

Before the Hearing Commissioners
appointed by the Buller District Council

Under the Resource Management Act 1991

In the matter of Resource consent applications by ACG Properties Limited to establish and operate a luxury lodge and visitor accommodation development at 4663 State Highway 6, Te Miko, Punakaiki (application number RC240079)

Legal Submissions on behalf of the Applicant

23 July 2026

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Naia te mihi kit e manawhenua

Naia te mihi ki a koutou

Tēnā tatou

May it please the Commissioners

- 1 These submissions are filed on behalf of ACG Properties Limited (**ACG**) in support of its application for resource consent to establish and operate the proposed Punakaiki Wild luxury lodge and visitor accommodation development near Punakaiki. The proposal comprises a lodge, 12 visitor accommodation cabins, workers accommodation, associated access and infrastructure, together with ecological restoration and enhancement across the site¹.
- 2 At its heart, this proposal is about enabling people to experience the remarkable West Coast coastline while maintaining and enhancing the environmental values that make it special. Mr Magides explains that the proposal was born from a genuine appreciation of the site's natural qualities and a desire to allow visitors to experience those qualities in a careful and respectful way. The natural environment was the reason the property was purchased and has remained the guiding consideration throughout the project's development².
- 3 The site itself is not pristine or untouched. It has been modified through pastoral farming, grazing, vegetation clearance, tracks and associated farming infrastructure³. However, it remains part of a broader coastal landscape, recognised as an outstanding natural landscape and having high and outstanding natural character⁴.
- 4 Since the property was acquired, the Applicant has assembled an experienced team including architects, landscape specialists, ecologists, planner, engineers and other technical specialists to better understand those values and develop a proposal that responds appropriately to them⁵. The proposal has evolved substantially through that process, informed by detailed investigations, requests for further information, consultation with Council officers and statutory agencies⁶, peer

¹ Statement of Evidence (**SoE**) N Smetham, at [13].

² SoE C Magides, at [5]-[6], [14]-[16], [22]-[24].

³ SoE N Smetham, at [16], [28]-[29], and SoE G Ussher at [45].

⁴ SoE N Smetham, at [15], [27].

⁵ SoE C Magides, at [15]-[17].

⁶ Department of Conservation and New Zealand Transport Agency.

reviews, community engagement⁷, submitter feedback (after the applicant requested public notification) and ongoing design development⁸.

- 5 The proposal before the Commissioners is not the same proposal that was originally lodged 15 months ago. The lodge has been substantially reduced in scale and redesigned as two smaller building forms, three cabins have been removed, development areas have been relocated away from sensitive landscape and hazard areas, and additional mitigation and restoration measures have been incorporated⁹. Those changes have materially reduced the potential environmental effects of the proposal while retaining the Applicant's vision for a high-quality, small-scale visitor accommodation experience¹⁰.
- 6 This iterative process has also resulted in substantial agreement between the experts (i.e. the Applicant's experts, the Council's peer reviewers and the Section 42A Reporting Officer)¹¹. There is broad agreement regarding the description of the site and proposal, the applicable planning framework, the assessment of environmental effects and the overall statutory planning assessment¹². Since the receipt of the Section 42A Report, NZTA and the Applicant have agreed conditions of consent to address concerns regarding the access to SH6. A revised set of conditions, which incorporates these conditions, dated 23 July 2026 is **attached**. The Applicant has otherwise accepted the Section 42A Reporting Officer's working version of conditions, except a matter relating to resident staff being able to have dogs on-site, subject to safeguards for wildlife training and management protocols. The condition offered by the Applicant in the attached conditions was agreed with Department of Conservation (**DOC**)¹³.
- 7 The expert evidence demonstrates that the proposal has been carefully designed to avoid adverse effects on ecological, landscape, natural character and natural hazard values. Conditions will ensure that potential risk of indirect effects on birds, lizards, wetlands, native vegetation, and streams will be avoided or minimised such that the potential for adverse effects will be nil or very low¹⁴. It is significant that

⁷ SoE C Magides, at [27]-[34].

⁸ SoE D Thorne, at [10], [14], [23] and [24].

⁹ SoE N Smetham, at [19]; SoE D Thorne, at [15]; SoE A Beale, at [7].

¹⁰ SoE N Smetham, at [19]-[23]; SoE D Thorne, at [15].

¹¹ It is acknowledged that the Section 42A Report did not have the benefit of the conditions proposed by the Applicant and agreed by NZTA, and the Report identifies concerns regarding matters of the access on SH6. This issue is now resolved.

¹² SoE D Thorne, at [10], [16].

¹³ SoE D Thorne, at [98(a)].

¹⁴ SoE G Ussher, at [46].

DOC and the Applicant agree on relevant conditions. Further, the Applicant has adopted the Accidental Discovery Protocol requested by Ngāti Waewae¹⁵.

- 8 The retirement of pastoral farming activities, revegetation and restoration planting, habitat enhancement, pest management and ongoing environmental stewardship will enhance ecological, landscape and natural character values across the site¹⁶, and result in a "very clear and large" benefit from this project on the ecology of the site and the surrounding landscape¹⁷. The proposal will also contribute to the local economy through employment, tourism opportunities and investment within the wider Punakaiki and West Coast communities¹⁸.
- 9 The Applicant has approached the project with the sensitivity of the environment, and environmental values of the site, central to the small-scale visitor experience. It is submitted the proposal is supported by the relevant local policy framework, will give risk of no more than minor adverse effects and is an appropriate form of sustainable tourism development in this location. It is submitted that the sustainable management purpose of the Resource Management Act 1991 (**RMA**) will be met by granting the consent for the proposal as sought.

Policy context

- 10 At the outset, it's important to understand the proposal must be assessed through the appropriate policy lens. The policy environment agreed as appropriate (through public processes) for *this community* is unique, and, in my experience, quite different to that which applies in other regions because of its unique environment.
- 11 Te Whanaketanga Te Tai Poutini West Coast 2050 Strategy (a collective community commitment supported by all local authorities and mana whenua) identifies the competitive advantage the region has with its abundance of natural resources which can be utilised to support the regenerative economic future, while protecting the environment for future generations¹⁹. Realising opportunities in high value and regenerative tourism is a priority and part of a local vision which seeks enhanced regional identity²⁰. This proposal falls squarely within that community vision (noting that it will be provided on private land, and not on public conservation land as envisaged).

¹⁵ SoE D Thorne, at [49].

¹⁶ SoE A Beale, at [6], [12]; SoE G Ussher, at [46]; SoE N Smetham at [42], [56], [84].

¹⁷ SoE G Ussher, at [46].

¹⁸ SoE C Magides, at [21]-[24]; SoE A Beale, at [15]; and supporting submission of Development West Coast.

¹⁹ Te Whanaketanga Te Tai Poutini West Coast 2050 Strategy, page 14, see [here](#).

²⁰ Te Whanaketanga Te Tai Poutini West Coast 2050 Strategy, page 13, see [here](#).

- 12 The West Coast Regional Policy Statement (**WCRPS**), a second generation statement made operative in 24 July 2020, which has given effect to the New Zealand Coastal Policy Statement:
- (a) Identifies that the West Coast is rich in its level of remaining indigenous biological diversity – having 84% of its land under the control of the DOC. In a national context, this is one quarter of all protected land in Aotearoa.
 - (b) Seeks to protect the values of the coastal environment *and* provide for appropriate development to enable people and communities to maintain or enhance their economic, social and cultural wellbeing²¹. Minor and transitory effects may not be an adverse effect in areas of outstanding natural character and areas of outstanding natural landscapes and features. Use and development with no more than minor effects are allowed while protecting the coastal environment²².
 - (c) Seeks to protect the natural character of the regions wetlands, lakes and rivers and their margins from inappropriate use and development *and* provide for appropriate use and development to enable people and communities to maintain or enhance their economic, social and cultural wellbeing²³. Activities which have no more than minor adverse effects on natural character are stated in policy as being allowed²⁴.
 - (d) Seeks to protect the regions outstanding natural features and outstanding natural landscapes from inappropriate use and development *and* provide for appropriate use and development *on, in or adjacent* to the outstanding natural features and outstanding natural landscapes to enable people and communities to maintain or enhance their economic, social and cultural wellbeing²⁵. Activities *in* outstanding natural features and outstanding natural landscapes which have no more than minor adverse effects are allowed²⁶.
 - (e) Seeks to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna (which are to be mapped as SNA), but allows activities with no more than minor adverse effects within the SNA provided the values of the SNA are maintained²⁷.

²¹ Objective 9.1 and 9.2, Chapter 9 Coastal Environment WCRPS.

²² Policy 9.3(c) and 9.3(d), Chapter 9 Coastal Environment WCRPS.

²³ Objective 7A.1 and 7A.2, Chapter 7A Natural Character.

²⁴ Policy 7A.4, Chapter 7A Natural Character.

²⁵ Objective 7B.1 and 7B.2, Chapter 7B Natural Features and landscapes.

²⁶ Policy 7B.4, Chapter 7B Natural Features and landscapes.

²⁷WCRPS, Section 7.1 and 7.6 (Ecosystems and Indigenous Biodiversity). *Note: The process of identifying SNAs on private land in the West Coast region is relatively recent and has not yet been applied to the vegetation communities at this site. The vegetation and habitats at the site which could be affected by the proposed*

- 13 At a local level, in the latest local plan (the Te Tai o Poutini Plan (**TTPP**) Decisions Version (DV) (under appeal²⁸)), tourism is expressly provided for within the Strategic Directions for the region via one objective and five policies. This is not surprising given the WCRPS identifies the West Coast has a high rate of tourism growth²⁹, and it is one of the top economic contributors to the region³⁰. There is a directly relevant policy (not under appeal) which supports the development of visitor facilities and accommodation within and near existing settlements and communities³¹.
- 14 In the TTPP (DV) the site is zoned General Rural Zone. In the Rural Chapter, rural areas are recognised as having a supporting role in supporting tourism as a major economic activity on Te Tai o Poutini/the West Coast³². There is express policy support for visitor economy in the rural zone (also not under appeal), including:
- (a) recognition that the rural areas form an important part of the visitor economy of Te Tai o Poutini/the West Coast, particularly as a location where tourism and visitor attractions are established (RURZ-P10, not under appeal);
 - (b) support the development of appropriate tourism and visitor businesses such as accommodation, education and other facilities which relate to the rural environments which they are located and which do not adversely affect primary production activities³³ (RURZ-P11, not under appeal).
- 15 For completeness, it is noted the Ecosystems and Indigenous Biodiversity chapter, Natural Features and Landscape chapter, and Coastal Environment Chapter objectives and policies are under appeal, but must give effect to the higher order WCRPS (set out in paragraph 12 above).
- 16 So, while the proposal requires consent as a non-complying activity, it should not be considered as an activity which is not anticipated or supported its location, given the uncontested TTPP(DV) provisions and the WCRPS policy direction above.

development against the ecological significance criteria in Appendix 1 of the West Coast Regional Policy Statement were assessed by G Ussher who considers that while native vegetation units on the site could qualify as significant indigenous vegetation but that the development layout avoids impacts on the highest areas of ecological valuable native vegetation (SoE G Ussher at [26]-[29]).

²⁸ 36 appeals have been lodged, and over 100 section 274 notices.

²⁹ WCRPS, Section 5, Use and Development of Resources, Background to issues, para 3.

³⁰ WCRPS, Section 7A, Natural Character, para 3.

³¹ TTPP (DV), TRM-P1(a).

³² TTPP (DV), Rural Zone, Objectives and Policies overview.

³³ There are currently no primary production activities occurring on the property, so these will not be adversely affected. SoE A Beale, at [6] confirms gorse clearance; and SoE C Magides refers to historical farming at [13].

- 17 In the BDP (which was made operative 26 years³⁴), the non-complying activity status results from exceedance of earthworks in the Paparoa Character Area standards (Table 5.10A), and because commercial activity and visitor accommodation was not expressly provided for (Rule 7.9.1.2). Whereas in the TTPP (DV) these activities are provided for, but the non-complying activity status results due to the floor area exceeding the standard for commercial activities in the rural zone (GRUZ-R29/GRUZ-R33), and due to the floor area of buildings and earthworks within the Outstanding Coastal Environmental Area exceeding the permitted activity standard (CE-R19/CE-R22). The latter rule is under appeal by a number of parties, as is the overlays and their extent, including for reason that the permitted standards are too restrictive and don't reflect the reality that these areas are privately owned and rurally zoned. Large portions of non-conservation/private owned land on the West Coast are within the coastal environment and reasonable use of that land has been appealed as necessary³⁵.

Matters addressed in submissions

- 18 These submissions address the following legal matters to assist the Commissioners:
- (a) Amendments to the Application - scope and requirements for consent pursuant to TTPP(DV);
 - (b) Legal tests – sections 104D ("Gateway Test"), 104, 106A and Part 2;
 - (c) What the term "avoid" means when it is in policy;
 - (d) Conditions of Consent and Management Plans;
 - (e) Third Party Approvals; and
 - (f) Visual amenity.

³⁴ With amendments in October 2004, May 2009 and September 2011.

³⁵ This point is obvious if you review the coastal environment overlays on the TTPP Emap (where in many cases the overlays cover all the flat land leading to the conservation estate).

Amendments to application

Scope

- 19 An amendment must be within the scope of an original application. Whether an amendment to an application is within scope is determined by how that amendment sits within the overall application in terms of:³⁶
- (a) being of a significantly different scale and intensity; and
 - (b) having significantly different effects.
- 20 The Applicant may make amendments to the Application up until the close of a hearing.³⁷ It is submitted that the amendments made to the Application reduce the effects of the Application and are within scope. Mr Thorne confirms that the proposal refinements have reduced the potential environmental effects³⁸.

Additional consents required for the Proposal (TTPP(DV))

- 21 The Application was lawfully lodged under section 88 RMA and has been nominally altered as a result of a decision being made on the TTPP. Section 88A RMA applies to the Application and it should continue to be processed, considered and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was first lodged (section 88A(1A) RMA).
- 22 The Applicant applied for a non-complying land-use consent to establish and operate the 'Punakaiki Wild' luxury lodge and visitor accommodation development. The proposal was a non-complying activity at lodgement, and remains so under the TTPP (DV).
- 23 The Application addressed the TTPP (Notified Version) provisions that existed at the time and was publicly notified on this basis. Mr Thorne (and the Section 42A Reporting Officer) have since assessed whether there are any non-compliances with rules from both the BDP and TTPP (DV) which have legal effect. While there are a small number of differences between rule triggers, Mr Thorne advises he is comfortable to adopt the Section 42A Reporting Officer's assessment as they do not alter the overall status of the activity or any planning assessments or conclusions³⁹.

³⁶ *Atkins v Napier City Council* (2008) 15 ELRNZ 84 at [32]. See also *H.I.L.Ltd v Queenstown Lakes District Council* [2014] NZEnvC 45 for a general overview of the case law on amendment.

³⁷ *Daroch v Whangarei District Council* A18/93 at page 27, as confirmed more recently in *Simons Hill Station Ltd v Canterbury Regional Council* [2013] NZEnvC 62 at [20].

³⁸ SoE D Thorne, at [15].

³⁹ SoE D Thorne, at [89].

- 24 In short, the Application remains for a bundled non-complying activity, and the TTPP (DV) rules have introduced no new issues that were not already assessed in the original Application and responses to further information.
- 25 The Commissioners will need to consider all provisions which have legal effect today – under both the BDP and the TTPP (DV) (including the rules, and objectives and policies) under section 104 RMA. This is what the Applicant and the Section 42A Report has done.
- 26 The Section 42A Report confirms that the Council also took legal advice on this issue and landed in the same place⁴⁰ (that is, where an activity status changes or new rules come into effect between lodgement and a plan's decisions version, an applicant is not required to lodge a new application⁴¹).

Legal tests

Section 104D RMA

- 27 The planning witnesses are agreed the activity is a non-complying activity overall. As a non-complying activity, the Application must pass the section 104D RMA 'gateway' test. That is, the consents may only be granted if the decision maker is satisfied that either:
- (a) the adverse effects of the activity on the environment will be minor (s104D(1)(a)). Positive effects are not to be considered; or
 - (b) the Application is for an activity that will not be contrary to the objectives and policies of both the BDP and TTPP(DV) (s104D(1)(b)). For completeness it is recorded that this assessment only applies to relevant district plans and not higher order documents.
- 28 There is no primacy given to either of the two limbs, so if one limb can be passed then the test is considered to be passed. If the Application passes either of the limbs, then it can move on to be considered under s104. Mr Thorne considers the proposal passes both of the gateway tests, subject to the imposition of the conditions of consent.⁴²

Section 104 RMA

- 29 Having passed the gateway tests, the Commissioners must (pursuant to section 104(1)) have regard to the actual and potential effects of allowing the activity,

⁴⁰ Section 42A Report, Sections 6.6-6.8.

⁴¹ See for example, *Duggan v Auckland Council* [2017] NZHC 1540, at [27]-[32], [38].

⁴² SoE D Thorne, at [20].

including positive effects, the relevant provisions of plans, policy statements and national environmental standards or regulations, and any other matter considered relevant and reasonably necessary to determine the Application. This statutory framework will be well known to the Commissioners and is addressed in the information put forward with the proposal and Mr Thorne's planning evidence.

30 Your evaluation requires giving 'genuine thought and attention' to the various matters set out in section 104 RMA.⁴³ To "have regard to" does not require you to "give effect to". The matters of consideration under section 104 are on equal footing, so that none of the subsections are to be elevated to a primary status.⁴⁴ All matters are to be considered and given such weight as you see fit.⁴⁵

31 It is for the Commissioners to:

- (a) Assess the relevant potential effects of the proposal, including in light of the objectives, policies and rules of the relevant plans. Your duty under section 104 is to consider all relevant effects, both positive and negative, otherwise the assessment may be incomplete, and the balancing of conflicting considerations may be distorted.⁴⁶
- (b) Have regard to relevant statutory instruments and place different weight on their objectives and policies. The correct weight to be given to plan provisions flows from the provisions themselves, both their terms and their context. Generally an assessment of relevant objectives and policies requires "a fair appraisal of the objectives and policies read as a whole".⁴⁷
- (c) Where the TTPP(DV) provisions are not contested (i.e. under appeal), these should be given significant weight as they have been part of a recent independent decision-making process. Otherwise, the second generation WCRPS is the next most recent expression of policy context for the West Coast, with the BDP and TTPP(DV) needing to give effect to its provisions.
- (d) The addition of new national policy statements is part of the context in which the Commissioners must assess the Application⁴⁸. They inform rather than

⁴³ *Foodstuffs South Island Limited v Christchurch City Council* (1999) 5 ELRNZ 308 (HC), at p 309.

⁴⁴ *Norwood Lodge v Upper Hutt City Council* HC Wellington CIV-2004-485-2068; *Henderson v Papakura District Council* A019/03 at [34].

⁴⁵ *Kennett v Dunedin City Council* (1992) 1A ELRNZ 168 at 182. *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209 at [25].

⁴⁶ *AFFCO v Far North District Council* A 6/94 at 233 (adopting what was said in *Te Aroha Air Quality Protection Group v Waikato Regional Council* (No 2) A 70/93; see also *Baker Boys Ltd v Christchurch City Council* (1998) 4 ELRNZ 297.

⁴⁷ *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209 at [25]; Referred to with approval in *Davidson R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [73].

⁴⁸ Refer evidence of D Thorne from [59] for assessment of NZCPS, NPSFM, NPSIB, and NPSNH.

dictate the outcome of an assessment. All objectives and policies must be considered comprehensively and, where possible, appropriately reconciled⁴⁹.

- (e) More specific or directive provisions may warrant greater weight, noting that enabling provisions can have directive character. Provisions which are qualified and seek to enable activities while controlling effects do not set environmental bottom lines⁵⁰.
 - (f) Weigh these conclusions to determine whether the consent can be granted and the purpose of the RMA is achieved.
 - (g) The obligation to refer to Part 2 remains unless the Commissioners is assured that it would not add to the evaluative exercise under s104 RMA to do so⁵¹. If a fair appraisal of the objectives and policies means the appropriate response to a particular application is obvious, it effectively presents itself. Genuine consideration and application of relevant plan provisions leave little room for Part 2 to influence the outcome.
- 32 The Commissioners should be mindful that there is an evidential burden on all parties to produce evidence tending to support an allegation.⁵² It is not enough to speculate, to simply entertain a possibility, pose questions, or to assert that something "may be" an outcome of this proposal. That is not the threshold. There must be cogent evidence to support a particular conclusion. In other words, there needs to be material of probative value which tends to logically show the existence of facts consistent with the finding.

Section 106A RMA

- 33 The Commissioners may refuse to grant a land use consent, or may grant the consent subject to conditions, if it considers that there is a significant risk from natural hazards. Mr Brown has considered the natural hazard risk that affects the site, and considers that the development primarily avoids these hazards, and where it does not, the residual hazards can be appropriately managed to an acceptable level through site-specific investigation, engineered design and

⁴⁹ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2021] NZHC 390, [2021] NZRMA 303 at [30] (in rejecting a suggestion that "environmental bottom lines" stood in the way of a proposal).

⁵⁰ *Te Runanga o Ngati Whatua v Auckland Council* [2023] NZEnvC 277, at [243].

⁵¹ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, at [47]; in resource consent decisions it is not limited to the exceptions in *King Salmon* (uncertainty, invalidity or incomplete coverage).

⁵² *West Coast Abattoir v Westland District Council* M126/82 and *McIntyre v Christchurch City Council* (1996) 2 ELRNZ 84, as confirmed more recently in *Wakatu Inc v Tasman District Council* [2012] NZEnvC 75 at p 7-8.

construction observation, such that the effects will be no more than minor⁵³. This expert evidence is not contested.

- 34 Mr Thorne also considers the proposal does not give rise to concerns pursuant to section 106A RMA⁵⁴.

What does "avoid" mean?

- 35 Avoid policies arise in this Application pursuant to the WCRPS (which effectively replicates the NZCPS policies in accordance with case law).

- 36 It is now well established that avoid means to 'not allow', or 'prevent the occurrence of'⁵⁵, while noting that *it is improbable that it would be necessary to prohibit an activity that has minor or transitory adverse effects*⁵⁶. Since *King Salmon* defined 'avoid' in this manner, the concept of materiality of adverse effects has gained momentum in the higher courts. The Supreme Court in *Port Otago Limited v Environmental Defence Society Incorporated and Others (Port Otago)* relevantly concluded, in relation to 'avoidance policies', that⁵⁷:

the avoidance policies in the NZCPS must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any development, whether measures can be put in place to avoid material harm to those values and areas.

- 37 In coming to this conclusion, the Supreme Court considered both the *King Salmon* interpretation of 'avoid' and the *Trans-Tasman* 'material harm test' – which was summarised as⁵⁸:

decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean:

(i) material harm will be avoided;

(ii) any harm will be mitigated so that the harm is no longer material; or

(iii) any harm will be remedied within a reasonable timeframe so that, taking into account the whole period harm subsists, overall the harm is not material...

⁵³ SoE C Brown, at [27].

⁵⁴ SoE D Thorne, at [64].

⁵⁵ *Environmental Defence Society Inc v NZ King Salmon Co Ltd* [2014] NZRMA 195, at [96].

⁵⁶ *Environmental Defence Society Inc v NZ King Salmon Co Ltd* [2014] NZRMA 195, at [145].

⁵⁷ *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112, at [68].

⁵⁸ *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112, at [66].

- 38 The concept of material harm has now been utilised in a resource consent application (as opposed to a plan change) in *Te Rūnanga o Ngāti Whātua v Auckland Council* [2023] NZEnvC 277, upheld on appeal to the High Court in *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794.
- 39 The expert evidence has appropriately assessed the proposal against the relevant directive policies which use the term "avoid" and "protect", and Mr Thorne is satisfied the proposal is consistent with those policy directions⁵⁹.

Conditions of Consent and Management Plans

- 40 The Commissioners' finding of effects is directly relevant to the imposition of conditions of consent, should resource consent be granted. Section 108AA RMA requires that conditions must be directly connected an adverse effect of the activity on the environment or an applicable district or regional rule, or a national environmental standard (unless the Applicant agrees to the condition).
- 41 The conditions relevant to management plans are consistent with previous consent conditions granted by the West Coast consent authorities, and case law. A management plan should serve the purpose of the RMA, and typically describe the methods and procedures to achieve the conditions of a consent:⁶⁰
- (a) consent conditions will usually provide they be developed by a suitably qualified expert;
 - (b) the consent authority (i.e. one consent authority) is to certify that the methods in the plan will achieve the outcomes stated in the conditions;
 - (c) the consent authority must require the consent holder to conduct their activities in accordance with the management plan; and
 - (d) conditions may provide that the management plan will be periodically reviewed.
- 42 In addition, relevant case law principles remain relevant. A resource consent condition must be for a resource management purpose, fairly and reasonably relate to the development authorised by the resource consent and not be unreasonable.
- 43 The Application involves a number of management plan conditions, agreed with various parties, which meet these requirements.

⁵⁹ SoE D Thorne, at [67].

⁶⁰ *Selwyn Quarries Limited v Canterbury Regional Council* [2019] NZEnvC 153, at [44].

Third Party approvals

- 44 The Applicant has had ongoing consultation with NZTA⁶¹, and has offered additional conditions (as agreed with NZTA) to resolve concerns raised. NZTA has now formally changed its position on the Application to neutral, confirming its acceptance of those conditions.
- 45 It is available to the Commissioner to grant these proffered consent conditions. The consent conditions appropriately secure an appropriate access design, while retaining the ability to address detailed measures as part of a detailed design process which will occur with NZTA.
- 46 The courts have accepted the validity of conditions requiring third party approval or action, provided they operate as a condition precedent. Such conditions should prevent the activity from commencing until the relevant approval or action occurs, without imposing direct obligations on the third party or affecting their rights without consent⁶².

Amenity values to be tested objectively with reference to plans

- 47 An assessment of amenity values must start with an understanding of the subjective, based on articulation by those who enjoy the values, but it must be able to be tested objectively with reference to the relevant plans.
- 48 In *Schofield v Auckland Council*⁶³ the Environment Court stated:

The topic of amenity can be emotionally charged, as this case has revealed. People tend to feel very strongly about the amenity they perceive they enjoy. Whilst s 7(c) of the RMA requires us to have particular regard to the maintenance and enhancement of amenity values, assessing amenity values can be difficult. The Plan itself provides some guidance, but at its most fundamental level the assessment of amenity value is a partly subjective one, which in our view must be able to be objectively scrutinised. In other words, the starting point for a discussion about amenity values will be articulated by those who enjoy them. This will often include people describing what an area means to them by expressing the activity they undertake there, and the emotion they experience undertaking that activity. Often these factors form part of the attachment people feel to an area or a place, but it can be difficult for people to separate the expression of emotional attachment associated from the activity

⁶¹ NZTA holds a designation (NZTA-1, TTPP (DV) "*to construct, operate, maintain and improve a state highway, cycleway and / or shared path, and associated infrastructure*".

⁶² *Lysaght v Whakatane District Council* [2021] NZHC 68 - The Court accepted that it is well established under the RMA that a resource consent condition that requires third party consent is invalid if it purports to bind or infringe third party rights. However, it distinguished conditions that simply require an applicant not to proceed until they have secured any necessary third party agreement or authority, noting these are valid if framed as conditions precedent. The Court relied on the approach in *Westfield*, holding that the affected party's property rights remain unaffected until agreement or lawful authority is obtained, and the condition merely places the risk on the applicant.

⁶³ *Schofield v Auckland Council* [2012] NZEnvC 68 at [51].

enjoyed in the space, from the space itself. Accordingly, whilst the assessment of amenity values must, in our view, start with an understanding of the subjective, it must be able to be tested objectively.

- 49 The genuinely held views of submitters are acknowledged, but it is submitted that the law must properly be applied on the evidence that is before you, and within the context of the planning provisions. Relevant RMA issues raised by submitters have been given due consideration and are addressed in evidence.

Witnesses

- 50 The Applicant has produced the following evidence in support of its case:

- (a) Connor Magides – Company;
- (b) Ant Beale – Project Management;
- (c) Nikki Smetham – Landscape;
- (d) Cole Brown – Geologist and Natural Hazards;
- (e) George Eivers – Access Design;
- (f) Andy Carr – Transport;
- (g) Dr Graham Ussher – Ecology;
- (h) Daniel Thorne – Planning.



A S Booker
Counsel for ACG Properties Limited
23 July 2026