

When replying please quote: LUC22/48312

## **SECTION 42A HEARINGS REPORT**

### **RESOURCE CONSENT APPLICATION FOR A DISCRETIONARY LANDUSE CONSENT AT 6 AND 42 LEITH ROAD, NEW PLYMOUTH APPLICATION NO. LUC22/48312**

Report prepared by: Laura Buttimore, Consultant Planner

<b>Consent No:</b>	LUC22/48312
<b>Applicant:</b>	B, M and R Sim
<b>Site Address:</b>	6 and 42 Leith Road, New Plymouth
<b>Legal:</b>	Lot 1 DP 19869 and Part Lot 1 DP 8787 held in RT TNK4/798 and TNK4/799
<b>Site Area:</b>	46.9ha and 2459m <sup>2</sup>
<b>Application:</b>	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).
<b>Zoning:</b>	Operative District Plan: Rural Environment Area Proposed District Plan: Rural Production Zone
<b>Overlays:</b>	Operative District Plan (ODP): State Highway 45 (Limited Access), Proposed District Plan (PDP): State Highway 45 (Limited Access), waterbodies under Proposed District Plan
<b>Relevant Rules:</b>	Rules Rur 17 of the ODP and HH-R17, SASM-R8 of the PDP
<b>Application status:</b>	The Proposal is Discretionary Activity under Rule Rur 17 of the New Plymouth District Plan (Operative 15 August 2005).  The proposal is a Discretionary Activity under Rules HH-R17 and SASM-R8 of the Proposed New Plymouth District Plan
<b>Notification:</b>	A decision was made on the 20 <sup>th</sup> of October for the application to proceed on a non-notified basis.

I, Laura Buttimore, Consultant Planner acting for the New Plymouth District Council (NPDC) have written this Section 42A report. It has been prepared to assist the Independent Hearings Commissioner in his consideration of the application and the subdivision application referenced as SUB21/47781 given both the subdivision and land use application are intrinsically linked. The report has no status other than as a Section 42A report on the application. It is not a decision, and the recommendation should not be construed as such.

### **Statement of Experience**

1. I hold the qualifications of a Bachelor of Resource and Environmental Planning (Honours) from Massey University. I am a Full Member of the New Zealand Planning Institute.
2. I have over thirteen years' experience as a professional planner working in local authority and private consultancy across New Zealand. I have extensive experience in terms of rural subdivision and associated land use consent development, specifically within the New Plymouth District. My recent experience includes processing a variety of rural subdivision resource consents for NPDC. I have also been involved in the Proposed District Plan for NPDC specifically with the urban Structure Plan Development Areas but additional advice and review has been provided on the Rural Production, Rural Lifestyle and Rural subdivision provisions.
3. I regularly appear at Council level hearings as a professional planning witness, and I have prepared and presented evidence to the Environment Court on planning matters.

### **Site Description and surrounding environment**

4. The site and surrounding environment is accurately described in the Section 42A report prepared for Commissioner St. Clair for a six lot subdivision referenced as SUB21/47781. A brief summary of the site is provided below.
5. The subject site is comprised in two Record of Titles (RT) on Leith Road. The site is 47ha, with a separate 2459m<sup>2</sup> title. The site has frontage to Leith Road along its eastern boundary and State Highway 45 (SH45) along its southern boundary. The smaller title has recently had a dwelling removed from the site and is now vacant of habitable buildings with only a shed provided on site. The larger farming title contains an existing dwelling in the south western corner of the site on the corner of Leith Road and SH45, farm implement and milking sheds are also located near this dwelling adjacent to Leith Road.
6. The site is steep to rolling in topography but primarily flat to rolling along the Leith Road frontage, with portions of the site sitting above the road. Two unnamed tributaries of the Katikara Stream dissect the site in generally a north, south direction.
7. The subject site is located within the Rural Environment Area (zone) under the Operative District Plan (ODP) and Rural Production Zone under the Proposed District Plan (PDP). Leith Road is a local road and South Road is State Highway 45. The site is affected by three overlays under the Proposed District Plan (PDP), these being:
  - the Site of Significance to Māori and Archaeological Site ID 197 being Puketi Pa which is an unverified site and the 200m extent of the site extends into the western extent of the subject site and;
  - the tributaries of the Katikara Stream that dissect the site are considered waterbodies under the PDP.

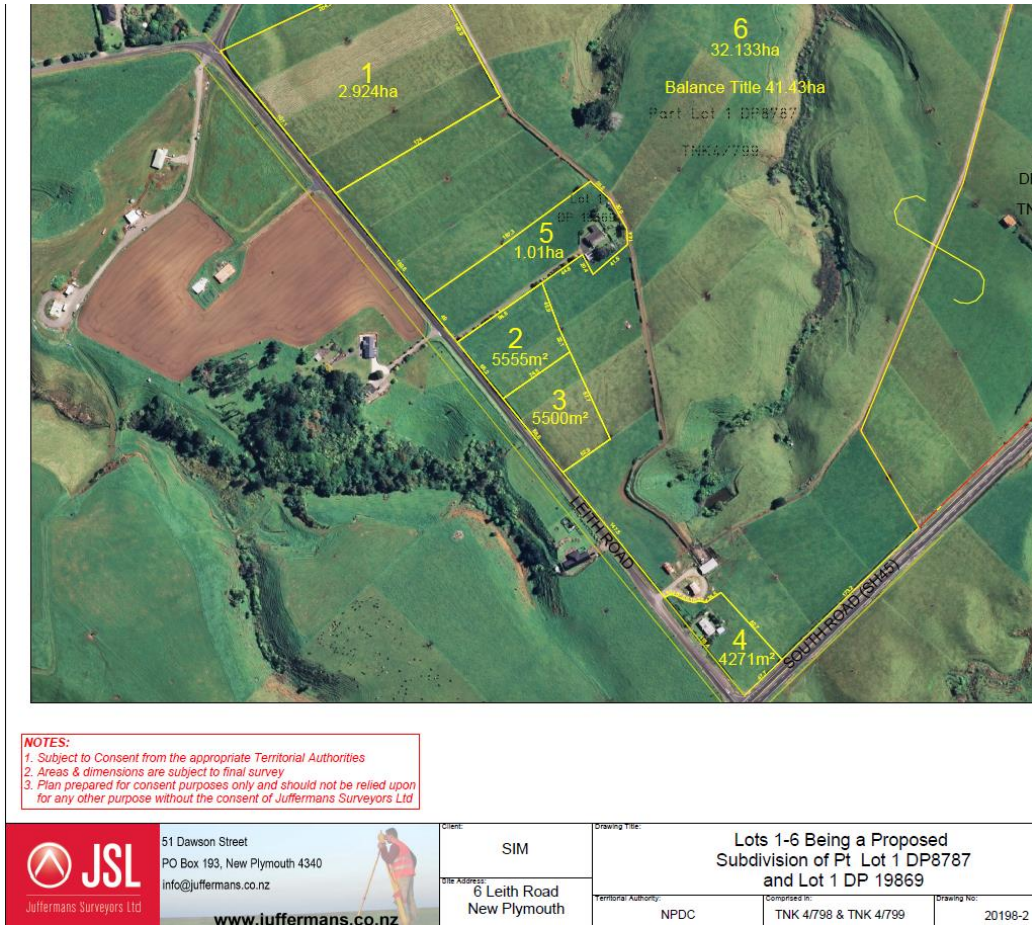


**Figure 1:** Aerial View of 6 and 42 Leith Road, New Plymouth (Source: Propertyguru)

## **Proposal**

### *History of subdivision and land use application*

8. An application for a 6-lot subdivision was made in 2021 by Juffermans Surveyors Limited. On the 21<sup>st</sup> of January 2022 this subdivision was publicly notified in accordance with section 95A and limited notified to relevant parties under section 95B of the RMA. A copy of the subdivision scheme is provided for reference below in Figure 2.



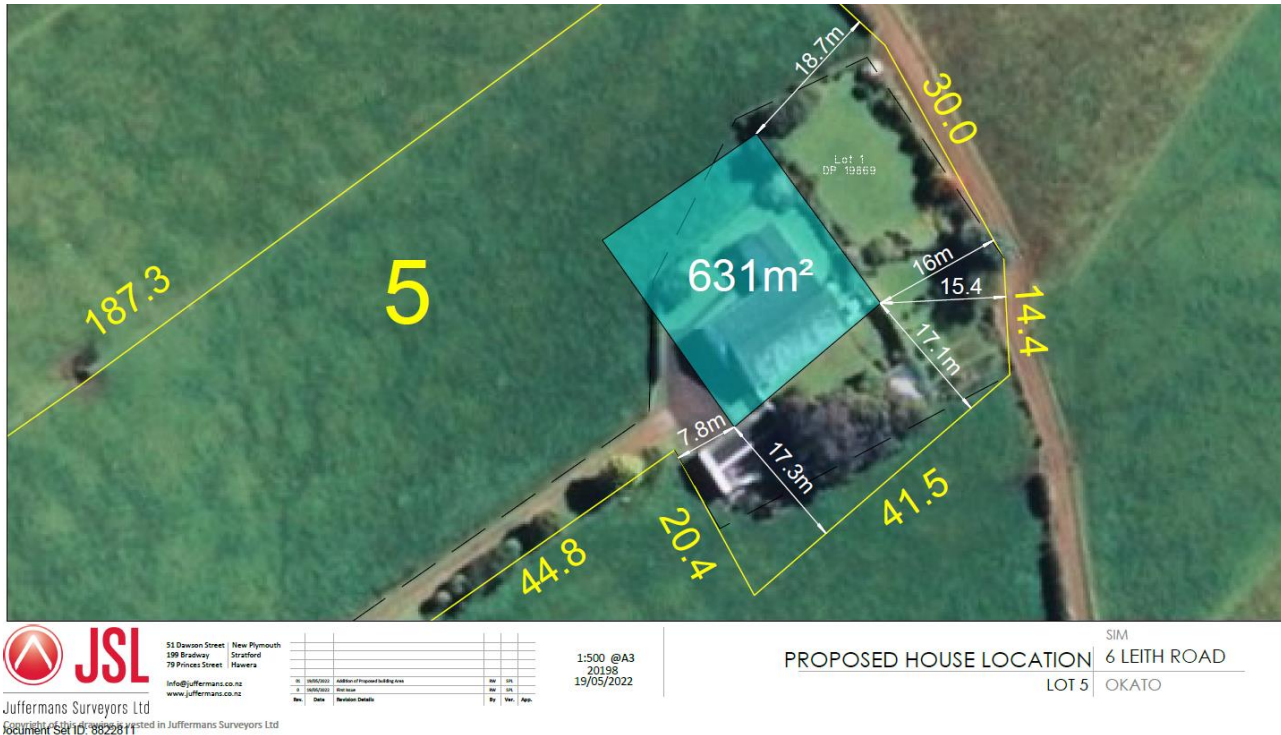
**Figure 2:** Scheme plan for SUB21/47781 (Source: Juffermans Surveyors Ltd)

9. A hearing commenced on Wednesday the 8 of June 2022 for this subdivision with Independent Commissioner St. Clair the appointed Commissioner to hear and decide this subdivision application. It was identified prior to that hearing (expert witness conferencing with myself and Ms Gerente) and addressed in Minute 5 by Commissioner St. Clair that a separate land use consent was required for the proposed activity. Commissioner St. Clair directed that this land use consent application be made to New Plymouth District Council (NPDC) and that SUB21/47781 be placed on hold under section 91(1) of the RMA until the land use consent application is made and a notification decision made on this application.
10. This land use consent is the application made as directed by Commissioner St. Clair in Minute 5. However, I do note that Minute 5 item (e) did direct the nature of the land use consent application to be determined between parties and this has not clearly translated in the application.
11. The land use consent application was prepared and lodged by Ms Gerente from Land Pro Ltd. This application was made on the 23<sup>rd</sup> of August 2022. A further information request was made on the 1<sup>st</sup> of September 2022 which sought the following further information:
  - Clarification on the activities that are seeking land use consent (earthworks and side yard setback only) and further detail on the volume, located and scale of the earthworks proposed.

- Clarification on the relevant rules the application is seeking consent under the PDP SASM and HH chapters;
  - Clarification on consent conditions offered for the land use consent and if they address the concerns/comments raised by Heritage New Zealand and Nga Mahanga A Tairi Hapu in their feedback provided to support the land use consent application;
  - A full copy of the feedback provided by Nga Mahanga A Tairi Hapu;
  - Consideration to any further mitigation proposed for the land use consent; and
  - Assessment of the application against the Taranaki Iwi Environmental Management Plan.
12. A response was provided by Ms Gerente on the 7<sup>th</sup> of September 2022 but it was determined this didn't satisfy the requirements of the Section 92 letter. A meeting was then held with Ms Gerente, Mr Stephen Lumb (Surveyor for Juffermans Surveyors Ltd) and myself on the 13<sup>th</sup> of September where we discussed the nature of detail necessary for the proposed earthworks part of the application. There was some disagreement around the level of detail that was necessary to progress the land use consent application. It was also determined that once the location of the vehicle access points and driveways were identified (previously not mapped or detailed in the application) that further correspondence would be necessary with Nga Mahanga A Tairi Hapu given their feedback provided.
  13. On the 15<sup>th</sup> of September 2022 a response was provided by Ms Gerente identifying vehicle access and driveway locations for proposed Lots 2 and 3 of SUB21/47781. I provided these plans and details to Nga Mahanga A Tairi Hapu representatives via email on the 28<sup>th</sup> of September 2022 to confirm those plans provided satisfied their requirements set out in their earlier emails to the applicant.
  14. On the 30<sup>th</sup> of September 2022 Ms Gerente provided a full Section 92 response and I was satisfied this response provided but confirmed with Ms Gerente that confirmation with hapū was necessary before the application could continue to be processed.
  15. On the 14<sup>th</sup> of October 2022 I received an email from Ms Fay Mulligan (Nga Mahanga A Tairi Hapu representative) that the hapū was satisfied with the accessways planned for Lots 2 and 3. Given this response I was comfortable I could proceed with the processing of the land use consent application.

*Side yard setback*

16. The applicant proposes to construct a habitable building on proposed Lot 5 of SUB21/47781 that will be 7.8m from its southwestern boundary. Figure 3 below identifies the proposed building area for the proposed dwelling.



**Figure 3:** Plan for Lot 5 habitable building setback (Source: LUC22/48312 application)

17. Concept house plans are also provided for the future dwelling on this allotment but no further site plan other than the one provided above in Figure 3.
18. The applicant has indicated that the proposed new dwelling on Lot 5 will be in a similar location to the dwelling that was recently removed from this location and that a consent notice is offered on the subdivision SUB21/47781 that states that any new habitable building on Lot 5 will be a similar scale to that of the former dwelling in this location.

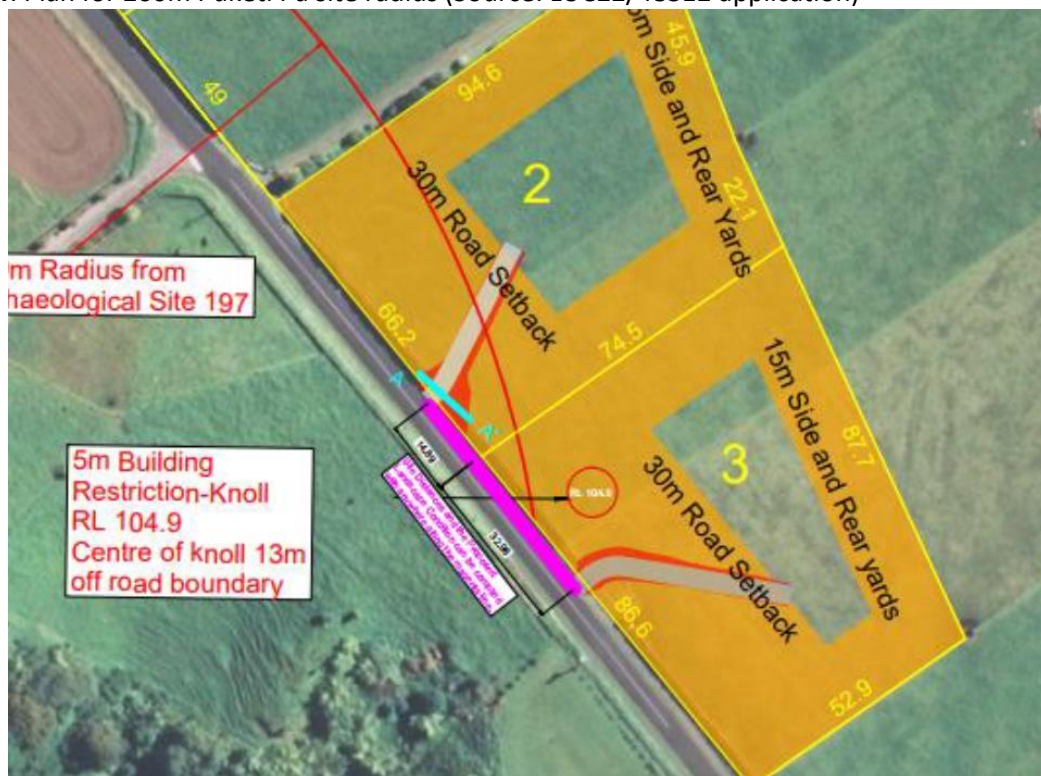
### Earthworks

19. The subject site is located adjacent to Puketi Pa which is identified on directly opposite the site on the other side of Leith Road. This pa site does not have a verified extent and therefore the PDP direct under the overview section of the SASM and Historic Heritage Chapters that *"For sites that don't have a verified extent, the accuracy of the location of sites is to +/- 200m and the extent of the site will be treated as the area within 200m radius of the sites centroid marker."* Therefore, the subject site is considered to form part of the SASM and Archaeological site listed and marked as 197 in the PDP.
20. The proposed subdivision of SUB21/47781 will create allotments that will partially be within the area that extends to 200m radius as shown in Figure 4 below. Therefore, proposed Lot 2 of SUB21/47781 will require a resource consent for a vehicle crossing and driveway into the site as the radius of Puketi Pa fully extends over this allotment road frontage. A vehicle crossing and driveway for Lots 3 and 6 could be located outside of this 200m radius.

21. The application seeks consent for earthworks on or within 50m of the SASM site and Archaeological site. It is assumed from the further information provided this only relates to the vehicle access and driveway for proposed Lot 2. The location and extent of the driveway for Lots 2 and 3 is shown below in Figure 5.



Figure 4: Plan for 200m Puketi Pa site radius (Source: LUC22/48312 application)



**Figure 5:** Plan vehicle access and driveway for Lots 2 and 3 (Source: LUC22/48312 further information response 30<sup>th</sup> September 2022)

22. The applicant has provided in their further information response that Lot 2 driveway will have approximately 75m<sup>3</sup> of earthworks to extend from the road boundary to the buildable area (outside of the 200m extent).
23. On the 20<sup>th</sup> of October 2022 a decision was made by an NPDC Officer under delegated authority for the land use consent to proceed on a non-notified basis.
24. As per Minute 7 from the Commissioner dated 23 November, this Section 42A hearing report has been directed to be prepared to assist the Commissioner in making a decision.

## **STATUTORY REASONS FOR THE APPLICATION**

### **National Environmental Standards**

25. Regulation 5(5) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) describes subdivision and development as an activity to which the NES applies where an activity that can be found on the Ministry for the Environment Hazardous Activities and Industries List (HAIL) has occurred.
26. I have checked the TRC Selected land Use register and there is no evidence that the site has contained an activity listed on the HAIL. Therefore, the NES does not apply.

### **Statutory Acknowledgement Area**

27. The site is not considered a Statutory Acknowledgement Area as the tributaries of the Katikara Stream are not listed as Statutory Acknowledgement areas.

### **Operative New Plymouth District Plan (2005)**

28. The site is identified in the New Plymouth District Plan (District Plan) as being within the 'Rural Environment'.
29. The New Plymouth District Plan was made operative on 15 August 2005. The proposal has been assessed as requiring consent for the following District Plan rules:
  - **Rule Rur17 (Minimum setback from a side boundary for a habitable building)** habitable buildings shall be 15m from any side boundary. An infringement to this standard of less than 10m requires consideration as a **Discretionary activity**.
    - *The proposed building footprint proposed on Lot 5 of SUB21/47781 will be 7.8m from the southwestern boundary of the site as shown in Figure 3 above.*



30. The proposed development falls to be a **Discretionary activity** overall under the ODP.
31. The relevant District Plan policies and objectives for Rules Rur17 are set out below.

**Proposed New Plymouth District Plan (Notified 23 September 2019)**

32. No decisions have yet been made on the Proposed District Plan (PDP) but submissions have closed and the Plan has been heard by Independent Commissioners with a decision due in 2023.
33. Given the site is considered to form part of SASM and Archaeological Site 197 the following rules have immediate legal effect and are considered to be relevant to the proposal.

Rule #	Rule Name/		
HH-R17	Earthworks on or within 50m of a scheduled archaeological site	Discretionary	The site contains Archaeological Site and Site of Significance to Maori Site ID: 197
SASM-R8	Earthworks on or within a scheduled site or area of significance to Māori	Discretionary	

34. No other rules under the PDP that have immediate legal effect are sought by the applicant as part of this land use consent. Please note that any structure (including fencing) erected within the 200m radius of Puketi Pa will require consent under SASM-R5 and HH-R2. The applicant is not seeking any consent for this activity.
35. The Proposed Plan seeks to retain the same type of zone on the subject site, it will change from Rural Environment Area to Rural Production Zone.

**Notification Summary**

36. As detailed above a decision was made on the 20<sup>th</sup> of October for this land use consent application to proceed on a non-notified basis. The decision was made by local authority officers under delegated authority.

**Assessment of the Application**

37. The following relevant matters have been considered in the assessment of this application under section 104 of the RMA:
  - Rural character;
  - Historic heritage; and
  - Cultural effects

### **Permitted baseline assessment**

38. Section 104(2) provides discretion to apply the permitted baseline. Section 104(2) of the RMA provides that when forming an opinion about whether there are any actual or potential effects on the environment of the following activity, the consent authority:

*"may disregard an adverse effect of an activity on the environment if a national environment standard of the plan permits an activity with that effect"*

38. The purpose of the permitted baseline test is to isolate and make effects of activities on the environment that are permitted by the plan, or have already been consented to, irrelevant. When applying the permitted baseline such effects cannot then be taken into account when assessing the effects of a particular resource consent application. The baseline has been defined by case law as comprising the 'existing environment' and non-fanciful (credible) activities that would be permitted as of right by the plan in question.
39. No permitted baseline consideration is relevant to this application.

### **Rural character and amenity**

40. The proposal seeks this land use consent application for the erection of a dwelling on Lot 5 that will be within 7.8m of the south western boundary. The effects of this non-compliance are isolated to the subject site given that it is an internal non-compliance with proposed Lot 6 which is the larger balance allotment. Given the proposed building platform for Lot 5 is well setback from the road and screened by existing and proposed landscaping (as offered by proposed conditions of consent for SUB21/47781) the effects of this non-compliance on the wider rural environment are negligible.
41. The proposed dwelling will be screened by the road and consistent with the built form once established on this site by the former dwelling. Any potential effects on this side yard setback non-compliance are limited to proposed Lot 6. Lot 6 is larger balance allotment, and this part of Lot 6 is a pastoral grazing paddock. For this reason, the non-compliance is considered appropriate from a rural character and amenity perspective. The proposed location of the dwelling on Lot 5 will ensure it is consistent in scale with the former dwelling that is well setback from the road and screened from the surrounding rural environment by existing and proposed landscaping.
42. Overall, it is considered that this side yard setback is considered appropriate and a positive design for the subdivision to ensure future built form on Lot 5 is mitigated.
43. In terms of the effects on rural character from the driveway and vehicle access for Lot 2 this is not further discussed in this application as this is heavily discussed in the Section 42A report for SUB21/47781 and is not relevant to this land use consent application. The effects in relation to the vehicle access and driveways for Lot 2 are limited to the historic and cultural matters further discussed below.

### Historic Heritage

44. The subject site is partially within the extent of archaeological site 197 being Puketi Pa site. The application includes an Archaeological Assessment by Mr Ivan Bruce and conclusions by Mr Bruce that determine the site does not contain any archaeological sites in the NZAA recording scheme or from his pedestrian survey of the site. Mr Bruce

does make recommendations that would form conditions of the land use consent which are cultural monitoring of earthworks associated with building platforms on Lots 1 to 6 of SUB21/47781 and accidental discovery protocols. These will be included in the suite of recommended conditions of consent.

45. The applicant has also engaged with Heritage New Zealand which also confirm that they have no concerns with the proposed subdivision and suggest appropriate wording for conditions of consent and advice notes in relation to accidental discovery protocols, these will also be included in the suite of recommended conditions of consent.
46. Given the information provided by the applicant on the location of the archaeological site being Puketi Pa, on the opposite side of Leith Road it is considered that the proposed location for vehicle access and driveway on Lot 2 will not adversely affect this heritage site and feature. Proposed conditions of consent offered by the applicant in relation to this land use consent will ensure any potential effects are avoided and or mitigated. It is therefore considered the proposed vehicle access and driveway for proposed Lot 2 won't create adverse effects on the historic heritage values of archaeological site ID 197.

#### Cultural

47. As outlined above the subject site includes SASM site 197 being Puketi Pa. The information the applicant has provided on this site suggests this SASM site does not extend into the subject site however it is still relevant for assessment under the SASM provisions under the PDP for the reasons identified above in relation to the 200m verified extent applying to this site.
48. The applicant has engaged with Nga Mahanga A Tairi Hapu, whom are the relevant mana whenua for the subject site and are a hapū to Te Kahui O Taranaki Iwi. The correspondence between the applicant and the hapū are provided in the response to further information provided by the applicant. The hapū make a number of comments that relate to the subdivision of this site rather than the proposed land use. Given the subdivision and this land use consent are so connected this is fully appreciated.
49. Once the applicant provided a spatial plan and proposed earthworks details in their response to further information, this detail was provided to the hapū to confirm this addressed their previously identified comments. The hapū confirmed they were happy with the vehicle access and driveway locations for Lots 2 and 3 for this subdivision.
50. The applicant has provided a suite of conditions to SUB21/47781 and to this proposed land use consent to address potential cultural effects arising from the subdivision and land use consent. Of relevance to this land use consent is the proposed cultural monitoring conditions for all earthworks and accidental discovery protocols, these conditions will ensure the hapū are involved in earthworks on site and can ensure any potential cultural effects are avoided.
51. Overall, it is considered that the proposed vehicle access to Lot 2 is proposed to be located to ensure any potential cultural effects can be avoided and or mitigated subject to conditions of consent being imposed as outlined above.

#### Conditions

52. A set of draft conditions have been provided in Appendix 1 for the Commissioner's use if he is of the opinion the application can be approved. These conditions include the most recent set of conditions agreed between myself and Ms Gerente following the subdivision hearing with the additions to these conditions to reflect the matters addressed above and offered by the applicant. It is important to note this land use consent application is only necessary/required if the Commissioner is of the mind to grant the subdivision consent SUB21/47781.

Overall effects summary

53. Overall, it is considered that the proposed land use will not result in an adverse effect on rural character and amenity and can ensure the cultural and heritage values of Puketū Pa are protected through proposed conditions of consent. It is considered the proposed land use consent when considered in isolation from SUB21/47781 can occur without creating adverse effects on the environment.
54. I remain of the opinion that the subdivision application does create adverse effects on rural character and amenity of the surrounding environment for the reasons listed in the Section 42A report for SUB21/47781.

**Assessment of Proposal against Planning Documents - Section 104(1)(b)**

National Environmental Standards

55. There is no NES relevant to this application.

National Policy Statements

44. The only relevant National Policy Statement is the National Policy Statement for Highly Productive Land 2022.
45. About 15% of New Zealand's land is categorised as highly productive. That means it's the country's most fertile and versatile land. The National Policy Statement (NPS) for Highly Productive Land will improve the management of this land. The NPS came into effect on 17 October 2022. The purpose of the NPS is to ensure highly productive land is available for growing vegetables, fruit, and other primary production, now and into the future.
46. Subdivision of highly productive land is forefront of the policy, the objective of which is "*Highly productive land is protected for use in land-based primary production, both now and for future generations.*". It is acknowledged that this Section 42A report is limited to a land use consent only. However, it is considered that this application is reliant and heavily linked to SUB21/47781 because without this subdivision proceeding this land use consent is not necessary. Further, Commissioner Minute 7 outlines at point 4 that he would like this NPS to be addressed.

Relevant policies include:

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

- *Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.*
  - *Policy 8: Highly productive land is protected from inappropriate use and development.*
  - *Policy 9: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.*
47. The land subject to the proposal to subdivide is located on highly productive land made up of some Class 2 land. The Manaaki Whenua Landcare Research website is the current tool we have available for identifying land class. This website identifies the flat land near the Leith Road frontage subject to SUB21/47781 and LUC22/48312 as Land Use Capability Class 2 land.
48. Section 3 of the NPS sets out what Regional Councils and Territorial Authorities must do to give effect to the NPS but also requires that effect be given to the NPS despite the actions required not yet being undertaken. In this regard, Sections 3.8 & 3.10 are relevant to the subdivision proposal SUB21/47781 and is further discussed in Appendix 2.
49. In terms of the proposed land use consent and effects this land use consent will have on highly productive soils is hard to solely isolate from the relevant subdivision given that they are intricately connected. However, a specific assessment of the land use application is required under Section 3.9 of the NPS-HPL as this directs territorial authorities to *'avoid inappropriate use or development of highly productive land that is not land based primary production'*. Section 3.9 (2) of the NPS-HPL sets out further exemptions for use of development on highly productive land, this includes Section 3.9 (2) (g) which is for *'small-scale or temporary land-use activity that has no impact on the productive capacity of the land'*. Looking at the land use consent in isolation from the subdivision application, which is difficult to do because the land use is only necessary if the subdivision proceeds there is an argument the land use component could fit under this exemption given the proposed works for the vehicle access and driveways are small in scale. The construction of driveways and vehicle access are activities that could occur as a permitted activity and are permitted under the ODP but are required to obtain consent due to the unverified extent of the adjacent SASM and heritage site. The internal setback reduction for Lot 5 is considered minor in scale and wouldn't impact on the overall productive capacity of the farm as this is already a record of title held in its ownership and a dwelling on this allotment is anticipated and enabled by the ODP. Further, the *'small scale'* test in 3.9 (2) requires it to *'have no impact on the land'*, the proposed vehicle access and driveways for Lots 2 and 3 will result in a loss on the productive capacity of the land and is therefore not consistent with Section 3.9 of the NPS-HPL. Whilst it is accepted this potential loss in productive capacity is small in scale it will still have an impact on the productive capacity of the subject site.
50. Given my determination under Section 3.9 above in relation to LUC22/48312 of the NPS-HPL an assessment is then required under Section 3.10 which provides exemptions for highly productive land subject to permanent or long-term constraints. From the information I have on the subject site's productive capacity (or lack thereof), which is limited due to the timing of the NPS-HPL and the lack of assessment provided by the applicant it is difficult to sustain or apply any of these exemptions to the subject

site. It does appear that only the flatter pastoral land adjoining Leith Road is considered 'highly productive' under the NPS-HPL and a large portion of the larger farming unit is lower land classification given its undulating nature and the presence of the waterbodies traversing the site. Further, clause 3.10 (1) (a) requires the presence of a permanent or long-term constraint on the land being present that would mean land-based primary production is not able to be economically viable for at least 30 years. This exemption does not seem likely to the subject site given its current productive use as a dry stock farming unit. Therefore, I do not believe the subject site would meet an exemption under Section 3.10 (1) (a) of the NPS-HPL. Given the application fails 3.10 (1) (a) then there is no need to address the subsequent sections of 3.10 (1) (b) and (c). It is also important to note the onus is on the applicant to demonstrate an exemption applies under 3.10 and the applicant has yet to demonstrate this is relevant. Therefore, I can only conclude the application does not meet an exemption under 3.10 of the NPS-HPL.

51. Overall, I believe the land use consent application related to driveway and vehicle access construction and a side yard setback for a dwelling breach will result in a loss of productive capacity of the subject site which is in conflict with the NPS-HPL. The proposed subdivision consideration under the NPS-HPL in relation to SUB21/47781 is provided in Appendix 2 attached where the tests are applied under Section 3.8 of the NPS-HPL with a similar conclusion.
52. In conclusion for the reasons listed above, I believe the applicant is in conflict with the NPS-HPL and that the proposed land use application will impact on the productive capacity of the subject site.

Taranaki Regional Policy Statement

53. The Taranaki Regional Policy Statement (RPS) considers regional wide issues on water, soil and land, air, freshwater, indigenous biodiversity, natural and historic features, waste management, minerals, energy and the built environment. A number of these issues are high level regional issues and the proposed subdivision will not impact on these wider regional issues.
54. Section 10 of the RPS outlines Natural Features and Landscape, historic heritage and amenity values. The proposed land use will not impact on outstanding natural features and landscape. Of relevance to this proposal is 10.3 of the RPS which seeks to maintain and enhance amenity values. AMY Objective 1 and AMY Policy 1 seeks to maintain and enhance amenity values both in a rural and urban setting. As concluded in the effects assessment above the application will not result in a loss of amenity values given the small scale nature of the proposed land use consent. Therefore, the application is not seen to be contrary to the relevant objectives and policies of the ODP.

Operative District Plan

55. The following objectives and policies of the Operative District Plan are considered relevant to this proposal and tabled below for reference:
56. **Table 1:** Applicable Operative District Plan Objectives and Policies

<b>Obj/Pol #</b>	
Objective 1	To ensure activities do not adversely affect the environmental and amenity values

	of areas within the district or adversely affect existing activities.
Policy 1.1	Activities should be located in areas where their effects are compatible with the character of the area.
Objective 4	To ensure the subdivision, use and development of land maintains the elements of RURAL CHARACTER.
Policy 4.3	Control the density, scale, location (including on-site location) and design of activities by; (a) Imposing a maximum HEIGHT for all buildings to allow for rural uses to operate. (b) Providing a maximum area that can be covered by BUILDINGS to control the effects of larger scale activities on small sites. (c) Requiring BUILDINGS to be setback from the ROAD BOUNDARY in order to maintain spaciousness. (d) Requiring BUILDINGS to be setback from the SIDE BOUNDARY to maintain separation between BUILDINGS and related activities. (e) Providing for the RELOCATION of BUILDINGS to ensure they are reinstated. (f) Requiring landscaping (planting and screening) to mitigate the effects of: (i) OUTDOOR STORAGE areas visible from an adjoining RESIDENTIAL ENVIRONMENT AREA or New Plymouth entrance corridor and; (ii) VEHICLE parking either visible from the ROAD or an adjoining RESIDENTIAL ENVIRONMENT AREA or New Plymouth entrance corridor; (iii) of large SUBSTATIONS and SWITCHING STATIONS. (g) Imposing controls on the size, HEIGHT, location, content, number and duration of ADVERTISING SIGNS. (h) Imposing controls on the quantity, composition and reinstatement of EXCAVATION and FILL to ensure adverse effects are mitigated.
Policy 4.4	Control the density, HEIGHT and on-site location of HABITABLE BUILDINGS by: (a) Allowing additional HABITABLE BUILDINGS at appropriate densities and of a size that maintain Spaciousness and a Low Density, Production Orientated environment, while allowing some flexible living opportunities. (b) Allowing HABITABLE BUILDINGS to a maximum HEIGHT that allows typical residential use to occur. (c) Requiring HABITABLE BUILDINGS to be setback from the SIDE BOUNDARY to ensure privacy between dwellings and separation from other rural uses.

57. Objective 1 and Policy 1.1 are about protecting amenity values and ensuring activities are compatible with the character of the area. If SUB21/47781 is approved the land use consent application will not alter amenity values or create effects on the surrounding character of the rural environment beyond what is anticipated and provided for by the subdivision application. The application is consistent with Objective 1 and Policy 1.1.

58. Objective 4 deals with the loss or reduction of rural amenity and character.

Objective 4:

*"To ensure the subdivision, use and development of land maintains the elements of RURAL CHARACTER is relevant".*

59. As outlined above the land use consent application is only necessary if the subdivision under SUB21/47781 is approved, if this is approved then the land use consent application will maintain the elements of rural character that have been established by this approved subdivision consent. The land use consent application is for small scale earthworks to enable vehicle access, driveways and an internal side yard setback. None of these discrete non-compliances will result in the degradation of rural character and amenity.
60. Overall, the application is considered to be consistent with the objectives and policies of the Operative Plan.

#### Proposed District Plan

61. The Objectives and Policies of the Proposed District Plan are required to be considered alongside those of the Operative District Plan as they have legal effect.
62. The following Objectives and Policies of the Proposed District Plan are considered relevant to the proposal and are tabled below for reference:

**Table 2:** Applicable Proposed District Plan Objectives and Policies

<b>Obj/Pol #</b>	
Strategic Objective UFD-24	Productive, versatile land and natural, physical and cultural resources located within rural areas that are of significance to the district are protected and maintained.
SASM-O1	Sites and areas of significance to Māori are recognised, protected and maintained.
SASM-O2	The relationship of tangata whenua with sites and areas of significance to Māori is recognised and protected.
HH-O1	Historic heritage is recognised, protected and maintained.
RPROZ-O1	Productive land and resources support a range of production oriented and resource dependent activities which are innovative and efficient.
RPROZ-O2	The Rural Production Zone is predominantly used for primary production.
RPROZ-O3	The role, function and predominant character of the Rural Production Zone is not compromised by incompatible activities.
RPROZ-O4	The predominant character and amenity of the Rural Production Zone is maintained, which includes: <ul style="list-style-type: none"> <li>1. extensive areas of vegetation of varying types (for example, pasture for grazing, crops, forestry and indigenous vegetation and habitat) and the presence of large numbers of farmed animals;</li> <li>2. low density built form with open space between buildings that are predominantly used for agricultural, pastoral and horticultural activities (for example, barns and sheds), low density rural living (for example, farm houses and worker's cottages) and community activities (for example, rural halls, domains and schools);</li> <li>3. a range of noises, smells, light overspill and traffic, often on a cyclic and seasonable basis, generated from the production, manufacture, processing and/or transportation of raw materials derived from primary production;</li> </ul>



	<p>4. interspersed existing rural industry facilities associated with the use of the land for intensive indoor farming, quarrying, oil and gas activities and cleanfills; and</p> <p>5. the presence of rural infrastructure, including rural roads, and the on-site disposal of waste, and a general lack of urban infrastructure, including street lighting, solid fences and footpaths.</p>
RPROZ-O5	<p>The Rural Production Zone is a functional, production and extraction orientated working environment where primary production and rural industry activities are able to operate effectively and efficiently, while ensuring that:</p> <ol style="list-style-type: none"> <li>1. the adverse effects generated by primary production and rural industry activities are appropriately managed; and</li> <li>2. primary production and rural industry activities are not limited, restricted or compromised by incompatible activities and/or reverse sensitivity effects.</li> </ol>
RPROZ-O6	<p>Natural features, soil productivity, versatility of land and rural character and/or amenity are not compromised by adverse changes to landform, intensification of land use and/or built form, or urbanization.</p>
RPROZ-O7	<p>Sensitive activities are designed and located to avoid, remedy or mitigate adverse reverse sensitivity effects and/or conflict with primary production.</p>
SASM-P2	<p>Protect and maintain sites and areas of significance to Māori from inappropriate activities by:</p> <ul style="list-style-type: none"> <li>○ 1. ensuring identified sites and areas of significance to Māori are not disturbed, destroyed, removed and/or visually encroached upon; and</li> <li>○ 2. requiring activities on, or in proximity to sites and areas of significance to Māori to avoid adverse effects on cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua.</li> </ul>
SASM-P3	<p>Allow the following activities to occur on, or adjacent to scheduled sites and areas of significance to Māori, while ensuring their design, scale and intensity will not compromise cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua:</p> <ol style="list-style-type: none"> <li>1. Land disturbance...;</li> </ol>
SASM-P4	<p>Manage activities that occur on, or adjacent to scheduled sites and areas of significance to Māori that have the potential to compromise cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua, including:</p> <ol style="list-style-type: none"> <li>1. Erection of, additions to and relocation of structures;</li> <li>2. Earthworks; and</li> <li>3. Subdivision of land containing sites and areas of significance to Maori.</li> </ol>
SASM-P5	<p>Ensure that activities on, adjacent to or affecting sites and areas of significance to Māori avoid adverse effects on the site or area, or where avoidance is not possible, appropriately remedy or mitigate adverse effects, having regard to:</p> <ol style="list-style-type: none"> <li>1. the particular cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the site which may be affected;</li> </ol>

	<p>2. the extent to which the activity may compromise tangata whenua's relationship with their ancestral lands, water, sites, wāhi tapu, and other taonga, and/or the ability to protect, maintain or enhance sites of significance to tangata whenua;</p> <p>3. tangata whenua's responsibilities as kaitiaki and mana whenua;</p> <p>4. any opportunities for tangata whenua's relationship with the site or area to be maintained or strengthened on an ongoing or long term basis, including practical mechanisms for mana whenua to access, use and maintain the identified site;</p> <p>5. the outcomes of any consultation with and/or cultural advice provided by mana whenua, in particular with respect to mitigation measures and/or the incorporation of mātauranga Māori principles into the design, development and/or operation of activities that may affect the site; and</p> <p>6. where the site is also an archaeological site, the relevant objectives and policies in the Historic Heritage Chapter.</p>
HH-P13	<p>Protect and maintain archaeological sites from inappropriate activities by:</p> <ol style="list-style-type: none"> <li>1. ensuring scheduled archaeological sites are not disturbed, destroyed, removed and/or visually encroached upon; and</li> <li>2. requiring activities on or adjacent to archaeological sites to avoid adverse effects on the sites' historic heritage values.</li> </ol>
HH-P14	<p>Allow the following activities on or adjacent to an archaeological site provided they do not compromise the site's historic heritage values:</p> <ol style="list-style-type: none"> <li>1. land disturbance;</li> <li>2. demolition or removal of existing buildings and structures;</li> <li>3. alterations to existing buildings and structures;</li> <li>4. maintenance and repair or upgrading of existing network utility structures; and</li> <li>5. erection of signs</li> </ol>
HH-P15	<p>Manage activities that occur on or adjacent to scheduled archaeological sites, including:</p> <ol style="list-style-type: none"> <li>1. erection of, additions to and relocation of structures;</li> <li>2. earthworks; and</li> <li>3. subdivision of land containing archaeological sites.</li> </ol>
RPROZ-P1	<p>Allow activities that are compatible with the role, function and predominant character of the Rural Production Zone, while ensuring their design, scale and intensity is appropriate, including:</p> <ol style="list-style-type: none"> <li>1. agricultural, pastoral and horticultural activities;</li> <li>2. residential activities;</li> <li>3. Māori purpose activities;</li> <li>4. rural produce retail; and</li> <li>5. petroleum prospecting.</li> </ol>
RPROZ-P2	<p>Manage activities that are potentially compatible with the role, function and predominant character of the Rural Production Zone and ensure it is appropriate for such activities to establish in the Rural Production Zone, having regard to whether:</p>

	<ol style="list-style-type: none"> <li>1. the activity is compatible with the character and the amenity of the rural area;</li> <li>2. the activity will limit or constrain the establishment and operation of agricultural, pastoral and horticultural activities;</li> <li>3. the activity will reduce the potential for versatile land to be used for productive purposes and in a sustainable manner;</li> <li>4. adequate on-site infrastructure and services are available and/or can be provided to service the activity's needs;</li> <li>5. adverse effects can be internalised within the activity's site; and</li> <li>6. the activity will not result in conflict at zone interfaces.</li> </ol>
RPROZ-P3	<p>Avoid activities that are incompatible with role, function and predominant character of the Rural Production Zone and/or activities that will result in:</p> <ol style="list-style-type: none"> <li>1. reverse sensitivity effects and/or conflict with permitted activities in the zone; or</li> <li>2. adverse effects, which cannot be avoided, or appropriately remedied or mitigated, on: <ol style="list-style-type: none"> <li>a. rural character and amenity values;</li> <li>b. the productive potential of highly productive soils and versatile rural land.</li> </ol> </li> </ol> <p>Incompatible activities include:</p> <ol style="list-style-type: none"> <li>1. residential activities (except papakāinga) and rural lifestyle living that are not ancillary to rural activities;</li> </ol> <p>...</p>
RPROZ-P4	<p>Maintain the role, function and predominant character of the Rural Production Zone by controlling the effects of:</p> <ol style="list-style-type: none"> <li>1. building height, bulk and location;</li> <li>2. setback from boundaries and boundary treatments; and</li> <li>3. earthworks and subdivision.</li> </ol>
RPROZ-P5	<p>Require the effects generated by activities to be of a type, scale and level that is appropriate in the Rural Production Zone and that will maintain rural character and amenity, including by:</p> <ol style="list-style-type: none"> <li>1. managing noise and light emissions to an acceptable level, particularly around sensitive activities; and</li> <li>2. managing high traffic generation activities that compromise the safe and efficient use of the transport network</li> </ol>
RPROZ-P7	<p>Require sensitive activities to be appropriately located and designed to minimise any reverse sensitivity effects, risks to people, property and the environment and/or conflict with activities permitted in the Rural Production Zone, including by:</p> <ol style="list-style-type: none"> <li>1. ensuring sufficient separation by distance and/or topography between sensitive activities and zone boundaries, transport networks, primary production, significant hazardous facilities and rural industry;</li> <li>2. adopting appropriate design measures to minimise the impact of off-site effects of rural industry that cannot be internalised within the rural industry activity's site; and</li> <li>3. utilising landscaping, screen planting or existing topography to minimise the visual impact of rural industry.</li> </ol>

63. It is considered that the proposal is consistent with rural production zone objectives and policies. As outlined above the proposed land use consent application is only necessary if SUB21/47781 is approved. The land use consent component related to the subdivision is discrete in nature and won't create any conflicts with the relevant objectives and policies. Acknowledging that the effects from the proposed subdivision are addressed in the Section 42A report for SUB21/47781. Further, the applicant has engaged with mana whenua and Heritage New Zealand and have been able to demonstrate that effects on the cultural site of significance to Māori and historic heritage of Puketi Pa can be avoided through the imposition of appropriate conditions. It is considered that these conditions will ensure the proposal is consistent with the relevant SASM and historic heritage objective and policies.
64. Overall, the proposal is consistent with the relevant objectives and policies of the Proposed District Plan outlined above.

### **Other Matters - s104(1)(c)**

65. The following other matters are considered relevant to the proposal:

Iwi Environmental Management Plan Taiao, Taiora - the Iwi Environmental Management Plan for the Taranaki rohe

Taiao, Taiora is the iwi environmental management planning document which sets out the views and expectations of Taranaki iwi regarding environmental resource management within the tribal rohe (tribal area). It provides a basis for engagement with Taranaki Iwi and its hapū on a broad range of environmental and resource management issues. The applicant has engaged with mana whenua, Nga Mahanga A Tairi Hapu who support the application and the proposal would be undertaken with measures to manage potential effects on mana whenua, as such that it will be largely consistent with the provisions of the aforementioned iwi management plan.

### **Part 2 of the RMA**

66. The Court of Appeal's decision in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 was released on 21 August 2018. The Court of Appeal held that the Supreme Court's rejection in *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 ("*King Salmon*") of the "overall broad judgement" approach in the context of plan provisions applied in the particular factual and statutory context of the NZCPS which, the Supreme Court confirmed, already reflects Part 2 and complies with the requirements of the RMA. The Court of Appeal did not consider the Supreme Court in *King Salmon* "intended to prohibit consideration of Part 2 by a consent authority in the context of resource consent applications (paragraph [66])".
67. In the context of resource consents, the Court of Appeal determined that:
- a) RMA decision makers should usually consider Part 2 when making decisions on resource consents (this is the implication of the words "subject to Part 2" in section 104); and

- b) However, doing so is unlikely to advance matters where the relevant plan provisions have clearly given effect to Part 2, or where it is clear the plan is “competently prepared” with “a coherent set of policies” such that there is no need to refer to Part 2.
68. In the present application, it is appropriate to apply Part 2 as it cannot be said the Operative District Plan or Proposed District Plan contains a coherent set of policies or gives effect to the NPS-HPL due to the timing of the NPS-HPL only recently coming into effect. Therefore, there is potential for incomplete coverage in the ODP and PDP in relation to the protection of highly productive soils. This is one of the three caveats where the Supreme Court in *King Salmon* said recourse should be had to Part 2. Accordingly, it is appropriate to provide an assessment of the application against Part 2 below.

### Section 8 – Treaty of Waitangi

69. Section 8 concerns the principles of the Treaty of Waitangi. The application has engaged with mana whenua and offered conditions of consent to ensure potential cultural effects are avoided. Further, from the archaeological and cultural advice received from the applicant it is unlikely the site is within the physical extent to the Puketū Pa site. Given this information and the conditions of consent offered it is unlikely the proposal will offend section 8 of the RMA.

### Section 7 – Other matters

70. Section 7 requires that Council shall have particular regard to a number of other matters, of relevance this includes

- (b) the efficient use and development of natural and physical resource*
- (c) the maintenance and enhancement of amenity values*
- (f) maintenance and enhancement of the quality of the environment and*
- (g) any finite characteristics of natural and physical resources*

- (b) Efficient use and Development of Natural and Physical Resource and (g) Finite Characteristics of Natural and Physical Resources*

71. In terms of the efficient use and development of natural and physical resources (7(b)) and the finite characteristics of natural and physical resource (7(g)), the resources relevant to this proposal are the soil resource and the protection of highly productive soil.
72. The subject site is zoned for rural purposes in both the ODP and the PDP. The land use consent application is for discrete land use matters relating to vehicle access construction, driveway construction and side yard infringement for a future dwelling. As outlined in the NPS-HPL assessment the driveway and vehicle access for Lots 2 and 3 are likely to result in the loss of some productive capacity of highly productive soils. It is therefore considered that the proposed land use is not the most efficient use of highly productive soils and doesn't recognise its finite characteristics that make it worthy of retention as a productive farming unit. Furthermore, the proposal conflicts with the NPS-HPL.

73. Regarding Section 7(g) I do consider the land use consent application clashes with Section 7 (g).
74. Regarding 7 (b) I do consider the proposed land use would result in an inefficient use of the highly productive soil class fronting Leith Road as it enables vehicle access and driveways which will result in a loss of productive capacity of highly productive land. It is considered this land use consent also clashes with Section 7 (b).

*(c) and (f) Maintenance and Enhancement of Amenity Values & Quality of the Environment*

75. In terms of the maintenance and enhancement of amenity values (7(c)) and the maintenance and enhancement of the quality of the environment (7(f)), the proposal will have minimal adverse effects with respect to amenity values and quality of the environment as this land use consent application is discrete in scale and wont adversely alter the amenity values of the immediate environment and is able to maintain the existing quality of the receiving environment.
76. The proposal accords to Section 7 (c) and (f) of the RMA.
77. Taking the above into consideration, it is my opinion that the proposal only partly meets the relevant principles of Section 7.

Section 6 – Matters of National Importance

78. Section 6 requires that Council shall recognise and provide for matters of national importance. In this case, I do not consider any of the matters of national importance under Section 6 are relevant to the consideration of the proposal.

Section 5 – Purpose

79. As stated above, Sections 6 – 8 all serve to inform the analysis and consideration of whether the purpose of the Act under section 5 will be achieved by the proposal. The overriding purpose of the RMA is 'to promote the sustainable management of natural and physical resources'. While the proposal meets the applicant's family's social and economic wellbeing, that consideration must be balanced against the remaining matters in Section 5(2).
80. The proposal involves the construction of a vehicle access and driveway within 200m of an unverified extent of Site of Significant to Māori and Heritage Site. Further, the proposal enables a dwelling to be constructed within the 15m side yard setback requirements to an internal boundary on the subject site that would be created by SUB21/47781. The application must therefore ensure it can achieve the following in addition to the social and economic well-being of the applicant:

*Section 5 (2)...*

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

*(b) Safeguarding the life supporting capacity of air, water, soil, and ecosystems; and  
(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

81. The s104 assessment provided above demonstrates that the application can appropriately avoid, remedy or mitigate potential adverse effects of the activity on the environment (s5 (2) (c)). However, as determined above the application cannot meet (5) (2) (a) and (b) for the reasons set above, specifically, the loss of the productive capacity of highly productive soils. Further, the proposal is not consistent with the NPS-HPL as set out above which appropriately gives effect to Part 2 of the RMA.
82. Taking these factors outlined above in account, it is my opinion that the proposal will not meet Sections 5(2) (a) and (b). As such, the proposal does not meet the overarching purposes of the RMA as does not promote the sustainable management of the natural and physical resources.

### **Recommendation**

83. That for the above reasons the application be declined pursuant to Section 104 & 104B of the Resource Management Act. The following conditions listed in Appendix 1 are recommended should consent be granted. Further if the Commissioner were of a mind that the land use consent application LUC22/48312 could be granted then this should only be if the consent for subdivision SUB21/47781 is also granted given this is the only reason for which the land use consent would be given effect to and the inherent connection between the two applications.

### **Report and recommendation by:**



*Laura Buttimore  
Consultant Planner*

**Date:** 6<sup>th</sup> of December 2022

Appendix 1: Draft conditions for SUB21/47781 and LUC22/48312

Appendix 2: Assessment of the NPS-HPL 2022 in relation to SUB21/47781