

RESOURCE CONSENT DECISION

Decision of Hearing Commissioners

Hearing held Thursday 25 February 2021, Friday 26 February
in the Richmond Room at Club Waimea, 345 Queen Street, Richmond &
Monday 10 May 2021 in the Tasman District Council Chambers

Final adjournment 10 May 2021

Hearing closed 4 pm Friday 28 May 2021

Applicant:	The Integrity Care Group Limited
Activities applied for:	A change of consent conditions, land use consent, subdivision consent, land use consent for land disturbance and a water permit involving undeveloped land within Olive Estate and adjoining vacant land at Hill Street (Richmond), to facilitate the development of additional dwellings and a care facility at the Olive Estate Lifestyle Village
Application site:	Undeveloped land within Olive Estate Lifestyle Village, accessed from Langdale Road, and, land to the south east of Olive Estate Lifestyle Village accessed from Hill Street, Richmond.
Legal description:	Lot 2 DP511511 and Lots 2 and 3 Deed 1763 held in records of title 785433 and 56/85.
Activity status:	Discretionary activity
Notification:	The application was publicly notified on 30 May 2020. Notice of the application was served on the owners of 189 properties considered to be potentially affected by the proposal. Submissions closed on 29 June 2020.
Submissions:	76 submissions were received before the closing date for submissions. One late submission was received after the closing date but was granted a waiver to enable it to be considered as a valid submission.
Hearing:	The application and submissions were heard over three days: commencing at 9.30 am on Thursday 25 February 2021, continuing on Friday 26 February 2021 and resuming on Monday 10 May 2021.
Council references:	Tasman District Council references RM120928V2, RM190789, RM190790, RM190791 and RM191308

1 Summary

- [1] The following consents are **GRANTED**, under delegated authority of the Tasman District Council, subject to the conditions specified in Attachments B to F to this decision, for the reasons explained throughout this decision which are summarised in Sections 31 and 32 of this decision:

RM120928V2	Being a variation of the conditions of land use consent RM120928V1
RM190789	Subdivision consent authorising a boundary adjustment of allotment boundaries of an earlier subdivision of Lot 2 DP511511 (RM130346V1)
RM190790	Land use consent to construct a compact density development (comprising residential villas and terrace houses) and a community activity and associated amenities
RM190791	Land use consent to undertake bulk earthworks in association with the construction of a compact density development and care facility, including all associated infrastructure and the decommissioning and filling of an existing on-site water storage pond
RM191308	Water permit for the 'take' of water associated with dewatering an existing water storage pond

2 Procedural matters

- [2] The application was publicly notified on 30 May 2020 and notice of it was served on the owners of 189 properties in the surrounding neighbourhood and properties within a local 'user catchment' the Council deemed to be potentially affected by the non-provision of a vested reserve.
- [3] Written approval to the proposal was received from Alison and David Nicholl, the owners of adjoining land at 376 Hill Street from whom the applicant bought the 'Hill Street Block'.
- [4] Seventy six submissions were received (including a late one for which the Council granted an extension under s 37 of the Act). Of the 76 submissions:
- 60 opposed the application,
 - 14 supported the application,
 - 2 neither supported nor opposed, and
 - 37 indicated they wished to be heard.
- [5] We were appointed to hear and determine the application, under authority delegated by the Tasman District Council, by decision dated 23 December 2020. The hearing commenced on Thursday 25 February 2021, continued on Friday 26 February 21 and was adjourned that day to allow the applicant to prepare additional information (including visual simulations) in response to a request made by the Panel pursuant to s 41C(1)(3) of the Act. The requested additional information was supplied by the applicant on 30 March 2021 and was supplied to all submitters.

- [6] The Panel's Minute Number 2 set out arrangements for the resumed hearing and the scope of matters to be addressed at the resumed hearing (Monday 10 May 2021). The hearing was adjourned at the end of the day on 10 May 2021, to allow the applicant to confer further with the Council about draft conditions they had suggested in their respective reports, evidence and legal submissions and to forward closing legal submissions. An amended set of draft conditions was appended to the applicant's closing legal submissions received by email on 24 May 2021 and the Panel closed the hearing at 4.00 pm on Friday 26 May 2021.

3 Attendances

- [7] A list of people who presented evidence or legal submissions to the hearing is contained in Attachment A to this decision.

4 Introduction – Olive Estate Lifestyle Village

- [8] The Integrity Care Group Limited is a company (owned by Kristin, Mark and Shirley Nimmo) that has developed and operated aged care facilities in New Zealand since 1992.
- [9] The company obtained consent from Tasman District Council in 2014 for the development of the Olive Estate Lifestyle Village in Richmond ('*Olive Estate*'). The 2014 consent (RM120928V1) enables the development of a community for people aged over 55 and comprises villas, terrace houses, an apartment building, a 'Lake House' community centre and children's play area adjacent to an artificial lake, and a care facility. The 'Lake House' community centre contains a café, hair and beauty salon, conference rooms, gymnasium, swimming pool and management office. The intention is that the 'Lake House' and the green space surrounding it will be a hub for Olive Estate and the surrounding community that can host a farmers' market and concerts. There is also space within the 'Lake House' for a general store or expanded café.
- [10] The landscape planting within the existing development includes orchard trees and a shared vegetable garden (a nod to the former horticulture use of the wider area) alongside individual gardens and lawns for individual dwellings.
- [11] Construction commenced in September 2014, 136 units were complete at the time of the hearing (accommodating 218 residents) and others are under construction. The consent authorises the development of a 'care facility' with 100 care beds and 58 serviced apartments to accommodate residents who require long-term residential (rest home) care, secure dementia care and hospital-level continuing care.
- [12] Olive Estate is accessed from Langdale Drive, a public road which connects Wensley Road and Fairrose Drive along a curved alignment. individual dwellings are connected to Langdale Drive by way of private connecting roads (Olive Terrace, Lakehouse Crescent, Iris Drive, Olive Mews, Harakeke Close) and numerous short privately-owned cul-de-sacs that extend from these connecting roads. Mrs Kristin Nimmo (co-owner and Manager of Olive Estate) explained in her evidence to the hearing that Olive Estate is intentionally built around a

public road (Langdale Drive) to enhance the integration of the Estate with the surrounding community. Mrs Nimmo stated that Olive Estate is not a 'gated community'. Members of the public are free to, and do, drive and walk along Langdale Drive through the Estate and use the Lakehouse Centre café and nearby village green and children's play area.

- [13] Mrs Nimmo explained that Olive Estate is designed to accommodate the wide range of needs of older people, with varied options for independent living through to partial and fully assisted living. This means that Olive Estate is able to accommodate couples who have different care needs and allows 'ageing in place' within what is known as the 'continuum of care'. The design concept promotes residents' independence, quality of life and integration with the surrounding community. The facilities, dwellings, open spaces, and gardens within the Olive Estate are built and maintained to a commendably high standard. The applicant has established on the site an attractive, modern and easily accessible living environment within the Richmond residential area.
- [14] The 2014 consent authorised development within the rectangular parcel of land shown at the left of Figure 1 below.



Figure 1: Olive Estate Landholding

5 The 'Hill Street Block'

- [15] In December 2017, the company purchased an adjoining block of land (the red-shaded 3.4 hectare 'Hill Street Block' shown in Figure 1 above). The 'Hill Street Block' was formerly used as a horticulture orchard and lily growing activity accessed from Hill Street. It comprises a series of small paddocks, with shelterbelt plantings and some remnant orchard fruit trees. There is an irrigation water storage pond in the north-eastern corner of the land, adjacent to Brenda Lawson Way.
- [16] The square-shaped 'chunk' of land excluded from the 'Hill Street Block' contains the house and accessory buildings of the former owner of the land (the Nicholls).

- [17] The company's intention is to expand Olive Estate into the 'Hill Street Block', with additional villas and terrace houses, and to relocate the care facility onto this land.
- [18] The care facility was originally to have been located adjacent to the boundary between the original Olive Estate landholding (the rectangular parcel) and the adjoining 'Hill Street Block'. That is, within the area highlighted in Figure 1 as 'Changes to Original Consented Development'. Mrs Nimmo explained that this location would have enabled privacy and security for residents and minimised disturbance caused by the day-to-day operations of the wider Estate. Mrs Nimmo explained that the Hill Street land is now the preferred location for the care facility partly because the rising topography allows the building to be 'tucked' into the land slope and partly because its location will be easier to find within the Estate, without having to travel through Olive Estate.
- [19] The original care facility building was designed to be approximately 10 metres high, accommodating 100 beds (for rest home, dementia and hospital care) and 58 serviced apartments. The applicant proposes a smaller-scale care facility comprising 70 beds (providing a mix of rest home, dementia and hospital-level continuing care) and 20 serviced apartments¹. Mrs Nimmo explained that the smaller scale of the care facility proposed reflects the provision for care beds made recently by other rest home developments in the region.

6 The proposal

- [20] The applicant proposes to relocate the care facility to the part of the 'Hill Street Block' adjacent to Hill Street and Brenda Lawson Way and to develop 25 additional villas and 12 additional terrace houses in the former location of the care facility. The applicant also proposes 36 villas and 11 terrace houses on the balance of the 'Hill Street Block'. The proposed layout of development is shown in Figure 2 below. The applicant intends to continue the same palette of building materials, fencing, wall and roof colours and landscape planting adopted in the already-built part of Olive Estate. The application includes a design guide confirming this intention.
- [21] An extension to Fairrose Drive is proposed, passing along the boundary with the Nicholl property and connecting to Hill Street. This extension to Fairrose Drive is to be a public road. A private internal connector road (Iris Drive) is proposed between Langdale Drive and the proposed Fairrose Drive extension as shown in Figure 2. An extension of the private internal connector road Olive Terrace is also proposed to connect with Iris Drive. Some of the proposed villas and terrace houses will have frontage and connect directly to Olive Terrace, Iris Drive or Fairrose Drive. Those that do not have frontage to these roads will have access from them via short lengths of shared cul-de-sac roadways as occurs elsewhere within Olive Estate. Cul-de-sac roads are a feature of the existing surrounding residential neighbourhood.

¹ As described in the written statement of evidence of Karen Nimmo to the hearing.

- [22] Four points of public entry into the proposed development and existing Olive Estate are proposed: at both ends of Langdale Drive and at both ends of the proposed Fairrose Drive extension. The applicant proposes to provide for vehicle access from the Nicholl property onto the Fairrose Drive extension.
- [23] Eight of the proposed villas will be freestanding dwellings (V05, V06, V18, V19, V28, V31, V35 and V36). All other villas and terrace houses will be connected dwellings, with conjoined garages and shared access and parking areas. All proposed villas will be single storey buildings and the proposed terrace houses will be two-storey buildings of similar design to those within the existing Olive Estate.
- [24] The applicant proposes to continue the provision of planted open space and lawns along Langdale Drive and around the Lake House. Green spaces are also proposed between the proposed care facility and neighbouring properties and along a central spine, separate from vehicle roads, following a proposed stormwater flow path. The applicant's intention is that some of these green spaces will be available to the public (primarily as a walking route connecting the Fairrose Drive extension with Langdale Drive) but much of the central green space will be developed as open space extensions of the dwellings within Olive Estate and for use by the residents.



Figure 2: Proposed layout

- [25] There is not proposed to be any hard fencing or barrier between the public walking space and the private green spaces, but the applicant's intention is that public access through the Estate should be confined to a walking path along the stormwater flow path. This is shown as the blue corridor in Figure 3. When developed and planted in the same manner as

elsewhere in Olive Estate, this walking path is expected to provide an attractive walking route.

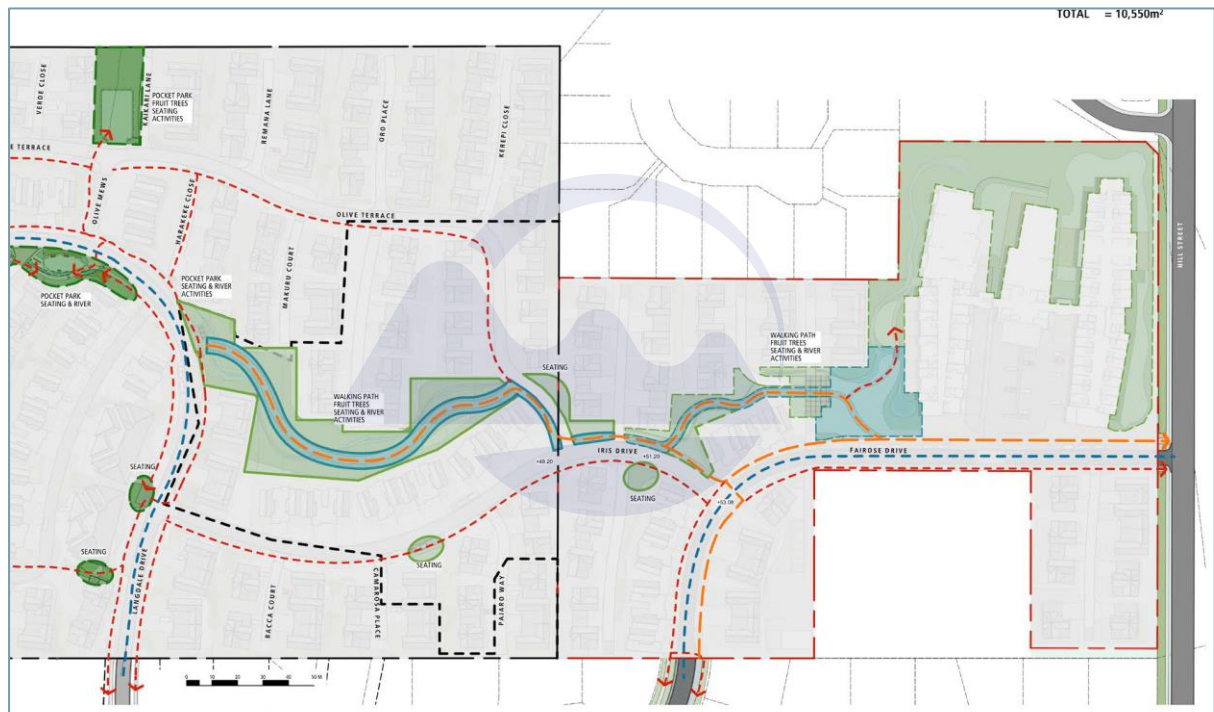


Figure 3 : Excerpt from Masterplan Sheet 3.11 showing proposed public open space areas

[28] The area of the square-shaped open space adjacent to the proposed care facility is to be approximately 1,300 m² and the area of the publicly available central walking path is to be approximately 1,200 m². The applicant proposes that public access to these open spaces will be secured by an **easement in gross in favour of the Council**. No details were included in the application about the final design or landscape planting of these public open spaces. This and the ownership and control of these areas of open space were points of concern to the Council's witnesses at the hearing.

7 Proposed care facility

- [29] The proposed care facility comprises three wings broadly parallel with Hill Street, having a footprint of approximately 4,400 m². The three wings of the building are stepped down the slope from Hill Street, with the building platform excavated into the hillside.
- [30] The proposed central wing (the smaller of the three) comprises:
- a basement area for service vehicles, loading, storage areas, a kitchen, laundry and plant rooms, and
 - a ground floor level accommodating a lobby, reception and administrative offices, the residents' dining area (with adjacent outdoor area with tables and chairs), a small lounge, beauty salon, massage facility, bookshop, and the corridor connecting to the other two wings.
- [31] The proposed eastern wing (nearest Hill Street) has two storeys, except for a portion labelled the 'Crow's Nest' which is higher. This wing accommodates:
- at the same ground level as the central wing, 32 single rooms with individual ensuite bathrooms, staff offices and nursing station, cleaning facilities, sitting lounges, kitchen and dining area (with adjacent outdoor deck area) and a small outdoor sitting area at the southern end of the building,
 - at first floor level, 34 single rooms with individual ensuite bathrooms, four rooms with two single beds and attached ensuite bathrooms, staff offices and nursing station, cleaning facilities, sitting lounges and library (with no outdoor balconies or deck areas), and
 - at second floor level, a small staffroom with kitchen and adjacent outdoor balcony area described at the hearing as the 'Crow's Nest' (being a reference to the fact that this small part of the building protrudes above the roofline of the rest of this wing).
- [32] The proposed western wing also has two storeys and accommodates:
- at lower ground floor level (equating to the basement level of the central wing), three single bedroom apartments and two two-bedroom apartments, computer room and library, theatre, wellness studio, gym, laundry, storage areas and corridor with access to the basement garage parking area,
 - at first floor level (being the ground level of the central wing), ten single bedroom apartments and four two-bedroom apartments, computer room and library and sitting areas.
- [33] All of the apartments in the proposed western wing have small individual ground floor outdoor deck areas or first floor outdoor balcony areas.

- [34] The elevations of the proposed care facility show box structures protruding above the roofline of the western and eastern wings. The applicant's architect, Mr Weir, explained at the hearing that these are structures to contain and screen any building services such as air conditioning units or vents.
- [35] Thirty car parking spaces are proposed at ground floor level outside the care facility's reception area. Twenty one car parking spaces are proposed within the basement. Vehicle access from the Fairrose Drive extension is to be via a dedicated access lane, separated from and alongside the car parking area.

8 Infrastructure services

- [36] There is an existing 150 mm sanitary sewer main connection available within the Olive Estate land and another sewer main at the current end of Fairrose Drive that adjoins the 'Hill Street Block'. Mr Mike Verrall is a Licensed Cadastral and Registered Professional Surveyor who prepared the report on infrastructure services that accompanied the application. According to Mr Verrall, the available sewer main connections are sufficient to accommodate the expected load from the proposed development.
- [37] Mr Verrall stated in his evidence that the existing downstream stormwater reticulation and the on-site Olive Estate stormwater reticulation and detention pond have sufficient capacity to accommodate stormwater flows from the proposed development in addition to existing site development.
- [38] Mr Verrall also stated in his evidence that there are 150 mm water mains within the existing Olive Estate and an existing water supply main in Hill Street. A new 150 mm main is also proposed to be laid in the Fairrose Drive extension. The water supply reticulation is in the high pressure zone and there is sufficient pressure for domestic supply and for fire fighting requirements.
- [39] The Council did not raise any concerns about the capacity of the available water supply and sanitary sewer services to accommodate the proposed development, or about the proposed stormwater drainage arrangements.

9 Staging

- [40] The applicant proposes to progress construction of the development in stages, as shown on Plan 3.11 of the application plan set. The applicant amended the proposed number of stages in an amended Plan 3.10, included with amended design plans lodged with the Council on 18 September 2020 (and further amended versions to reflect changes to other plans on 8 October 2020 and 30 March 2021). The applicant estimates that completion of each stage of proposed additional villas and terrace houses should take approximately 18 months and proposes that installation of roads, private ways and infrastructure services should match the needs of each stage. The applicant also estimates that the earthworks for the care facility should take six months and construction of the care facility building should take

approximately 36 months. The applicant proposed a condition of consent² that would provide for flexibility in the staging of construction but would require completion of the dwellings and care facility within these time frames.

10 Design amendments

- [41] The applicant made changes to the design of the proposal after lodgement with the Council, to address concerns raised by submitters about the proposed care facility. Those changes were made at four points in time:
- a. Firstly: following the close of submissions and prior to the commencement of the hearing, by letter dated 18 September 2020,
 - b. Secondly: further design amendments shown on amended plans dated 8 October 2020,
 - c. Thirdly: during the hearing adjournment, in the supplementary evidence of Ms Elizabeth Gavin (the applicant's Landscape Architect) dated 30 March 2021, and
 - d. Fourthly: further amendments proposed in the applicant's closing legal submissions.
- [42] The proposed layout lodged with the application proposed that the care facility would be serviced via a service entrance connecting to Brenda Lawson Way. The proposed design of the Fairrose Drive extension proposed 90° car parking alongside the vehicle carriageway.
- [43] The 18 September 2020 changes:
- a. removed the service vehicle access from Brenda Lawson Way,
 - b. proposed additional landscape planting near the boundary with Brenda Lawson properties (in the area formerly proposed as service vehicle access, described in the evidence of Mr Luke Porter, the applicant's Urban Designer),
 - c. removed a walkway proposed alongside the stormwater flow channel at the north western side of the care facility,
 - d. reduced the height of a retaining wall,
 - e. reduced the size of an outdoor deck adjacent to the proposed care facility's café,
 - f. proposed a replacement service vehicle access from the Fairrose Drive extension,
 - g. proposed a single ingress and egress point for all vehicles accessing the care facility from the Fairrose Drive extension,

² Referenced in sub-paragraphs (a) and (b) on page 7 of the closing legal submissions and attached to closing legal submissions as proposed Condition 2 of RM190790

- h. proposed that all service vehicles would load and unload in a completely enclosed basement access area not visible from Brenda Lawson Way,
 - i. proposed that all on-site carparking for the care facility would be, either, at ground level between the building and the Fairrose Drive extension (surrounded on three sides by the care facility building) or within the basement,
 - j. proposed some changes to the configuration of the central wing of the care facility, to accommodate the changes to internal access and parking, and
 - k. changed the car parking along Fairrose Drive extension from 90° to parallel parking (in response to comments made to the applicant's design team by the Council's Traffic Engineer).
- [44] The **8 October 2020 changes** were to the design detail of the proposed Fairrose Drive extension to achieve compliance with the Council's standards.
- [45] The **30 March 2021 changes**:
- a. adopted a ground level for the foundations of the proposed care facility 350 mm lower than originally proposed, recognising that earthworks in this part of the site would involve removal of the irrigation water storage pond and that this would create a ground level that was more akin to the 'natural' ground level that existed before construction of the storage pond (and acknowledging that the Tasman Resource Management Plan (the '*TRMP*') requires height above ground to be measured from 'natural' ground level),
 - b. reduced the height of the care facility building by approximately 560 mm so that all parts of the building are between 6.35 m and 6.8 m above ground level, with the exception of the 'Crow's Nest' in the eastern wing which protrudes above this with a gable roof to a height of 10m above ground. The reduced heights of the care facility are achieved by redesigning the building interior.
- [46] **The applicant's closing legal submissions** further proposed to delete the glazing of the 'Crow's Nest' facing Hill Street (responding to concerns raised by Hill Street residents about potential adverse privacy and night lighting effects).
- [47] The amendments made to the design and ground level for the proposed care facility described above were captured in an amended 'Masterplan' plan set (revision 06 sheets 3.5 to 3.9 and 3.11) presented on Day 3 of the hearing.
- [48] None of the amendments made following lodgement of the application extend the footprint or bulk of the building beyond what was proposed in the application. The amendments lessen, rather than increase, any potential adverse effects on the environment. We are

satisfied that the amendments are within the scope of the application and we note that no submitter raised any concerns about scope for the amendments.

11 Consents applied for

[49] The applicant applied for the following six consents:

- a. Consent under section 127 of the Act to change the conditions of RM120928V1 to allow the care facility to be removed from its original location and to allow construction of additional residential dwellings in the former location of the care facility, with a different site layout;
- b. Land use consent for the development of dwellings and the care facility, together with roads and other amenities and services on the Hill Street Block;
- c. Subdivision consent for a boundary adjustment to contain the proposed care facility in a Lot 6, to amalgamate the other developed land within the 'Hill Street Block' with the existing Olive Estate land and to vest the proposed Fairrose Drive extension as a public road (Lot 9);
- d. Land use consent for land disturbance associated with the earthworks necessary to construct the roads and site development (including filling in the irrigation storage pond);
- e. A water permit to de-water the irrigation storage pond; and
- f. Land use consent under the Resource Management (*National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011* (the '**NESCS**'), for soil disturbance, subdivision and change of use of land known to have been used for horticultural growing and therefore potentially contaminated by historic pesticide use.

12 Matters raised in submissions

[50] The Council's section 42A report was prepared by Ms Jennifer Lancashire (who married during the adjournment following the first two days of the hearing and adopted the surname 'Rose'). In her s 42A report, Ms Rose helpfully summarised the issues raised in opposing submissions under the following headings³:

- a. Non-provision of a vested public reserve

³ Pages 24 to 28 of the s 42A report.

- b. Concerns about the location, bulk and adverse visual effects of the proposed care facility, including loss of outlook and views from neighbouring properties, shading, adverse night light spill
- c. Ecological effects associated with draining and removing the water storage pond (although we note that no party pursued this matter at the hearing)
- d. Adverse effects during construction, including dust and sedimentation of waterways
- e. Traffic safety effects, including concerns about the proposed intersection of Fairose Drive extension with Hill Street, concerns about potential conflicts caused by additional traffic using Hill Street (particularly when cars parked kerbside along Hill Street narrow the vehicle lanes and a concern about sunstrike), the design of Fairose Drive extension, opposition to the use of Brenda Lawson Way for service vehicle access to the care facility
- f. Concerns about the potential increase in activity, traffic and noise on the site and on roads accessing the site, the potential for increased demand in kerbside parking around the site and a concern about the potential for car headlight glare to adversely affect the properties immediately opposite the proposed Fairose Drive / Hill Street intersection
- g. Concern about increased risk of stormwater runoff and downstream flooding
- h. Requests for amendments or conditions to mitigate potential adverse effects, including enforcement of the TRMP daylight admission for dwellings near the site's boundaries, reduction of height of the care facility, enhanced landscape planting to screen views to proposed buildings (and particularly views to the proposed care facility), and requests for 'no-parking' restrictions on Hill Street
- i. Potential adverse impact on the values of properties surrounding the development.

[51] Ms Rose's advice was that this last matter (potential impact on property value) is not a matter that is relevant for our evaluation of the proposal. Ms Rose clarified that the actual and potential effects of the proposal on the amenity values of the surrounding residential area are, however, valid matters (and, we note, are central issues for this proposal). We discuss actual and potential effects on the amenity values of the residential neighbourhood later, in Section 26 of this decision.

[52] Submissions also identified the following positive outcomes expected from the development:

- a. The creation of high quality green spaces
- b. Provision of a best practice retirement village design and a high quality living environment for older people which will contribute positively to attracting people to the region

- c. Adding to the available housing stock
- d. Employment and economic opportunities associated with construction and occupation of the proposed buildings
- e. The degree of integration of the proposal with the surrounding neighbourhood.

13 Matters in contention at the hearing

[53] Not all of the matters raised in submissions were pursued by submitters at the hearing. There was, broadly, no dispute about the layout or the potential adverse effects on amenity values caused by the proposed villas and terrace houses. Almost all of the submitters who addressed the hearing commented positively about the high architectural quality of the proposed dwellings and acknowledged the high quality of Olive Estate's existing open spaces and landscape planting. Submitters were primarily concerned about the adverse effects of the bulk, location and height of the proposed care facility. The applicant's amendment to delete service vehicle access via Brenda Lawson Way effectively resolved the concerns of submitters in Brenda Lawson Way and Fawdan Way about the adverse noise and disruption effects likely to have been caused by the original service lane proposal. One submitter, who lives at a distance from the site, was critical of the density and architectural form of the proposed buildings as viewed from a higher elevation on the hillside south of Hill Street.

[54] The following are the matters that remained in dispute between submitters and the applicant and between the Council and the applicant at the hearing:

- a. The non-provision of a vested public reserve (the Council's witnesses recommended we decline consent to the application for this reason);
- b. The actual and potential adverse effects of the proposed care facility building on the amenity values and outlook from neighbouring properties in Brenda Lawson Way, Fawdan Way and properties on the opposite side of Hill Street, including:
 - Adverse effects of the building form (shading, building dominance, loss of outlook and views), and
 - Adverse effects of activities at the care facility on the privacy and peaceful enjoyment of those neighbouring properties;
- c. Potential adverse traffic safety effects;
- d. Adverse effects of car headlights on numbers 3 and 5 Hillplough Heights;
- e. The duration and effects of construction (including noise, dust and disturbance of potentially contaminated soil);
- f. The potentially adverse effects of construction vibration on the structural integrity of existing dwellings on the nearest properties in Brenda Lawson Way.

- [55] We discuss the evidence and our findings on each of these disputed issues in Sections 24 to 30 later in this decision.
- [56] There was no dispute at the hearing about the adequacy of proposed provision for water supply and sewer reticulation or about the proposed design or capacity of the proposed stormwater management facilities.

14 District Plan provisions

- [57] The site is within the *Richmond South Development Area* in the *Residential Zone* of the TRMP. It also within *Land Disturbance Area 1*. The TRMP planning map also identifies three 'indicative roads' through the site and an 'indicative reserve' that connects two of the 'indicative roads' (the green rectangle in Figure 4 below). The 'indicative road' connection between Langdale Drive and Fairrose Drive (at the top of Figure 4) has been constructed. The applicant proposes to build a continuous road connection between Fairrose Drive and Hill Street along a slightly different alignment (emerging on Hill Street further west than the 'indicative road' alignment). The applicant does not propose to vest a public reserve in the location of the green rectangle shown on Figure 4. Ms Rose's section 42A report recommended that we should decline consent to the application because of the non-provision of this reserve.
- [58] The *Richmond South Development Area* is identified in the TRMP as an area where medium density housing developments that achieve a high standard of amenity are encouraged⁴ and enabled by the Plan rules. The principal reasons and explanation for the policies, in Section 6.2.30 of the TRMP, explain that:

"[...] While the low density and low-rise character and scale of the settlements is to be maintained compared with larger centres outside the District, resubdivision of existing allotments is encouraged to make more efficient use of the existing land resource in serviced settlements zoned urban. The smallest residential allotment size is permitted in the larger settlements that are located on the most versatile soils to lessen the demand for growth onto greenfield sites. Also, Motueka and Richmond are characterised by a relatively high proportion of elderly residents who often prefer small lot sizes.

Medium density development is encouraged in development areas shown on the planning maps and identified in the rules in the forms of compact density and intensive residential development. The specified areas are Richmond South, Richmond West, Mapua Special, Motueka West Compact Density and the Richmond Intensive development areas. Outside of the above areas, medium density development is provided for in the form of comprehensive development.

⁴ TRMP Policy 6.1.3.2A – note that the 'Richmond South Development Area' is identified on Figure 6.8B within TRMP Chapter 6 (Urban Environment Effects)

Intensive residential development is promoted and encouraged within walking distance or close to town centres and urban facilities as it increases lifestyle and housing choices and uses urban land and services, including public transport, efficiently and effectively.

Subdivision and zone Plan rules, together with the Urban Design Guide, are designed to ensure that medium density development achieves a high standard of amenity. ..."

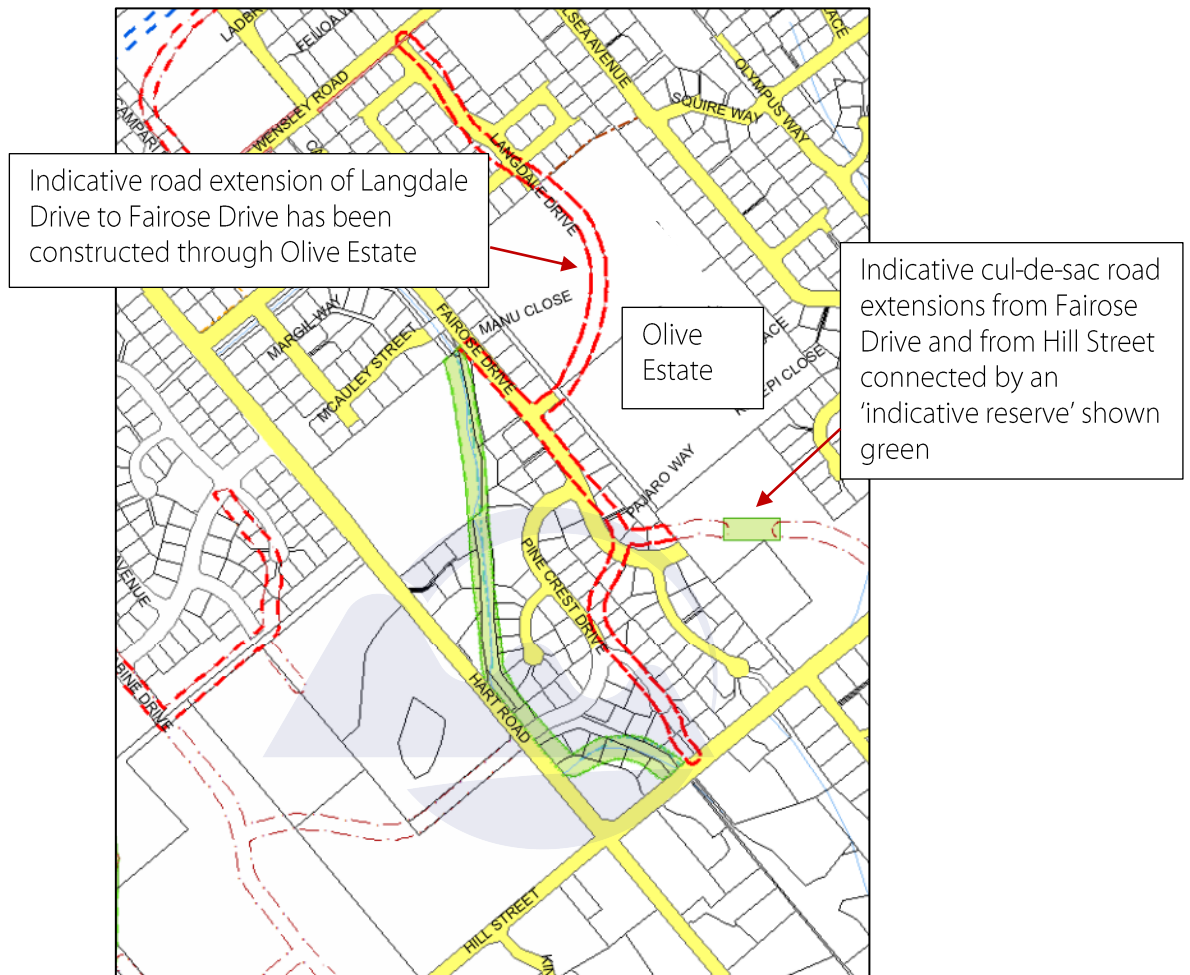


Figure 4 District Plan indicative roads and reserves

[59] Policy 6.8.3.27B gives effect to this intention:

'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.*
- (b) In the Richmond Intensive Development Area, in the form of intensive development.*
- (c) In the Residential Zone outside of the Richmond South, Richmond West and the Richmond Intensive development areas, in the form of comprehensive development.*

[60] Olive Estate, including the 'Hill Street Block', has the same zoning and Plan policy framework as the surrounding residential area, except that the Olive Estate land and 'Hill Street Block' are within the *Richmond South Development Area*. The boundary distinguishing the *Richmond South Development Area* follows the boundary between the site and adjoining Brenda Lawson Way and Fawdan Way properties. There was a perception, voiced at the hearing by several submitters, that the whole area including Olive Estate is zoned for (only) standard density residential development of the single house per site variety typical in the surrounding Brenda Lawson Way, Fawdan Way and Wilkinson Place neighbourhoods. That is not the case. The wider area, including Olive Estate and the 'Hill Street Block', is explicitly identified as being suitable for compact and comprehensive residential development involving, potentially, multiple dwellings in higher density configurations than the existing surrounding housing stock (potentially including conjoined multi-unit, two-storey apartments). We note that there is no TRMP rule limiting the continuous length or the maximum footprint of any building within the *Richmond South Development Area* of the *Residential Zone*. The 'Hill Street Block' is a notably large vacant site, ideally suited for development of the compact density type the TRMP encourages. It must be seen as having considerable potential for medium density residential development as enabled under the TRMP rules.

15 District Plan definitions

[61] The following TRMP definitions are relevant for this application:

Medium density development - means residential development with a dwelling density between 20 – 30 dwellings per hectare on sites averaging between 200 – 300 square metres in extent, including Compact Density, Comprehensive and Intensive housing development.

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.

Comprehensive residential development – means a comprehensively planned and designed collection of three or more dwellings on one site.

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.

Commercial activity – means the use of land and buildings for the primary purpose of display, offering, provision or the sale or hire of goods, equipment or services. A commercial activity includes shops, markets, showrooms, restaurants, takeaway food

bars, professional, commercial and administrative offices, service stations, motor vehicle sales, tourist accommodation, the sale of liquor and associated parking areas, but excludes community activities and home occupations.

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.

16 Reasons consent is required

- [62] The reasons why consent is required were analysed in detail in Chapter 5 of the application and in Section 5 (and Table 2) of Ms Rose's section 42A report. We do not propose to repeat that analysis in full here, save for highlighting the following points:
- [63] Section 127 (3) stipulates that an application to vary a consent condition must be treated as an application for discretionary activity consent.
- [64] The applicant applied for land use consent for the proposed development as a community activity because that is the basis on which the 2014 consent had been granted. Ms Rose's section 42A report classified the proposed residential dwellings as compact density development, distinct from the proposed care facility which she classified as a community activity.
- [65] The proposal, as a whole, involves the combination of the care facility (community activity) and residential development (compact density development). The applicant made one comprehensive application – not separate applications for the community activity and the residential components of the proposal. Rule 17.1.2.1 states that any land use is a permitted activity if it complies with the specified conditions. The condition specified in rule 17.1.2.1 (a) (viii) requires that the activity must not be a community activity generating more than 30 vehicle movements per day. The proposed care facility will generate more than 30 vehicle movements per day. Activities that do not comply with rule 17.1.2.1 require consent as a restricted discretionary activity under rule 17.1.2.5.
- [66] Even if the care facility were considered separately, it would require consent as a restricted discretionary activity under rule 17.1.2.5.
- [67] In addition, aspects of the proposed residential dwellings do not comply with the permitted activity conditions (including setback from an indicative road or indicative reserve, the provision of outdoor living spaces, juxtaposition of dwelling walls, fence height, more than one dwelling per site). Looked at in isolation, these non-compliances would require consent as a restricted discretionary activity under rule 17.1.2.5.

- [68] The height of the proposed care facility exceeds the 7.5 m maximum specified in rule 17.1.3.1 (p) (ii), so requires consent as a restricted discretionary activity under rule 17.1.3.4B.
- [69] The proposed Fairrose Drive extension does not meet all of the relevant standards specified in rule 16.3.3.1, so requires consent as a discretionary activity under rule 16.3.3.4. All subdivision (including boundary adjustment) requires consent in the Residential Zone and consent is required as a discretionary activity under rule 16.3.3.4. Non-provision of the indicative reserve is a non-compliance with rule 16.3.3.1 (n) (iii), which means the subdivision does not qualify as a restricted discretionary activity under rule 16.3.3.2A and therefore requires consent as a discretionary activity under rule 16.3.3.4 (b).
- [70] In addition, the height of proposed cut batters and fill areas exceed the maximum 1 m height and 1 hectare area specified in rule 18.5.2.1 (q) and requires consent as a controlled activity under rule 18.5.2.3. Also, regulation 9 of the NESCS requires consent as a controlled activity for subdivision of land where hazardous activities or industries have occurred.
- [71] There was no dispute at the hearing that the application has to be considered, on a bundled basis, as a discretionary activity. However, we have been mindful in our assessment of the application of the restricted matters of discretion for individual aspects of the proposal for which discretion is restricted (for example, the height and bulk of the care facility and the bulk and location of the villas and terrace houses).

17 Misunderstandings about the TRMP rule framework

- [72] There were four assertions made in the evidence of some submitters at the hearing that warrant brief comment. The first is a view that the proposal should not be permitted to depart in any way from the TRMP permitted activity building standards. This assertion reflects a misunderstanding about the TRMP framework. The TRMP explicitly provides for (contemplates) activities that do not comply with permitted activity standards and provides a process by which those can be considered on their merits.
- [73] The second assertion was that the care facility should be considered as a *commercial activity* because people will pay to live there and this necessitates a commercial transaction. The relevant TRMP definitions are reproduced in paragraph 61 above and the matter appears to be straightforward. The care facility does not fall within the definition of *commercial activity*. It is, clearly in our view and by definition, a *community activity* and the definition of *commercial activity* explicitly excludes any *community activity*.
- [74] Related to this, was the (third) assertion that a care facility is not an activity contemplated on this site. That is not the case. The TRMP provides explicitly for care facilities within the definition of *community activities* as restricted discretionary activities in the *Residential Zone* generally and on this site.

[75] The fourth assertion was that developers of land (whether they be individuals or companies) should be subject to different or additional requirements compared with residents or residences that are already established. There is nothing in the TRMP that supports this view. Related to this, and in answer to a question we asked her, Ms Rose advised that the TRMP objectives and policies do not require complete avoidance of the adverse effects of activities. Ms Rose's advice was that mitigation and reduction are valid approaches under the TRMP, depending on the circumstances. We note that there are policies⁵ that seek to ensure suitable and compatible location, height, density, scale and bulk of *intensive residential development* or to avoid, remedy or mitigate adverse effects of *community activities* on visual amenity within the *Residential Zone*. We examine the extent to which the proposal aligns with these, and other, objectives and policies later in this decision.

18 Relevant RMA provisions

[76] The RMA provides, in s 104B, that a consent authority (this Hearing Panel under delegated authority) may grant or refuse consent to an application for a discretionary activity and, if granted, may impose conditions under s 108.

[77] Section 104C states that, when considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which it has restricted the exercise of its discretion in its Plan (the TRMP). The Council and the applicant were agreed that the application should be considered, on a bundled basis, as a discretionary activity notwithstanding that elements of it are strictly *restricted* discretionary activities. Accordingly, we have considered the restriction on discretion listed in the TRMP only where these are relevant. In general, we find that the scope of the listed restricted discretionary matters embraces all of the matters of concern of submitters about adverse effects on the amenity values of the neighbourhood, the acoustic environment of adjoining properties, visual character, streetscape and privacy.

[78] Section 104 sets out the matters to which we are required to have particular regard when considering the application and submissions. It states:

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
 - (a) *any actual and potential effects on the environment of allowing the activity;*
 - and*

⁵ For example Policies 6.1.3.1A ('*To encourage medium density housing developments that achieve a high standard of amenity in areas identified on the planning maps [including Richmond South] ... 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 6.8.3.27 ('*To provide for community activities and facilities within the Residential Zone where the nature, scale and intensity of the development is compatible with the residential environment, and adverse effects on visual amenity, noise and traffic safety can be avoided, remedied or mitigated*').

- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) any relevant provisions of—*
 - (i) a national environmental standard [the **NESCS** in this case];*
 - (ii) other regulations [none are relevant for this application];*
 - (iii) a national policy statement [the **NPS Freshwater Management 2020** and the **NPS Urban Development 2020** are relevant for this application];*
 - (iv) a New Zealand coastal policy statement [the **NZCPS 2010** is not relevant for this application];*
 - (v) a regional policy statement or proposed regional policy statement [the **Tasman Regional Policy Statement**];*
 - (vi) a plan or proposed plan [the **TRMP**]; and*
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application [for this application and the dispute about non-provision of a vested public reserve, the Council's **Open Space Strategy 2015-2025**, **Tasman District Council Long Term Plan 2018-2028** and **Reserves and Facilities Activity Management Plan 2018** are relevant].*
- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect...*
- (3) A consent authority must not,—*
 - (a) when considering an application, have regard to—*
 - (i) trade competition or the effects of trade competition; or*
 - (ii) any effect on a person who has given written approval to the application:*

[79] We record that there were no effects on the Nicholl property discussed in evidence and we have not had regard to any potential effects on the Nicholls, who gave a written approval.

[80] We address the relevant matters listed in s 104 in the following sections of this decision.

19 Part 2

[81] Section 104 states that the regard we must have to the listed matters is *subject to Part 2*. We asked the Council's and applicant's advisers whether we need to resort to Part 2, or whether the TRMP provisions can be considered to give effect to Part 2 as a coherent and settled Plan. Their agreed advice was that we do not need to resort to Part 2 because the TRMP can be considered to be a coherent Plan that is consistent with and gives effect to Part 2. No party disagreed with this approach.

20 The 'NESCO' and potential contamination

- [82] Recognising the site's long-established previous use as a horticulture orchard, the applicant commissioned a detailed site investigation⁶ to determine the potential for site contamination. The investigation report confirmed that activities included in the Hazardous Activities and Industries List ('**HAIL**') did occur on parts of the site. Soil samples were taken and analysed. The results of soil sample analysis confirmed no evidence of contamination that exceeds the relevant standard specified in the NESCS. However, the soil sample analysis did identify that part of the site has elevated concentrations of copper in excess of the relevant standards for acceptance of cleanfill within the Tasman region. Accordingly, any soil required to be removed from the site will need to be disposed of at an appropriate landfill if not retained on site and re-used for landscape planting. The applicant has proposed a condition of consent requiring a contaminated soils management plan and the Council is content that this is sufficient to appropriately manage any potential contaminant risk.

21 The NPS for Freshwater Management 2020 (NPS-FM)

- [83] This NPS came into effect on 3 September 2020 and superseded its predecessor (the 2017 NPS). Ms Rose's report referred only to the 2017 NPS. In the absence of any specific advice from the Council's advisers, we have considered the single objective and fifteen policies of the 2020 NPS-FM. There are no natural streams or natural wetlands within the site. The irrigation water storage pond is, strictly, a 'water body' and the water that will flow along the stormwater channel proposed within the development is 'water', as defined in the Act. We are satisfied that no aspect of the proposed de-watering of the irrigation water storage pond or stormwater arrangements raises any issues in terms of the objective and policies of the NPS-FM.

22 The NPS on Urban Development 2020 (NPS-UD)

- [84] This NPS came into effect on 20 August 2020 and replaced its predecessor (the NPS on Urban Development Capacity 2016). Ms Rose's s 42A report refers only to the 2016 NPS-UDC. In the absence of any specific advice from the Council's advisers, we have considered the provisions of the 2020 NPS-UD. It applies to all local authorities who have an urban environment within their district or region and classifies Tasman District Council as a '*Tier 2 local authority*' and the Nelson Tasman region as a '*Tier 2 urban environment*'⁷.
- [85] The NPS-UD has eight objectives and eleven policies. Objective 1 is that:

'New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.'

⁶ Undertaken by Contract Environmental, a company specialising in environmental science and hazard management.

⁷ Table 2 in the Appendix to the NPS-UD 2020

[86] Objective 1 is relevant in considering the positive benefits that would derive from a grant of consent (in enabling the provision of a well-designed living environment for older people) and the potential adverse effects on wellbeing associated with amenity values, raised by submitters.

[87] The NPS-UD defines a '*planning decision*' as including a decision on an application for resource consent and Objective 2 is that: '*Planning decisions improve housing affordability by supporting competitive land and development markets.*' There was no discussion of housing affordability or market competition in any of the evidence heard.

[88] Objective 4 is directly relevant to this application and is that:

'New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.'

[89] Aspects of Policy 1 are also directly relevant. It states:

'Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

(a) have or enable a variety of homes that:

- (i) meet the needs, in terms of type, price and location, of different households; and*
- (ii) enable Māori to express their cultural traditions and norms; and*

(b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and

(c) have good accessibility for all people between housing, jobs, community services, natural spaces, including by way of public or active transport; and

(d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

(e) support reductions in greenhouse gas emissions; and

(f) are resilient to the likely current and future effects of climate change.'

[90] Policy 6 requires that:

'When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:

(a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement

(b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:

- (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*
- (ii) are not, of themselves, an adverse effect*

- (c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)*
- (d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity*
- (e) the likely current and future effects of climate change.*

- [91] Clause (b) of Policy 6 directly addresses the issues that are live for this hearing (the effects of a particular form of housing on the amenity values of neighbouring properties and residents).
- [92] The other provisions of the NPS-UD direct local authorities to monitor housing supply and demand, to make available and service sufficient land for urban development and to prepare future development strategies, and are not directly relevant for this application.

23 Tasman Regional Policy Statement 2001 (RPS)

- [93] The RPS identifies as an issue the potential for existing and new urban activities to degrade the physical qualities of the urban environment, including through visual appearance. In response, Objective 5.5 is: *'Maintenance and enhancement of urban environmental quality, including amenity values and the character of small towns.'* Picking this issue up, Policy 5.4 states that:

'The Council will avoid, remedy or mitigate adverse effects across property boundaries, especially between urban and rural land use or development, including effects of:

- (i) noise;*
- (ii) odour;*
- (iii) shelter-belts (microclimate and biological effects);*
- (iv) contaminant discharges;*
- (v) fire risk.'*

- [94] Policy 5.7 states that: *'Council will seek to enhance urban environmental quality, having regard to:*

- (i) the design and appearance of buildings and spaces;*
- (ii) vegetation and open space;*
- (iii) heritage sites and values;*
- (iv) pedestrian facilities and traffic management;*
- (v) noise levels and air quality;*
- (vi) the relationship between the urban area and the values of its adjoining landscapes.'*

- [95] The methods of implementation clarify that these policies will be given effect through the TRMP. Our view is that the TRMP provisions therefore provide the more directly relevant policy framework for our consideration.

24 Proposed public open space and the indicative reserve

- [96] It was the Council's position, through the evidence of Ms Squire (the Council's Reserves Planner) and Ms Rose, that the area of land shown as the 'indicative reserve' connecting the two ends of road shown on Figure 4 must vest in the Council as public reserve. Ms Squire and Ms Rose were unable to agree with the applicant any alternative means by which the 'indicative reserve' could be provided within the development. The area of the green rectangle shown on Figure 4 is approximately 2,500 m².
- [97] The applicant proposes, instead, to provide public access to an area of approximately 2,500 m² within the proposed development, comprising a combination of walkway and a dedicated open space area (the blue shaded areas in Figure 3). The applicant proposes to secure public access to these areas by way of an easement in gross in favour of the Council. A draft of such an easement was discussed at the hearing and appended to the applicant's closing legal submissions. In addition, the applicant accepts that it must pay the usual reserves and community services financial contributions at the rate applicable. The applicant does, however, expect the value of the open space areas made available to the public to be acknowledged as 'credit' against the sum of reserves and community services contributions due. The Council and the applicant were unable to agree on the extent of 'credit' that would be given or, even, on the wording of a condition that would facilitate a process for determining what (if any) 'credit' could be claimed in future.
- [98] The relevant TRMP subdivision rules (16.3.3.1 (n) (iii)⁸ and 16.33.2A (c) (ii)) require that, to qualify as a controlled activity subdivision, *'land that is subject to a notation on the planning maps as indicative reserve is set aside as reserve and vested in the Council upon subdivision in general alignment with the indicative reserve areas shown on the maps.'* Failure to vest an 'indicative reserve' as public reserve in Council ownership means the subdivision application has to be considered, on its merits, as a discretionary activity. Failure to vest as public reserve an 'indicative reserve' is not treated as a prohibited activity under the TRMP.
- [99] Ms Rose stated in her s 42A report (paragraph 14.2) that she would be minded to recommend granting consent to the application *if* a condition could be imposed requiring a reserve to vest in Council. However, her view was that because the applicant had expressly not proposed the vesting of the reserve, such a condition would fundamentally controvert the proposal. Somewhat confusingly, Ms Rose included in her suggested conditions a condition requiring the vesting of land and concluded that the non-provision of a vested reserve warrants refusal of the application. Ms Rose noted (paragraph 14.3) that she was open to alternative appropriate means of achieving the same outcome as a vested public reserve, but her opinion was that the applicant's proposal of public access by way of easement in gross would be a poorer environmental outcome (her paragraph 14.4). Ms Squire and Ms Rose remained resolute, throughout the hearing, in their opposition to the

⁸ Mr Rae gave the rule reference as 16.3.3.3 (a) (iv) which applies to subdivision for compact residential development. The proposed subdivision is not for that purpose – it is a simple standard density boundary adjustment.

applicant's proposed alternative means of providing publicly available open space in this locality.

- [100] Some submitters raised concerns about the non-provision of the vested reserve but none of them appeared at the hearing in support of their concerns. Mr Darryl King lodged a submission opposing the application, including on the grounds of the failure to provide a vested public reserve. However, having considered the matter further, Mr King (in his evidence to the hearing) supported the applicant's proposal to make land available to the public, but managed by Olive Estate. Mr King stated in his evidence that '*a smaller recreational area will best serve our community's needs*' and endorsed Mr Porter's analysis that it is not just the size or ownership of a greenspace that is important, but how it is provided and what its purpose is.
- [101] The proposed subdivision is a boundary adjustment. Mr Rae made the point in his evidence that no additional allotments are created. It was his evidence that the boundary adjustment subdivision does not, of itself, create any new or additional demand for public reserve in this area. The rule that requires the vesting of the reserve is attached to the subdivision consent and not to the land use consent.
- [102] Ms Squire summarised her reasons for opposing the applicant's proposed open space alternative as:
- a. Its location (the areas of open space the applicant proposes are not in exactly the position shown on the planning map and the location of some of the open space adjacent to the proposed care facility may give that land the appearance of being private and not publicly available);
 - b. Concerns about the conditions the applicant proposes on the easement in gross that could restrict public access at any time;
 - c. The fact that the Council would not hold ultimate management responsibility for the land; and
 - d. The inability of the Council to influence or control the design of the open spaces or be certain that they are developed in a usable way or to the Council's usual standards.
- [103] Ms Squire opposes the wording of the easement in gross the applicant proposes but offered no suggested alternative. Ms Squire acknowledged that the area of proposed open space adjacent to the proposed care facility would at least have direct access from and be visible from a public road (the Fairrose Drive extension). In her opinion, location would not be a 'showstopper', if all of the other concerns could be resolved. Somewhat at odds with Ms Squire's and Ms Rose's position, Mr Dugald Ley's evidence (as the Council's Development Engineer) was that an easement in gross is a viable option for securing public access over privately owned open space and that this approach has been adopted elsewhere by this Council, including in securing parts of the Mapua cycleway.

- [104] Mr Christopher Ward is a consultant specialising in local government community services, including parks and reserves policy. Mr Ward's evidence was that there is ample provision of vested reserves and open spaces of various types within a reasonable distance of the 'indicative reserve' to meet current community needs. It was also his opinion that the proposed provision of publicly available and private open spaces within the existing Olive Estate and the proposed development would appropriately meet the foreseeable needs of Olive Estate residents and the surrounding community. Ms Squire and Mr Ward disagreed on this matter. Ms Squire's opinion is that an analysis of net usable reserve space (excluding walkways, utility reserves and stormwater detention corridors which may also be walkways) indicates that additional dedicated reserve space is required. Mr Ward's analysis had considered gross areas (including walkways). Ms Squire went further and suggested that the area of open space proposed to be made available to the public is less than the 2,500 m² the applicant describes, because the Council doesn't usually count open space within stormwater corridors as usable reserve.
- [105] In their evidence, Mr Ward and Ms Nimmo also drew attention to the location, functionality and condition of vested reserves in the vicinity of Olive Estate, compared with the standard of open spaces available within Olive Estate. Their point was that the available vested public reserves are generally bare land with little or no planting, few facilities and are little used (other than the walkways). It was their view that the public open space within the proposed extension of Olive Terrace would be of a better aesthetic quality, more appealing to users and would be better maintained than any nearby Council reserve. The photographs Ms Nimmo and Mr Porter attached to their evidence, which illustrated these comparisons, and our visits to the locality, suggest that is the likely outcome of the applicant's proposed alternative.
- [106] Ms Squire addressed in her evidence the three documents that are most relevant to consideration of reserves and open space: the Council's *Open Space Strategy 2015-2025*, the *Tasman District Council Long Term Plan 2018-2028* and *Reserves and Facilities Activity Management Plan 2018*. Ms Squire's analysis of these documents is set out on pages 10 to 15 of her memorandum to Ms Lancashire (Ms Rose) dated 15 January 2021 (appended to the s 42A report). We have also read the relevant sections of those documents and we do not read them as only requiring the vesting of public reserves to meet foreseeable community need. The documents refer to a network of open spaces suitable for a range of uses that maintain and enhance quality of life for the community. We also note Ms Squire referred to the desired outcomes of the *Open Space Strategy* (pages 14 and 15 of her 15.01.21 memorandum) as including:
- *'Management and provision of the open space network, including both public and private land, is effectively coordinated;*
 - *An adequate open space network is secured over time, considering growing demands for recreation space, the need to maintain and improve environmental values, and the often limited opportunities to protect strategic land in perpetuity; and*

- *Careful use of open space in the region is promoted and managed, considering, in particular, cultural and environmental values and changing demographics. Modern open space and urban design principles are used to provide for the multiple use of open space, including for utility services – such as storm water management – and recreation, while sustaining natural values’*

[107] The relevant TRMP objective is 14.1.2 which states:

‘Adequate area and distribution of a wide range of reserves and open spaces to maintain and enhance recreation, conservation, access and amenity values.’

[108] TRMP Policy 14.1.3.1 is *‘To provide at least four hectares of Council land per 1,000 residents for recreation and amenity space which is in addition to Crown and private land’*. In a joint expert statement presented to the hearing, Ms Squire and Mr Ward agreed that the level of service prescribed by Policy 14.1.3.1 is met. They also highlighted another measure of level of service prescribed in the Reserves and Facilities Activity Management Plan: that *‘at least 85% of properties zoned Residential are located within 500 metres of open space’*, although they disagreed on how this should be measured. Ms Squire’s opinion is that the 500 m should be measured only from vested neighbourhood reserves (excluding walkways, utility reserves and stormwater detention areas) and that, on this basis, there remains a need for a local reserve in the location of the *‘indicative reserve’*. Mr Ward measured the 500 m from all open spaces, including vested reserves and other open spaces, and concluded there is no deficit in this locality. Mr Ward pointed out that the expression used in this level of service measure is *‘open space’*. It was his view that this should not be restricted to vested recreation reserves. Interestingly, it was Ms Squire’s own evidence, quoting the Council’s Long Term Plan, that this level of service is currently met⁹.

[109] Mr Ward and Ms Squire agreed that, to the extent there may be gaps in the provision of recreation reserves locally, these have been brought about by pre-existing subdivision.

[110] Also relevant are TRMP Policies 14.1.3.3, 14.1.3.4, 14.1.3.5, 14.1.3.6, 14.1.3.8 and 14.1.3.9:

14.1.3.3 *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.*

14.1.3.4 *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.*

14.1.3.5 *To identify areas where there is a deficiency of open space.*

14.1.3.6 *To adjust financial contributions for reserves and community services in lieu of the vesting of land for walkway/cycleway, open space and recreation reserve purposes, unless agreed otherwise.*

⁹ Figure 6, page 12 of Ms Squire’s 15 January 2021 memorandum to Jennifer Lancashire (current performance is given as 85%).

14.1.3.7 *To identify, acquire, and manage land, including esplanade reserves and road reserves, to facilitate public access to water bodies and the coast.*

14.1.3.8 *To encourage the integration of reserves and open space areas within a whole catchment and Low Impact Design approach to drainage and the management of stormwater.*

14.1.3.9 *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.*

- [111] There is no definition of ‘open space’ in the TRMP but the relevant policies do not appear to limit open spaces to being only those that are within vested reserves. For example, the ‘indicative reserve’ shown on the TRMP map on this site is an expression of policies 14.1.3.3 and 14.1.3.5, but those policies do not state that the open space provision must only be vested reserve.
- [112] Adopting Ms Squire’s expert advice, Ms Rose concluded that, because the proposed publicly available open space within the proposed development would not be vested in the Council, the proposal ‘*does not enable people and communities to provide for their social and cultural wellbeing*’.

Finding – Reserves provision

- [113] We do not find, in any of the relevant policy documents, justification for the position taken by Ms Squire and Ms Rose. On an objective assessment, the open spaces that exist and are proposed within Olive Estate will, when fully developed, amply meet the foreseeable needs of the community of people living within Olive Estate. Not only that, the publicly available open spaces within the fully developed Olive Estate will contribute positively to the network of open spaces available to the community of Richmond.
- [114] Olive Estate is unlikely to create additional demand for active or passive recreation reserves that cannot be met by the combination of open spaces within Olive Estate and public reserves and open spaces that exist already within the vicinity of this site. The applicant is willing not only to make land publicly available but also to develop, landscape plant and maintain that land to an attractive standard at no cost to the Council. In addition, the applicant is willing to make a fair and reasonable financial contribution to assist the Council in the provision and development of reserves and community services throughout the District. Our conclusion is that this combination of additional publicly available open space and funds (whatever the sum) will be a substantially net positive benefit in terms of open space facilities and values for this community. That outcome is entirely consistent with the relevant Council reserves planning policy documents and TRMP policy framework.
- [115] We are satisfied that the draft easement in gross proposed by the applicant, including the conditions restricting certain activities, is appropriate. The applicant offered to participate in a process that would have allowed the Council to influence the design of the proposed

publicly available open space and development of a management plan for that open space. The Council did not support this process and, in rejecting it, demonstrated such intransigence of position about control of the land that we doubt such a process would achieve any sort of agreement as to design, use or management. We could not reasonably subject the applicant to the risks of such a process. No party brought to the hearing any evidence that the applicant's intention to maintain the 2,500 m² area of open space as publicly available in perpetuity is other than genuine. Ms Squire and Ms Rose are nervous that the easement in gross may be altered in the future. If imposed as a condition of consent (which the applicant has volunteered), it could not be altered other than by way of a s 127 discretionary activity variation.

[116] Our conclusion is that the applicant's offer of publicly available open space, managed at no cost to the Council, in addition to a financial contribution is generous. Our view is also that, it would be excessive for the Council to accept the financial contribution¹⁰ without acknowledging (and giving credit for) the value to the community of the 2,500 m² of publicly available open space. We are confident that a fair value for that land could be established by a registered valuer. If the value of the walkway portion is impaired in the way Ms Squire considers, that will be reflected in the valuation.

[117] We also observe that the combination of proposed open space and walkways seems to be entirely appropriate for this neighbourhood. It will open up connectivity options that are not provided by the Council's own road or reserve network. The evidence we heard confirms the popularity of walking for recreation in this neighbourhood. Also, the design proposed by the applicant for this site would create better overall connectivity than the 'indicative reserve' arrangement shown on the TRMP map. The extension of Fairrose Drive would provide a full connection for all modes (vehicles and pedestrians) in addition to the dedicated area of open space and the separate walkway corridor. That is, in our view, a better community outcome overall than the more limiting options available from the cul-de-sac road proposition shown on the TRMP map.

25 Effects permitted by the plan

[118] Before turning to discuss potential effects of the proposed care facility on amenity values and character, it is relevant to consider the forms of development (and the potential effects of development) that are enabled by the TRMP. Section 104 (2) confers on us a discretion: when forming an opinion about actual and potential effects on the environment of allowing an application, we *may* disregard an adverse effect of the activity if the TRMP permits an activity with that effect. Accordingly, we questioned the two expert planners (Mr Gary Rae for the applicant and Ms Rose for the Council) at length about whether and how section 104(2) should be applied. Mr Rae and Ms Rose were in agreement that there is no relevant 'permitted baseline' for this application. That is because the TRMP does not provide for a community activity as a permitted activity. However, that is not the end of the matter, given

¹⁰ Suggested Condition 4 of RM190790 attached to the applicant's closing legal submissions.

the wording of s 104(2). The relevant concern, under s 104(2), is with effects and not simply with activities. It is relevant to understand what effects might arise from permitted activities on the site.

[119] Mr Rae and Ms Rose clarified, in their written evidence and in answers to our questions at the hearing, that the TRMP does not provide for multiple dwellings on this site as a permitted activity. However, compact density residential development (involving multiple dwellings) would be granted consent as a controlled activity¹¹, if it complies with the specified conditions. The conditions constrain development in the following way:

- a. site coverage is limited to 70%;
- b. building coverage is limited to 50%;
- c. stormwater generated from the site must comply with a standard requirement;
- d. all buildings must be set back a minimum of 2m and no more than 5m from the front boundary;
- e. all buildings must fit within a building envelope;
- f. garages must be set back 5.5m from the front boundary;
- g. each dwelling must have a dedicated area of outdoor living space; and
- h. the development must manage stormwater in accordance with specified standards.

[120] The reserved matters for such controlled activity consents include consideration of an *Urban Design Guide*, allotment layout, dwelling size, on-site amenity, roading, traffic, vehicle access, parking, cycleways, walkways, amenity effects, provision of services, earthworks and landscaping. The consent process for compact residential development may result in modifications to address amenity effects. The point Mr Rae and Ms Rose made is that a dwelling, or multiple connected dwellings, that comply with these conditions must be granted consent¹². Mr Rae attached to his evidence an analysis of how the proposed buildings (including the proposed care facility) comply with these controlled activity conditions, with one exception. The only exception is that the fence proposed for the Hill Street front yard exceeds the maximum 0.8 m height specified in rule 17.1.3.3 (ga). His point is that the proposal complies with all of the conditions that influence amenity values on adjoining sites.

[121] At the end of the second day of the hearing, we requested that the applicant prepare some photographic simulations to illustrate views of the proposed care facility from some neighbouring properties. We also requested photographic simulations showing a compliant structure on the applicant's site¹³. Ms Elizabeth Gavin (the applicant's Landscape Architect) forwarded photographic simulations attached to her supplementary statement of evidence

¹¹ Rule 17.1.3.3 (b)

¹² Section 104A states that an application for controlled activity consent must be granted consent.

¹³ We note that there is a crucial word missing from paragraph 4 of our 4 March 2021 Minute #1 ('compliant' structure) that would have made this clearer. However, this request was made clear prior to adjourning the hearing and the applicant generated comparative photographic simulations for a comparative structure that would comply with the relevant TRMP conditions.

dated 30 March 2021. We appreciate the applicant's efforts in generating these photographic simulations. They are helpful in visualising the bulk of the proposed care facility. They are also helpful in visualising the proximity, height and bulk of dwellings that the TRMP would authorise as controlled activities (or as a permitted activity single dwelling). They do not present what is conventionally understood to be a 'permitted baseline'. The applicant accepts that there is no 'permitted baseline' for this application. However, they do helpfully show the likely visual effects of the form of development that could be enabled by the TRMP. That is, development that has the following effects:

- a. Conjoined residential dwellings, having a continuous 3 m high building wall, located as close as 1.5 m from the boundary with adjoining properties;
- b. Conjoined residential dwellings, having a continuous building wall up to 7.5 m height, located as close as 7 m from the boundary with adjoining properties;
- c. Multiple conjoined residential dwellings with outdoor living areas located within the yard area between the dwellings and the boundary with adjoining properties;
- d. Multiple conjoined residential dwellings with glazing at first floor overlooking the yards of adjoining properties;
- e. Multiple conjoined residential dwellings with outdoor balconies at first floor level overlooking the yards of adjoining properties; and
- f. Long single storey or two-storey building walls within 7 m of the boundary (Ms Rose confirmed in oral evidence that the TRMP rules do not restrict the continuous length of residential dwellings).

[122] The potential for these effects is depicted accurately, in our view, in the photographic simulations Ms Gavin presented and in cross-section sheet 08 of the attachment to her supplementary statement of evidence. Ms Gavin also emphasised that her photographic simulations do not show buildings as close to the boundary as they could be located under the TRMP rules. Cross section sheet 08 shows two potential buildings (a single storey building 1.5 m from the boundary and the other a two-storey building 7 m from the boundary). Ms Gavin confirmed that her visual simulations depict only the building set back 7 m. In this respect, they do not depict a potential 'worst case'.

[123] We accept that the effects listed above could be moderated by modifications to building form made under the reserved matters listed in rule 17.1.3.3. However, Ms Gavin's photographic simulations are helpful in indicating the broad form of development that the TRMP enables. We found them useful and we consider that they are a relevant and reasonably necessary matter for our consideration (within the scope of section 104(1)(c)). It would be inappropriate, in our view, to not consider the potential visual effects of the bulk, height and density of development the TRMP enables on this site. It is relevant to note again that the TRMP encourages medium density housing developments that achieve a high standard of amenity on this site. The standard of amenity has to be assessed against the

TRMP bulk and location standards and the Council's *Urban Design Guide*. Ms Rose did not raise any issues with amenity outcomes in terms of the applicable *Urban Design Guide*¹⁴.

- [124] Some submitters told us in evidence on day three of the hearing that they found the photographic simulations, and the process by which they were created, intimidating. The simulations were generated at our request. Ms Rose agreed that they accurately depict the type of structures that she would expect to be enabled as compact density development by the TRMP, subject to complying with the controlled activity standards. We questioned Ms Gavin at length about the relative heights and building setbacks depicted in the simulations. Ms Rose confirmed that the simulations had been prepared showing a compact density development scenario that fully complies with the controlled activity standards.
- [125] Although some submitters criticised the accuracy of the images in the simulations, there is no evidence that they are inaccurate. They are certainly confronting. They confront the reality that the ground level of parts of some properties, particularly of numbers 3 and 5 Brenda Lawson Way and numbers 21 and 28 Fawdan Way, is substantially lower than the sloping land within the 'Hill Street Block'. Even with the earthworks proposed to reshape the 'Hill Street Block', including removal of the irrigation pond and establishment of a building platform lower than originally proposed, these adjoining properties will remain materially lower.
- [126] Even a single dwelling, located and built in compliance with the TRMP permitted activity conditions, has the potential to be obviously visible from and to overlook these properties. What the photographic simulations do is demonstrate this reality. Equally, even a fully compliant permitted activity single dwelling on the site has the potential to impede views that neighbours currently enjoy across the vacant land, depending on its position on the site.
- [127] We have considered these factors, where relevant, in the assessment of effects of the proposed care facility in the following section.

26 Potential adverse effects of the proposed care facility on amenity values and residential character

- [128] The primary focus of submissions from people living near Olive Estate who oppose the proposal was the potentially adverse effects of the proposed care facility on the amenity values of neighbouring properties and on the residential character of this neighbourhood. Submissions were received on this matter from residents of adjoining and nearby properties in Brenda Lawson Way and Fawdan Way and opposite the site on Hill Street and Hillplough Heights. Many of these submitters presented evidence to the hearing in support of their concerns and we visited the nearest properties in Brenda Lawson Way, Fawdan Way, Hill Street and Hillplough Heights on our site visit.

¹⁴ Part II – Appendix 2 to the TRMP Residential Zone Rules

[129] Ms Rose provided an accurate summary of the concerns raised by submitters about the potential effects of the care facility at paragraph 6.7b of her s. 42A report. We consider it useful, however, to further refine those effects into three broad categories:

- Potential effects on the amenity values of neighbouring properties resulting from the visual presence of the building itself;
- Potential effects on the amenity values, privacy and quiet enjoyment of neighbouring properties resulting from use of the building; and
- Potential effects on the character and visual amenity values of the residential neighbourhood.

[130] We also consider potential effects on the neighbouring properties closest to the site.

Expert visual evidence and visual simulations

[131] Expert evidence on these matters was presented on behalf of the applicant by Ms Elizabeth Gavin (a Landscape Architect), in relation to landscape and visual effects, Dr Jeremy Trevathan (an Acoustician) on noise, and Mr Gary Rae (a Resource Management Planner) on planning policy and the relevant provisions of the TRMP.

[132] In the following paragraphs, we evaluate the expert evidence presented to us and the concerns raised by submitters on these matters. This is followed by an evaluation of the potential effects within the receiving environment of the neighbouring properties, in light of any mitigation techniques proposed by the applicant (both in terms of design changes made since lodgement and proposed conditions of consent).

[133] Before doing so, we make some observations on the landscape and visual evidence presented by Ms Gavin. In her evidence, Ms Gavin spoke to the landscape and visual assessment ('LVA') she had undertaken of the proposal. This assessed broader landscape effects of the development and also potential visual effects on neighbouring properties in Fawdan Way, Brenda Lawson Way, Hill Street and Hillplough Heights.

[134] Ms Gavin's LVA states that it is undertaken in accordance with the New Zealand Institute of Landscape Architects' *Best Practice Note: Landscape Assessment and Sustainable Management*. This involves use of an effects rating, based on a seven-point scale, from very low to very high. The Panel was not assisted, in considering and testing Ms Gavin's application of this rating system, because no expert landscape and visual peer review of her report has been undertaken by Council. Nor was there any other suitably qualified expert present at the hearing whom we could question on this matter. However, we diligently pursued, through our questioning of Ms Gavin, the particular concerns individual submitters had raised in their submissions and took care to view the site and their concerns about potential effects from their viewing perspectives on our site visit. As a result of which we concluded, following our site visit on day two of the hearing, that we needed better visual

simulations illustrating the potential visual effects of the proposed care facility and made the request detailed in our Minute Number 1.

- [135] At the resumed hearing, Ms Gavin spoke to the visual simulations that had been prepared in response to our request. There was criticism from some submitters who presented evidence to the resumed hearing that the visual simulation from their property was not representative of their views towards the site. Specifically, the criticism was that the position from which the photograph was taken was not agreed with the submitters and that the visual simulations showed only one view from each property. We did not require Ms Gavin to select photograph viewing points by agreement with individual submitters. We requested that the visual simulations depict the *primary views* into the application site from eight properties. We did not request multiple visual simulations. We are aware that the production of such visual simulations is time-consuming and expensive. We sought visual aids to our consideration of the issues. Ms Gavin supplied those and they are no less useful even if the viewing points were not agreed with submitters.
- [136] Mr McDouall and Mr Goodman presented to the Panel photographs taken from their properties by a Mr Jon Hunter, who was referred to as a professional photographer.¹⁵ Mr Hunter was not present at the hearing, so we were unable to understand the methodology and purpose of his photographs. However, the photographs were useful to the extent that they show a range of views from neighbours' properties, confirming the perspectives we had ourselves seen on our own visits to these properties.
- [137] From Ms Gavin's supplementary evidence and her explanation at the hearing, we understand that she has used the visual simulations as a tool to assist her in her assessment of landscape and visual effects, but that they were not determinative in her overall conclusion about effects. That approach is consistent with our understanding of professional practice for a landscape architect undertaking such an assessment. We note the process for preparation of the photographic simulations, described in Ms Gavin's supplementary statement of evidence, and find that to be overall thorough and robust.
- [138] Ms Gavin presented three versions of the visual simulations for each of the selected views from neighbouring properties. These showed:
- a. a simulation of the building as presented to the Panel in evidence-in-chief;
 - b. a simulation of the building incorporating the changes made to the building described in Ms Gavin's 30 March 2021 supplementary statement of evidence (lowering the overall building height and changes to the design of the 'Crow's Nest'); and

¹⁵ Statement of Clare and Len Davenport, 2 Brenda Lawson Way.

- c. a simulation showing a *'complying building that could occur within the daylight angles and setbacks; and permitted heights of the TRMP.'*¹⁶

[139] As we discuss earlier, in regard to effects permitted by the TRMP, the *'complying scenario'* simulations do not seek to assert that a community facility could be built on this site as a permitted activity. They simply show indicative residential buildings that would comply with the bulk, location and setback standards of the TRMP. While the scenarios are self-evidently hypothetical (as they are not a proposed scheme), we do not find them to be unrealistic or misleading, as some submitters uncharitably asserted. The *'complying scenario'* simulations show the generally anticipated bulk and location of buildings enabled by the zoning on the site, relative to neighbouring properties and, in this respect they provide a useful benchmark.

Potential effects of the proposed care facility building on neighbouring amenity values: Loss of daylight and sunlight

- [140] In his evidence, Mr Rae states that the development overall, including the care facility, complies with all zone density, building coverage, site coverage, building envelope and building setback standards. He states that these *'particular standards are all designed to protect the amenity of adjoining properties, and it can therefore be said the proposed buildings go a long way towards achieving the outcomes sought by the TRMP.'*¹⁷
- [141] Ms Rose states in her report that the development complies with the TRMP standards in respect of daylight and sunlight on its external boundaries and, as such, is consistent with policy 5.2.3.2 regarding ensuring adequate daylight and sunlight to residential properties.¹⁸
- [142] We agree with Mr Rae and Ms Rose. We find that the care facility building would have daylight effects on adjoining properties no greater than could be enabled by the *Residential Zone* rules for this site. In fact, the effects are potentially less than this due to the proposed building's setback from site boundaries being further than what the rules allow. The proposed building is to the south of adjoining properties. We do not consider that the proposed building will create any material adverse shading or loss of sunlight effects for neighbouring properties.
- [143] Concern was expressed by some submitters, including Mr Goodman of 5 Brenda Lawson Way, regarding the potential shading effect of trees proposed to be planted between the care facility building and site boundaries on their properties. We understand that shading from vegetation is not an effect directly managed by the TRMP rules. That said, we evaluate the shading effects of proposed tree planting around the perimeter of the care facility building in our evaluation of effects on individual neighbouring properties below.

¹⁶ Elizabeth Gavin supplementary evidence, paragraph 22(iii).

¹⁷ Gary Rae evidence, paragraph 37.

¹⁸ S42a report, paragraph 9.39.

Potential effects of the proposed care facility building on neighbouring amenity values: height, bulk and scale of elevation facing Hill Street

- [144] Concerns about the height, bulk and scale of the elevation of the proposed care facility facing Hill Street were raised in the submissions of Roy Medlicott and Jeanette Swift (5 Hillplough Heights), James and Phillipa Bagnall (381 Hill Street) and Peter Hancock (375 Hill Street). Mr Bagnall, who lives directly opposite the proposed 'Crow's Nest' was particularly concerned about the potential loss of privacy that would result from the proposed staff room being at the height proposed, in relation to his home's bedrooms and living room. In response to these concerns, the applicant has deleted the windows from the Hill Street façade of the staffroom.
- [145] The evidence of these submitters, and of Mr Jeffrey Billington (who lives at 3 Hillplough Heights) and Mr Richard Kempthorne (who lives at 11 Hillplough Heights), questioned whether the landscape planting proposed along the Hill Street frontage would be successful in mitigating the bulk and continuous length of the proposed building. There was broad agreement between them that the planting should be lower closer to Hill Street and of a type and density to effectively provide visual interest, but not so high that it would block views from the homes on the southern side of Hill Street. The applicant has responded to these concerns by specifying that lower trees should be used near Hill Street. We are satisfied that the suggested condition on this matter in the applicant's closing legal submissions would (subject to comments we make later in this decision) deliver appropriate visual mitigation without creating adverse effects.

Potential effects of the proposed care facility building on neighbouring amenity values: Loss of views

- [146] As we discuss earlier in this decision, a common theme amongst submitters was a concern that the care facility would result in the loss of views across the site to the wider landscape.
- [147] The visual simulations provided by Ms Gavin show that the care facility building will block existing views from some neighbouring properties. It is clear to us from statements made by submitters on the third day of the hearing that these views are highly valued. We acknowledge this. However, in response to questions from the Panel, Ms Rose stated that there is no general protection of views in the TRMP's Residential zone.
- [148] The site is currently undeveloped 'greenfield' land. As we have already discussed, any compliant development of this site would result in some loss of views currently enjoyed by surrounding residents across it. Some submitters were careful to clarify that they did not expect the site would remain vacant. Their concern is with the bulk and scale of the building and the extent to which the building blocks views.
- [149] The proposed care facility building complies with the zone's maximum permitted height (7.5 m), except for the 'Crow's Nest', which exceeds it by up to 2.5 m. The proposed building

also complies with all other bulk, location and setback standards. We agree that there would be a partial loss of views across the site to the distant hills from number 381 Hill Street. However, the bulk of the panoramic view from this property would remain. For the other properties on the opposite side of Hill Street from the site, the roof and walls of the proposed building will sit in the foreground of the view, obscuring only views of the built-up area. Overall, we therefore find that loss of existing views across the site (except as to the extent that is relevant in an evaluation of the 'Crow's Nest') is not an adverse effect in terms of the zone. It is also relevant, and it was a point acknowledged by some Hill Street submitters, that the proposed development necessitates the removal of the large gum trees near the Hill Street boundary and that this will open up new views across the site.

Potential effects of the proposed care facility building on neighbouring amenity values: Privacy

- [150] Ms Rose considers that window placement within the care facility will result in some loss of privacy to neighbouring properties.¹⁹ We take from this that she does not consider the proposal to be wholly consistent with policy 5.2.3.1, which requires development to maintain privacy in residential properties.
- [151] Ms Gavin states in her evidence that the setback of the care facility building from adjacent residential boundaries, being 9.3 m at its closest point²⁰, provides space for landscaped amenity that creates privacy and amenity. She concludes that these setbacks, as well as the proposed landscape treatment, will maintain privacy at a level consistent with that expected by the *Residential* zoning.²¹
- [152] We agree with Ms Gavin. Although the privacy currently enjoyed by some neighbouring properties will not be maintained at its current level, policy 5.2.3.1 must be read in light of the level of development enabled by the zone. The current privacy these properties enjoy is somewhat artificial, achieved only because the land is vacant. The visual simulations show that windows within the care facility building visible from neighbouring properties are primarily second storey windows. Two storey development is enabled in the *Richmond South Development Area* by its permitted 7.5 m height. The fence that is proposed along the boundary will assure privacy between the site and neighbours in terms of ground floor windows and outdoor areas.
- [153] We find that the extent to which the windows of the proposed care facility overlook neighbouring sites is generally consistent with that enabled by the site's zoning.

¹⁹ Section 42a report, paragraph 9.37.

²⁰ The distance between the northern (apartments) wing and the boundary of number 28 Fawdan Way

²¹ Elizabeth Gavin evidence, paragraphs 51 and 71.

Potential effects of the proposed care facility building on neighbouring amenity values: Light pollution

- [154] An issue raised by submitters was the potential for light spill from the development, with some observing that lighting of the development will change the current outlook. We agree. However, we observe that this is not unexpected when compared to the currently undeveloped nature of the site. We note that the applicant has volunteered a condition to address this general concern and confirm compliance with TRMP site lighting requirements (proposed condition 28 attached to the applicant's closing legal submissions).²²
- [155] A more specific concern regarding light spill raised by submitters was the potential for light spill from the 'Crow's Nest' part of the proposed care facility building. In her presentation at the hearing, Mrs Davenport, who lives at 2 Brenda Lawson Way, referred to the 'Crow's Nest' producing a 'torch-like light pollution' into their property. Concerns were also raised by Hill Street submitters, including Mr Bagnall of 381 Hill Street, about the potential for 24 hour lighting of the 'Crow's Nest', due to its staff room function.
- [156] In response to these concerns, the applicant has redesigned the 'Crow's Nest' to remove all glazing from the wall facing Hill Street. Glazing has, however, been retained along the northern elevation of the 'Crow's Nest', facing towards 2 Brenda Lawson Way.
- [157] There does not appear to be any rule in the TRMP that seeks to manage interior lighting of rooms. Ms Gavin, in her evidence, refers to the distance of over 50 m between the 'Crow's Nest' and the boundary with Brenda Lawson Way properties. We are satisfied that this distance is sufficient to ensure that any visible light from the 'Crow's Nest' will not be experienced as a significant adverse effect within the Brenda Lawson Way properties. The TRMP does not seek, or guarantee, a completely dark night sky in this area. The potential adverse night lighting effects for number 381 Hill Street will be largely avoided by the amendment deleting glazing from this facing wall (although we accept there would be some light spill discernible from the eastern and western sides of the 'Crow's Nest').

Potential effects of the proposed care facility building on neighbouring amenity values: Noise

- [158] A significant concern raised by neighbours in submissions was the potential noise effects of service vehicle access to the care facility from Brenda Lawson Way, as proposed in the lodged version of the application. As outlined earlier in this decision, the applicant has redesigned this aspect of the proposal, partly in response to submissions, to remove this potential noise source by relocating all vehicle access to the Fairrose Drive frontage of the building.

²² Gary Rae evidence, paragraph 30.3.

- [159] In his evidence, the applicant's noise expert Dr Trevathan discusses the effects of changes to the design of the proposed care facility since lodgement. He concludes that the removal of vehicle access to Brenda Lawson Way will achieve full compliance with TRMP noise standards for car and service vehicle movement during both day and night time periods, as experienced on neighbouring properties. That is, with the exception of the Nicholls property at 376 Hill Street, for which there is a written approval.²³
- [160] Remaining areas of concern for submitters on noise matters relate to the potential for noise effects from people using the outdoor dining deck on the north side of the building, noise from balconies, and concerns regarding plant and machinery on the roof of the building.
- [161] Dr Trevathan states that noise levels of up to 48 dBA Leq are expected at the closest property boundary from use of the outdoor dining deck. This complies with the daytime maximum of 55 dBA Leq. The night time noise limit is 40 dBA Leq, and Dr Trevathan states that the applicant has proposed to keep the sliding doors closed after 10 pm at night.²⁴
- [162] At the hearing, Dr Trevathan confirmed his recommendation (stated in his evidence) that:²⁵
- 'A Noise Management Plan should be developed for the facility which outlines processes and expectations to ensure appropriate consideration of neighbours. Specific issues which should be covered include the use of any outdoor areas used for entertainment and group activities, management of the dementia unit and noise generated on elevated balconies.'*
- [163] The suggested conditions attached to the applicant's closing legal submissions do not include a condition which refers to the requirement for a such a plan. There is, however, a proposed condition which is recorded as being agreed to by the Council that states that the operation of the care facility shall not exceed the noise limits at the boundary of the site specified in the TRMP. The applicant also proposed a condition requiring that a suitably qualified acoustic engineer must review the plans for plant and machinery to ensure that noise from these will comply with the TRMP noise limits. We consider this is sufficient protection of the neighbourhood's acoustic environment.

Effects on the character and amenity of the residential neighbourhood

- [164] The proposed care facility's potential effects on residential character was a central concern of many submitters. The concern focused on the height, scale, length, and placement of the building on site and its use. Submitters are concerned that these aspects of the building would erode the neighbourhood's character and would not be consistent the zone's anticipated character.

²³ Jeremy Trevathan evidence, paragraphs 21-23.

²⁴ Jeremy Trevathan evidence, paragraphs 15-16.

²⁵ Jeremy Trevathan evidence, paragraph 36.

[165] Policy 5.4.3.2 states:

‘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.’

[166] This policy was the subject of questions from the Panel to Ms Rose and Mr Rae. Both planners agreed that the proposed care facility is an activity which would be covered by the policy and that therefore the TRMP contemplates such uses within the *Residential* zone. The point of difference between the two planners is whether the proposed care facility ‘compromises’ the character or amenity of the existing residential neighbourhood surrounding this part of the site.

Effects on the character and amenity of the residential neighbourhood: Location of the Care Facility

[167] A common concern of submitters was that care facility in its consented position, at the eastern end of the existing site, would have lesser impact on neighbours than the now proposed location along Hill Street, where it would be closer to an established residential neighbourhood.

[168] In the applicant’s closing legal submissions, Counsel for the applicant state that the pertinent question is not which of the two locations is the better – the consented or the proposed. Rather, that our role is *‘to make a decision on the application before you based on the merits of the current application.’*²⁶ That is, as we understand it, the correct approach. The Act does not allow us to direct the applicant to adopt an alternative site for the proposed care facility. Our task is to determine whether the proposed building, in the location proposed, should proceed (and, if so, subject to what conditions).

[169] An understanding of the consented care facility was useful in providing historical context. Our focus, however, in evaluating the evidence before us, has been to consider the effects of the currently proposed care facility on its own merits.

Effects on the character and amenity of the residential neighbourhood: Character and amenity of the residential neighbourhood

[170] The extent to which a *community activity* will result in loss of residential character or amenity is a matter of discretion for Council and, due to the activity’s restricted discretionary status, a matter on which the Council may refuse consent.

²⁶ Nigel McFadden and Shoshana Galbreath, Right of Reply, paragraph 37.

- [171] In order to understand the care facility's potential effects on neighbourhood character or amenity, it is therefore necessary to define what the character or amenity of the existing neighbourhood is.
- [172] We were interested to hear from submitters, at the hearing, what they consider to be the character and amenity of this neighbourhood. We also asked this question of the applicant's experts, and the Council team. Submitters' answers to our questions on this point were generally framed in terms of the form of development they had expected to see on this site.
- [173] Submitters were generally of the view that they would expect to see detached housing of a variety of styles, with space between them and areas of green space. The statement of Joy Tomlinson, resident at 21 Fawdan Way, is particularly apt on this point:

'We believe our expectations, of any permitted residential development, would not be unlike the existing residential developments surrounding us. We would have expected that a variety of buildings with diversity, density, height and open spaces, breaking up the landscape and providing interest would be more in keeping with this area [and] would be less invasive, dominant and aesthetically pleasing.'

- [174] Some submitters expressed the view that seeing a continuation of the existing style of housing, while denser than in the surrounding residential area, would not be unexpected, while others were less convinced on this aspect.
- [175] Several submitters considered the proposed care facility to be non-residential in nature (instead, they see it as a commercial activity) and that such a commercial activity is inconsistent with the character of the area. On this aspect, Ms Tomlinson stated:

'This Care Facility Building can, in our view, only be perceived as a commercial enterprise which seems to us as setting a precedence for other future developments in residential areas.'

- [176] Ms Davenport, of 2 Brenda Lawson Way, offered this view:

'The main use for this building, being that the patients are in paid care and the staff are salaried, surely makes this a commercial enterprise, in the middle of a residential area.'

- [177] We discussed earlier the TRMP categorisation of the care facility activity (as a *community activity*, not a *commercial activity*). In terms of the what the TRMP policies and rules provide for, it is not correct to say that an activity such as the proposed care facility is inherently inappropriate in this Zone, or on this site. The TRMP explicitly provides for these activities and Ms Rose stated that the Residential Zone is the appropriate zone for them. Ms Rose and Mr Rae broadly agreed, with reference to Policy 5.4.3.2, that uses of the type represented by the proposed care facility are activities contemplated by the TRMP within residential areas.

- [178] A common concern voiced by submitters was that, in the context of an expectation for smaller scale detached housing, the size, length and height of the proposed care facility is inconsistent with the character of the neighbourhood.
- [179] Advice from Ms Rose was that the *Richmond South Development Area* overlay which applies to the site enables medium density housing, typically in the form of a *compact density development*, and that this housing may be on smaller lots than permitted in the standard *Residential zone*. Ms Rose confirmed that there is no TRMP rule limiting building length in the *Richmond South Development Area*, and that the development of multi-unit residential buildings is anticipated, subject to a consent process.
- [180] The TRMP restricts the Council's discretion, when considering an application for a *community activity* in the *Residential zone* under Rule 17.1.2.5, to the *scale* of the building (not its use). From this we take that the TRMP anticipates a *community activity* is in principle an appropriate activity within the Zone and that it may be of a larger scale than other buildings in the residential neighbourhood, although the potential effects of scale need to be carefully considered.
- [181] The TRMP maps show that the boundary of the *Richmond South Development Area* follows the boundary between this site and the adjoining Brenda Lawson Way properties. The properties accessed off Brenda Lawson Way and Fawdan Way, Hillplough Heights or the eastern side of Hill Street are not within the *Richmond South Development*, but the Hill Street Block and properties to the south of it are. The TRMP explicitly intends that land within the *Richmond South Development Area* will be more intensively developed than the traditional residential subdivision the submitters described. It was apparent at the hearing that the submitters were not aware of this TRMP distinction.
- [182] In summary, the TRMP enables and (through policies 6.1.3.1A and 6.2.3.2A, referred to by Ms Rose) encourages medium density development within the *Richmond South Development Area*, applying to the existing site, the Hill Street Block and residential lots to the south, and that development may include a *community activity* of a larger scale than surrounding buildings.
- [183] In reaching this finding, we are conscious that both medium density development in the form of a compact density development and community activities require resource consent and therefore do not form part of the neighbourhood character, in the sense that they are not within a permitted baseline. That said, we find it is reasonable to conclude that a form of development of this scale, density and type of use is an outcome generally anticipated by the TRMP.
- [184] Having found that the TRMP allows for activities such as the care facility in residential areas, subject to an assessment of their effects, and that the TRMP contemplates such activities may be of a larger scale, the matter for evaluation can be refined to: will the scale of the

building and use, as proposed, have effects that compromise the character of the neighbourhood?

[185] An area of common ground between all parties is that the proposed care facility building would bring a noticeable change to the existing residential environment. On this aspect, Mr Rae states that *'I accept that the Care Facility will represent a significant change to the area.'* He qualifies this, however, with the statement that any change to Hill Street block would be significant, given its existing greenfield state.²⁷

[186] Ms Gavin states:²⁸

'Even though the building varies in height along its approximate 100 m length on Hill Street, it does differ in character when compared to the surrounding residential character on Hill Street.'

[187] On the matter of the scale of the building, the applicant team's reply to a question from the Panel as to whether there were any buildings of a similar scale in the Richmond area was that there were other large buildings in the area. However, no specific examples were brought to the Panel's attention.

[188] On the matter of the height of the care facility, Mr Rae stated that this was the only infringing aspect of the building, which is limited to the 'Crow's Nest', and that it otherwise fully complied with TRMP building construction standards.²⁹ While this is a fact, as we have discussed earlier, we note the overall scale of the building remains a matter for consideration under the restricted discretionary status for Community Activities in the Residential zone.

[189] The thrust of the applicant's argument in regard to the care facility building, as put to us, is that it has been designed to integrate with the site on which it is placed and the surrounding area by:

- a. The placement of the building below the level of the adjoining Hill Street frontage, such that, as viewed from Hill Street, it would predominantly appear as a one storey building;
- b. The building's setbacks beyond what the TRMP requires from adjoining residential property boundaries;
- c. The staggered nature of proposed fencing along the building's Hill Street frontage assisting with breaking down its visual bulk;

²⁷ Gary Rae evidence, paragraph 56.

²⁸ Elizabeth Gavin evidence, paragraph 26.

²⁹ Gary Rae evidence, paragraph 37.

- d. Changes to the design of the 'Crow's Nest', including the reduction in its height (and that of the building overall) and the removal of glazing from its Hill Street frontage;
- e. Exterior building materials, using different textures, colours and finishes;
- f. Proposed landscaping, including tree planting, which would also assist in breaking down the building's bulk; and
- g. The Crow's Nest itself as a design feature to break up the length of the building.

[190] On the use of the 'Crow's Nest' as a technique to address the building's length, we record that this element, as the applicant acknowledges, creates its own issues (infringement of maximum height) and was a key area of opposition to the care facility by submitters.

[191] We understand, from the evidence of the applicant's architect Robert Weir and urban designer Luke Porter, that the 'Crow's Nest' was an addition to the building after a presentation to the Urban Design Panel and a recommendation by the Panel that part of the roofline of the building should be broken with an area of greater height in order to address the appearance of a building of great length.

[192] When questioned on the effectiveness of the 'Crow's Nest' to this end, Mr Weir stated that he considered it a 'token gesture'. Mr Weir then clarified his view that 'popping the top' of the building is a 'good thing' and is aesthetically successful.

[193] In assessing the effectiveness of these techniques in addressing potential landscape and visual effects, Ms Gavin's evidence focused on the length of the care facility's façade and its over-height 'Crow's Nest'.

[194] In regard to the height of the 'Crow's Nest', Ms Gavin stated that it would not impact the immediate neighbouring properties on Brenda Lawson Way due to being approximately 50m from the nearest property on that road and due to the terracing of the care facility and that, for properties along Hill Street, the difference in elevation between those houses and the proposed building provides natural mitigation. At paragraph 24 of her evidence, she states:

'This change in elevation and the expansive landscape create the opportunity for the over height component of the Care Facility to settle into the landscape in a manner that can absorb the change from the adjacent neighbours on both Brenda Lawson Way and Hill Street.'

[195] In regard to the length of the building, she states that the proposed landscape treatment of offset timber screens, fencing and a variety of planting at differing heights along Hill Street will assist in breaking up the continuous length of the facility while also providing amenity to the streetscape.³⁰

³⁰ Elizabeth Gavin evidence, paragraph 27.

- [196] She concludes that the overall landscape effects (which we understand to mean character related effects) of the care facility building are moderate to low, reducing to low as landscaping around the building establishes. At the reconvened hearing, subsequent to the proposed reduction in height of the care facility from 10.56 m to 10 m, Ms Gavin confirmed her opinion on this matter.
- [197] In response to questions, Ms Gavin stated that part of the reason for her moderate to low landscape effects rating was the effect of the use of the care facility as something that was not 'purely residential' and due to the potential higher number of occupants of the building compared to the surrounding existing environment.
- [198] Based on Ms Gavin's evidence, Mr Rae told us that he considered, in terms of policy 5.4.3.2, the care facility would not compromise the residential character of the area and that any effects on amenity values would be no more than minor.
- [199] Ms Rose's s 42A report stated that the care facility building would compromise amenity values 'albeit to a moderate extent (given the mitigation proposed), but her report did not express a clear view on whether residential character would be compromised.³¹
- [200] At the hearing, Mr Rae offered his view in regard to how to interpret the phrase 'does not compromise' in policy 5.4.3.2. He considered the phrase required two questions to be asked. Firstly, does the building meet the permitted activity standards for building construction? Secondly, does the design fit with the particular characteristic of the residential environment?
- [201] Mr Rae stated that the answer to the first question is yes, with the exception of the height of the Crow's Nest. In regard to the second question, he considered that the character of Olive Estate itself, as part of the residential environment, needed to be considered. In his view, the care facility has been designed to integrate with this.

Finding – Effects on residential amenity values and character

- [202] Having evaluated all the opinions and evidence presented to us on this matter, we find that the care facility is broadly consistent with policy 5.4.3.2. To the extent that there is any compromise of residential character or amenity, we find that it can be adequately mitigated.

Effects on nearest neighbouring properties

- [203] Based on the visual simulations attached to the supplementary evidence of Ms Gavin, it is apparent that the care facility would bring about a significant change in the viewing environment when looking towards the site, particularly for neighbouring properties at 2, 3 and 5 Brenda Lawson Way and 21 and 28 Fawdan Way. The residents in these neighbouring

³¹ S42a report, paragraph 9.5.2.

properties are closest to the proposed care facility and we heard from all of them at the hearing.

28 Fawdan Way

- [204] Ms Janet Sullivan lives at number 28 Fawdan Way. Her house is the closest to the proposed care facility. The proposed northernmost wing of the care facility (the long north-facing wall) would be 9.3 metres from Ms Sullivan's boundary. Ms Sullivan's property is not only the closest to the care facility building, but also shares two boundaries with the 'Hill Street Block' where the care facility is proposed. Ms Sullivan's property is lower than the site where the care facility is proposed, at the base of the bank supporting the water storage pond on the 'Hill Street Block'. The windows of rooms and the garage, along the south-facing wall, of Ms Sullivan's home will look directly at the long wall of the northern wing of the proposed care facility. There is currently an open view from the southern side of Ms Sullivan's property into the site of the proposed care facility (illustrated on Sheet 041 of Ms Gavin's visual simulations).
- [205] There is a fabric wind screen fencing and some trees growing along the other shared boundary, sheltering an outdoor living area in the western corner of Ms Sullivan's property. Proposed villa V25 is also proposed near Ms Sullivan's western boundary. Views into the site from this part of Ms Sullivan's property, and from the west-facing rooms, are partially obscured by the trees along this boundary.
- [206] The applicant has proposed a condition that would require villa V25 to comply with the daylight envelope and building setback rules. Ms Sullivan's particular concern is with the height, bulk and closeness of the proposed care facility building. At the hearing, Ms Sullivan stated that her concerns are that the proposed care facility building is '*so big, so continuous, so confronting*'. Ms Gavin's visual simulations 'A' and 'B' (Sheets 042 and 043) illustrate these concerns.
- [207] The northern wing of the proposed care facility, near Ms Sullivan's property, comprises a ground floor level to be completely enclosed, with few windows, used as an internally-accessed car park. Above this car park at first floor level, three apartments are proposed, with living rooms and bedrooms facing north (towards Ms Sullivan's property) and small outdoor balconies adjoining the first floor living areas (overlooking Ms Sullivan's property). There are also apartments on the other side of the building at first floor level, facing south and not visible from Ms Sullivan's property. The part of this wing of the building that extends west of the corner of Ms Sullivan's two boundaries is proposed to have two levels of apartments, with ground floor terraces and first floor outdoor balconies for each individual apartment unit facing north.
- [208] There is potential for people on the first-floor balconies to overlook the southern and western yard areas and windows of Ms Sullivan's home. To mitigate potential visual effects, the applicant proposes to build a 1.8-metre-high fence along both of Ms Sullivan's boundaries and to plant low-growing shrub, flax and native grasses within the site, close to

this fence, with taller shrubs and trees on the bank between this fence and the proposed building.

- [209] We note that the space between the proposed building and Ms Sullivan's boundary contains a proposed stormwater swale and that the applicant proposes to plant the land between the swale and the boundary. The space available is relatively narrow. It is not clear whether the presence of the proposed stormwater swale has been accounted for in the positioning of the future trees in Ms Gavin's visual simulations. We expect that the applicant would not want to plant tall trees directly in front of the first floor balconies and windows of the apartments (between the swale and the apartments). However, with judicious tree selection, we expect that some relatively dense planting of the type illustrated in Ms Gavin's visual simulations, could be established along the boundary near the boundary fence. Our view is that this would be necessary to mitigate the view of the first floor apartments and mitigate the potential for overlooking Ms Sullivan's property. Having said that, we note that the part of Ms Sullivan's property potentially overlooked is a relatively narrow southern yard, not a north-facing outdoor living area. We expect that the proposed 1.8 metre-high close boarded fence along the boundary will completely block views of the walls of the ground floor car park.
- [210] The fence should also completely obscure views between this southern part of Ms Sullivan's property and the proposed ground floor apartments further west. We also note that there is space for planting larger trees (and larger trees shown on the Master Plan) adjacent to the southwestern corner of Ms Sullivan's property. Taken together, the presence of villa V25, the proposed planting and the fence should effectively obscure views from Ms Sullivan's outdoor living area to the two-storey apartments in the western part of this wing of the building.
- [211] Although the northern wing of the proposed building is long, there will be only three first-floor apartments immediately adjacent to Ms Sullivan's southern boundary, and one ground floor and one first floor apartment close to and potentially visible from her property. These will be less visible from within her home. Given the area of land in this corner of the 'Hill Street Block', that is not a particularly intensive density of nearby households. A 'standard' subdivision, even involving sections of a similar size to Ms Sullivan's, in this corner could yield a similar number of households nearby and similar potential for first floor living rooms, windows and balconies. It is also relevant to note that the proposed building will be approximately half a metre lower than shown in the application plans (as proposed by the applicant through Ms Gavin's supplementary evidence). What Ms Gavin's visual simulations and the cross section accompanying them (Sheet 045) indicate is that the TRMP could permit individual two-storey dwellings on 'standard' sections, closer to Ms Sullivan's boundary than the proposed apartments.
- [212] Having considered all of the relevant evidence, we are satisfied that the potential adverse visual effects for Ms Sullivan's property can be mitigated such that they are acceptable. That is, provided the fencing is close-boarded (visually impermeable) and there is careful

attention to tree planting along the boundary. The conditions suggested by the applicant and the Council can, in our view with some adjustment, appropriately mitigate the potentially adverse effects.

21 Fawdan Way

- [213] Mr and Mrs George and Joy Tomlinson have lived at number 21 Fawdan Way for over 20 years. Like Ms Sullivan's, the Tomlinsons' property is at an elevation lower than the land on which the proposed care facility building is proposed. Although the applicant proposes to lower and reshape the site, in removing the water storage pond, the location of the proposed care facility will still be higher up the slope to the south of the Tomlinson's property. The northernmost end of the proposed northern wing of the care facility would be approximately 13 metres from the shared boundary and approximately 25 metres from the Tomlinson's home.
- [214] The windows of rooms and the garage, along the south-facing wall, of Mr and Mrs Tomlinson's home will look directly at the northernmost end of the northern wing of the proposed care facility. There is currently an open view from the southern side of the Tomlinsons' property into the site of the proposed care facility and to the Richmond hills and skyline beyond (illustrated on Sheet 036 of Ms Gavin's visual simulations). There is a developed outdoor living area on this south-facing side of the house. There is also a north-facing outdoor living area on the northern side of the house, near the driveway from Fawdan Way.
- [215] The ground floor of this northernmost part of the care facility building is to be enclosed internal parking as described above. North-facing apartments are proposed at first floor, with living rooms and outdoor balconies that could potentially overlook the southern yard and southern windows of the Tomlinson's home.
- [216] Mr and Mrs Tomlinson oppose the proposed care facility building, particularly because of their concerns about its proposed bulk, height and scale and its potential to cause loss of residential character, privacy, views and value of their home. The likely views from their home to the proposed building are illustrated in Ms Gavin's visual simulations Sheets 037 and 038. Views to the full extent of the proposed care facility building from this site will be limited (if experienced at all).
- [217] The applicant proposes to erect a 1.8 metre-high fence along the boundary, and this would obscure views to much of the ground floor of the proposed building. The applicant also proposes a mix of planting to achieve a visual screen between 1.5 m and 3 m tall, and we note that there is considerable space available for this within the applicant's site, on both sides of the proposed stormwater swale. Ms Gavin's visual simulation illustrates how this fencing and planting could mitigate views of the proposed building and mitigate the potential for people on the first floor of the proposed building to overlook the Tomlinson's property. The cross-section accompanying Ms Gavin's visual simulations (Sheet 040)

indicates that the building shown in the visual simulation complies with the TRMP's maximum height and daylight envelope and setback rules.

- [218] Although the entire northern wing is long and two storeys high, the part likely to be visible from the Tomlinsons' property will have bulk and height similar to a (permitted) large residential dwelling. Our view is that there is potential for a similar degree of visibility to and from first floor balconies and windows associated with a 'standard' residential dwelling in this corner of the site. The TRMP allows residential buildings on this site that would block the current view from the Tomlinson's southern outdoor living area to the Richmond Hills. The relevant benchmark for our consideration is not the vacant land, but the likelihood of residential development, including two-storey buildings, on this part of the applicant's site.
- [219] Having considered all of the relevant evidence, we agree with Ms Gavin's assessment of the potential visual effects for the Tomlinson's property and are satisfied that these can be appropriately mitigated by the fencing and planting the applicant proposes.

3 Brenda Lawson Way

- [220] The residents of 3 Brenda Lawson Way, Mr Sidney and Mrs Virginia McDouall, lodged a submission opposing the proposed care facility building and expressed concern about adverse visual and landscape effects due to the height, scale and bulk of the proposed care facility. They are also concerned about the potential loss of residential character in Brenda Lawson Way.
- [221] The McDoualls' property is the first on the left as one enters Brenda Lawson Way. The property slopes quite steeply from the south to the north. There are two accesses into the property from Brenda Lawson Way (one at the higher southern end of the property and one into its lower, northern end. The McDoualls' home is two-storey, with living rooms and bedrooms at first floor level. There are clear views into the site of the proposed care facility building from the living room, bedrooms and the connecting stairwell. The McDoualls have developed an outdoor seating area and garden in the southern part of their property, between Brenda Lawson Way and the boundary with the applicant's site. There is a fence and planted hedge along the boundary with the applicant's site, and surrounding this outdoor living area, which provide a high level of privacy. Mr McDouall is a keen gardener and has developed attractive gardens on the upper and lower parts of the property. There are panoramic views from the upper floor rooms of the McDoualls' house to the west, north and northeast over the applicant's site and over Richmond.
- [222] There are large trees on the applicant's site near Hill Street currently. These are to be removed to create the building platform for the proposed care facility. From most parts of their property, inside the dwelling and outdoors, Mr and Mrs McDouall will have clear views to all of the east-facing parts of the proposed care facility. Their property adjoins a significant length of the eastern shared boundary with the applicant's site, giving it a 'front row' view of all three wings of the proposed building. The potential visual impact of this is illustrated in Ms Gavin's visual simulations Sheets 028, 029, 033 and 034. The closest part of

the proposed building will be the eastern end of the southern wing (approximately 15 m from the upper outdoor seating area). This part of the building will have sitting rooms nearest the boundary, on the ground and first floors, with windows but no doors or outdoor seating areas. The windows of the hospital ensuite rooms along the northern face of the proposed building will also be clearly visible from number 3 Brenda Lawson Way.

- [223] The eastern and northern faces of the central, single storey, dining rooms will also be clearly visible from the upper level and from the McDoualls' living areas. As will the northernmost end of the northern wing of the proposed care facility that contains serviced apartments above the ground level car park. Both levels of the northern wing will be visible from the McDoualls' house and upper garden.
- [224] As illustrated in Ms Gavin's visual simulations, the first floor eastern end of the southern (hospital care) wing will be a large presence in the view to the west from number 3 Brenda Lawson Way. The central (dining area) and northern (apartment) wings are designed to step down the slope and be benched into the slope. It is relevant to note that the proposed amendments presented by Ms Gavin to the resumed hearing mean the buildings will be approximately half a metre lower on the land. Mr McDouall acknowledged this height reduction but stated that he would have preferred greater reduction. Even with that slightly reduced height, the central and northern wings will take up much of the view of the hills to the west and we expect they will likely obscure the skyline in this view.
- [225] The applicant made the (correct) point that neither the RMA nor the TRMP protect views across private property, except where specific viewshafts are identified in the district plan. No such viewshaft is identified in the TRMP and we understood from Mr McDouall's evidence that he fully understands that. However, the proposed building would create a profound change to the views Mr and Mrs McDouall currently enjoy.
- [226] Mr McDouall considers that the nearest building (the eastern end of the southern hospital care wing) will visually dominate over his property. He described it as a '*towering structure*'. We agree that it will be a large building. However, it will be set to the southwest of number 3 Brenda Lawson Way and the applicant proposes to undertake landscape planting, including with large trees and dense planting, in the space between the shared boundary and the care facility building. Mr McDouall highlighted the fact that the applicant had proposed to plant 1.5 metre-high trees close to his boundary. The fence along the shared boundary is already 1.8 m (with a planted hedge above that) and Mr McDouall's point is that planting of the order of 1.5 m height will add no mitigation value. Mr McDouall suggested that, for the scale of building proposed, a more generous approach to landscape planting is needed.
- [227] In response to this point, the applicant has proposed that the planting nearest to the McDoualls' property (on the sloping bank) would be 1.5 m to 3 m high, then '*a significant number of trees*' up to 6 m in height would be planted within 4 m of the shared boundary (similar to that shown in Ms Gavin's visual simulation Sheets 028 and 029). In addition, the applicant proposes to plant trees up to 8 m at maturity within the balance of the space

between the shared boundary and the eastern wall of the care facility building. This intention is not shown on the Master Plan, but is captured in the suggested conditions agreed between the applicant and the Council following the resumed hearing.

- [228] We take Mr McDouall's point: the proposed building is large and warrants landscape planting involving large trees. Mr McDouall accepted that it would take some time for any trees planted (particularly large ones) to reach a significant height. Ms Gavin confirmed that the trees depicted in her visual simulations were shown at their height after 5 years of growth and she had assumed that shrubs would be PB8 and trees PB45 at the time of planting. Ms Gavin also stated in evidence that there is potential for some of the landscape planting to be undertaken as soon as the earthworks to reshape the site and create the building foundation are complete.
- [229] Mr McDouall also raised concerns about the potential for people using the outdoor terrace areas adjacent to the central dining facility to disturb or intrude on the privacy enjoyed on his property. Our expectation is that the landscape planting proposed in the space between the shared boundary and this dining facility will largely obscure views to and from these outdoor terrace areas. These outdoor terraces are, also, proposed to be set back from the boundary further than the width of the McDouall property. The applicant confirmed at the hearing that the dining facility is strictly for residents and their guests (in the way of most retirement complexes) and is not a dining venue open to the public. We do not anticipate that the presence of, or use of, the proposed dining facility or the associated outdoor terraces will diminish the privacy enjoyed on the McDouall property to any greater extent than would 'standard' residential development of the site (which we note could occur closer to the boundary, including at second storey level).
- [230] Once the landscape planting recommended by Ms Gavin is established (and even before it is fully mature), we expect that this in combination with the existing fence and hedge will mitigate the potential visual dominance effects of the proposed southern wing. Obviously, the earlier the dense planting and trees over 6 m can be planted, the sooner that mitigation would be achieved. However, we acknowledge that depending on the timing of construction of the care facility, there would be a time gap during which the building would be potentially obvious in the views to the west from the McDoualls' property. Having said that, we do not consider the proposed building shown in the Weir Architecture plans and Ms Gavin's visual simulations to be architecturally incompatible with this residential location. It has elements of residential form and scale along its elevations. Although it is large, our view is that it will maintain and not detract from the residential character or architectural quality of this neighbourhood.
- [231] Our conclusion is that the acknowledged visual effects on the amenity values and outlook of number 3 Brenda Lawson Way can be mitigated by the landscape planting and design measures the applicant proposes.

5 Brenda Lawson Way

- [232] Mr Tegan Goodman and Ms Angela Lukacs and their family live at number 5 Brenda Lawson Way. The dwelling on their property is at an elevation lower than the land on which the proposed care facility is to be built. The applicant's site slopes steeply up immediately adjacent to the shared boundary towards the water storage pond and Mr Goodman's and Ms Lukacs' single storey dwelling is located very close to the shared boundary. Mr Goodman's and Ms Lukacs' primary concern is about the significant loss of residential character and the severe impact on their privacy and lifestyle they consider the proposed care facility will cause.
- [233] Mr Goodman stated, in his written evidence to the hearing, that the proposed building would be an approximately 108 metre-long block building which towers over his property and that its 10 m height would tower over neighbouring properties. Mr Goodman considers that Olive Estate has put its interests ahead of the interests of neighbours.
- [234] It is relevant to note that number 5 Brenda Lawson Way is a rear section that gets its access by way of a driveway from Brenda Lawson Way, and that the proposed care facility will be clearly visible on the road approach and when entering the driveway.
- [235] Although Mr Goodman described the proposed building as being 10 m in height, the proposal is that the parts of the proposed building closest to his boundary will comply with the maximum 7.5m height and the daylight envelope requirements of the TRMP. The only portion of the proposed building that is above the maximum permitted height is the 10 m high 'Crow's Nest' near Hill Street. We expect this part of the building would be largely (or completely) obscured from view from Mr Goodman's property by other parts of the care facility that comply with the maximum 7.5 m height and by proposed landscape planting (once that is established). Mr Goodman and Ms Lukacs' submission referred to a three-storey villa adjacent to their property. The nearest proposed building would be two-storeys and it would be no higher than the 7.5 m TRMP height limit for this zone
- [236] Although the full extent of the care facility would be visible from Brenda Lawson Way and the driveway entrance, the portions of the proposed building visible from within the Goodman / Lukacs property would be the eastern ends of the three wings. The eastern end of the northern (apartment) wing would be most visible from the bedrooms and outdoor living area within number 5 Brenda Lawson Way, at a distance of approximately 19 metres from the shared boundary, and we note that this building will be two storey (the internal garage at ground floor with apartments at first floor). The central dining facility will read as a ground floor building from this perspective and will be at least 30 metres away (although the outdoor terraces will be approximately 25 metres from the southern corner of the Goodman / Lukacs house).
- [237] Mr Goodman presented a photograph taken from his outdoor living area, looking into the site. The photograph shows the white poles that Ms Gavin had erected on the applicant's site to denote the 7.5 m height and position of a theoretical permitted activity building. The

poles do not indicate the position of the nearest wall of the northern (apartment) wing. The proposed building would be set back more than twice the distance from the boundary shown by the poles in the photograph. Ms Gavin explained at the resumed hearing that the height of any building on the applicant's site would need to be measured from 'natural' ground level (i.e., the ground level that existed before construction of the raised walls of the water storage pond) and not from the top of the bank shown in Mr Goodman's photograph.

- [238] Mr Goodman's photograph is, though, instructive in illustrating the impact that ground slope, and differences in ground level, can make to building height and the potential impact that any permitted activity dwelling adjacent number 5 Brenda Lawson Way could have.
- [239] Mr Goodman was particularly concerned about tall trees adjacent to his boundary creating a dark backdrop to the view from his bedroom windows. Mr Goodman presented photographs at the hearing that show the blue sky view currently available from these windows. We appreciate that removal of the irrigation storage pond would mean a reshaping and lowering of the bank adjacent to number 5 Brenda Lawson Way. We also appreciate that any (permitted activity) fence or garden on even a lower bank adjacent to number 5 Brenda Lawson Way could block light from those windows. The applicant has proposed landscape planting conditions that would see the planting of trees up to 6 m in height on the bank immediately adjacent to the Goodman / Lukacs dwelling and within 4 m of that boundary.
- [240] A 6.0 metre-high tree would be approximately 4 metres higher than the proposed 1.8 metre-high fence along that boundary. According to the cross section supplied with Ms Gavin's supplementary evidence (the Canopy Sheet 08 dated 30 March 2021) a 6 metre-high tree would need to be located at least approximately 4 m from the boundary to avoid blocking daylight. There appears to be scope, within the generous space available between the Goodman / Lukacs boundary and the proposed building, to incorporate lower growing plants near the shared boundary, with taller trees further away. That may address Mr Goodman's concern about the adverse impact of planting.
- [241] We do not consider that the proposed buildings, at the distances from the shared boundary and at the heights proposed, will have adverse effects on the privacy or outlook from number 5 Brenda Lawson Way any greater than a 'standard' residential development. The applicant proposes no residential development at ground floor nearest this boundary. A 'standard' residential dwelling would likely incorporate outdoor living area(s) immediately adjacent to the boundary. Permitted activity two-storey residential dwellings could have outdoor balconies at first floor level nearer to the boundary than proposed. There are no balconies proposed at first floor on the eastern end of the nearest building. The first floor balconies are proposed on the north-facing and south-facing walls and only one or two are proposed (north-facing) at a distance that would have any potential to overlook number 5 Brenda Lawson Way.

2 Brenda Lawson Way

- [242] Mr and Mrs Leonard and Claire Davenport live at number 2 Brenda Lawson Way, on the opposite side of Brenda Lawson Way from the McDouall property. Their house is a two-storey building and the kitchen and living areas are on the first floor level, with panoramic views to the north and west, including over the applicant's site. The nearest part of the proposed care facility is the southern (hospital care) wing which will be approximately 30 metres from the Davenports' property. All three wings of the proposed care facility will be clearly visible from the first floor living areas of the Davenports' home.
- [243] Mr and Mrs Davenport lodged a submission opposing the application, including for reasons of the bulk, scale and continuous façade of the proposed building and the height exceedance of the proposed 'Crow's Nest'. Mrs Davenport is concerned that the proposed 'Crow's Nest' will appear as a lighted beacon at night, at odds with the residential character of the neighbourhood. Our expectation is that the landscape planting the applicant proposes will (when mature) moderate the view of the ground floors of the proposed building but that most of the first floors of the three wings will remain visible in the view from the Davenports' living areas. However, we do not consider that visual effect will be any greater than for a 'standard' residential development of this site, viewed at this distance.
- [244] The Davenports are fortunate in having a wide panoramic view from their home, including to mountain ranges to the west over the roof of the McDoualls' house at 3 Brenda Lawson Way and over the site. Ms Gavin's visual simulations Sheets 032 – 035 show that the lowered height of the care facility would retain parts of the view to the west to the mountain ranges (above the roof of the proposed building), potentially of a greater extent than if the site were developed for multi-unit housing. We note that the Davenports also have the benefit of alternative views to the north over Richmond. We agree with Ms Gavin's assessment of visual effects on the Davenport property.
- [245] We do not consider the height of the 'Crow's Nest' will have any particular adverse effects on the Davenports' residential amenity values. Being able to see a building is not of itself an adverse effect and our view is that the proposed 'Crow's Nest' is sufficiently distant from the Davenport property that effects will be minor or less than minor, including at night, and barely discernible compared with the placement of windows in a compliant 7.5-metre-high residential dwelling.

Other Brenda Lawson Way properties

- [246] Submissions were also lodged by the residents of numbers 6, 8 and 10 Brenda Lawson Way and we heard evidence from some of those residents at the hearing. They shared the concerns expressed by other residents of Brenda Lawson Way about the height, bulk and potential adverse effects of the proposed care facility on the residential amenity values and residential character of the neighbourhood. Our view is that these properties, being further distant from the proposed care facility, will experience less (and in some cases no) adverse

visual effects and our conclusion is as explained earlier: that the proposed care facility will not detract from the residential character of this neighbourhood.

27 Transport connections and traffic safety

- [247] One of the reasons consent is required is that the width and geometry of the proposed Fairrose Drive extension does not completely comply with the minimum TRMP standards. However, the Council and the applicant agree that the proposed narrower road width is appropriate. The Council and the applicant also agree that the Fairrose Drive extension should be a continuous link to Hill Street (not the cul-de-sac configuration shown on the TRMP map). They also agree on the location of the intersection of Fairrose Drive extension and Hill Street. The Council has recommended that all of the proposed access roads within the Olive Estate development be vested as public roads (whereas the applicant proposes that, with the exception of Lot 9, they be private roads).
- [248] Submitters raised concerns about the potential impact on road safety of introducing more traffic onto Hill Street, particularly given what they described as its narrow width when cars are parked kerbside. They also highlighted a particular problem of sunstrike for northbound traffic along Hill Street on winter mornings. Concerns were also raised about the safety of the proposed intersection between the Fairrose Drive extension and Hill Street.
- [249] There was no dispute at the hearing that the proposal provides sufficient on-site carparking for the proposed activities, although we note that some submitters did request that we impose a condition preventing staff of the proposed care facility from parking kerbside along Hill Street.

Road geometry

- [250] Mr Gary Clark is a consultant Chartered Professional Engineer who undertook the road design and traffic impact assessment for the applicant and presented evidence in support of the proposed roading, vehicle servicing and car parking configuration. Mr Clark was previously employed by the Council as a Roading Engineer. Mr Dugald Ley is the Council's Development Engineer who assessed the traffic implications of the proposal in a memorandum to Ms Lancashire (Ms Rose) dated November 2020. Mr Ley's memorandum records that a number of pre-application discussions were held about the Fairrose Drive extension and road design, and that agreement had been reached on design. Notwithstanding the two cul-de-sac 'indicative roads' shown on the TRMP (Figure 4 of this decision), Mr Ley's memorandum records that the Council's current preference is to have a continuous link road connecting Fairrose Drive with Hill Street.
- [251] Fairrose Drive is classified as a 'Sub-Collector' road in the Council's roading hierarchy. Mr Ley's memorandum states that Council has refined its road design standards since the earlier stages of Olive Estate, acknowledging the slower speed environment now expected in residential areas. Mr Clark and Mr Ley agree that an appropriate standard of formation for

the Fairose Drive extension is a 6m sealed carriageway, dual cycling and vehicle use of the vehicle lanes, parallel kerbside parking, widened berms adjoining road intersections and footpaths along both sides (one of 1.4 m and one of 2.5 m). These parameters match those of the earlier section of Fairose Drive and Mr Ley agrees they create an appropriate speed and safety environment. The applicant also proposes to plant street trees within the road berm. There are no matters in dispute between the applicant and Council in terms of proposed road geometry. We note, for completeness that the proposed Fairose Drive geometry complies with the standards of the 2019 *Nelson Tasman Land Development Manual*, which do not strictly apply to the proposal because it was lodged before they came into effect through TRMP rules.

Legal road width

- [252] Mr Ley's recommendation is that the Fairose Drive extension have a vested legal road width of no less than 19 m. The applicant proposes a vested legal road corridor of sufficient width to contain all of the agreed features and proposed a condition to this effect (proposed condition 6 (f) of the draft conditions presented by the applicant on Day 3 of the hearing). The Council does not agree with this condition, but no reason was given by the Council for its opposition. Our view is that the applicant's suggested conditions is sufficient and sensible. It isn't clear why the Council would want to take possession of (or maintain) more legal road than is necessary to accommodate the road it will control.

Car parking in front of garages

- [253] Mr Ley identified a potential issue, for a narrower road corridor as proposed for Fairose Drive, that the proximity of garage doors to footpaths and the road can create situations of vehicles parked over the footpath. Where this occurs, it forces pedestrians and people using mobility scooters or wheelchairs onto the road and creates potential conflict with vehicle traffic. The TRMP minimum setback requirement is 5.5 m from garage door to legal road boundary. Mr Clark's evidence was that the issue is the need for a 5.5 m setback from the garage door to the back of the footpath (not the legal road boundary). The applicant has proposed a condition that captures Mr Clark's recommendation. We agree that Mr Clark's recommendation is appropriate to the low speed environment proposed.

Additional traffic on Hill Street and road safety

- [254] The Council supports, and wants, a link road connecting Fairose Drive and Hill Street. That connection will introduce more through traffic onto Hill Street. Mr Ley and Mr Clark agree that Hill Street has capacity, as an arterial road, to accommodate the additional traffic generated by the proposed care facility and by the introduction of the Fairose Drive extension.
- [255] Mr Ley's memorandum records that Hill Street was re-constructed in 2002 with a 9 m kerb-to-kerb carriageway width that met the applicable engineering standards at the time

(providing for 2.75 m wide vehicle lanes and 2.75 m wide kerbside parking lane). His memorandum acknowledges that the Hill Street road width would not meet current (*Nelson Tasman Land Development Manual 2019*) standards, which include wider traffic lanes, wider car parking widths and cycle lanes. However, he noted that the road width does help to control speeds which he considers an advantage along this section of straight road with long view shafts that would otherwise encourage increased vehicle speeds. Mr Ley also stated that the provision of a right turn bay (discussed below) and no stopping lines on Hill Street may alleviate some concerns about lane widths and conflict with parked cars.

[256] Mr Clark included in his statement of evidence a summary of Hill Street traffic crash data that had not been available at the time he prepared his traffic assessment of the proposal. Five incidents were reported between December 2019 and June 2020:

- a. Two were non-injury incidents immediately south of Lorimer Lane (approximately 900 metres further north along Hill Street): one involved a nose-to-tail collision caused by a southbound driver stopping suddenly to avoid a cat crossing the road; the other involved a northbound driver colliding with the wing mirror of a parked car;
- b. One was a non-injury incident opposite Resolution Place (approximately 420 metres further north along Hill Street) involving a driver who fell asleep and collided with a parked vehicle;
- c. One minor injury incident on 22 June 2020 near Pioneer Heights (approximately 270 metres further north along Hill Street) involving a northbound car colliding with a parked truck in the process of unloading a flagged oversized load; and
- d. One minor injury on the same day (22 June 2020) opposite Hillplough Heights involving a northbound van colliding with a parked trailer due to sunstrike.

[257] Some submitters also highlighted this last incident and recounted their personal experience of the difficulty that sunstrike can cause when travelling north along Hill Street.

[258] Mr Clark's evidence acknowledged an increase in traffic flows along Hill Street as a result of development in the Richmond South area. Development in the Richmond South area (including on the 'Hill Street Block') is planned under the TRMP and Hill Street is an arterial route intended to serve the area. Mr Clark's analysis was that some other factors on the wider road network are potentially leading to an emerging safety issue along Hill Street. Mr Clark acknowledged that the proposed development would increase traffic along Hill Street, consistent with the intended TRMP zoning and arterial status of Hill Street. Mr Clark also stated in his evidence that it would appear the time may have come for better parking management along Hill Street. He also noted that the Hill Street operating speed is higher than the posted speed limit and that this needs to be considered. He recommended that the increase in traffic on Hill Street, the increased presence of parked vehicles on both sides of Hill Street and its narrow width should be addressed by the Council but neither he nor Mr Ley considered these issues warrant refusal of consent to the proposed development.

- [259] Some submitters were concerned that the proposed care facility would increase traffic movements, via Fairrose Drive, on Hill Street. It is relevant to note that the Council has already granted consent to a larger care facility within Olive Estate. It is reasonable to expect at least some of the traffic to the consented care facility would use the Fairrose Drive connection and Hill Street. To some degree, additional traffic generated by a care facility within Olive Estate, using Hill Street, is already an authorised part of the existing environment.
- [260] Mr Clark's evidence was that, while the proposed development would increase traffic along Hill Street, he expects it will be noticeably less traffic than from a standard residential subdivision of this site. That is because retirement villages generate less traffic than typical residential developments. It was his opinion that the proposed development, including the proposed care facility, would generate less traffic than a standard residential subdivision. It was Mr Clark's evidence that the issues he identified for Hill Street need to be addressed but that they are unrelated to the proposed Olive Estate development. He recommended a suite of measures including a parking management plan, a roundabout at the Queen Street intersection and speed calming measures along Hill Street. In his oral evidence to the hearing, Mr Ley acknowledged the emerging issues for Hill Street but did not alter his support for the proposal.
- [261] We accept Mr Clark's expert evidence that the proposed Olive Estate development will place less pressure on the surrounding road network, including Hill Street, than would a standard residential subdivision of this site. Hill Street is an arterial road and should be capable of absorbing the additional traffic introduced by this proposal. The road controlling authority, not the applicant, is responsible for addressing the emerging traffic safety issues to ensure that Hill Street is capable of safely performing its arterial road function. The interventions Mr Clark recommended are not actions the applicant could implement in any event. The applicant cannot resolve the problems associated with sunstrike that already exist. The Council, however, could adjust the speed and parking environment to minimise the risks of collision. We must leave those matters for Mr Ley and the Council to consider and implement if or when they see fit. The only road improvement we consider the applicant should be expected to take responsibility for is the installation of a right turn bay for southbound traffic on Hill Street (discussed next).

Hill Street right turn bay

- [262] The application plans proposed a right turn bay for southbound traffic along Hill Street at the intersection of Hill Street and Fairrose Drive. This would accommodate traffic turning right, from Hill Street, into Fairrose Drive. Mr Clark explained in his evidence that this should have been removed from the plans prior to lodgement. It was his view that the right turn bay is not warranted by the anticipated Hill Street traffic flows. He also noted that the only other right turn bay along Hill Street is at the Williams Street intersection, which is a busy intersection that connects Hill Street to Salisbury Road and provides access to schools.

- [263] Mr Ley favours installation of the right turn bay. It was his evidence that such a right turn bay would be required for any application for a link road connection to Hill Street in this location. He also noted that the applicant was required to install a right turn bay onto Wensley Road as a condition of consent for the earlier Olive Estate development. Mr Ley noted that the installation of a right turn bay may necessitate the installation of no-stopping lines along parts of Hill Street but that this is unlikely to adversely affect much kerb-side parking.
- [264] Although the applicant changed its stance on provision during the hearing (first it was proposed, then it was withdrawn) the applicant, ultimately, proposed a condition (agreed by the Council) requiring installation of a right turn bay at the applicant's expense. Mr Clark's evidence was that its installation would benefit visitors to the proposed care facility and all road users. He described the benefits as including the separated turning facility, potential speed reduction (due to the turn bay visually narrowing the road) and better management of the road space within this arterial road. We support the agreed position reached between the Council and the applicant that a right turn bay should be installed, at the applicant's expense, at the time the Fairose Drive extension is constructed to intersect with Hill Street. We note that the applicant was concerned that the Council might require construction of a raised median dividing the turning bay from vehicle lanes. The Council has agreed (in the note to the suggested condition also agreed between the Council and applicant) that a painted turning bay will be sufficient. That is the basis on which we are prepared to impose such a condition.

Vested or private roads within Olive Estate

- [265] Mr Ley included in his November 2020 memorandum to Ms Lancashire (Ms Rose) an aerial photograph overlain with the alignment of the Langdale Drive extension that has been constructed through Olive Estate (the pink alignment in Figure 5 below), connecting with Fairose Drive, and the 'indicative road' alignment that was originally intended for this road extension (the green alignment in Figure 5 below):



Figure 5 Langdale Drive actual and 'indicative' alignments

- [266] Mr Ley commented, in his memorandum, that *'the applicant has chosen to extend / lengthen Langdale Drive.....as compared to the indicative road alignment shown on the TRMP planning maps.....which will increase time and travel cost and encourage adjacent Fairrose Rd traffic to access their properties by either Hill Street or Hart Road.'* This may be the reason why the Council has recommended that the private roads, and particularly Iris Drive, within the Olive Estate extension be vested as public roads. Doing so would provide a supplementary connection (short-cut) between Fairrose Drive and Langdale Drive.
- [267] However, Langdale Drive is now part of the existing environment and the Council has not, since its construction, altered the pattern of 'indicative roads' shown on the TRMP to add a connection between Langdale Drive and Fairrose Drive. As we see it, the Council has no basis for requiring the vesting of additional connecting roads. The applicant's subdivision plan shows only the proposed Lot 9 Fairrose Drive extension. The applicant opposes the vesting of Iris Drive as a public road. We expect that the logic of Ms Rose's argument about the 'indicative reserve' (paragraph 14.2 of her s 42A report) applies equally to this issue: that there is a question over whether the Council can impose a condition requiring the vesting of land that an applicant has not proposed as part of its subdivision design.
- [268] The applicant has implemented the TRMP 'indicative road' layout intended to provide key road connections, in building the Langdale Drive extension and in proposing the Fairrose

Drive extension. There will be two vested public roads through the Olive Estate residential area providing through connections for the surrounding area (Langdale Drive and Fairrose Drive). The applicant proposes an internal roading layout for Olive Estate that will ensure residents are able to efficiently and conveniently achieve vehicle and footpath connection to the Council's public roads. The applicant also proposes to maintain those internal Olive Estate roads in perpetuity at its own cost. We do not consider the vesting of Iris Drive, or any of the proposed private road connections within the proposed development, is required.

Finding - Transport connections and traffic safety

- [269] We are satisfied that, with subject to the conditions we propose, there will be no residual adverse transport or traffic safety effects. There are some acknowledged shortcomings in the geometry of Hill Street which the applicant is unable to address (they are the responsibility of the road controlling authority).

28 Fairrose Drive vehicle headlights

- [270] Headlight sweep is a potential issue for this application because the location of the proposed intersection of Fairrose Drive extension and Hill Street differs from that shown on the TRMP map. The 'indicative road' proposed by the TRMP intersects with Hill Street approximately opposite number 373 Hill Street, and closer to Brenda Lawson Way than the alignment proposed by the applicant. The applicant's proposed road (Lot 9) intersects with Hill Street approximately opposite number 5 Hillplough Heights. The south western boundary of proposed Lot 9 aligns approximately with the boundary between numbers 3 and 5 Hillplough Heights (as shown on Attachment A, Sheet 3, of the plan set attached to Ms Gavin's supplementary evidence dated 30 March 2021). In plan view at least, the headlights of vehicles exiting Fairrose Drive onto Hill Street would be directed at number 5 Hillplough Heights and the headlights of vehicles turning right would sweep across the front of number 3 Hillplough Heights.
- [271] Mr Jeffrey Billington, a submitter who lives at number 3 Hillplough Heights, raised a concern in his submission about the potential for vehicle headlights along Fairrose Drive to shine directly into or sweep across his property at night and cause disruption. Mr Billington stated at the hearing that his partner suffers a medical condition that means any such night light sweep or glare would be particularly problematic.
- [272] Mr Roy Medlicott and Jeanette Swift, submitters who live at number 5 Hillplough Heights, also raised concern about potential headlights shining directly into their and adjoining properties, due to the elevation change as Fairrose Drive approaches Hill Street.
- [273] In his written statement of evidence, Mr Clark considered the potential for headlight glare affecting number 3 Hillplough Heights but did not specifically consider potential effects on number 5 Hillplough Heights. Mr Clark's oral evidence to the hearing was that vehicles exiting Fairrose Drive extension would be to the right and north of Mr Billington's property

and out of range of headlights. He also noted that Mr Billington's house is well back from the Hill Street road boundary and on land that is elevated above Hill Street by approximately 3 m. Mr Clark also stated that there would be a street light at the proposed intersection which would reduce the effect of headlight glare.

- [274] Mr Billington was particularly concerned that the land within the site, where the road is proposed to join Hill Street slopes away from Hill Street. His expectation is that this will mean that vehicles will be on a slope as they approach Hill Street and that this will mean their headlights are pointing up and onto the properties on the opposite side of Hill Street. He had tested his theory at night using a torch and this confirmed for him the potential for this to be an adverse effect.
- [275] The relative elevations of the proposed road and the building platforms of numbers 3 and 5 Hillplough Heights are illustrated in the photographic simulations (Sheets 10, 11 and 12 showing the outlook from number 3 Hillplough Heights and Sheets 15, 16, 17 and 19 showing the outlook from number 5 Hillplough Heights). We have visited both properties. The contours on Ms Gavin's Attachment A, Sheet 3, show the approximate 3 m elevation difference between the building platforms of these houses and Hill Street which is also apparent in the photographic simulations.
- [276] In answer to our questions, Mr Ley explained that although the land within the site falls away from Hill Street currently, the future road connection will level out as it approaches the Hill Street intersection and this will mean that vehicle headlights will be directed at the bank *below* the houses on numbers 3 and 5 Hillplough Heights. The photographic simulations certainly show a relatively flat road approach to Hill Street. Mr Ley agreed that, as vehicles drive up the slope from within Olive Estate towards Hill Street, their headlights would be pointing up but noted that this effect would not occur within about 10 metres from the Hill Street intersection and that, at this distance, it should not create adverse effects for the houses on numbers 3 and 5 Hillplough Heights.
- [277] There is some vegetation growing along the top of the bank in front of numbers 3 and 5 Hillplough Heights, but much of this is low in height and not particularly dense. The vegetation would not obscure headlights shining directly into those properties. We understand Mr Clarke's reference to the street light at the intersection to mean that the street lighting will create a lighter background within which headlight sweep occurs, thereby reducing the net impact of the headlights (compared with, say, headlights appearing against a dark background). We note that there is an existing streetlight on Hill Street, opposite numbers 3 and 5 Hillplough Heights (as shown in the photographic simulations Sheets 09, 10, 11 and 12). Street lighting is already a feature of this locality.

Finding – Vehicle headlights

- [278] We accept the logic of Mr Ley's argument that, provided the Fairrose Drive road approach is flat, headlights will sweep below the building platforms on numbers 3 and 5 Hillplough

Heights. It would be reasonable to expect vehicle lights to be on 'dim' (not full) in this urban environment, so their sweep should be confined vertically. There may be some residual light, but the sweep of direct headlight glare should be expected to be onto the bank below the houses. However, we have not identified any plan in the application or the further information supplied or in evidence to the hearing that confirms definitively the level and gradient of the Fairrose Drive extension as it approaches Hill Street. In our view, to ensure that the effects of headlight glare and headlight sweep are avoided or minor, there would need to be a condition securing the road geometric design described by Mr Ley. That is, the design of the Fairrose Drive extension would need to demonstrate that the level of its approach to Hill Street is sufficiently flat to confine headlight glare and headlight sweep to no higher than the top of the bank below the houses on numbers 3 and 5 Hillplough Heights.

29 Construction effects

- [279] Some submitters raised concerns about the prospect that construction of the dwellings and the proposed care facility, involving such an extensive area and such a large care facility building, would occur over a protracted duration. This, they say, would mean they are subjected to earthmoving and construction activities over a potentially long period of time. Some submitters also raised questions about the potential for contaminated soil and dust to adversely affect them during construction. As earlier discussed, the soil in parts of the site is identified as having elevated concentrations of copper derived from the historical horticulture use.
- [280] Construction of the dwellings is planned to progress in stages, with road construction to match each stage (as reflected in the proposed staging plan 3.10). The zoning of the site means that it is inevitable there must be some period of construction to enable the development of residential dwellings there. Our view is that the proposed sizes of the individual stages of dwelling construction and the duration of the stages for construction of the dwellings (18 months each as stated in the applicant's closing legal submissions) is reasonable. Construction effects will be of different types within each construction timeline with earthworks, road building and site preparation creating potentially the more noticeable noise, dust and silt effects during the early part of each stage. However, this is likely to be commensurate with the nature, scale and intensity of any residential subdivision and development permitted by the TRMP for this site.
- [281] Earthworks for the care facility foundations are expected to take six months and construction of the building is expected to take two years³². The applicant has proposed conditions of consent that would require the preparation and implementation of a *Construction Management Plan* and a *Construction Traffic Management Plan* and a *Construction Noise and Vibration Management Plan*. The Council has agreed the wording of those suggested conditions with one exception. The exception is that, in suggested condition 29 (noise and vibration), the applicant proposes to *notify* people in the immediate

³² Paragraph 20 (page 7) of the applicant's closing legal submissions in reply.

surrounding area of the times and duration of particularly noise aspects of the construction. The Council recommends the condition require *consultation with* those persons.

- [282] Given the zoning of this site, any development of it would require a period of earthworks and building construction. Our view is that the six-month period proposed for earthworks to create the foundation platforms for the care facility appears reasonable and is commensurate with what might be required for any development of this part of the site. As explained to us at the hearing, by reference to the three-dimensional model, construction of the three separate 'wings' of the care facility would proceed separately, such that one complete wing would be constructed before moving onto the next. The north-eastern end of each of the three wings is located between 20 metres and 30 metres of the nearest houses in Brenda Lawson Way (numbers 2, 3 and 5). The lowest (northernmost) wing is located between approximately 12 metres and 25 metres of the nearest houses at 21 and 28 Fawdan Way. This means that the residents of numbers 2, 3 and 5 Brenda Lawson Way face the prospect of six months of earthworks followed by construction of large structures nearby, elevated above their properties, over a period of up to three years. For the residents of 21 and 28 Fawdan Way, the most significant construction activities will be the formation of foundations and the exterior structure of the northernmost wing. We expect that there will inevitably be some noise and disturbance for a period of time.
- [283] The *Construction Management Plan* and *Construction Noise Vibration Management Plan* proposed in the applicant's suggested conditions describe processes for advising the residents of 3 and 5 Brenda Lawson Way and 21 and 28 Fawdan Way of the expected start, timing and duration of work and for complaints about construction noise. There is no stated commitment to completing the construction works nearest these properties in the shortest practicable time. Our view is that this would be appropriate. Once the nearest parts of the building are closed in, we expect that the effects of construction of the further distant parts of the structures will be less noticeable for these residents.
- [284] We note the applicant's intention to undertake landscape planting on the slope adjacent to the Brenda Lawson Way and Fawdan Way properties to mitigate the visual impacts of the completed structures. For reasons explained earlier, our view is that this planting should commence as soon as site earthworks are completed for the care facility foundations. Undertaken early, this planting would also provide some visual mitigation or visual screening of construction activities, depending on the timing of construction of the individual wings. We accept that it may not be practicable to attempt to install a visual screen to completely obscure construction activities (and no submitter requested this). However, given the potentially long construction duration and the visibility of the construction activities from these nearest properties, our assessment is that some moderation of the visual impact of construction activities by undertaking early planting of the slope would assist and is warranted.
- [285] The applicant proposes to limit construction activities to weekdays and Saturdays (excluding Sundays, public holidays and the period 25 December to 10 January) and that daily work

hours be 7.00 am to 6.00 pm. That is reasonable, in our view, except that we consider a 7.00 am start on a Saturday morning to be unreasonable. Our view is that, given the planned three-year construction period, the nearest neighbours should expect some reprieve from construction activities near them until 9.00 am on a Saturday morning. We do not consider this will impair construction progress materially. It can be planned for and the restriction we envisage would only affect activities within a close distance (30 m) of adjoining properties. For example, it would mean that construction involving noisy machinery or activities within the northernmost wing could not start until 9.00 am on a Saturday morning. We do not consider that is unreasonable.

- [286] Except in the respects discussed above, we expect that the scope of the proposed construction management plans will be adequate to manage the potential noise effects of construction activities.
- [287] For residents of the properties opposite the site, along Hill Street, the earthworks and construction activities will be separated from them by a busy road, greater distance and the fact that the central and northernmost wings are to be built into the slope at a lower elevation relative to their houses. They will likely experience the part of the three-year construction period required for construction of the wing nearest Hill Street only. Our assessment is that the potential adverse noise and disturbance effects for the Hill Street properties will be less intensive and should be able to be moderated by implementation of the management plans proposed by the applicant.

Finding – Construction effects

- [288] We are satisfied that the actual and potential adverse effects of construction can be appropriately managed by the proposed management plans. Any material risks from the disturbance and movement of soil that is potentially contaminated with copper can be managed by implementing the measures and the contaminated soils management plan the applicant has proposed in suggested conditions. We note that the inherent risk to human health has been assessed as low in any event. The contamination investigation report³³ concluded that, based on soil sample analysis, any heavy metals present are at concentrations below the relevant NESCS standard for the protection of human health.

30 Construction vibration and risk to the structural integrity of houses on adjoining properties

- [289] This was an issue raised by the residents of numbers 3 and 5 Brenda Lawson Way and 21 Fawdan Way and the applicant responded to it at the hearing with supplementary evidence presented by Dr Jeremy Trevathan. Dr Trevathan has qualifications and over 15 years' experience in assessing both acoustics and construction vibration impacts. Dr Trevathan's evidence was that there is a relevant standard for establishing limits on

³³ Section 10 of the CLL Service and Solutions Ltd report *Detailed Site Investigation – Hill Street, Richmond* February 2018

construction vibration: the *German Industrial DIN 4150-3 (1999): Structural vibration – Part 3 Effects of vibration on structures*. Dr Trevathan’s evidence included a table specifying the maximum limits on vibration at different frequencies. For dwellings, the maximum recommended guideline value for vibration is 5mm/second at the frequency typical for construction (being 1 to 10 hertz). Dr Trevathan also stated that the threshold of human perception of vibration is less – between 0.14mm/s and 0.3mm/s.

- [290] Dr Trevathan described, in his supplementary statement, the typical vibration intensity likely to be experienced from different types of construction activity. For example, he said, a hydraulic rock breaker may generate vibration in the order of 4 mm/s at a distance of 5 metres, reducing to 1 mm/s at 20 metres distance. No bedrock is expected to be encountered on this site, so vibration from rock breaking is not anticipated. For example, a vibratory roller may generate vibration in the order of 8mm/s at a distance of 5 metres, reducing to 2 mm/s at 30 metres distance. Dr Trevathan stated that the building footprint of the care facility will require some vibratory roller work and that some of this may need to be within 10 to 20 metres of neighbouring dwellings. That appears realistic, based on our understanding of the plans. Dr Trevathan’s recommendation is that, if a vibratory roller is used as close as this to dwellings, a pre-construction and post-construction condition survey of those dwellings should be undertaken. He was specifically referring to the dwellings at numbers 3 and 5 Brenda Lawson Way and at numbers 21 and 28 Fawdan Way. The applicant has proposed a condition that captures that intention.
- [291] Another example Dr Trevathan gave was the vibration caused by excavators and trucks travelling over irregular surfaces, which he expects could generate vibration in the order of 2 mm/s at 5 metres, reduction to less than 0.5 mm/s at a distance of 20 metres. Dr Trevathan understood that the largest excavator expected to be used on site is a 20 tonne machine and that the vibration associated with this, and with the movement of trucks on site, would readily comply with the DIN 4150-3 (1999) limits and be generally imperceptible beyond the site boundary.
- [292] According to Dr Trevathan, the driving of piles could generate vibration in the order of 10 to 15 mm/s at a distance of 5 metres, reducing to 2 to 4 mm/s at 20 metres distance. However, this is very dependent on soil conditions and the impact energy of the pile driving hammer. He stated that rotary bored piling would generate lower vibration levels. Dr Trevathan stated that piling may be required under some parts of the proposed building but that the piling methodology is not currently known (and would be clarified during detailed design). Dr Trevathan’s evidence was that any practicable steps for minimising vibration associated with piling should be established through the development of a management plan. He also stated that *if driven piles are the only practicable option* in creating the building foundation within 20 m of the nearest dwellings, then pre-construction and post-construction condition surveys of those dwellings should be undertaken.
- [293] Mr McDouall (3 Brenda Lawson Way) observed at the hearing that the suggested condition does not indicate what remediation would occur if the post-construction survey identified

any damage attributable to vibration. Dr Trevathan's evidence implies that the risk of damage to Mr McDouall's house from vibration is low. For example, Mr McDouall's house is approximately 20 metres from the perimeter of the central wing or the southern wing of the proposed care facility where such vibratory rolling might occur. At that distance, Dr Trevathan's evidence is that the impact of a vibratory roller would be in the order of 2 mm/s. The risk is, however, potentially present for the dwellings at 5 Brenda Lawson Way and the two nearest Fawdan Way properties which could be within 10 m-20 m of any vibratory rolling, and potentially experience vibration from this activity at over 5mm/s. The dwellings at 5 Brenda Lawson Way and 28 Fawdan Way could also be within 10 to 20 metres of proposed piling at the perimeter of the proposed building, and therefore at risk of vibration from driven piling greater than 5 mm/s.

Finding – Construction vibration effects

- [294] We agree that there is a gap in the suggested condition as proposed by the applicant, in terms of 'next steps' if damage is identified. The suggested condition does not, either, reference the relevant German standard or require the *Construction Noise and Vibration Management Plan* to adopt construction methods that would generally *avoid* generating vibration in excess of 5 mm/s at the boundary wherever practicable. Neither does the suggested condition require the management plan to demonstrate how vibration will be managed to ensure it does not exceed 5 mm/s at the boundary generally, or how particular activities (such as vibratory rolling and piling) are to be managed to minimise the potential for damage. Our view is that avoidance of adverse vibration effects should be the aim, where there are practicable construction methods available and the consequences of adverse effects on people's homes are potentially severe. That does not mean that there should be an avoidance of vibration. Rather, that vibration should be managed (including by carefully managing particular construction methods or machines close to boundaries) explicitly to avoid the risk of damage to nearby dwellings.
- [295] We are satisfied (based on Dr Trevathan's evidence) that construction methods could be adopted and managed on this site that minimise the potential risk and avoid adverse consequences for neighbouring dwellings. We agree that pre-construction and post-construction condition surveys will be useful to demonstrate the success of the measures adopted and that it is reasonable for these neighbours to expect no less reassurance.

31 Overall conclusion and reasons

- [296] Having considered the application, the submissions, evidence and legal submissions, we conclude that granting consent to this proposal, subject to conditions, will give effect to the sustainable management purpose of the RMA and to the relevant objectives and policies of the TRMP.
- [297] The provision of appropriate homes and support facilities for people as they age is important. The proposed development will enable people to make their home within the

Olive Estate community, and within the Richmond community. It will enable people and the community to provide for their wellbeing, health and safety.

- [298] The site is an appropriate site for the intensity of residential development proposed and for the proposed care facility. We are satisfied that the amendments made to the proposal since it was lodged with the Council, and the conditions we propose, will appropriately mitigate and manage the actual and potential adverse effects of the proposed buildings and activities in a manner compatible with the character of the surrounding residential environment.
- [299] We have carefully examined the concerns of submitters and the evidence about the height, bulk and scale of the proposed care facility. We are satisfied that it can fit within this residential setting without adversely affecting the residential amenity values enjoyed on neighbouring residential properties in a way that would be contrary to the policy intention of the TRMP.
- [300] The absence of a vested public reserve in the location preferred by the Council is not a reason to decline consent to this proposal, based on the evidence we heard (including the Council's own evidence). The area of land that Olive Estate intends to make available for use by the public for recreation and as a walking route will contribute positively to the open space network of Richmond, in a manner consistent with all of the relevant policy documents.
- [301] The proposal is a high quality development and we expect it will become a valuable and attractive asset for the Richmond community as it develops.

32 Conditions

- [302] To give effect to our findings discussed earlier in this decision, we have made the following amendments to the conditions suggested by the applicant and Council:
- a. We have amended the general conditions in each consent to refer to the most recent plans and made other editorial amendments to improve the readability of some suggested conditions. We have also aligned the wording of conditions between consents that address the same or similar issues. We have deleted some advice notes that are unnecessary or repeat the content of the condition(s). We have also adjusted the description of the activities applied for in each attached set of conditions, to more accurately reflect the activities applied for.

In the conditions for land use consent RM190790:

- b. Condition 2 (Staging): We have replaced the advice note relating to staging in the version of suggested conditions attached to the s 42A report with the condition and advice note suggested by the applicant (slightly amended to make clearer the start point for counting the maximum periods).

- c. Condition 4 (Financial contributions): For the reasons earlier explained, we consider that the amount due for financial contributions should be reduced by the value of the land that is subject to the proposed easement in gross. We have adapted the suggestion made by the applicant and included in the condition a process by which an independent registered valuer can be selected by agreement between the applicant and Council. The process within the condition also provides time frames within which the Council must nominate three independent valuers, for this purpose, and an incentive to ensure that the Council does so. If the Council does not nominate three alternative registered valuers within 21 working days, the consent holder can provide its own valuation undertaken by an independent valuer. We consider 21 working days is a generous timeframe. The condition also stipulates that no reduction, remission or credit shall be due until the Council has evidence that the easement in gross has been registered.
- d. Conditions 8 and 9 (Maximum height of care facility building): Although condition 1 requires that all buildings be built 'in general accordance' with the plans supplied, we agree that condition 8 is appropriate. It requires that the care facility building be 'benched' into the land's slope. This aspect of the proposal was central to the applicant's evidence that this would result in the visual bulk of the building being reduced. Our view is that it is appropriate to specify this outcome as a condition. We have also included condition 9, which requires certification by a surveyor that the maximum height of the care facility building does not exceed the maximum heights shown on the plans referred to in condition 8. Our view is that, given the degree of contention over height at the hearing, this reassurance will be useful for all parties.
- e. Condition 11 (Finished appearance of the care facility building): The bulk and height of the proposed care facility building are shown in application plans. The purpose of the condition suggested by the applicant was to ensure the final detailed design of the building has elements of a residential building and good urban design. Colours and materials do not need to be recessive or dark but should be carefully chosen to be compatible with the surrounding residential environment (including the Olive Estate residential environment). We do not consider that a detailed design plan or certification by the Council are required. The condition we have imposed requires the applicant to prepare exterior elevations, rendered in sufficient detail to show the architecture and type of materials to be used, to demonstrate how the building will incorporate elements of residential building and be integrated with the architectural quality of the balance of the Olive Estate built environment. The condition also requires the care facility building to be constructed in the manner shown in the elevations supplied. The Council's compliance role is to certify that the elevations and supporting commentary are provided and that they address the matters listed (not to assess whether the finished appearance of the building is to the Council's taste).
- f. Condition 12 (Detailed Landscape Plan): We have listed the relevant application plans the DLP is to give effect to. For each of the objectives we have clarified that the objective is to be achieved 'by' the actions listed. There may be other planting or

landscape treatment the applicant wishes to include in the DLP but the listed matters are all that is required to achieve compliance with the condition.

- g. In the Fawdan Way and Brenda Lawson Way objectives (a) and (b), we have inserted a requirement that the fencing be close-boarded or similar visually impermeable fencing.
- h. In the Brenda Lawson Way objectives (b), for the reasons we earlier discussed, we consider that the objectives for the boundary with number 5 Brenda Lawson Way should be nuanced slightly to prevent the planting of trees up to 6 m in height on the bank immediately adjacent to the Goodman / Lukacs dwelling and within 4 m of that boundary. If the width of land dedicated to low-growing plants is specified as 4.0 metres, it will also, in our view be sufficiently wide to achieve the depth of planting shown in Ms Gavin's visual simulations. We have also adjusted the wording of sub-clause (b) (iii) to specify that the planting of small trees should be set back beyond the 4 metre-wide lower growing shrub, flax and native grass planting immediately adjacent to the fence between Olive Estate and number 5 Brenda Lawson Way.
- i. The outlook from the McDouall property and dwelling (number 3 Brenda Lawson Way) is quite different from the outlook from number 5 Brenda Lawson Way. We understood from his evidence that Mr McDouall would prefer taller trees close to his boundary to achieve visual screening. There are already taller trees close within the Olive Estate land close to this boundary. As earlier noted, there is already a fence along the boundaries of numbers 3 and 5 Brenda Lawson Way and that Mr and Mrs McDouall are successfully growing a hedge higher than, and supported by, the fence there. We expect Mr and Mrs McDouall may prefer to retain the fence and the additional height provided by the hedge, and to avoid damaging that by replacing that fence. That option should remain open to these residents in our view.
- j. We also have some discomfort with the expression 'a significant number of trees' in objective (b) (iii) because it is imprecise. Ms Gavin's visual simulations show these small trees planted densely and our view is that this seems to be the key to providing effective screening). We have adjusted the wording of (b) (iii) to reflect this intention.
- k. We have also inserted into the objectives for Brenda Lawson Way and Fawdan Way a requirement to commence the landscape planting within the first planting season following completion of the earthworks to create the building platforms of the buildings near these boundaries, consistent with Ms Gavin's evidence on this point, to achieve the visual mitigation as early as practicable.
- l. Conditions 16 and 17 (Operational noise): We have deleted the reference to a future resource consent that may authorise exceedance of the specified noise limits. That would require a consent, in any event, and (if successful) would supersede this consent so the words are not necessary.

- m. Condition 28 (Vibration): For the reasons earlier explained, we consider that the Construction Noise and Vibration Management Plan (CNVMP) should explicitly state the methods that are proposed to avoid vibration in excess of the relevant German DIN Standard in the first instance. Where it is not practicable to avoid vibration in excess of that standard, the CNVMP should detail how construction activities are to be managed to avoid vibration causing damage to buildings on adjoining properties. We have included all buildings in the conditions (not just dwellings). We have also tightened up the process by which the applicant should undertake and advise the potentially affected neighbours of the pre-construction and post-construction building condition surveys.
- n. Condition 44 (Road geometry specifications): We have inserted a requirement that the design of the Lot 9 road approach to Hill Street ensure that car headlights do not sweep higher than the top of the bank adjacent to numbers 3 and 5 Hillplough Heights.
- o. Condition 45 (Construction of Fairrose Drive extension two stages): No reason was presented to the hearing why Fairrose Drive could not be built in two stages. It seems reasonable to us and we have refined the wording of the condition to make it clearer what each stage would comprise.
- p. Condition 50 (Easement in gross): We have simplified the wording suggested by the applicant, by deleting the reference to control and ownership remaining with the consent holder. The inherent feature of the easement in gross is that ownership remains with the landowner. Clause 3 of Schedule A of the easement specifies that control and management are reserved to the grantor (the landowner). It is not necessary to duplicate that in the condition. Due to the absence of any appetite by the Council for it, we have deleted the applicant's proposed condition requiring an Open Space Management Plan for the land subject to the easement in gross.
- q. Deleted condition 53 (Rights of way over private roads): for the reasons earlier explained, we have not imposed a condition requiring that the internal Olive Estate private roads vest as public roads.

In the conditions for subdivision consent RM190789:

- r. Condition 1 (General): For consistency between consents, we have inserted the wording of the clause about discrepancies and conflicts used in the conditions of RM190790.
- s. Condition 2 (Easements): We have clarified that the land to which the condition relates is Lots 1 to 9 shown on the Verrall & Partners Ltd subdivision plan 12039-6 dated June 2019.
- t. Condition 3 (Valuation of easement in gross for public access): We have not included the wording suggested by the applicant about valuation of the land subject to the easement in gross in this condition. Instead, we have included a process for valuation of

that land in Condition 4 of RM190790 where it is relevant to the assessment of financial contributions payable.

- u. Condition 5 (Road to vest): We have replicated the specification of road formation and legal width from condition 44 of RM190790. We have also replicated the wording of condition 45 of RM190790 relating to staging of construction of Lot 9.
- v. Condition 8 (Landscaping of Lot 9): We have replicated Condition 48 of RM190790.
- w. Deleted Condition 9A (Service conduits): We have deleted the condition included because no evidence was presented to the hearing demonstrating the need for this condition. The condition refers to installation of conduits in a 'main road' which is not specified. In any event, the installation of conduits in a public road, once vested, will be subject to the separate requirements of the road controlling authority and the subdivision consent should not interfere with that.
- x. Condition 9 (Hill street right turn bay): We have replicated condition 49 of RM190790.

In the conditions for land use consent RM190791 (bulk earthworks):

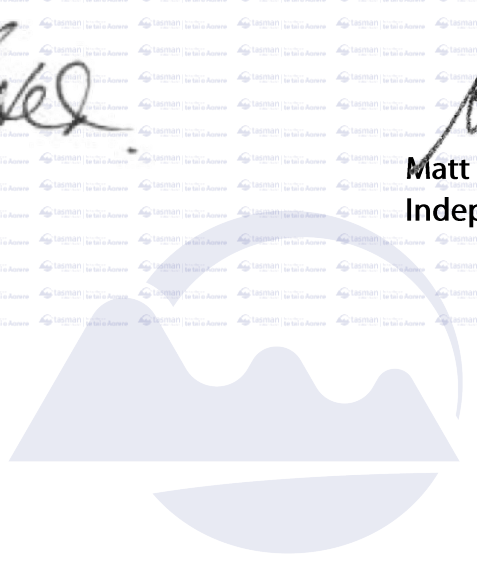
- y. Condition 13 (Construction management): We have aligned the requirements of the Construction Management Plan, the Construction Traffic Management Plan and the Construction Noise and Vibration Management Plan required under this condition with Conditions 28 to 36 of RM190790. That is necessary, in our view to ensure consistency of mitigation measures across all proposed activities, including the bulk earthworks.


In the conditions for water permit RM191308:


- z. Condition 6 (Consent expiry): We note that this condition was highlighted as not agreed between the applicant and the Council. The suggested conditions presented to the resumed hearing proposed that the consent would expire one month after the commencement of dewatering the irrigation storage pond. The version of the suggested conditions attached to the applicant's closing legal submissions suggests that the condition be amended to provide for a longer period, if necessary due to unforeseen circumstances. That seems reasonable. The volume of the irrigation storage pond is limited, and relatively small, so the time required to dewater it should be relatively short, even if extended beyond one month.

33 Grant of consent

[303] In accordance with the authority delegated to us by Tasman District Council and pursuant to sections 104B, 104C, 108, 127 (in respect of RM120928V2) and 220 (in respect of RM190789) of the Resource Management Act 1991, consent is **GRANTED** to land use consents numbered RM120928V2, RM190790 and RM190791, subdivision consent RM190789 and water permit RM191308, subject to the conditions detailed in Attachments B, C, D, E and F to this decision and for the reasons summarised in sections 31 and 32 of this decision.




Christine Foster
Chairperson


Matt Riley
Independent Commissioner

24 June 2021

34 Minor corrections

[304] Under section 133A of the RMA:

A consent authority that grants a resource consent may, within 20 working days of the grant, issue an amended consent that corrects minor mistakes or defects in the consent.

[305] The minor mistakes or defects in the resource consents as issued 24 June 2021, and the relevant correction method are identified below.

Consent variation RM120929V2

[306] To improve clarity, consequential amendments to conditions rendered redundant by the deletion of the care facility building have occurred. These are deletion of conditions to 8 to 16 (and any associated advice notes) inclusive, and the reference to the care facility building in condition 6 (maximum heights).

[307] To avoid the potential defect of confusion arising from the bundling of consents / interplay with resource consents RM190790 and others, the approved plans RM190190 A1 to A4 explicitly referenced in condition 1 are now attached for reference as appendix One, with the reference to their appending added to condition 1.

[308] For comprehensiveness, as the consent authority is providing the full replacement RM12092V2 consent documentation alongside these minor corrections, the note in respect of replacement documentation is updated to reference their contemporaneous availability.

Subdivision consent RM190789

[309] For consistency and clarity across the bundle of resource consents, condition 3 is amended to reference the form of the easement in gross as provided by the Applicant, and a copy is appended to the documentation as Appendix One. This aligns with the wording in condition 50 of land use consent RM190790.

[310] Condition numbering is corrected, having gone awry in conversion between digital file formats

Land use consent RM190790

[311] Condition 29(k) is amended to clarify that any requirement for insurance imposed on third parties contracted to undertake consented works may be relied on by the consent holder as a method to demonstrate a commitment to meeting repair costs in the event of damage to properties from vibration. The amendment includes the addition of an advice note

[312] Condition 44(f) is amended to remove the reference to a "level" grade. This acknowledges the purpose of the condition is to avoid glare on properties to the north from car headlights, and that it is not matter of prescribing that the road be level (in the strict sense) but rather of an appropriate slope or gradient to achieve the outcome. To avoid this potential defect,


the reference to "level" is deleted with associated wording changes to accommodate deletion, and clarify the primacy of the outcome sought

Land use consent RM190791 (land disturbance)

- [313] Incorrect numbering on cross referencing was rectified in condition 15.

Consents RM120929V2, RM190789, RM190790 and RM190791 re-issued

- [314] Attachments B (RM120929V2 - digital decision document 08B), C (RM190789 - digital decision document 08C), and E (RM190789 - digital decision document 08E) are re-issued as replacement documents in whole, and for Attachment D (RM190790) the replacement document is limited to the consent conditions and Appendix One (digital decision document 08D). This record of the reasons and changes made under s 133A is a supplementary to the decision, with a replacement Hearing Commissioners Decision issued (digital document 08A).
- [315] These changes are made under section 133A of the Resource Management Act 1991 with the delegated authority of Tasman District Council.



Alastair Jewell
Principal Planner, Resource Consents
21 July 2021

Attachment A: Hearing attendances

For the Applicant

Mr Nigel McFadden, assisted by Shoshona Galbreath (Solicitors, Duncan Cotterill)

Ms Kristin Nimmo (Director of Integrity Care Group Limited)

Mr Luke Porter (Consultant Landscape Architect, Urban Designer and Director of Canopy NZ Limited)

Mr Robert Weir (Consultant Architect, Weir Architecture Limited – Mr Weir also lodged submission number 2 to the application, in support of the application)

Ms Elizabeth Gavin (Consultant Landscape Architect and Director of Canopy NZ Limited)

Dr Jeremy Trevathan (Consultant Acoustic Engineer and Director of Acoustic Engineering Services Limited)

Mr Christopher Ward (Managing Director of Policy Works Limited, a consultancy specialising in local government community services, including parks and reserves)

Mr Gary Clark (Consultant Chartered Professional (Civil) Engineer and Director of Trafficoncepts Ltd)

Mr Gary Rae (Consultant Resource Management Planner and Director of Gary Rae Consulting Limited)

Mr Michael Verrall (Licensed Cadastral and Registered Professional Surveyor and Land Development Consultant)

Exert evidence prepared by Mr Ronald O'Hara (Consultant Civil Engineer and Principal of Tasman Consulting Engineers Limited) was circulated to all parties prior to the hearing but Mr O'Hara did not present any additional evidence at the hearing.

Submitters

Mr Roy Medicott and Ms Jeanette Swift (5 Hillplough Heights)

Ms Annette Chandler (10 Brenda Lawson Way)

Mr Tegan Goodman and Ms Angela Lukacs (5 Brenda Lawson Way)

Mrs Joy Tomlinson and Mr George Tomlinson (21 Fawdan Way)

Mrs Claire Davenport and Mr Leonard Davenport (2 Brenda Lawson Way)

Mrs Karen Dewson and Mr Grant Dewson (8 Brenda Lawson Way)

Mr Sidney McDouall on behalf of Sidney and Virginia McDouall (3 Brenda Lawson Way)

Mr Ray Firth on behalf of RA and ML Firth (105 Hart Road)

Ms Janet Sullivan (a resident of 28 Fawdan Way)

Mr James Bagnall on behalf of James and Phillipa Bagnall (381 Hill Street)

Mr Darryl King (11 Brover Crescent)

Mr Richard Kempthorne on behalf of Richard and Jane Kempthorne
(11 Hillplough Heights)

Ms Deidre Tolerton (2 Kakariki Lane, Olive Estate)

Mr Brian McGurk on behalf of Brian and Denise McGurk (20 Fawdan Way)

Mr Jeffrey Billington (3 Hillplough Heights)

Written statements were also tabled at the hearing on behalf of Mr Peter Hancock (375 Hill Street, submission number 75) and Clare and Alex Tolan (6 Brenda Lawson Way, submission number 30)

**For Tasman District
Council**

Ms Jennifer Rose (Consultant Senior Planner, Beca)

Ms Jenna Wolter (Senior Consent Planner (Subdivision), Tasman District Council)

Ms Rosalind Squire (Consultant Planner employed by Tasman District Council as Contract Reserves Planner)

Mr Dugald Ley (Development Engineer, Tasman District Council)

Mr Alastair Jewell (Hearing Facilitator and Principal Planner, Tasman District Council)