention dam and current discharge to Wilkinson Place is adequate to mitigate the design stormwater flows to no more than the predevelopment flows. Refer Section 3 above for further details. Council's Team Leader Natural Resources has reviewed this information and is satisfied with the findings.

- 9.28 The application has shown it is practical to direct the secondary flows to the road network and internal drainage network minimising the risk to the neighbours. The most recent design for the secondary flows around the care facility shows a stormwater channel at the top of an embankment. This design is not considered best practice. Conditions of consent are recommended in land use consent RM190790 to ensure that the secondary flows paths are designed and constructed by appropriately qualified professionals to ensure any risk to downstream properties is appropriately mitigated.

- 9.29 The stormwater discharge is a permitted activity in accordance with rule 36.4.2.1 of the TRMP.

9.30 Policy 5.1.3.8 of the TRMP requires developments *to avoid, remedy, or mitigate effects of:*

*(a) noise and vibration;*

*(b) dust and other particulate emissions;*

*(c) contaminant discharges;*

*(d) odour and fumes;*

*(e) glare;*

*(f) electrical interference;*

*(g) vehicles;*

*(h) buildings and structures;*

*(i) temporary activities;*

*beyond the boundaries of the site generating the effect.*

#### Assessment

9.31 The only criteria considered to be of relevance to the CFB is (g) and (h). The effects of the CFB on the amenity values of this area in respect of the other criteria listed in this policy can either be mitigated or are not relevant. In respect of the effects of vehicles (from an amenity values point of view) the removal of the service access lane onto Brenda Lawson Way has significantly improved the amenity effects of the CFB, particularly as experienced by those neighbours on Brenda Lawson Way.

9.32 The consequential increase in vehicle usage of the proposed extension onto Hill Street is not considered to have any significant adverse effects on the amenity values of the area, including the neighbours on Hill Street. This is because this indicative roading connection has already been set aside in the TRMP planning maps and its construction and use is therefore an anticipated environmental outcome in this location.

9.33 In respect of (h) (buildings and structures) the applicant is proposing some mitigation of effects, as detailed in the LVA provided with the application.

9.34 In respect of amenity values, Objective 5.2.2 seeks .

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9.35 The following polices in respect of amenity values that are relevant to this proposal are:

9.36 Policy 5.2.3.1 *To maintain privacy in residential properties, and for rural dwelling sites.*

**Assessment**

9.37 The window placement within the CFB will result in some loss of privacy which will be particularly noticeable to the neighbours on Fawdon Way (given their proximity to the CFB and being at a lower elevation).

9.38 Policy 5.2.3.2 *To ensure adequate daylight and sunlight to residential properties, and rural dwelling sites.*

**Assessment**

9.39 The development complies with the TRMP standards in respect of daylight and sunlight on its external boundaries and as such the development is consistent with this policy.

9.40 Policy 5.2.3.3 *To promote opportunity for outdoor living on residential properties, including rural dwelling sites.*

**Assessment**

9.41 This development does not comply with the TRMP area requirements for outdoor living courts in respect of each residential unit. However, it provides high quality open green space throughout the development that can be used by the occupants of the retirement village. The development is consistent with this policy.

9.42 Policy 5.2.3.4 *To promote amenity through vegetation, landscaping, street and park furniture, and screening.*

**Assessment**

9.43 This development promotes on-site amenity through vegetation and landscaping, street furniture and screening and as such is consistent with this policy.

9.44 Policy 5.2.3.7 *To enable a variety of housing types in residential and rural areas.*

**Assessment**

- 9.45 This development is consistent with this policy as it provides a variety and choice of housing type in an established residential area.
- 9.46 The objectives and policies relevant to residential activity and community facilities are identified and assessed below.
- 9.47 Objective 5.4.2 which states: *Accommodation of a wide range of residential activities and accessible community facilities in urban areas.*

**Assessment**

- 9.48 This development is consistent with this policy as it provides a community facility in an established residential area.
- 9.49 Policy 5.4.3.1 *To enable a variety of housing types, recognising different population growth characteristics, age, family and financial circumstances and the physical mobility of, or care required by, residents.*

**Assessment**

- 9.50 This development is consistent with this policy.
- 9.51 Policy 5.4.3.2 *To allow for health care, educational and cultural facilities and other local community activities, including in residential areas, providing these do not compromise the character or amenity of the residential neighbourhood.*

**Assessment**

- 9.52 This development is partly consistent with this policy in that it allows a health care facility in an existing established residential area. However, the CFB will compromise the amenity values of the residential neighbourhood albeit to a moderate extent (given the mitigation proposed).
- 9.53 Objective 6.1.2.2 relates to sustainable urban design and development and seeks a wide range of living opportunities in urban locations that incorporate urban design principles.

**Assessment**

- 9.54 This development is consistent with this policy.

9.55 Policy 6.1.3.1 seeks to encourage subdivision and development to incorporate sustainable urban design principles by:

- (a) encouraging a sense of place and identity;*
- (b) working with the natural characteristics of sites;*
- (c) creating opportunities to enhance natural values;*
- (d) providing a high degree of connectivity within road networks;*
- (e) providing for safe walking and cycling;*
- (f) designing local roads to ensure a safe low traffic speed environment on local streets and accessways;*
- (g) creating a streetscape which enhances perceptions of safety;*
- (h) managing stormwater run-off on site where possible, and ensuring off-site stormwater run-off does not increase flood risk nor adversely affect water quality in waterways and the coastal marine area for aquatic ecosystems and recreation; and*
- (i) locating and designing development to address cross-boundary effects between land uses.*
- (j) encouraging medium density housing development in the forms of compact density and comprehensive housing and intensive residential development within walking distance of or close to town centres and urban facilities, including public transport.*
- (k) providing for a choice of residential density and form within the District, taking into account people's preferences, the existing character of neighbourhoods, topography, proximity to town centre, the capacity of infrastructure and the constraints of the land resource.*
- (l) enabling protection of heritage sites, items and values, cultural heritage and protected trees.*

#### Assessment

9.56 This development (and particularly the residential units and green spaces) is consistent with criteria (a) of this policy in that this proposal is a continuation of

the style, density and characteristics of the existing retirement village. In this respect the proposal created a sense of place and identity.

- 9.57 The development is not entirely consistent with (b) and (c) in that the site needs to be modified (and a pond filled) in order to accommodate the development. However as noted in a submission in support of this application the developer's inclusion of high quality open green spaces does create some natural values.
- 9.58 The development is consistent with criteria (d)-(h) providing the connectivity that is proposed by the applicant is kept available for public use in perpetuity.
- 9.59 In terms of (i) there will be no adverse cross boundary effects as there are no incompatible land uses in the area (the area is already residential in character). There will be some effects in terms of amenity values, in respect of the CFB and the closest neighbours (as detailed above). However, these are not considered to be adverse cross boundary effects (which usually arise as a result of incompatible and adjacent land uses such as an industrial activity next to a residential activity).
- 9.60 The development is consistent with (j) and (k) and (l) is not considered to be relevant.
- 9.61 Policy 6.1.3.1A seeks *to encourage medium density housing developments that achieve a high standard of amenity in areas identified on the planning maps as the Richmond South, Richmond West, Mapua Special and Richmond Intensive development areas and the Motueka West Compact Density Residential Area by:*
- (a) ensuring the suitable and compatible location, height, density, scale and bulk of intensive residential development relative to its context and adjacent land uses, including streets and reserves; and*
- (b) encouraging best practice and design through the use of the Council's Urban Design Guide.*

#### Assessment

- 9.62 The proposed residential component to this development is suitably located and compatible (in respect of height density, scale and bulk) relative to its context and adjacent land uses. The CFB is less compatible in this respect. The compatibility of the development in terms of reserves is addressed in Section 8 of this report.



- 9.63 Policy 6.1.3.2 seeks to *integrate the management of stormwater run-off with the maintenance and enhancement of natural waterways, vegetation and wetlands, and co-locate provision of passive recreational opportunities, and pedestrian and cycle access.*

**Assessment**

- 9.64 The development is consistent with this policy.
- 9.65 Policy 6.1.3.3 *To ensure the establishment of riparian planting along urban waterways to maintain and enhance water quality and natural habitats, improve indigenous biodiversity of the catchment, and reduce stream bank erosion while providing access for channel maintenance.*
- 9.66 The development is consistent with this policy. The cross section plans of the proposed open stormwater swale show the provision of riparian planting along its margins.
- 9.67 The policies that relate specifically to the Richmond South area are included in chapter 6.8.3 of the TRMP. In respect of the Council's desired outcomes for the Open Space and Reserve Network in Richmond South, Policy 6.8.3.24 seeks to *establish an open space network that links the hills to the sea and creates a perimeter pedestrian and cycleway network linking the residential environments of Richmond East, West and South with one another.*
- 9.68 And Policy 6.8.3.25 seeks to *promote multi-purpose use of open space for recreation, non-motorized transport networks, ecological corridors, and stormwater management.*

**Assessment**

- 9.69 The development is not entirely consistent with Policy 6.8.3.24 in that it does not provide a reserve that will vest with Council. It does provide connectivity and multi-purpose open spaces (which are likely to be primarily utilised by the retirement village residents), non-motorized transport networks (and motorized in respect of e-bikes and mobility scooters etc) and ecological corridors (through the open stormwater channels that are to be incorporated into the development).
- 9.70 Policies 6.8.3.27 and (A) and (B) are also of relevance. These policies seek to *provide for community activities and facilities within the Residential Zone where the nature, scale and intensity of the development is compatible with the*

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*residential environment, and adverse effects on visual amenity, noise and traffic safety can be avoided, remedied or mitigated.*

- 9.71 Policy 6.8.3.27A seeks to provide for a range of housing choices in the Residential Zone in Richmond in specified locations; and
- 9.72 Policy 6.8.3.27B to provide for medium density residential housing in the Residential Zone in Richmond as follows: (a) In the Richmond South and Richmond West development areas, in the form of compact density development.

#### Assessment

- 9.73 This development is consistent with these policies except the CFB is not entirely compatible with the residential environment (owing to its length, height, scale and bulk and nature of the traffic movements and parking that will be associated with its use).

#### Summary

- 9.74 Chapters 5 and 6 of the TRMP contain the objectives and policies that relate to site amenity and urban environment effects in the Tasman District. This development is mostly consistent with the relevant objectives and policies of the TRMP. The aspects of the development that are not consistent with the relevant policies and objectives relate to the CFB (in that it will result in some loss of residential amenity values by virtue of its height, scale, bulk and location). However, there are policies in the TRMP which also recognise the value in having accessible community facilities in residential areas.
- 9.75 These amenity value effects must also be evaluated in the context of the receiving environment. The receiving environment includes the existing consent which also authorised a CFB of comparable height and size (albeit it was more centrally located within the site and at a lower elevation). The applicant has also proposed a number of design measures that will, at least to some degree, mitigate the effects of the CFB on the amenity values of the area. The removal of the service access lane from Brenda Lawson Way is considered to be a significant improvement in respect of the mitigation of amenity value effects this would have otherwise had on the locality (and which was one of the key matters of contention raised by the submitters).

- 9.76 The only other aspect of the development that is not considered to be consistent with the relevant policies is in respect of the open space and reserve outcomes that are sought by the TRMP. This is because the development does not provide a reserve that will vest with Council (as more fully considered in the memorandum prepared by Ms Squire).

## 10 Traffic and access

- 10.1 The applicant has provided a Traffic Impact Assessment (TIA) from Traffic Concepts Ltd (Mr Clarke). The TIA provides an assessment on the roading, access, parking, manoeuvring and loading effects associated with the development.
- 10.2 The applicant proposes to form a number of roads, including an extension to Fairrose Drive (which will vest with Council and connect to Hill Street via a new intersection) and internal roads (which will not vest with Council but that the applicant intends to keep open to the general public by way of easement).

### Parking

- 10.3 The number of car parking spaces that are provided on site comply with the permitted standards of the TRMP. In summary two car parking spaces are provided in front of each residential unit (or within the integral garages) and a total of 49 car parking spaces are provided on the site of the CFB (the TRMP requires 45). A breakdown of the TRMP parking standards versus the total number of car parking spaces being provided within the development is included on page 4 of the addendum to the TIA (dated 4 December 2019).
- 10.4 In summary the car parking standards of the TRMP require a total of 193 on site car parking spaces. The applicant is providing a total of 205 on site car parking spaces. I agree with the conclusions in section 7.7 of the TIA and consider the number of on-site car parking spaces is sufficient and that the development will not result in any significant adverse traffic or pedestrian safety effects or any significant adverse effects on the efficiency of the road network as a result of residents, visitors or staff needing to park off site (e.g. on Hill Street, Fairrose Drive or Brenda Lawson Way).

## Roading

- 10.5 In brief the road design philosophy for the Olive Estate development is one that provides 'liveable streets' that reduce speed and create a safer environment for pedestrians and motorists. This is achieved in a number of ways, including forming narrower streets, inset parking bays, strong vertical treatments and high-quality landscaping (as examples).
- 10.6 The TIA contends that the design of the proposed extension to Fairrose Drive (which will be narrower than the permitted standards of the NTLDM), will also help to create a slower speed environment.
- 10.7 Achieving an appropriate speed environment on Fairrose Drive is important because it will help to mitigate any adverse traffic and / or pedestrian safety effects. It is also important because a higher speed environment might encourage motorists to use Fairrose Drive as a 'rat run' which can be detrimental to the amenity of the public, existing residents on Fairrose Drive and the safety of motorists and pedestrians.
- 10.8 The applicant proposes to adopt the road design philosophy of Olive Estate into the design of the extension to Fairrose Drive (which will vest with Council). The applicant wants to create a slower speed environment and proposes to extend Fairrose Drive such that it will have a 6m wide carriageway, a footpath on either side measuring 1.4m in width on one side and 2.5m on the other side and a road reserve width measuring 15.5m in width.
- 10.9 In comparison, the existing portion of Fairrose Drive has an 8m wide carriageway, a road reserve width of 19m and a footpath on either side measuring 2.5m in width.
- 10.10 The extension to Fairrose Drive will be narrower than the existing portion of Fairrose Drive but the TIA states that a carriageway width of 7m will provide an appropriate level of continuity and that the design will meet the needs of its residents and the residential environment the road will go through. The addendum to the TIA (dated 22 August 2019) states:

*Providing an 8m wide road would be inconsistent with the road design philosophy of Olive Estate, inconsistent with the NTLDM, will lead to a poor residential outcome and will be unsafe.*

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- 10.11 The traffic, parking and access aspects of this development have been considered by Mr Dugald Ley in his memorandum, which is attached in **Attachment 7** of this agenda. His assessment of these matters is not duplicated here but in summary it can be concluded that the Councils' Development Engineer is satisfied that the development can be appropriately serviced, and accessed safely by motorists and pedestrians without significant detriment to the efficiency and safety to the surrounding road network, subject to certain design engineering standards being met.
- 10.12 The applicant has provided an indicative development staging plan, which shows how the construction of the development might be sequenced. The applicant has not however confirmed the timing or trigger for when Fairrose Drive will be completed and vest with the Council or when the Hill Street intersection will be upgraded. It is expected that the road will vest with Council as soon as access is required to the CFB and / or any of the residential units which are accessed off this road. The applicant is expected to provide further information in this respect in its evidence and propose an appropriate condition of consent that is agreeable to the Council.

### **Submissions**

- 10.13 The submissions did raise some traffic safety and pedestrian safety concerns. However, these were mostly in relation to the proposed service access lane onto Brenda Lawson Way, which no longer forms part of the application.
- 10.14 A small number of submissions also raised concerns in respect of the proposed intersection of Fairrose Drive and Hill Street. Some submitters have described how there have been crashes on Hill Street because of sun strike, and they are concerned that an intersection in this location may exacerbate this risk.
- 10.15 There were other submissions that referred to the design standards of the proposed extension to Fairrose Drive and a desire that the width of the existing portion of Fairrose Drive be continued along its length. However, this was more from an amenity values perspective, as opposed to a traffic or pedestrian safety perspective.
- 10.16 It is expected that the applicant's traffic expert will provide further evidence in respect of the location and design of the proposed Fairrose Drive / Hill Street

intersection in respect of the traffic safety concerns that have been identified in some of the submissions.

**Relevant policies and objectives of the TRMP**

- 10.17 The objectives and policies relevant to traffic and access are contained within Chapter 11 of the TRMP and they generally seek to ensure the maintenance of a safe and efficient transport system and that adverse effects of land use or development on the transport system are avoided, remedied or mitigated.
- 10.18 I accept the advice of Mr Clarke and the Council's Development Engineer and consider the development can ensure a safe and efficient transport system and that the adverse effects of this land use on the surrounding road transport system can be appropriately mitigated subject to appropriate conditions of consent.

**11 Ecology**

- 11.1 A small number of submitters oppose the application because they are concerned that dewatering the pond and reducing the amount of existing open green space (to make way for the development) will have adverse ecological effects. Conversely some submitters in support of the application contend that the proposal will have positive ecological effects because the development incorporates a variety of open green spaces and open stormwater swales. One submitter has provided photographic evidence of the bird life that can be found in the existing part of the retirement village development (towards the lake house) to illustrate the positive ecological effects the development will likely have.
- 11.2 This matter is addressed by Ms Wolter in her addendum to this report (Attachment 8 to this agenda) and is not considered further here, except to identify the relevant objectives and policies of the TRMP.

**Relevant policies and objectives of the TRMP**

- 11.3 The objectives and policies relevant to the intrinsic values of ecosystems are contained in Chapter 8 of the TRMP. Chapter 8 of the TRMP states that when considering applications for land use the Council is required to have regard to natural values as matters of national importance as identified in section 6 of the Act.

- 11.4 However, I note that section 6 (c) of the Act relates to the protection of areas of 'significant indigenous vegetation and significant habitats of indigenous fauna'. I do not consider this to be applicable to this site.

## 12 Positive effects

- 12.1 A number of submissions were received in support of the application. The positive matters identified in the submissions can be broadly grouped into two themes '**High quality urban development**' and '**Economic**' which I consider in turn below.

### **High quality urban development**

- 12.2 The submissions in support of the application contend that the proposal creates high quality publicly accessible greenspaces, represents best practice in the retirement village industry, is integrated with the community and provides a high-quality urban development for the benefit of the elderly and the wider community.

### **Economic**

- 12.3 The submissions in support of the application also explain that the developer is a local family owned business which supports the local community and that there will be employment and economic opportunities arising from this proposal. A submitter in support also stated that the proposal will provide more housing in the region which in turn will free up other houses for families and that this in turn will attract people to the region. This might also have economic benefits for the region.

### **Relevant policies and objectives of the TRPS**

- 12.4 General Objective 5 of the TRPS *Maintenance of economic and social opportunities to use and develop resources in a sustainable manner* explains how the Council's resource management role is not limited to constraining resource uses because of their adverse environmental effects. Rather it is recognised that the Council is in a key position to enable the uptake of opportunities to use and develop a range of resources in ways that are environmentally sustainable by providing information and advocating or allowing appropriate resource development pathways.

### Assessment

- 12.5 From the submissions in support of the application it is apparent that the development is considered by some people within the community to be a high-quality urban development. The high quality of the development, including the design and layout of the residential units and its open green spaces and landscaping, can be seen in the existing developed portion of the retirement village. This application would result in a continuation of that development.
- 12.6 Some of the submissions in support of the application explained how the existing lake house facility and green space is a valued publicly accessible space that benefits the local community by bringing people together. This positive effect is acknowledged and could be continued into the extended portion of the development in the form of a fully publicly accessible reserve (that will vest with Council and which will not be subject to any actual or perceived accessibility restrictions).
- 12.7 In terms of the positive economic effects that have been identified in the submissions, I have not been provided with any information which quantifies the actual or potential economic benefits for the region this proposal may have (particularly in respect of its actual and potential employment opportunities).
- 12.8 However, it seems logical that to enable the continued expansion of the retirement village will provide ongoing employment opportunities, both in the short term (i.e. construction) and the longer term (i.e. ongoing management and operation of the retirement village and CFB). It is expected that this development will, at least to some extent, help to support the economic and social opportunities in the region and contribute towards the viable and diverse economic achievements and development potential of the Tasman District.
- 12.9 On this basis I consider the proposal to be consistent with the economic and social outcomes that are identified in General Objective 5 of the TRPS.



## 13 Summary of key issues and recommendations

- 13.1 The application is for a **discretionary activity** in accordance with the operative TRMP, so the application must be considered in accordance with sections 104 and 104B of the Resource Management Act 1991.

### National Policy Statement on Urban Development Capacity

- 13.2 The following Objectives and policies of the NPSUDC are relevant to this proposal:
- 13.3 OA1: *Effective and efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing.*

#### Assessment

The proposal is considered to be partly inconsistent with this objective for the same reasons given in section 9 of this report.

- 13.4 OA2: *Urban environments that have sufficient opportunities for the development of housing and business land to meet demand, and which provide choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses.*

#### Assessment

The proposal is considered to be consistent with this objective because it provides a choice in housing (for 55 +) and for people with varying needs of care.

- 13.5 OA3: *Urban environments that, over time, develop and change in response to the changing needs of people and communities and future generations.*

#### Assessment

The proposal is considered to be consistent with this objective because it provides housing and care for a changing (aging) demographic.

- 13.6 PA2: *Local authorities shall satisfy themselves that other infrastructure required to support urban development are likely to be available.*

### Assessment

The proposal is consistent with this policy because there is adequate infrastructure to service the development.

- 13.7 PA3: *When making planning decisions that affect the way and the rate at which development capacity is provided, decision-makers shall provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, whilst having particular regard to:*

*a) Providing for choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses;*

*b) Promoting the efficient use of urban land and development infrastructure and other infrastructure; and*

*c) Limiting as much as possible adverse impacts on the competitive operation of land and development markets.*

### Assessment

The proposal is consistent with this policy.

- 13.8 PA4: *When considering the effects of urban development, decision-makers shall take into account:*

*a) The benefits that urban development will provide with respect to the ability for people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing; and*

*b) The benefits and costs of urban development at a national, inter-regional, regional and district scale, as well as the local effects.*

### Assessment

The proposal is considered to be partly inconsistent with this objective for the same reasons given in section 9 of this report.

**Any other matter Council considers relevant - section 104(1)(c)**

**Precedent**

- 13.9 The Courts have previously determined that the granting of a resource consent has no precedent effect in the strictest sense, and *“the most that can be said is that the granting of one consent may well have an influence on how another application should be dealt with”*<sup>14</sup>
- 13.10 In this instance, it is appropriate that the Commissioners consider the effects of granting this development without a reserve that will vest with Council in respect of the way in which this might influence how another comparable development should be dealt with by the Council. This is because as a matter of uniformity and fairness other similar applications could be made with the expectation that developments need not provide a public reserve, even if the need for one has been identified in the TRMP policy documents. It is also an appropriate matter to consider because it is raised as a matter of concern by the submitters.
- 13.11 With the above in mind, it is my understanding that this application must be considered on its own merits, because in the strictest sense it should not pre-determine the outcome of any future comparable applications.
- 13.12 However, in reality the granting of this application (without requiring the applicant to vest a reserve with the Council) has the potential to influence the way other comparable applications will need to be dealt with. Other applicants might reasonably expect that they do not need to provide a public reserve (even if the Council's policy documents identify the need for one), or they too may propose an alternative and compromised area of open space. Any further applications that are granted in this scenario will inevitably undermine the spatial amenity qualities and values that the Council's policy documents seek to achieve and may lead to a longer-term decline in the amenity values of the district.
- 13.13 In my opinion the grant of this consent could set an undesirable precedent that would make similar applications progressively more difficult for the Council to resist.

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<sup>14</sup> [2002] 1 NZLR 337 *Dye v Auckland Regional Council*

## **Summary of key issues**

### **Non-provision of a public reserve**

- 13.14 One of the key themes from the submissions in opposition to this application (and the applications only real departure from the relevant policy documents) relates to the non-provision of a reserve that will vest with Council. The provision of a publicly accessible reserve of a shape, size and location, and without any actual or perceived restrictions as to its accessibility, is important for the communities' wellbeing (mental, social, recreational and health). The Council's policy framework also clearly plans for and anticipates the vesting of a public reserve in this location to support these recognised social-wellbeing outcomes.
- 13.15 It is acknowledged that the applicant has suggested alternative mechanisms to reflect its intention to enable the public to access its open spaces (e.g. Heads of agreement, easements or a covenant in favour of the Council etc). However, any such arrangement would still be subject to conditions, including the applicant retaining the ability to preclude access or remove persons from its open spaces (should it have the need to do so). Further, the Council would not have control over the appearance or maintenance of the open spaces and as such they may not appear or feel publicly accessible to some members of the community.
- 13.16 Additionally, the open spaces are fragmented and serve different functions. They are not of a suitable size, shape or location to provide a neighbourhood park where play equipment and play / recreational opportunities will be provided (in comparison to what is intended by the TRMP provisions and as is seen in other Council owned reserves in the district). A consequence of this may be that it de-incentivises the community's willingness to utilise the spaces and in turn increase the community's reliance on the use of other reserves in the area.

### **Care facility building**

- 13.17 The other key theme from the submissions in opposition to this application relates to the CFB, and the impact this building (and use) will have on the amenity values of this area. The CFB is a large building, with a long frontage and over-height aspect and is not in-keeping with the character and / or appearance of a compact density residential development (which is the type of development that the TRMP provides for in the Richmond South residential zone).

13.18 The application plans were taken to the Councils Urban Design Panel (UDP)<sup>15</sup> in April 2019, prior to the lodgement of the resource consent applications. The recommendations made by the UDP are attached and to and addressed in the Urban Design Assessment that has been prepared by Canopy Landscape Architects Ltd (and included in Annexure I of the applicants Assessment of Environmental Effects). In principle the UDP considers the formal arrangement of the CFB and breakdown of building form to be very positive. The UDP recommends some improvements, including:

- relocating the servicing and parking to under the south-east side of the building; and
- creating greater variation in building form and increasing the height of the building form at the southern end of the building (as opposed to the centre of the building); and
- creating a raised roof line over part of the building to contribute to a further variation in roofscape; and
- re-arranging the internal functions of the building; and
- installing skylights to increase the amount of light within the building.

13.19 The applicant has not incorporated these changes into the design of the CFB but then it is not required to do so. It has instead implemented its own design solutions in response to the recommendations that were made by the UDP. Further, the effects of the CFB (in respect of amenity values) must be considered in the context of the receiving environment. This includes the existing resource consent (RM120928V1) which authorises the construction of a comparably sized CFB, but in a different part of the site and further away from the residents on Hill Street, Brenda Lawson Way and Fawdon Way.

13.20 The applicant seeks consent to relocate the consented CFB into a more prominent location (by virtue of its increase in elevation and closer proximity to the external site boundaries and the boundary with Hill Street). This will have some adverse effects on the amenity values of the area which will be the most discernible to the closest neighbours on Brenda Lawson Way, Fawdon Way and to a lesser extent Hill Street (the neighbours on Hill Street are elevated above the

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<sup>15</sup> The Urban Design Panel is a group of experienced and qualified professionals who provide free independent design reviews for projects from both private developers and the Councils.

CFB and therefore the height of the CFB will not be as discernible to these neighbours).

- 13.21 However, the applicant has proposed several design measures to mitigate the effects of the CFB on the amenity values of the locality (these are detailed in the application and the supporting LVA). Further the CFB is not considered to generate any adverse noise, dust, odour, glare or other similar adverse amenity effects.
- 13.22 The most significant measure that will mitigate the effects of the CFB on the amenity values of the area has been achieved by removing the proposed service access lane onto Brenda Lawson Way. This has resolved one of the key matters of contention that was identified in a number of the submissions in opposition to the proposal. It is also assumed that this will have brought the development into compliance with the permitted day time and night time noise standards of the TRMP (but this needs to be confirmed by the applicant).
- 13.23 I also note that the TRMP contains a policy that supports the provision of community facilities (such as the CFB) in residential areas providing they *'do not compromise the character or amenity of the residential neighbourhood'*<sup>16</sup>.
- 13.24 In my view 'compromising' the character or amenity of this neighbourhood means approving a development that results in an environmental outcome that is at odds with the environmental outcomes that are sought by the TRMP provisions or presents a poor environmental outcome. I do not consider this to be the case in respect of the CFB. This is because a CFB has already been consented in the existing retirement village development, the design of the CFB does incorporate design features (as advised by the supporting LVA) to help reduce its visual, bulk and dominance effects, and the vehicle movements associated with its use have been consolidated and moved further away from the neighbours and onto the extension to Fairrose Drive.
- 13.25 I am satisfied that the environmental effects in respect of the other aspects of this proposal (such as the subdivision, the way in which the development will be serviced, accessed and the earthworks to be undertaken including in respect of

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<sup>16</sup> Policy 5.4.3.2

the management of contaminated soils) are minor and can be appropriately mitigated subject to appropriate conditions of consent.

- 13.26 The only other matter that requires further consideration is in respect of the actual and potential effects associated with filling and decommissioning the existing irrigation pond. It is expected that the applicant will provide further analysis of the appropriate mitigation measures that will be adopted in this respect.

### Summary

- 13.27 Section 7 of the Act requires the Commissioners to have regard to the efficient use and development of natural and physical resources and the maintenance and enhancement of the quality of the environment. This development is a considered to be an efficient use of an existing land resource. However, the proposal does not enhance the quality of the environment as it does not provide a public reserve that will vest with the Council (and the TRMP identifies the need for a community reserve in this location).

- 13.28 The purpose of the Act is to promote the sustainable management of physical resources. Sustainable management means:

*managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*

*(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*

*(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*

*(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

- 13.29 The applicant does not propose to vest a reserve with the Council (as required by the Councils policy documents), and in this respect the development does not enable people and communities to provide for their social and cultural wellbeing. However, I acknowledge there are aspects of the development that are consistent with Part 2 of the Act. For example, the CFB will provide for peoples' health and safety while sustaining a physical resource that will meet the reasonably foreseeable needs of future generations (by providing health care facilities). The

construction and ongoing management of the retirement village may also enable the community to provide for their economic wellbeing.

- 13.30 A number of submissions have been received in opposition to this application on the basis that a public reserve will not be provided and that this will have a detrimental impact in respect of the communities social wellbeing (albeit some of these are pro-forma and not from local residents).
- 13.31 In this respect the applicant has not satisfactorily demonstrated that the proposal will achieve the sustainable management of natural and physical resources through the management, use and development of physical resources in a way which enables people to provide for their health and safety whilst avoiding, remedying or mitigating the adverse effects of the activity on the environment.



## 14 Recommendation

- 14.1 I would be minded to recommend the application be granted pursuant to sections 104B(a) and 104(6) of the Act **if** a condition could be imposed that requires a reserve to vest with the Council, which is appropriate both in size and location (as guided by the Council's Reserves team and supporting policy framework).
- 14.2 However, the applicant has expressly applied for resource consents on the specific terms that vesting a reserve with the Council does not form part of the proposed activity. I am therefore mindful that there is a question mark over the lawfulness of a consent authority imposing a condition of consent requiring vesting to occur. For this application, imposing such a requirement unilaterally it may materially change the nature of the proposal beyond the explicit terms in which it has been applied for by the applicant.
- 14.3 If a reserve is not vested with the Council, then an alternative and appropriate means of achieving the same social wellbeing outcomes (as sought by the relevant TRMP provisions and the Act) will be required. This might mean implementing an alternative legal mechanism to ensure the ongoing public accessibility of the open spaces and walkways within the development.
- 14.4 However, I would consider this outcome to be a compromise and a poorer environmental outcome than if a reserve is vested with the Council. This is because the space may still not feel or appear publicly accessible, it would be fragmented, and the Council would not be able to retain control over its maintenance and accessibility. For these reasons an alternative legal mechanism would still represent a departure from the social wellbeing outcomes that are anticipated by the Council's relevant policy documents and Part 2 of the Act. It might also create an undesirable precedent and make other comparable proposals more difficult for the Council to resist.
- 14.5 The non-provision of a reserve will undermine the Council's objective of encouraging the effective and efficient design and establishment of parks and reserves in its district that can integrate multiple uses and functions of open space. It will not enable the Council to provide for the open space needs of the existing and future residents and workers in the area, and it will reduce opportunities for the wider community to utilise the district's recreational reserves

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and open spaces to the detriment of the positive community wellbeing effects that could otherwise be achieved.

- 14.6 On this basis I consider the non-provision of a reserve warrants the **REFUSAL** of the application.
- 14.7 However, this is a recommendation only and the Commissioners are required to determine the application once submissions and evidence on the application have been heard. The TRMP and TRPS provisions are identified in the above assessment and these in conjunction with the matters raised at the hearing should form the basis of any decision reached. I have included a list of recommended consent conditions in **Attachment 9** should the Commissioners be minded to grant the applications.
- 14.8 The conditions contained in **Attachment 9** include a condition that requires a reserve to vest with the Council (noting that this may be considered to be ultra vires unless the applicant agrees to it). It is expected that this matter will be canvassed at the hearing, and an appropriate condition that reflects any decision reached will be refined accordingly (if the Commissioners are minded to grant the applications).

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