BEFORE THE INDEPENDENT HEARINGS COMMISSIONER AT NEW PLYMOUTH

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an application under s88 of the Act by B, M R Sim to the New Plymouth District Council to undertake a boundary change and five-lot subdivision, at 6 & 42 Leith Road, Okato (**SUB21/47781**)
	AND
	of an application under s88 of the Act by B, M R Sim to the New Plymouth District Council for a side boundary setback breach for a proposed dwelling on Lot 5 of SUB21/47781 and earthworks within 200m of Site of Significance to Māori and Archaeological Site ID 197 (under the Proposed District Plan) (**LUC22/48312**)

STATEMENT OF EVIDENCE OF

KATHRYN LOUISE HOOPER - PLANNER

21 April 2023

INTRODUCTION

1. My name is Kathryn Louise Hooper.

2. My qualifications and experience are as detailed in my evidence dated 24 January 2023.

3. In preparing this evidence I have reviewed:

    a. All original application details, including the land use consent application dated 23 August 2022;
    b. The NPDC Planners 42A Report for SUB21/47781 dated 16 May 2022;
    c. The planning evidence of my colleague Zenaida Gerente, specifically;
        i. Her Evidence in Chief (EIC) dated 25 May 2022;
        ii. The summary of highlights in her planning evidence, provided in the legal memorandum on 10 June 2022;
    d. The supplementary evidence/JWS prepared by Ms Gerente dated 30 May 2022;
    e. The supplementary evidence of Ms Buttimore, the NPDC's processing planner, dated 7 June 2022;
    f. The EIC of Mr Richard Bain dated 23 May 2022;
    g. The EIC of Ms Martha Dravitski dated 23 May 2022; and,
    h. The 42A report for LUC22/48312 dated 6 December 2022; and,
    i. The evidence of Mr Allen, AgFirst dated 24 January 2023 and 21 April 2023; the evidence of Mr Bain, Bluemarble dated 24 January 2023 and 21 April 2023 (and the evidence of Mr Juffermans, Juffermans Surveyors dated 24 January 2023).
    j. The revised 42A report from Ms Buttimore dated 17 March 2023.

4. Although this is a Council level hearing, I again confirm that I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court Practice Note 2023, and I agree to comply with it in giving this evidence. I confirm that the issues addressed in this brief of evidence are within my area of expertise.

Response to S42A Report LUC22/48312

5. I firstly note that since the revised 42A report (dated 17 March 2023), the NPS HPL Guide to Implementation document has been updated (30 March 2023). Accordingly, where I reference the guide, I refer to the 2023 version. There are no significant differences between the two in relation to the matters considered in this evidence, and the only difference is that the information appears on differently numbered pages.

6. Ms. Buttimore recommends LUC22/48312 be declined on the basis of the loss of productive capacity of highly productive soils.

7. She disagrees that the activity is consistent with clause 3.8 of the NPS-HPL because she;

- does not believe the lots meet the productive capacity test[1],
- is of the opinion that fragmentation is a consideration under clause 3.8 of the NPS-HPL[2],
- believes the lot sizes are not large enough so that the predominant land use of the site is able to be land based primary production (i.e. the lots are 'rural lifestyle' in nature, and not able to be production oriented)[3],
- in the case of lot 1[4], believes that the presence of a dwelling on this lot means land will be lost to rural lifestyle purposes[5] and the predominant use of the lot will be lifestyle in nature and the productive capacity of the land is not able to be retained,
- in the case of lot 5[6] believes the predominant use of the lot will be lifestyle in nature and the productive capacity of the land is not able to be retained,
- in the case of lot 4[7] with the existing dwelling the use of the lot can only be lifestyle and therefore the productive capacity of the land is not able to be retained.

PRODUCTIVE CAPACITY

8. Ms Buttimore states at Paragraph 84 that: '*I believe the applicant in the evidence of Ms Hooper and Mr Allen have incorrectly applied the 'productive capacity' test under Clause 3.8 and rely on the economic viability of each allotment rather than the required 'potential productive capacity'.*

Mr Allen has confirmed the productive capacity of the land will be retained (in his evidence of 24 January and 21 April 2023), and he has confirmed in his supplementary evidence (dated 21 April 2023) that he has used the appropriate test. In fact Mr Allen confirms that it is significantly easier to demonstrate productive capacity when the economic viability of an enterprise does not ned to be taken into account.

9. At paragraph 84 of her revised 42A report, Ms Buttimore states;

'*It is my opinion that the NPS-HPL clause 3.8 (1) (a) is not intended to be applied to rural lifestyle allotments as they cannot achieve the overall productive capacity of the land long term and result in fragmentation of HPL as is stated in the Guidance Document*'

[1] Paragraph 85 of revised 42A report
[2] Paragraph 94 of revised 42A report
[3] Paragraph 85 of revised 42A report
[4] Paragraphs 87-88 of revised 42A report
[5] Paragraph 88 of revised 42A report
[6] Paragraphs 93-94 of revised 42A report
[7] Paragraphs 89-92 of revised 42A report

10. This opinion is inconsistent with the guidance[8], which Ms. Buttimore cites at paragraph 84 of her revised 42A report, which reads (at page 23 and 24 of the 2023 MfE Guide):

    "The NPS-HPL deliberately does not contain direction on the size of a lot that will guarantee the productive capacity of HPL will be retained. This will be dependent on range of factors and will vary from region to region. Whether or not a particular lot can remain productive will vary depending on, for example, fluctuating markets or local conditions in each district. As discussed above, the determining factor is whether the site is large enough so that the predominant use of the site is land-based primary production and not residential lifestyle."

    Accordingly, it is up to the applicant to demonstrate the size of the lot is appropriate to enable the productive capacity to be retained. I rely on the expert evidence of Mr Allen in this context, which correctly analyses the '*productive capacity*' of the subject land, as defined in clause 1.3 of the NPS-HPL[9].

11. Mr Allen's evidence also correctly assesses whether the '*overall productive capacity*' of the land will be retained in the context of the subdivision application. In doing so, Mr Allen correctly considers the existing productive capacity of the subject land in his assessment – so that an overall comparison between the existing and the proposed capacity can be made – while also considering the relevant factors contributing to the existing productive capacity as recommended by way of examples in the guide.[10]

12. Ms Buttimore makes her stance on this subdivision clear at paragraph 85 of her revised 42A report:

    'From my reading and interpretation of the NPS-HPL and the Guidance Document rural lifestyle allotments are not intended to meet the 'productive capacity' test provided for in Clause 3.8 as they simply cannot retain the overall productive capacity of the land. Generally speaking rural lifestyle living is not at a scale where productive land uses occur on the land.'

13. In the above statement, Ms Buttimore pre-empts what is a 'rural lifestyle' allotment on the basis of size, despite the MfE guidance being very clear that no size is specified and the reasons for this. She dismisses the demonstration of productive capacity in Mr Allen's expert evidence called by the applicant in this case. She has provided no evidence to the contrary which I can consider (particularly expert evidence such as Mr Allen's).

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[8] National Policy Statement for Highly Productive Land, Guide to Implementation, Ministry for Environment, March 2023 ("the 2023 MfE Guide)

[9] The definition of productive capacity from section 1.3 of the NPS HPL is as follows; *productive capacity, in relation to land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:*

(a) physical characteristics (such as soil type, properties, and versatility); and

(b) legal constraints (such as consent notices, local authority covenants and easements); and

(c) *the size and shape of existing and proposed land parcels.*

[10] See Productive capacity, page 22 of the 2023 MfE Guide.

14. Further to Ms. Buttimore's comment at paragraph 85 of her report, and with specific reference to her statement that '*Generally speaking rural lifestyle living is not at a scale where productive land uses occur on the land*'. Firstly, this shows lack of understanding about what needs to be demonstrated under Clause 3.8. The issue is not whether productive land uses do occur on a parcel of land (a person may choose to use a very large block of HPL in a lifestyle manner). What is important is that productive land uses are able to occur, and that the productive capacity is not compromised, should an owner either now or in the future choose to exploit the productive capacity of the land. I discuss this further at paragraph 59.

15. At Ms. Buttimore's paragraph 81 she again cites the MfE guidance – '*The key measure of productive capacity is the potential capacity of the land to support land-based primary production activities"*[11]. Based on my experience, and the evidence of Mr Allen who is an expert in this field, I am of the opinion the lots will support land based primary productive uses, and where there is productive capacity, this will be the predominant land use.

16. Ms. Buttimore, despite her reliance on the guide, which is very careful not to determine a size of lot that is able to support productive land use (leaving this to applicants to demonstrate), is of the opinion that the lots will be too small to be productive in nature (despite the expert evidence of Mr Allen to the contrary) and, therefore, will default to Rural Lifestyle in nature. I strongly disagree with this and before I discuss each lot, I describe why below.

17. A paragraph 30 of my evidence of 24 January 2023, I referred to the Venture Taranaki Branching Out Programme. I expand on this below.

18. Branching Out is led by Venture Taranaki, and funded by local sponsors and the Ministry of Primary Industries Sustainable Food and Fibres Fund. From the website[12], "*Blueprints have been developed and published which aim to build investor confidence, and kick-start complementary land based activities and value chain enterprises in Taranaki*". The project is now entering phase 2 growing trials, and something I observe is that a number of the projects which are currently in play are on smaller land holdings.

19. From the website, some of the productive opportunities that would be relevant on the subject land include avocados, gin botanicals, grains, legumes and vegetables, hemp fibre, hops, indigenous ingredients, botanical plants, kiwifruit (noting Mr Allens comments about Kiwifruit in his evidence), and trees/forestry. These are all productive land options, and, while not relevant to the definition of productive capacity in the NPS-HPL, the Branching Out Project also provides economic information so people investing in these opportunities are able to make informed economic decisions.

[11] Page 22 of the 2023 MfE guidance.
[12] Branching Out Website link https://www.venture.org.nz/projects/branching-out/

20. A key part of the Branching Out work has been the Taranaki Land and Climate Assessment, which assesses the region's growing capability[13]. This document assesses land use capability, slope, growing degree and frost free days across the region.

21. Not surprisingly, the highly productive area of the subject land is identified as suitable for general horticultural use in this report, being of high land use capability, low slope and having a high number of growing degree and frost free days.

22. My reason to highlight this is to demonstrate that (particularly given that it is not the most economically viable option which is to be considered for productive capacity, which both Mr Allen and I accept);

    a. smaller blocks are certainly able to retain their productive capacity and there is considerable support for this;
    b. there are a large number of options for utilizing the productive capacity of the land on these lots; and,
    c. there is a trend, and central government encouragement, towards diversification.

23. My opinion, and that of Mr Allen as he notes in his evidence, is that innovation and improvements in the resilience of our primary sector come from the ability for people to access land. Part of this equation is the affordability and availability of land and smaller blocks are typically more affordable, and more suited to experimentation with diverse land uses. Few people can afford to invest in large established farming operations, but once they have proved their concepts, they can expand from a smaller block.

24. In summary, smaller blocks are able to retain productive capacity, they play a significant role in primary production - and to take the position that they are not able to retain productive capacity merely due to their size - is an assumption and, in this case, an error.

25. I also consider that the findings of the Branching Out Project will have relevance to the implementation of clause 3.12 (b) of the NPS-HPL, which requires territorial authorities to include objectives, policies and rules in their district plans that encourage opportunities that maintain or increase the productive capacity of HPL, where appropriate.

Proposed Lot 1

26. In relation to Lot 1 – I first note Ms. Buttimore's concerns about the potential for a dwelling and curtilage on this lot to result in land being '*lost for rural lifestyle purposes'*[14] and *'there would be reduction in the overall productive capacity of HPL'*.

[13] A link to the Land and Climate report is here: *https://www.venture.org.nz/assets/Uploads/Taranaki-Land-Climate-Report-Nov-2020.pdf*

[14] Paragraph 88 of revised 42A report

The wording of this statement implies that any dwelling in the rural zone should be considered 'rural lifestyle' therefore contrary to the NPS-HPL.

27. This concerns me – the majority of productive land holdings I visit (both in Taranaki, and in other parts of New Zealand) have at least one dwelling on them - so the people working the land (who are part of the local communities), can live there. It is convenient, and most cost effective and efficient to live on the land – but also essential for security and safety in some circumstances (of animals, people and property). This is also squarely in line with Part 2 of the Resource Management Act 1991 ("RMA") in my opinion.

28. What matters under Clause 3.8 is that the potential for the land to support land based primary production and that its long-term productive capacity is retained, which Mr Allen confirms is the case.

29. With this in mind, I do note that the design of the lot – i.e. location of any dwelling – will have an impact on ensuring that the productive capacity of the land is retained. If a dwelling was placed in the middle with significant curtilage, then this would affect productive capacity as it would not be as efficient as it could be. I have, therefore, recommended restricting the future dwelling and associated curtilage location to a small portion of the site which does not interfere with the operational potential - and the applicant volunteers a condition of consent requiring a consent notice on lot 1, restricting any dwelling and associated curtilage to Area A marked on the revised scheme plan in **Appendix A**. The updated consent wording to reflect this change is attached as **Appendix B**.

30. This, in my opinion, secures the potential long term productive capacity of the land. A dwelling on a productive block is not contrary to primary land-based production or productive capacity. In fact, it is normal and expected. I do not believe the intent of the NPS-HPL was to stop our primary producers living on their land – however, taken to its logical conclusion, this is where Ms. Buttimores opinion leaves us; which is also at odds with Part 2 RMA in my opinion.

31. If Ms. Buttimore's stance on dwellings on HPL is accepted no block would be able to be subdivided anywhere in New Zealand, regardless of the size of it, if the land area beneath any future dwelling was not considered part of the productive enterprise.

32. Further, if the land beneath a dwelling that supports a productive rural enterprise is considered a 'loss of HPL' then the same argument applies to any building or structure that is established on HPL to support rural production, which is clearly not the intent of the NPS-HPL.

33. Logically, if the productive capacity of the land which is being subdivided can be demonstrated to be retained (as is demonstrated in Mr Allen's expert evidence in this case), the provision of somewhere for the persons working that land to live on that land is part and parcel with a rural based enterprise. It is not residential or rural

lifestyle living, it is consistent with maximising the productive capacity of the land and is therefore consistent with the NPS-HPL.

34. Clause 1.3 of the NPS-HPL defines '*supporting activities*' as, *"… those activities reasonably necessary to support land-based primary production on that land (such as on-site processing and packing, equipment storage, and animal housing)".* While this definition does not affect Clause 3.8, it is a key part of Clause 3.9 which addresses the inappropriate use and development of HPL. The guidance on this matter may therefore be of assistance when considering this issue, and in that regard the guidance states[15];

    "Activities such as residential accommodation for the landowner and/or farm staff, seasonal worker accommodation, sheds for farm machinery, workshops for repairing and maintaining equipment and roadside sales of goods produced on site would all be anticipated under this clause where these support land-based primary production".

35. This guidance appears to support the position of Mr Allen and myself that dwellings are anticipated as part of, and are often critical to, a productive rural enterprise. From a planning standpoint, the dwellings on this land are part of the existing environment, or are permitted activities under the ONPDP and PNPDP, however if there was a rule that triggered assessment of dwellings on the allotments under the NPS-HPL, the fact that they will be able to support land based primary production would be able to be demonstrated.

Proposed Lot 4

36. In relation to **Proposed lot 4**, from my interpretation of Ms Buttimores opinion[16] she agrees that the land beneath the dwelling and curtilage is not productive, but does not believe that the NPS-HPL provides for this scenario.

37. Firstly, I do not detect any dispute that the productive capacity of the land will remain exactly as it is now and will therefore be retained.

38. Ms. Buttimore however asserts[17] that the NPS HPL does not provide for this scenario '*as it clearly sets out to avoid fragmentation of HPL in to rural lifestyle regardless of the existing nature of the dwelling'*.

39. Clause 3.8 of the NPS HPL does not mention fragmentation. Nor does it mention rural lifestyle.

40. The only discussion about fragmentation in the MfE guide in relation to clause 3.8 is where the site contains both HPL and non-HPL, and it says the intent is that the HPL portion of a site is not fragmented across multiple lots. This must be considered in the

[15] Page 28 2023 MfE Guidance
[16] Paragraph 89 of revised 42A report
[17] Paragraph 90 of revised 42A report

context of the actual wording of clause 3.8(a), which allows subdivision (which is by definition, land fragmentation) where it can be demonstrated that the productive capacity of the land can be retained.

41. The guidance does state *"The direction that subdivision of HPL be "avoided", **apart from the specific exceptions in the NPS-HPL**,*(my emphasis added) *is intended to provide a stringent approach for any subdivision proposal on HPL to avoid further fragmentation of this finite resource.[18]"*

42. The application is consistent with one of the 'specific exceptions', which is provided for as per clause 3.8 of the NPS-HPL in that it has been demonstrated in Mr Allen's evidence for the applicant, "*that the proposed lots will retain the overall productive capacity of the subject land over the long term"[19].*

43. Rather than debating guidance however it is critical to return to the NPS-HPL itself. Policy 7 is the key policy in this instance and addresses subdivision and clause 3.8, which (as per the second part of Policy 7) provides for subdivision in certain circumstances.

***Policy 7:** The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.*

3.8 Avoiding subdivision of highly productive land

(1) *Territorial authorities must avoid the subdivision of highly productive land unless one of the following applies to the subdivision, and the measures in subclause (2) are applied:*
   a) *the applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term:*
   b) *the subdivision is on specified Māori land:*
   c) *the subdivision is for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a functional or operational need for the subdivision.*

44. Clause 3.8 is clear, unless the productive capacity of the land can be retained, subdivision must be avoided. I agree that '*must avoid*' is a strong directive, however the exception provided under clause 3.8 moderates this. The exception for subdivision where proposed lots can retain the overall productive capacity of the land over the long term makes it clear that the retention of productive capacity is the goal, not merely the restriction on subdivision.

45. As mentioned above, clause 3.8 does not reference fragmentation – this direct consideration being left to clause 3.10, which the applicant does not rely on. Ms. Buttimore's reliance on fragmentation to decline proposed lot 4 is, therefore, not appropriate when the evidence shows that the productive capacity test under clause 3.8(a) is met.

[18] Page 21 2023 MfE Guidance
[19] Clause 3.8 NPS-HPL

46. Ms. Buttimore uses the definition of productive capacity to further justify her assertion. In my opinion, the presence of a dwelling (or any other permanent structure or impediment on the land - such as tanks, roads, tracks, contamination or waterways) would be considered under *i) the physical characteristics of the of the land*.

47. Further, the guidance[20] provides direction in terms of the, '*Retaining the overall productive capacity over the long term'* part of the definition. This means, '… *there is no loss in the potential of the subject land being used for land-based primary production when viewed over a 30-year timeframe based on reasonably forseeable conditions. This should include consideration of effects of the proposed subdivision and/or subsequent proposed land use on the potential land-based primary production use of the subject land, including loss of land from production through access, curtilage development…..*'.

48. The existing dwelling is part of the existing environment (and in due course, the NPDC will have to provide for this under clause 3.11 of the NPS-HPL). It is reasonable to foresee that the dwelling will remain in place for the next 30 years. The effect of this on the potential land-based primary production use of the subject land (the overall site, and lot 4 in its own right) is zero, because there is no potential land-based primary production use of the subject land at present.

49. Ms Buttimore raises a valid point at paragraph 91, in relation to the subdivision of the subject dwelling from the main parcel, that '*There is also an argument to be made that a loss of a dwelling on a productive rural land holding to rural lifestyle purposes has the potential to result in further loss of productive capacity of the balance farming allotment if a dwelling is needed for management of the land holding'.* Basically she is saying that the that the subdivision of the existing dwelling from the balance will result in this dwelling no longer serving the productive enterprise, and another dwelling being established on the balance (lot 6).

50. Currently, unsubdivided, two dwellings are permitted on the land under the Operative and Proposed District Plans (as has been canvassed in prior evidence in this case), noting the PNPDP is more restrictive in terms of dwelling location. With the subdivision, given the balance will still exceed 40ha, two dwellings could still be placed on proposed lot 6 once subdivided. I don't believe that two dwellings would be required on this 40ha block to enable it to operate productively and efficiently. Accordingly, a condition restricting the number of dwellings on proposed lot 6 to one dwelling is proposed. This eliminates the concern raised by Ms Buttimore by ensuring that the number of dwellings that could be established over lots 4 and 6 remains the same. The updated consent wording to reflect this change is attached as **Appendix B**.

51. Accordingly, I remain of the strong opinion that there is no loss of productive capacity on proposed lot 4 and proposed lot 4 is consistent with the NPS-HPL.

[20] Page 23 2023 MfE Guidance

Lot 5

52. In relation to **proposed lot 5**, I reiterate paragraphs 35 and 36 from my 24 January 2023 evidence. Increasing the area of land associated with the dwelling on proposed lot 5 from 0.25 ha to 1.01 ha, enables a size large enough to establish productive capacity on this parcel, without compromising the overall productive capacity of the land, which was the applicant's intention when increasing this land parcel from the outset via the boundary adjustment sought.

53. Ms. Buttimore again relies on the issue of fragmentation, which is not one which can be considered under clause 3.8, as detailed in paragraphs 38 to 45 above.

54. The layout of the parcel and boundaries and the 1.01ha size makes it apparent that the land has productive capacity, with the house set well back on the site and a paddock clearly provided for grazing purposes, or which could be used to produce maize as identified by Mr Allen in his original evidence (of 24 January 2023), or which, as identified in the Taranaki land and Climate Assessment completed by Venture Taranaki, could very easily be used to produce a wider range of crops.

55. Ms Buttimore states[21] that "*..no adequate assessment is made by the applicant as to how the productive capacity of the 8000m^2 will impact the overall productive capacity of the existing larger land holding*". Mr Allen addresses this comprehensively in his evidence.

56. On these grounds I remain completely satisfied that the productive capacity of the land that will form proposed Lot 5 is able to be retained for the same reasons as I detail above in relation to proposed lot 1 and the overall productive capacity of the land is retained. In the case of lot 5, I am also satisfied that, by providing an area of land to produce from, the predominant site use will change to be production orientated, as opposed to the current very obvious restriction to lifestyle.

57. In relation to proposed lot 5, the applicant would be open to a decision whereby the boundary adjustment to create proposed lot 5 was declined separately to the subdivision of the main title. In my view this is not required in this case for the reasons previously discussed – the productive capacity of this lot and the overall land has been demonstrated.

Summary

58. To satisfy clause 3.8 NPS-HPL, the applicant must demonstrate that the proposed lots will retain the overall productive capacity of the subject land over the long term. There are no other tests that have to be met. The guidance raises a lot of questions and speculation, but ultimately, we have to return to Clause 3.8 and determine whether the subdivision can be allowed under these provisions. This focusses us in on answering one question – will the productive capacity of the land be retained?

[21] Paragraph 93 Revised 42A report

59. Is the land, once subdivided, more likely to be used for lifestyle purposes? Ms. Buttimore contends that potentially it is – yet Mr Allen's evidence illustrates many long-term productive capacity options for the lots. However, the guidance is clear that people cannot be compelled to use their land, whatever the size, shape or location of it, in a certain way. What is important is ensuring the productive capacity is retained for future generations, and this is achieved with this subdivision (as Mr Allen's expert evidence demonstrates).

60. Is the potential predominant land use rural production? This too is highly subjective – in my opinion, with my background and familiarity with the wide variety of options for productive uses of land – it certainly is. Ms. Buttimore disagrees. However, this also is not one of the tests under clause 3.8.

61. Will the land be fragmented? Yes, as provided for under clause 3.8. Subdivision, by definition, results in fragmentation of the land. The definition of the two words is similar. Clause 3.8 would be entirely unworkable if one of the tests for allowing subdivision was to avoid fragmentation.

62. The availability of HPL will in fact be increased by this subdivision as it will provide the opportunity for people to access productive land affordably and use it productively innovatively and more diversely, also in line with Part 2 RMA.

Other policies in the NPS HPL

63. I have focused closely on Policy 7 and clause 3.8 in this and previous evidence, as these are undoubtably the relevant parts of the NPS HPL.

64. For completeness, I make the following comments in relation to the other seven Policies in the NPS HPL.

65. ***Policy 1****: Highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production.*

    The proposal, in ensuring the retention of productive capacity of the land, recognises the long term values of the land for primary production.

66. ***Policy 2****: The identification and management of highly productive land is undertaken in an integrated way that considers the interactions with freshwater management and urban development.*

    This is not relevant to the application.

67. ***Policy 3****: Highly productive land is mapped and included in regional policy statements and district plans.*

This is an obligation on regional and district councils, and is not relevant to the application. The transitional provisions in the NPS apply until this mapping occurs.

68. ***Policy 4****: The use of highly productive land for land-based primary production is prioritised and supported.*

    The proposal, in ensuring the retention of productive capacity of the land for future generations, and in providing protection from reverse sensitivity effects, prioritises and supports land-based production on this land.

69. ***Policy 5****: The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.*

    This is not relevant to the application.

70. ***Policy 6****: The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.*

    No rezoning is proposed. Proposed lot 4 could be considered 'development of land as rural lifestyle' however this is provided for in Clause 3.8 of the NPS-HPL, as it is clearly demonstrated that there is no loss of productive capacity from this lot, and reverse sensitivity protections are put in place (as discussed in my evidence of 24 January 2023).

71. ***Policy 8****: Highly productive land is protected from inappropriate use and development.*

    In demonstrating consistency with Clause 3.8 (by retaining the productive capacity of the land), the use and development of the land is considered appropriate. Of key note are the reverse sensitivity protections, and proposed covenants placing restrictions on the locations and numbers of dwellings, where necessary.

72. ***Policy 9****: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.*

    Reverse sensitivity protections are inherent in this proposal.

Part 2 RMA

73. Ms Buttimore finds the application inconsistent with Part 2 in paragraphs 128 to 144 of the revised 42A report, largely on the basis of her opinion that the allotments are '*rural lifestyle*' in nature. My opinion is contrary to this and accordingly I find no conflict with Part 2.

74. Clause 3.8 of the NPS-HPL must be applied in a way that is consistent with Part 2 RMA and an overzealous application leaning towards '*absolute protection*' would not be consistent, as it would not achieve the balance necessary to promote sustainable management as defined in Section 5.

75. My reference to 'absolute protection' above comes from reading the Section 32 analysis for the NPSHPL[22], which makes it clear from the outset (at page 6) that; *"The NPS-HPL does not seek to provide absolute protection of HPL, nor does it specify that there should be no loss of HPL within a region or district. The NPS-HPL recognises the need for certain (non-productive) uses and developments to occur on HPL and provides for these in specified circumstances, either through rezoning or resource consents".*

Further responses to 42A report

76. There is an error on page 1 of the revised 42A report, under Application Status, where it states that this is a controlled activity under the PNPDP. This should be corrected to read that the status is discretionary.

77. At paragraph 82 of her revised s42A report Ms. Buttimore suggests that the '*potential of the subject site following the subdivision has not been accurately portrayed by the applicant'*. I am unsure what this suggestion is based on. I note the additional restriction on the location of the dwelling on proposed lot 1 volunteered via this evidence, and the restriction of dwellings on the balance to one (also volunteered by the applicant via this evidence). The dwelling on proposed lot 5 was existing and its replacement is restricted in its position already, and the dwelling on lot 4 is existing (as has been thoroughly canvassed in the prior evidence in respect of this case).

78. I also refer to the 32 Report for the NPS HPL[23], where the efficiency of Policy 7 and clause 3.8 are assessed. It states that: *"clause 3.8 applies to all subdivisions on HPL rather than trying to control different types of subdivisions in different ways (i.e, for rural lifestyle purposes v land-based primary production). This will help avoid arguments and debates about the underlying purpose of subdivision and associated inefficiencies".* This is a strong direction that we must rely on the productive capacity test, and avoid making assumptions about the underlying purpose of the subdivision.

79. Ms. Buttimore appears to focus on the negative aspects of the word '*potential*' when considering *'the potential capacity of the land to support land based primary production'*. There are equally, if not more, positive opportunities. The way to strike this balance is provided in the wording of the definition of '*Productive Capacity*' in the NPS-HPL. This NPS recognises that people will use their land for whatever they want to, however providing this application does not reduce the potential for the land to be used productively in the future, it is acceptable under the NPS-HPL.

80. Still at paragraph 82 of the 42A report, I agree with Ms. Buttimore that subdivision results in different ownership and future owners will all run their properties in their own way, and a number of permitted activities may occur on the allotments. However, I am confused by Ms. Buttimore's suggestion that this is somehow able to occur

[22]A link to the s32 report is here: https://environment.govt.nz/assets/publications/NPS-for-Highly-Productive-Land-Section-32-Evaluation-Report.pdf
[23] Table 8 on page 89 of the s32 Report, https://environment.govt.nz/assets/publications/NPS-for-Highly-Productive-Land-Section-32-Evaluation-Report.pdf

without regard to the NPS-HPL, particularly given clauses 3.9 (3) and (4) in the NPS-HPL direct territorial authorities to take measures and include objectives, policies and rules in their plans to minimise or mitigate the loss of HPL.

81. The effect Ms. Buttimore describes at paragraph 100 of her revised 42A report is a precedent effect – i.e. if this subdivision is allowed, then others will be. I discuss this below.

82. Firstly, any subdivision that can avoid the loss of productive capacity and satisfy clause 3.8 of the NPSHPL should not be a concern in relation to precedent. This is the whole purpose of the test – some subdivisions will pass it, some won't.

83. Secondly, this subdivision is unique for many reasons and variables. Procedurally, it straddled the implementation of the NPS-HPL, and therefore was not originally designed with the NPS-HPL in mind. It has had to be re-designed through the course of this hearing, with the 4000m^2 blocks removed because of advice that the productive capacity of the land was not able to be retained if they were included, and additional restrictions proposed via conditions. This process would be impossible to replicate.

84. Physically, the subdivision is unique - the dwelling on proposed lot 4 is existing, and proposed lot 5 is a boundary adjustment. The layout of proposed lot 5 is unique, and provides for the dwelling to be sited well to the rear of the site, on the site of a long standing previous dwelling (only recently removed), ensuring the productive capacity of the remaining land. In this case, the boundary adjustment is being created to provide for land from which the owner can produce, and is a situation where a block that is clearly 'lifestyle' at present is being given productive capacity and capabilities.

85. Other aspects that are unique are that the application has the written approval of Iwi and all neighbouring parties.

86. At paragraph 101 of her revised 42A report Ms. Buttimore focusses on a small loss of HPL associated with the dwelling on proposed lot 4. I agree that the dwelling takes up land. However, this is not the issue we have to consider. The issue is whether there is a loss of productive capacity from that land, and the evidence from Mr Allen confirms there is no loss of productive capacity, because there is no productive capacity now.

87. The logical conclusion of this subdivision, if it is allowed, is thus:

    a. The balance lot will potentially continue to be operated largely as it is now by the applicant. A dwelling may be established, something which could occur now as a permitted activity. The potential for a second dwelling to be established has been removed via consent condition. If it is sold, the future use of the land is unknown; but if parties choose, the productive capacity of the land can be exploited.
    b. Proposed lot 1 may be sold. A dwelling could be established in the restricted area show on the scheme plan in **Appendix A**, leaving the land open for

development of a productive rural enterprise, if and when any future owner chooses. Any dwelling would be available to support this enterprise.

c. The dwelling on proposed lot 5 will be re-established in accordance with the consent by a family member. The additional land provided with lot 5 will be available to be used for productive farming purposes if and when the current owner, or any future owner, chooses.
d. The existing dwelling on proposed lot 4 will be sold, and this allotment will be used for rural living with no supporting productive land. This would be considered rural lifestyle in nature. Reverse sensitivity covenants will be put in place at subdivision to avoid this issue.
e. Therefore, in place of one productive rural enterprise will potentially be three. This is consistent with the diversification encouragement from central government, it is consistent with the NPS-HPL, and ultimately, while the NPS HPL does not consider economic resilience or sustainability, if we return to the purpose of the RMA (which Ms. Buttimore agrees we should[24]), the natural soil resources will provide for sustainable rural communities for future generations.

Further Matters

88. Mr Bain comments on the comments from Ms Griffiths relating to landscape and visual effects. I have updated the conditions in **Appendix B** to reflect his additional evidence (of 24 January and 21 April 2023).

89. I note that I have recommended restrictions on the location of any habitable dwelling on proposed lot 1. Mr Bain's evidence considers the potential adverse effect of a dwelling anywhere on this lot, and he confirms that the proposed restrictions will not alter his opinion (as his original LVIA assumes a dwelling anywhere that complies with relevant road and boundary setbacks).

Future subdivision

90. My final observation in relation to this subdivision is that under the ONPDP, a controlled activity subdivision of one allotment would be possible under RUR78. The parent title is dated 1998, there is a balance of greater than 20ha, and, therefore, one allotment of not less than 4000m^2 would be controlled under the ONPDP. Under the ONPDP, the Waahi Tapu subdivision rule (OL87) only applies if the subject property contains a Waahi Tapu site. Ms Buttimore appears to agree as OL87 is not one of the rules she has included in her assessment of the ONPSP rules at paragraph 24 of the revised 42A report.

91. Under the notified version of the PNPDP, with its altered definition of 'SASM' any subdivision which is within the extents of a SASM is at present discretionary. The subject land is therefore captured by rules HHR-18 and SASM-R9, because the extent of any SASM identified with a koru symbol is clearly defined as being a 200m radius

[24] Paragraph 130 of revised 42A report

from that SASM – thus encroaching on the subject land (the extent of this encroachment is shown on the scheme plan in **Attachment A**).

92. Submissions were received on this matter and the 42A Officers Report to Hearing 14[25] recommended changes to the definition of SASM, at paragraph 698, as follows;

New definitions: "Scheduled site or area of significance to Māori"
698. As a result of amendments to the rule framework, I propose a new definition for "scheduled site or area of significance to Māori" which will be used solely in the rules. The definition is as follows:

A site or area of significance to Maori which is listed in SCHED3 and includes:
a) sites and areas of significance to Maori with a mapped extent (a "mapped site and area of significance to Maori" or a "mapped SASM"). The extent of a 'mapped SASM' is anywhere within the mapped extent;
b) sites and areas of significance to Maori without a mapped extent that are identified on the planning maps with a koru symbol (an "identified site and area of significance to Māori" or " identified SASM"). The extent of an 'identified SASM' is:
i. anywhere within a 200m radius of the site's mapped koru symbol; or
ii. where the extent of the identified SASM has been confirmed by mana whenua and made known in writing to the Council, within that extent;

93. The 42A Right of Reply to Hearing 14[26] has recommended further changes to the definition of SASM, as follows:

> *351. It is recommended that clause b(ii) of the definition for "scheduled site or area of significance to Māori" be amended as follows:*
>
> *"b. sites and areas of significance to Maori without a mapped extent that are identified on the planning maps with a koru symbol (an "identified site and area of significance to Māori" or "identified SASM"). The extent of an 'identified SASM' is:*
>
> > *i. anywhere within a 200m radius of the site's mapped koru symbol; or*
> > *ii. where the extent of the identified SASM within the 200m radius of the site's mapped koru symbol has been confirmed by mana whenua and made known in writing to the Council, within that extent;"*

[25] A link to the full 42A report is here: https://proposeddistrictplan.npdc.govt.nz/media/bdelinks/hearing-14-section-42a-report-sasm-and-sched3.pdf

[26] A link to the full 42A Right of Reply is here: https://proposeddistrictplan.npdc.govt.nz/media/4sunvkt3/hearing-14-section-42a-report-right-of-reply-sasm-and-sched3.pdf

94. I note for completeness that Puketi Pa is identified as both a SASM and an Archaeological Site (AS), and similar changes to the definition for archaeological sites are proposed.[27]

95. Given the comments from tangata whenua that "*We feel that his subdivision will not impact on the Pa site as Leith road is dividing the site from the subdivision. Therefore our approval stands*"[28] it seems highly likely that the extent of Puketi Pa does not extend across Leith Road and that, should the commissioners accept the officer's recommendation on this matter, this will be the definition in the decisions version of the PNPDP. Accordingly a controlled activity pathway will likely exist for one allotment on the subject land. As a controlled activity, the NPS- HPL would not be able to be taken into account.

96. In my opinion this is important to bear in mind when making a decision on this application.

Conclusion

97. The issue at hand is whether the long-term productive capacity of the HPL will be retained as a result of this subdivision. The applicant has provided expert evidence confirming that long-term productive capacity will in fact be retained, and no other evidence of this nature has been received.

98. Any of the lots, including the balance, just like any other block in the district could be used as 'lifestyle blocks'. As the guidance says – there is no 'lot size' that is lifestyle in nature, and there is nothing to compel people to use land they own in a particular manner.

99. The lack of a clear definition of 'lifestyle block' reflects that this is highly subjective in nature. Certainly the difference between a 'lifestyle block' and a 'small rural land holding' is quite blurred. Therefore, instead of defining a lifestyle block, the NPS-HPL allows applicants to demonstrate that their subdivision will retain the overall productive capacity of the land.

100. Therefore, what is important is that the long-term productive capacity of this land is retained for future generations should someone, as some stage, make that choice to use it. Use of these lots for 'lifestyle' is a choice, just like any other use will be a choice and the options for productive uses are significant.

101. The original subdivision did not provide for this 'choice' because on two of the originally proposed lots the size was such that there was no 'choice' and rural lifestyle was the only option. These lots have been removed from the proposal which has been

[27] paragraph 496 and 497 of the 42A Report for Hearing 13 - link here: https://proposeddistrictplan.npdc.govt.nz/media/uadfgmq3/hearing-13-section-42a-report-historic-heritage-sched1-and-sched2.pdf).

[28] This is documented in Appendix B to Ms Gerentes supplementary evidence dated 30 May 2022.

responsibly redesigned by the applicant to now be consistent with clause 3.8 in the NPS-HPL.

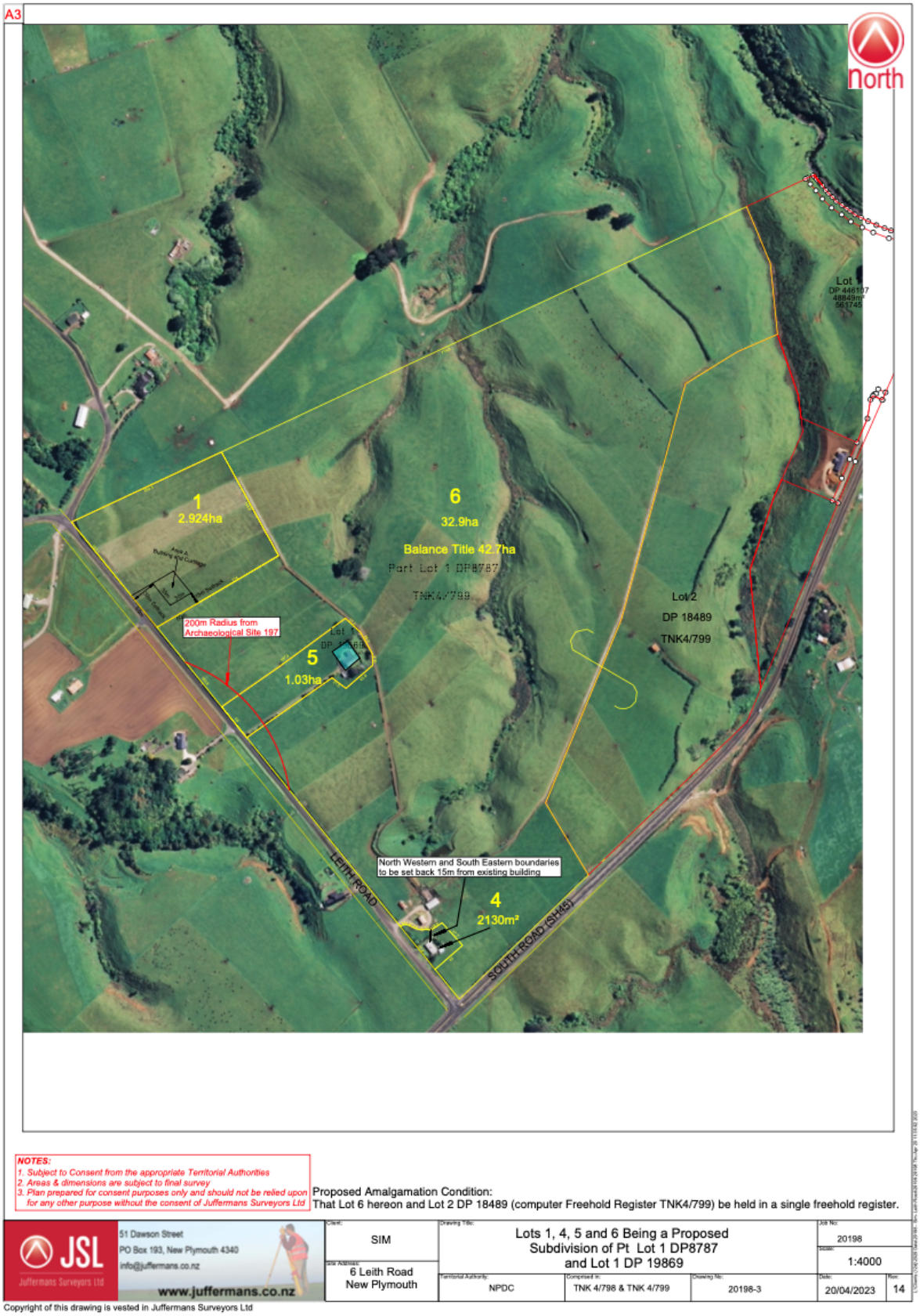
102. Throughout this supplementary brief of evidence, I have considered the revised 42A report prepared by Ms. Buttimore, and retain my original opinion that the activities are consistent with the NPS-HPL and this consent should be granted.

103. I have attached a mark up of the conditions to reflect the additional volunteered conditions in this evidence, and the amendments recommended by Mr Bain, as **Appendix B**.

Signed this 21st day of April 2023

Kathryn Louise Hooper
MNZPI

APPENDIX A
REVISED SCHEME PLAN SHOWING AREA A



APPENDIX B
MARK UP TO PROPOSED CONDITIONS
RED – Proposed at 24 January 2023
RED + YELLOW HIGHLIGHT = Additional amendments proposed at 21 April 2023

Appendix One: Proposed conditions of consent for SUB21/47781 and LUC22/48312

SUBDIVISION DECISION:
Subject to the following conditions imposed under Section 108 of the Resource Management Act 1991:

1. The subdivision activity shall be carried out in accordance with the plans and all information submitted with the application, and all referenced by the Council as consent number SUB21/47781.

2. The application for a certificate under section 224(c) of the RMA shall be accompanied by certification from a professionally qualified surveyor or engineer that all the conditions of subdivision consent have been complied with and that in respect of those conditions that have not been complied with:
   a. a completion certificate has been issued in relation to any conditions to which section 222 applies;
   b. a consent notice has been or will be issued that in relation to any conditions to which section 221 applies;

Survey Plan Approval

3. The survey plan shall conform with the subdivision scheme plans submitted by Juffermans Surveyors Ltd and entitled "Lots 1 ~~– 6,~~ 4, 5 & 6 being a subdivision of Part Lot 1 DP 8787 and Lot 1 DP 19869"; Job Number 20198; ~~Dated 23 May 2022~~ ~~23 January 2023~~ 20 April 2023.

4. ~~The knoll high point identified on Lot 3 at RL104.9 shall be marked and the 5m setback shall be defined on the survey plan.~~

5. The building platform on Lot 5 shall be consistent with the plan submitted by Juffermans Surveyors Ltd entitled "Proposed House Location Lot 5, 6 Leith Road Okato, dated 23 January 2023" and identified and marked on the survey plan.

6. ~~A no build area on Lots 2 and 3 shall be marked and defined on the survey plan the full extent of the 30m road frontage on both lots.~~

7. That the consent be subject to the following amalgamation condition:
   'That Lot 6 hereon is held with Lot 2 DP 18489 and that one Record of Title is issued herewith'.

See Request ID: 1792763

Building platforms and onsite stormwater disposal systems

8. An inspection and a report shall be carried out of soil compatibility by a suitably qualified person and submitted to the council to confirm the suitability of Lots ~~1, 2 and 3~~ for on-site stormwater disposal.

9. A report shall be provided from a suitably qualified person to confirm that there is available within Lots ~~1, 2 and 3~~ a stable flood free building platform suitable for building foundations in accordance with the requirements of the New Zealand Building Code – Acceptable Solution B1/AS4 of Approved Document B1/4; Structure Foundations.

10. Any recommendations requiring specific on-site stormwater and building platform shall be subject to Consent Notice under Section 221 of the Resource Management Act 1991.

Vehicle Entrance

~~11. A Type G vehicle crossing shall be constructed to service both Lots 2 and 3 to ensure compliance with the District Plan 160m sight distance requirement, these shall be in the locations shown in the Section 92 response to LUC22/48312. Each crossing shall be constructed to the Standard specified in the Council's Land Development & Subdivision Infrastructure Standard.~~

12. The existing vehicle crossings servicing Lots 4 and 5 shall be upgraded to a Type G vehicle crossing and shall be constructed to the Standard specified in the Council's Land Development & Subdivision Infrastructure Standard.

13. The unused crossing on Lot 4 shall be removed and the road reserve reinstated with grass.

Advice Note

An application with the appropriate fee shall be made to the Council for a new and or upgraded Vehicle Crossing, and upon approval the vehicle crossing is to be installed by a Council approved contractor at the applicant's cost.

Consent notice on Lots 1 ~~–6,~~ 4, 5 & 6

14. The consent holder or future owners of proposed Lots 1, ~~2, 3~~ and 5 shall comply with the following:

a) All buildings on Lots 1~~, 2, 3~~ and 5 shall be limited in terms of finish to exterior surfaces, this includes roofs and walls, recessive (shades rather than tints) and colours to have reflectivity values of below 20% for roofs and 40% for exterior walls.

b) All new driveways and accessways for Lots 1~~, 2, 3~~ and 5 shall finished in rural material and shall be a mid to dark grey in colour.
c) All habitable buildings on Lots 1~~, 2, 3~~ and 5 shall be single storey and less than 6m in height.
d) Only one habitable building shall be constructed on Lots 1~~, 2, 3~~ and 5.
e) Any new habitable dwelling on Lot 5 shall be the same or similar in scale to that of the former dwelling on site.
f) Water tanks on Lots 1~~, 2, 3~~ and 5 shall be recessive shade less than 35% reflectivity and shall be integrated with the dwelling design and either screened or planted from the view from the road, if not located underground.
g) All external lighting on Lots 1~~, 2, 3~~ and 5 shall be hooded or cast down so that no lamp source is visible.
h) All earthworks on Lots 1~~, 2, 3~~ and 5 shall include sediment control measures and be limited in height to 1.5m unless created at a batter of no steeper than 3 horizontal to 1 vertical. Any earthworks shall be grassed.
i) Fencing on Lots 1~~, 2, 3~~ and 5 shall be limited to post and rail or post and batten only.
j) Habitable building on Lot 5 shall be limited to the areas marked and defined on the survey plan.
~~k) No buildings shall be located in Lots 2 and 3 as shown and marked on the survey plan.~~
l) Within the next planting season following completion of the dwelling on Lot~~s~~ 1 ~~-3~~ native planting shall occur along the full extent of the driveway, along the southern side of the driveway on Lot~~s~~ 1 ~~and 3 and the northern side of the driveway on Lot 2~~. A minimum of two rows of native vegetation at 1m spacings capable of reaching a minimum height of 3m in six years shall be planted. Species should be selected from the coastal zone list in the Taranaki Tree Trust publication "Restoration Planting in Taranaki: A guide to the Egmont Ecological District". This publication is available on the TRC website.
m) Any habitable building and all curtilage (including but not limited to water tanks, septic tanks and ancillary buildings) associated with the dwelling on proposed lot 1 shall be contained within the area shown as "A" on the scheme plan.

15. The consent holder or future owners of proposed Lot 6 shall comply with the following:
    a) The number of habitable buildings shall be restricted to one, and no habitable building shall be located within 180m of the Leith Road boundary.
    b) Riparian planting and fencing within Lot 6 along the length of the waterbodies (tributaries of the Katikara Stream) shall be retained, maintained and enhanced on an on-going basis.
    c) Any dead or diseased species within the riparian planting shall be replaced as soon as practicable within the next planting season.
    d) Any damaged fencing along the riparian margins shall be replaced to ensure stock proof fencing permanently along the stream margins.

16. The consent holder or future owners of proposed Lot 4 shall comply with the following:

a) Only one habitable building shall be constructed on this allotment

b) Fencing shall be limited to post and rail or post and batten only.

c) All new buildings shall be limited in terms of finish to exterior surfaces, this includes roofs and walls, recessive (shades rather than tints) and colours to have reflectivity values of below 20% for roofs and 40% for exterior walls.

d) All buildings on Lot 4 shall be single storey and less than 6m in height.

e) Any new habitable building on Lot 4 shall be the same or similar in scale to that of the current existing habitable building on site.

f) The landowner or occupier will not interfere or restrain activities from occurring on land surrounding the burdened land where those activities are permitted by, and carried out in accordance with, the District Plan, Regional Plans or any replacement plans.

b. The landowners or occupier will not:

i) Make nor lodge; nor

ii) Be party to; nor

iii) Finance nor contribute to the cost of;

Any submission, proceeding or appeal designed or intended to limit, prohibit or restrict activities that are permitted and carried out in accordance with the District Plan or Regional Plans or any replacement plans.

17. The consent holder or future owners of proposed Lots 1 ~~– 6,~~ 4, 5 & 6 shall comply with the following:

a) Each new dwelling shall be supplied with a dedicated firefighting water supply, and access to such supply, in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008, which must thereafter be maintained.

b) The Consent Holder or future owners of Lots 1 ~~– 6,~~ 4, 5 & 6 shall arrange for cultural monitoring during any earthworks on any allotment. Five days prior to earthworks commencing Nga Mahanga A Tairi hapū shall be notified to allow time to arrange a monitor to be on site.

Note: Cultural monitoring shall be at the consent holder or future owners of Lots 1 ~~– 6,~~ 4, 5 & 6.

c) The Consent Holder or future owners of Lots 1 ~~– 6,~~ 4, 5 & 6 shall consult with Nga Mahanga A Tairi hapū for any earthworks for services and or buildings within 200m of Puekti Pa (Site ID 197). Nga Mahanga A Tairi shall approve the mitigation measures for earthworks associated with these activities.

d) If archaeological or cultural material are accidentally discovered by the construction crew, work in the immediate area will stop and an Accidental Discovery Protocol shall be implemented. Nga Mahanga A Tairi hapū shall be notified.

NEW *A 'No Complaints Covenant shall be placed on Lots 1, 4 and 5' in favour of Lot 6, with this covenant including a "no complaints" clause relating to lawful rural based production operations, that extends to owners, lessees, tenants, visitors or other occupiers.*

~~18. The consent holder or future owners of proposed Lots 2 and 3 shall comply with the following:~~

~~a) Nobuilding, earthworks, driveway and vehicle access shall be located within 5m of the highest point of the knoll, as identified by a confirmed RL Level (at the time of s223 stage) on Lot 3 as identified and marked on the survey plan.~~
~~b) The vehicle access and driveway locations for Lots 2 and 3 shall be in the locations specified in the Section 92 response for LUC22/48312.~~

19. The consent holder or future owners of proposed Lots 1 ~~–6,~~ 4, 5 & 6 shall comply with the following:
a) All planting established and or existing and identified to be retained in accordance with the Landscape Planting Plan [insert name + reference details of Landscape Planting Plan certified in accordance with Condition 23] and the planting set out in condition 14(l) shall be maintained by the owner and shall not be destroyed or removed. The owner shall replace any dead or dying plants with the same species in accordance with the [insert name + reference details of Landscape Planting Plan] and or condition 14(l) within the following planting season.

20. Conditions 14 -19 above shall be the subject of a consent notice under Section 221 of the Resource Management Act 1991 registered against the new record of title for Lots 1 ~~–6,~~ 4, 5 & 6 (where applicable) of the subdivision of ~~Lot~~ Part Lot 1 DP 8787 and Lot 1 DP 19869 as identified in the condition and shall be prepared by the Council at the cost of the consent holder.

Riparian Planting

21. Riparian planting and fencing shall occur along the length of the tributaries within Lot 6. TRC riparian guidelines 23, 24, 25, 26 and 41 shall be used as a guide to inform the fencing and planting plan.

22. Fencing shall be stock proof permanent fencing as per the Taranaki Regional Council (TRC) Guidelines.

Mitigation Planting

23. A Landscape Planting Plan prepared by a suitably qualified expert in landscaping shall be submitted by the consent holder to the Development Control Lead and certified prior to the commencement of works. The Landscaping Planting Plan is intended to provide screening and or softening

of existing and or proposed built form on Lots 1 ~~– 6,~~ 4, 5 & 6. The Landscape Planting Plan shall provide the following:

- Road boundary planting along the frontage of Lots~~ 1, 2 and 3~~ to screen and or soften the future building platforms.
- Identification of existing vegetation on Lot 5 that shall be retained and protected in perpetuity.
- ~~Identification of planting along the southern boundary of Lot 3 at a minimum of two rows at 1.5m spacing offset from one another to achieve a minimum height of 3m within 5 years of plantin. Upon installation the planting shall be a minimum of 1 to 2 litres in size.~~
- Identification of existing vegetation to be retained (road frontage hedge) until new planting achieves specific heights. The heights that the new planting must achieve before the existing vegetation can be removed shall be identified in the Landscape Planting Plan;
- Plant species, which must all be native varieties and include the numbers, size, spacing, layout and grade;
- Methods of ground preparation, fertilising, mulching, spraying;
- Maintenance and weed management.

All works shall be carried out in accordance with the Landscape Plan certified in accordance with this condition.

24. Prior to issue of certification under Section 224 of the Resource Management Act 1991, the consent holder shall complete planting in accordance with the Landscape Planting Plan certified in accordance with Condition 21.

25. In the event that application is made to the New Plymouth District Council for certification pursuant to Section 224 of the Resource Management Act 1991 before riparian planting and fencing under condition 21 and 22 and the planting approved under Condition 23 is completed, then the consent holder shall pay to the New Plymouth District Council a bond in the form of a refundable cash deposit. The purpose of this bond shall be for ensuring compliance with Condition 21 - 23 and shall only be entered into if the Council is satisfied that the amount of the bond is sufficient to achieve this purpose, and that 25% of the estimated cost for the maintenance period has been added.

~~LANDUSE DECISION:~~

~~Subject to the following conditions imposed under Section 108 of the Resource Management Act 1991:~~

1. ~~The use and development of the land shall be as described within the application and shall be substantially in accordance with the plans submitted with LUC22/48312 and as provided in response to Section 92 requests from LandPro Ltd and Juffermans Surveyors Ltd and entitled:~~
   ~~- Proposed House Location Lot 5, Job Number 20198-04; dated 19/05/22; and~~

~~- Lots 1 – 6 Being a Proposed Subdivision of Pt Lot 1 DP 8787 and Lot 1 DP 19869; Job Number: 20198; dated 13/09/22 (identified vehicle and driveway locations on proposed Lots 2 and 3.~~

2. ~~The Consent Holder or future owners of the subject site shall arrange for cultural monitoring during any earthworks in association with the proposed vehicle access and driveways on proposed Lots 2 and 3. Five days prior to earthworks commencing Nga Mahanga A Tairi hapū shall be notified to allow time to arrange a monitor to be on site.~~

   ~~Note: Cultural monitoring shall be at the consent holder or future owners of Lots 1 – 6.~~

3. ~~If archaeological or cultural material are accidentally discovered by the construction crew, work in the immediate area will stop and an Accidental Discovery Protocol shall be implemented. Nga Mahanga A Tairi hapū shall be notified.~~

Advice notes

Fire and Emergency staff are available free of charge to advise on means of compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

The installation of a sprinkler system is Fire and Emergency New Zealand's recommended means of compliance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 in non-reticulated areas.

The applicant has indicated the riparian planting along the waterbodies within Lot 6 will occur alongside discussions and engagement with Te Kahui o Taranaki Iwi Trust.

There is no reticulated water supply available to the site. Any dwelling constructed on Lot 2 will require provision for the water needs of the project in accordance with the provisions of the Building Code. The activity will require you to provide for its own potable water supply in accordance with the standards specified by the Building Code. Details showing how this is to be provided for will need to be provided as part of the Building Consent application for the project. Bore or well water supply will require a water quality test and results report. No firefighting water is available to this development. It is recommended that a 75mm instantaneous female coupling and valve be fitted to any water storage tanks that may be constructed as part of this work. The requirements of the New Zealand Fire Services Firefighting Water Supplies Code of Practice may have to be met.

The subject property is located in an area of known habitation and there is reasonable cause to suspect the presents of unrecorded archaeological sites. Evidence of archaeological sites may include burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches, banks, pits, old building foundations, artefacts of Māori and European origin or human burials.

If any activity associated with this proposal, such as earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s) (known or unknown), an authority (consent) from Heritage New Zealand Pouhere Taonga must be obtained for the work to proceed lawfully. Under the Heritage New Zealand Pouhere Taonga Act 2014, it is illegal to modify or destroy an archaeological site without obtaining an archaeological authority from Heritage New Zealand Pouhere Taonga. Heritage New Zealand Pouhere Taonga should be contacted prior to work commencing on the subject property. The relevant Regional Archaeologist can be contacted at archaeologist2CR@heritage.org.nz.

A Development Contribution for off-site services of $2275.44 excluding GST for Lots ~~1, 2 and 3~~ is payable by the consent holder and shall be invoiced separately. The 224 release of this subdivision will not be approved until payment of this contribution is made.

Consent Lapse Date
*This consent lapses on **XXXX 2027** unless the consent is given effect to before that date; or unless an application is made before the expiry of that date for the Council to grant an extension of time for establishment of the use. An application for an extension of time will be subject to the provisions of section 125 of the Resource Management Act 1991.*

This consent is subject to the right of objection as set out in section 357A of the Resource Management Act 1991.