

**BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL
INDEPENDENT HEARING COMMISSIONERS**

IN THE MATTER the Resource Management Act

AND

IN THE MATTER of a request for Private Plan Change NPDC PLC18/00048
by Oakura Farm Park Limited to rezone land at Oakura
within the New Plymouth District

CLOSING LEGAL SUBMISSIONS ON BEHALF OF OAKURA FARM PARK LTD

Dated 20 December 2019

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INTRODUCTION

1. Plan Change 48 (**PC48**) was lodged with the New Plymouth District Council (**Council**) on 15 March 2018 and publicly notified on 29 June 2018. Hearings into submissions on PC48 were held between 22 and 26 July, and 2 December 2019.
2. The original proposal set out in the plan change application was for the rezoning of approximately 58 hectares of rural zoned land to a mixed- use residential environment comprising approximately 399 lots. The original s42A report dated 31 May 2019 recommended that PC48 be approved in part, but as a consequence of potable water constraints, that it be subject to amendments which would reduce its scale and extent to a limit of 167 lots/dwellings.¹ This recommendation was repeated in the updated section 42A report dated 19 July 2019.²
3. After the hearing of evidence between 22 and 26 July 2019 the s42A report was updated. On 19 August 2019 the S42A authors released a further report which concluded that;

5.22...based on the information currently available, I am of the view that the subject property has some ability to accommodate residential development. However, the form, scale and intensity of the development is not suitable for the current context of Oakura. Any alternative proposal (e.g. reduced scale and intensity of the development area) would be subject to whether the uncertainty and insufficiencies in information outlined above could be adequately addressed, as well as demonstrating how this information has informed the form, scale and intensity of development.

5.23 Given the current available information and lack of information for particular matters, the potential for significant adverse effects, and the uncertainty of whether the plan change provisions would effectively avoid, remedy or mitigate these effects, at this time, I recommend that the plan change request and application to amend the consent notice be declined. The reasons for rejection are:

¹ S42A report dated 31 May 2019; para 15.3 -15.4

² S42A report dated 19 July 2019; para 5.3

- The risk of acting based on insufficient information on a number of fundamental matters (e.g. traffic, landscape and visual impact, stormwater) is significant, and these risks are not outweighed by providing for new residential development where there is sufficient supply to meet the short and medium term housing needs in Oakura.
- Uncertainty whether the provisions in the plan change effectively and efficiently avoid, remedy or mitigate the adverse effects of the proposal.
- Uncertainty whether community infrastructure can be expanded or new infrastructure development to cope with the future scale of development.
- Lack of information in the form of a cultural impact assessment to understand how the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga has been recognised or provided for.
- Based on the currently available information, the scale, form and design of the development sought in the proposed plan change would degrade the qualities and characteristics of the Oakura township.

4. On 6 September 2019 the commissioners produced a set of procedural directions requiring the applicant to present further evidence addressing these matters of uncertainty, by 11 October 2019, noting:

12. The section 42A authors have provided a comprehensive assessment of the information presented at the hearing in the 19 August's supplementary report. In that regard I have relied on that advice to identify the further evidence that is being requested. This includes;
 - landscape and visual effects
 - traffic and transport network safety and efficiency
 - stormwater defects
 - cultural impacts
 - social impacts
13. It is requested that evidence to address those matters listed above as identified in the section 42 a response (dated 19 August) be provided by the applicant. The expectation is that the further evidence will be focused on the matters listed above and there will be appropriate care to avoid matters outside this scope, new matters and unnecessary repetition.

5. By memorandum of counsel dated 12 August 2019 the applicant indicated that it would be providing further evidence to address matters of uncertainty raised in the updated section 42A report, and reserved its position to make amendments to the plan change, pursuant to clause 10 (2) (b) of Schedule 1 to the RMA, which would reduce the size and scale of

the plan change area, as a means of addressing the outstanding concerns raised by submitters in opposition, and those identified in the updated section 42A report.³

6. The applicant's further expert evidence was provided to the commissioners on 11 October 2019, and following the provision of further evidence from submitters, the matter was reconvened for a final day of hearing evidence on 2 December 2019.
7. At the hearing on 2 December 2019 the applicant confirmed its commitment to the revised plan change, and presented the technical evidence which supported the revised plan change, which reduced the size and scale of the plan change area to approximately half the original plan change area, and reduced the total yield from 399 lots/dwellings to 144 lots/dwellings (**revised plan change**).
8. At the conclusion of the hearing on 2 December 2019 the section 42A author presented an updated report in respect of the revised plan change (**final s42A report**). The final section 42A report concluded that there was "merit in the proposal" and that provided certain measures could be introduced to the plan change to address some residual matters, the revised plan change was supported.⁴
9. Those additional measures which Mr Wesney sought to be included within the final plan change provisions were then set out in writing as follows;⁵
 - a) A response to the final Cultural Impact Assessment;
 - b) Staging plans, including the staging of the open space areas;

³ Memorandum of counsel for the applicant dated 12 August 2019; paragraphs 13-15

⁴ Verbal presentation of Hamish Wesney at conclusion of hearing evidence on 2 December 2019

⁵ *Response to evidence presented at reconvened hearing Proposed Private Plan Change 48: Wairau Road, Oakura Rezoning 2 December 2019*

- c) Traffic effects, particularly the trigger or timing for implementation of traffic measures and specific improvements;
 - d) landscape and visual effects, particularly the Wairau Rd linkage across the gully, how the southern extent of the revised plan change was established, screening between the plan change area and The Paddocks, and a landscape framework plan;
 - e) Confirmation of the open space areas proposed to be vested in Council;
 - f) Social impacts, particularly solutions to address social impacts;
 - g) The consent notice wording, and whether it would be retained for the balance rural zone land.
10. Filed contemporaneously with these closing submissions is the final set of proposed plan provisions which address the matters listed above (**final provisions**). These closing submissions address the key issues which have arisen in respect of PC48, and where appropriate, cross-reference where and how these issues are addressed within the final provisions. The key issues are;
- a) Strategic land use and land supply at Oakura;
 - b) Landscape effects and the revised plan change;
 - c) 3 waters infrastructure;
 - d) Transportation effects;
 - e) Cultural impacts;

- f) Social impacts;
- g) The consent notice;
- h) Benefits arising from the revised plan change.

STRATEGIC LAND USE AND LAND SUPPLY AT OAKURA

11. Through the Oakura Structure Plan 2006, Oakura has been identified as a Future Growth Area in the New Plymouth District for over decade⁶. The 2018/2028 Council Long Term Plan (LTP) presents a table of areas in the district that have been identified for future growth, and the year that they are likely to be zoned for residential development. The Oakura South FUD area is scheduled to have 158 lots zoned for residential land use in 2019/20, while the Oakura West FUD area is scheduled to be zoned for the release of 390 lots between 2028-2032.⁷
12. Council has invested in strategic infrastructure capacity to enable this anticipated growth in Oakura. There is currently available infrastructure capacity for reticulated potable water treatment and supply, and the wastewater reticulation capacity has been the subject of a significant investment in the last 20 years, with the establishment of the trunk main between Oakura and the wastewater treatment plant at New Plymouth.
13. With this surplus capacity, and given the current Oakura population of 1,380⁸ the current water supply capacity is under-utilised by almost 50 percent and the wastewater infrastructure by some 20 percent. Like 3 waters infrastructure, Council has made financial provision for the upgrade of the transport network to accommodate growth in Oakura, with

⁶ Oakura Structure Plan 2006.

⁷ LTP Pg 50

⁸ Census 2013

investment of up to \$2.1M in the Wairau Rd/SH45 intersection scheduled for 2021.

14. It is clear from Council's recent strategic infrastructure investment, and its long-term infrastructure planning, that Council has identified Oakura as an area where growth is intended. This commitment to growth in Oakura is further evidenced by Council's recently notified Proposed District Plan (PDP) which has retained the South FUD and West FUD at Oakura within the PDP, clearly signaling a commitment to this strategic growth intent.
15. This strategic approach to growth is consistent with the NPS-UDC which directs local authorities to provide sufficient development capacity in their resource management plans to meet demand arising from housing and business growth. New Plymouth District is classified as a High Growth Area for the purposes of the NPS-UDC.⁹
16. Council has assessed the capacity for residential growth in Oakura. There has been contrasting evidence presented on the issue of residential development capacity in Oakura, and in particular the reliability of Council's Housing and Business Capacity Assessment (**HBCA**) which acknowledges at page 45, section 4.4 para 3;

Refining feasibility modelling and ground-truthing in the local market are necessary for results to be considered reliable assessments of feasible commercial dwelling capacity in the district.

17. The HBCA assesses infill capacity within Oakura at 127 lots. However, the evidence of two surveyors, Mr Kiss (Submitter#108) and Mr Doy for the applicant, who have each undertaken that 'ground truthing' and have independently arrived at similar yields which differ with Table 4.8 in the HBCA. Mr Doy concurs with Mr Kiss that the potential for infill is more than likely to yield nearer the 48 lots proposed by Mr Kiss as opposed to

⁹ See s42A report section 11.3

the 127 lots estimated in the HBCA, and acknowledges that while the PDP may open up some opportunities for smaller allotments, these opportunities are low given the existing fragmentation of the cadastre, topographical constraints and siting of existing buildings.¹⁰ Mr Doy sets out the comparison as follows:¹¹

Table 1: Land Supply Comparison

	HBA (NPDC) (Lots)	Alan Doy (applicant's surveyor) (Lots)	Stefan Kiss (submitting surveyor) (Lots)
Oakura Infill	127	(48) Note 1	48
Undeveloped Residential Land Oakura	157	134	140
Oakura West FUD	355	283	295
Oakura South FUD	117	125	107-129
Totals	756	590	590 - 612

18. Mr Doy concludes that the potential total lot yield for Oakura is more likely to be approximately 612 lots. The large difference in lot yield potential for the Undeveloped Residential Land and West FUD is primarily due to large tracts of land which are generally unsuitable for subdivision due to the risk of inundation, difficult topography and land covenants restricting further subdivision.¹²
19. Accordingly, the applicant has demonstrated that the supply of residential lots within Oakura is significantly more constrained than the estimates within the HBCA would suggest. However, the applicant does not contend that enabling the revised plan change is necessary in order for Council to give effect to the NPS-UDC, and does not rely on this factor to support the plan change.

¹⁰ Alan Doy statement dated 11 October 2019; para 20 table 1 note

¹¹ Ibid;

¹² Ibid; para 21

20. Certainly by enabling the revised plan change to proceed, this will assist Council to give effect to the NPS-UDC, but the applicant agrees with commissioner Wasley's observation that the NPS-UDC can be complied with by Council having sufficient capacity across the entire district, even if there is a shortage of supply in one particular area of the district.¹³
21. The s42A reporting suggested that there is land currently available at Oakura to meet the short and medium term needs identified under the NPS-UDC.¹⁴ Mr Comber's evidence called for a more robust analysis.¹⁵ He advised that apart from limited infill development opportunity there is currently no short-term development capacity available at Oakura, i.e. land readily available with feasibility proven, zoned and serviced. Written evidence from a registered valuer and real estate agent was given by Mr Comber in July and again in December pointing to the Oakura market being historically undersupplied of both dwellings and serviced sections and that there is ongoing strong demand. He also pointed to the only greenfields (unserviced) land available being held in just two ownerships, one being the applicants. The requirement for serviced land at Oakura is more immediate than that suggested in the s42A Report and the revised plan change will enable the historic undersupply and immediate shortfall to be addressed by delivering 'Short Term' land to the Oakura market.
22. Overall, regardless of the commissioner's final findings on the realistic immediate development capacity within Oakura, the revised plan change will introduce a further 144 residential lots, over time, which will directly assist Council to meet its overall NPS-UDC obligations. This additional residential capacity, in an area intended for growth, and which delivers infrastructure efficiencies in keeping with Council's strategic planning,

¹³ Commissioner Wasley comments during presentation of verbal s42A update at hearing on 2 December 2019

¹⁴ s42A Report – 22 November 2019 - para 3.11

¹⁵ C Comber Supplementary Statement – 2 December 2019 - para.2

provides significant benefits to the existing and future community of Oakura.

LANDSCAPE EFFECTS AND THE REVISED PLAN CHANGE

23. The form, scale and intensity of the residential land use activities enabled by PC48 has been a central focus of the submissions in opposition, and the s42A evaluation. Concerns regarding form, scale and intensity have been anchored in the landscape and visual amenity effects likely to arise.

24. The s42a report prepared at the conclusion of the July hearing summarized the issues in these terms;¹⁶

4.43 In regard to the proposed development and Outstanding Landscape, NPDC's LVA advisor states that the introduction of the proposed development creates a change to the Ring Plain character area, from rural to a built landscape. Furthermore, NPDC's advisor concludes that the landscape characteristics and rural character of this location would change dramatically, resulting in adverse effects on the values of the Outstanding Landscape. This change in character may be acceptable if the development can demonstrate that it can integrate seamlessly between the existing built edge of Oākura, the Outstanding Landscape and the wider rural landscape of the ring plain. The current proposal and evidence presented does not demonstrate whether this can be achieved.

4.44 In response to the evidence presented at the hearing, the potential adverse effects on the Kaitake Range Outstanding Landscape has not been adequately identified or addressed.

25. In addition to the impacts on the values of the Outstanding Landscape, Mr Kensington also raised concerns regarding the visual impacts and loss of rural amenity experienced by the residents in the Paddocks subdivision, and suggests that the consent notice *assists with the maintenance of rural spaciousness and character and in preserving the views of the foreground and setting of the Kaitake Range Outstanding Landscape, particularly when viewed from South Road (SH45).*¹⁷

¹⁶ S42A report dated 19 August 2019

¹⁷ Statement of Peter Kensington dated 24 July 2019; para 4

26. Mr Kensington identified his key concerns as;¹⁸

- a) Lack of integration with the existing landscape
- b) No opportunities/constraints analysis
- c) Severance of important landscape features; e.g. gully tributaries of the Wairau Stream
- d) Landscape and visual effects arising from large scale civil earthworks, acoustic bund and SH45 underpass/roundabout
- e) Lack of a clearly defensible rural-urban boundary
- f) Community opposition arising from visual and associative effects of appreciation of the Kaitake Range Outstanding Landscape
- g) Adverse visual effects, including experienced within The Paddocks.

27. The s42A report concluded that, having regard to these landscape and visual effect concerns;¹⁹

4.64 Based on the above assessment and conclusions, I consider that the proposed plan change request as it stands is inconsistent with Policy 23.1 a), c), e) and h). As concluded by NPDC's LVA Advisor the plan change application as it currently stands has too many areas of outstanding information which are fundamental to understanding the proposal and a clear and robust analysis of landscape and visual effects. Therefore, in terms of Section 32 (2)(c) RMA, I consider the risk of acting (in the form of approving the plan change) with insufficient or uncertain information could result in significant effects which have not been avoided, remedied or mitigated.

28. This conclusion reached by the s42A author was significant to the applicant, and caused it to carefully reflect on the evidence presented at the July hearing. It requested Mr Bain to review the proposal from a first principles basis, and provide his recommendations on how the proposed rezoning could be amended to resolve these areas of concern.

29. As a result of that exercise, Mr Bain prepared a revised structure plan layout which was of a smaller scale and intensity, which reduced the overall plan change area. While the revised structure plan layout reduced the lot yield from 399 lots to 144 lots, which had a significant impact on the

¹⁸Statement of Peter Kensington dated 24 July 2019; para 6

¹⁹ S42A 19 August 2019

commercial outcomes, the applicant supported the changes, and instructed its technical team to revise their assessments accordingly. The technical evidence presented on behalf of the applicant on 11 October 2019 was all directed at evaluating the reduced scale structure plan (the revised plan change).

30. The revised plan change addresses these concerns raised by limiting the built area to relatively flat areas between vegetated gullies with the southwestern edge of the development moved well back from SH45, tucked below the existing QEII bush area. Expansiveness is reduced by a significantly smaller urban footprint as well as the removal of the Lifestyle/Equestrian zone, creating a large balance farm area that wraps around the western and southern parts of the site. The interface between the urban and rural environment is now an unnamed tributary of the Wairau Stream, (a 'defensible natural feature') where previously it was the site's cadastral south boundary.²⁰
31. Under the revised plan change the offending noise bund is removed, reverse sensitivity effects concerning the neighbouring Greensill farming operation no longer exist, the planting/vegetative screening within the urban area will be developed in accordance with a Landscape Framework Plan as part of subdivision design, including street trees, entrance planting, and berm planting. Special areas of ecological and amenity planting will be located at key locations such as street intersections, the recreation space, stream crossing over the tributary of the Wairau Stream, and along pedestrian/cycle linkages.²¹
32. The revised plan change was the subject of further evaluation by the s42A author dated 22 November 2019 which noted;

3.38 Overall, I consider that insufficient detail has been provided to be able to conclude what the impact of the revised proposal

²⁰ Statement of evidence of Richard Bain dated 11 October 2019; para 10

²¹ Ibid; para 13

might be on the Outstanding Landscape. Although a reduced scheme is now proposed, what is not clear is the impact of the proposed lots at the sensitive interface between the plan change area and the lower slopes of the Kaitake Range. Whilst the overall size of the scheme plan has reduced, it appears development remains in this sensitive area.

33. This remaining area of uncertainty was addressed in the evidence presented by Mr Comber dated 2 December 2019 where he clarified that the revised plan change does not encroach into these 'sensitive areas' within the lower slopes of the Kaitake Range. In some detail Mr Comber explained;

3.38 References a 'sensitive' interface between the plan change area and the lower slopes of the Kaitake Range and that '...it appears that development remains in this sensitive area.'

Assessment: The discussion in the s42A Response report suggests to me the extent of the Applicants site is not well understood and I suspect this could be the case with a number of submitters. Analysis shows the applicant's site does not extend to the National Park boundary, defined visually by the fenced bush line. The adjoining pastured slopes below the bush line are on the neighbouring Greensill property.

What the S42A report refers to as 'sensitive' is described as 'Inland Area' in the Oakura Structure Plan 2006 (OSP). Further, the OSP did not contemplate a prohibition on development on these upper slopes. It proposed development controls directed at 'building height, scale and form' of residential development.'

...

It can be concluded from the OSP that c2006 the community did place a special value on sense of space and the natural values of the locality and that currently continues to be the case. However, that does not translate to a prohibition of development in the defined 'sensitive' Inland Area.

I have undertaken an analysis of the topography along a view line from SH45, across the Applicants site, the neighbouring Greensill Property to the National Park and Kaitake Range.

The data used is derived from the New Plymouth District Council's mapping website (public domain) which utilises aerial photography as its base layer. Contour information has been interrogated in combination with the available measuring tools. The analysis is not survey accurate but is an accurate approximation to gain a reliable understanding of the spatial characteristics of the site and environs.

I now refer the Commission to the 2-sheet attachment titled 'Long Section & Location Map' dated November 2019 – File 2943. The

horizontal and vertical axis are drawn to the same scale (1:5,000@ A3). The sheets can also be viewed on the screen.

The view-line starts at RL45 at SH45 passes to the south of the proposed structure plan area, through/over the hayshed on the applicant's land, across the Greensill property and up to a Kaitake Range high point (RL240).

The hayshed approximates to the most south-eastern extent of the structure plan area as shown to the east of the view-line.

The slope from SH45 to the Hayshed approximates 3.5%. To the naked eye, land at such a shallow grade appears virtually flat (e.g. typical cross-fall of a foot path). From the hayshed to the Greensill property the slope is marginally steeper at 4.3%.

The change in direction of the OFPL/Greensill boundary occurs at about RL70, some 900m from SH 45. Without detailed knowledge of the subject properties the casual observer, understandably, is not able to determine where the common boundary occurs. Both properties are in pasture with the common boundary defined by a fence line. The landscape reads as a continuous pastoral scene and the assumption is made (incorrectly) that the OFPL land extends to the bush-line. This same difficulty occurs when endeavouring to visualise the location of future development. Even with the hayshed as a reference point across the flat landscape, which is nearly 600m along the view-line from the point of origin, a casual observer will have difficulty visualising exactly where in the landscape future development (e.g. built form and vegetative plantings for screening) is to occur.

The slope analysis shows that from RL70 to RL120 (National Park boundary) the grade steepens to 20% over a relatively short distance (245m). It is this rising ground on the Greensill property and the bush within the National Park combined with the more steeply sloping pastureland contrasted against the bush vegetation to which the eye is drawn.

Sheet 2, in plan view, shows the location and extent of the reduced structure plan area in relation to the 'Inland Area' as depicted on the OSP 2006 map. Note that the structure plan area does not intrude into the Inland Area.

That portion of the 'Inland Area' that is within the OFPL site (note irregular boundaries) will continue to be within the Rural Environment Area/Rural Production Zone and subject to the development controls of the respective plans.

Finally, to note that the 'Inland Area' is not within the 'Outstanding Landscape' as defined in both the ODP nor within 'Natural Features and Landscapes' definition of the PDP. In both documents the extent of the OS/NFS is limited to the National Park boundary.

In conclusion, the slope analysis removes the uncertainty expressed in the S42A Report about development occurring within the 'sensitive' Inland Area as none is proposed and, by contrast to the s42A report, I am of the view there is adequate information to assess the appropriateness of the form, nature and scale of the reduced proposal.

34. Having reviewed this evidence, the s42A author concluded that there remained some residual areas of uncertainty concerning landscape and visual matters that would need to be addressed in the plan change provisions. The s42A report of 2 December 2019 sought clarity on, inter alia;

- (d) Landscape and visual effects, particularly:
 - i. Nature and form of road linking to Upper Wairau Road and crossing of gully.
 - ii. How the southern extent of the proposed Residential zoning has been determined (e.g. Mr Comber referred to contours as well as the 'Inland Area' shown on the Oakura Structure Plan 2006).
 - iii. Outlook from properties within The Paddocks development. Consideration of whether any existing or proposed planting within the gully system would provide screening, and/or whether these areas (The Paddocks properties relative to the area proposed to be zoned Residential) are at different elevations which would influence the visual effects. Depending on this assessment, are any mitigation measures proposed?
 - iv. Landscape Framework Plan which includes details on implementation. For example, timing on when planting is to be undertaken related to the staging of development. In addition, include details on the ownership, maintenance and implement of the different areas of open space (e.g. neighbourhood park, open space for recreation/screening/stormwater management purposes, open space treatment for the stub roads, etc). Also, include details for landscape within road reserve. These landscape details are to include landscape objectives/outcomes, crossing sections⁶, and plant species lists.

35. These matters are now comprehensively addressed in the final version of the plan change provisions (**provisions**), and in particular, Policy 23.8 and implementation methods 23.8 b), c), h)v, Policy 23.10.4, Policy 23.10.5, and residential rules Res 99 and Res 100.

THREE WATERS INFRASTRUCTURE

Potable water

36. At the commencement of the hearing in July 2019 the supply of potable water was deemed to be a significant infrastructure constraint which lead the S42A author to conclude in the initial S42A report that;²²

15.3 ...the aquifer supplying the Oakura water supply system has a limited capacity to meet future demand. Therefore, a limit of 167 lots/dwellings within the Wairau Estate Structure Plan Area is recommended.

37. After hearing evidence, the s42A author concluded that based on these constraints, if the plan change was to be approved, he suggested the additional water capacity was capable of servicing a further 334 lots, and that this be apportioned 86 to the South FUD (the plan change area) and 248 to the West FUD.²³
38. The applicant took issue with this 'allocation' of infrastructure capacity, and noted that it failed to take account of the potential improvements in water supply capacity, and amounted to 'picking winners' by assuming FUD West would be developed, despite evidence clearly indicating it was subject to significant development constraints.²⁴
39. Ultimately, on the issue of potable water supply, Councils expert, Mr Hall accepted that this was not a constraint to the revised plan change, and the s42A report concluded;

3.52 Mr Hall, Council's 3 waters manager has considered the further evidence and concludes that for the revised proposal reducing to 144 lots, and being undertaken in a staged manner, that the water supply can service this proposal. If the plan change was approved for the revised proposal, in assessing any subdivision application, one of the matters assessed is water supply. This

²² S42A report dated 31 May 2019

²³ S42A report dated 22 November 2019; para 3.47

²⁴ Ibid; para 3.49-3.50; Comber statement of further evidence; para 68-80

assessment would ensure sufficient water supply was available at that time to service each stage of development.

Waste-water

40. There are no wastewater infrastructure constraints which inhibit the revised plan change. The s42A report concludes;

3.53 In my Response to Hearing Evidence Report, I considered that measures were available to effectively provide for wastewater infrastructure for the original plan change proposed. These measures are included in the plan change as currently drafted, including consideration of the provision of infrastructure at the time of subdivision. No changes are proposed by the applicant relating to these measures, with the revised structure plan now proposed therefore my previous assessment stands and there are no outstanding wastewater infrastructure matters.

41. The cultural effects relating to the management of wastewater are addressed via Policy 23.10.2 in the provisions, and associated implementation methods.

Stormwater

42. At the conclusion of the hearing of evidence in July, further information was required regarding stormwater effects, including catchment modelling of run off, peak flow and potential flooding. Information was also sought on the management of water quality and integration with other matters, such as ecological effects and use and development of open spaces/reserves.

43. For the applicant, Mr Bunn's further analysis demonstrated that there is sufficient capacity in the proposed detention pond to accommodate storm events, and that the proposed pond would not increase peak flows at the discharge point. Further, he considers that the pond has a no more than minor effect on the SH45 culvert crossing and downstream confluence with the Wairau Stream. He states that in the modelled storm scenarios the

development, resulting from the plan change, will have a negligible impact on the existing downstream environment.

44. The s42A report of 22 November 2019 notes that submitters sought an outcome whereby the stormwater effects downstream be reduced.²⁵ It concluded however that;

3.57 Mr Hall, Council's 3 waters manager has reviewed the stormwater assessment provided by the applicant and they accept its findings. Mr Hall notes that submitters are concerned about the downstream flooding, and that this appears to arise from the wider catchment. If the plan change was approved for the revised proposal, in assessing any subdivision application, one of the matters assessed is stormwater management. This assessment would ensure the design of the stormwater management system achieved hydraulic neutrality.

3.58 Overall, based on this new information, I consider the revised proposal is consistent with Policy 23.1 b) and d) of the District Plan in that stormwater infrastructure can be provided in a coordinated manner and ensures a resilient and safe community.

45. These stormwater issues are addressed in the provisions at Policy 23.8 and implementation method 23.8 d) via a Stormwater Management Plan, and cultural issues are addressed via Policy 23.10.3.

TRANSPORTATION EFFECTS

46. At the conclusion of the hearing of evidence in July 2019 the s42A author concluded that there was inadequate information to make an informed assessment of the adverse effects of traffic, parking and access related to the plan change. The report concluded;

²⁵ S42A report dated 22 November 2019; para 3.56

- 4.32 Uncertainty lies in what access will be utilised (roundabout or SH45 access or a link road with two access points) and the mechanism(s) for managing the traffic effects. Furthermore, there is uncertainty about whether the effects on the wider transport network, and any measures to address these effects. This lack of information, certainty and more detailed design makes alignment with Policy 23.1 d) and g) uncertain.
47. This uncertainty was fully resolved with the introduction of the revised plan change. With the reduced scale and lot yield limited to 144 lots, a total daily trip generation rate of 1,224 vehicle movements in and out of the plan change area was established.
48. As a consequence, it was concluded that the traffic generated can be accommodated within the local road network without capacity improvements to the SH45/ Wairau Rd intersection. In terms of further network upgrades, Upper Wairau Rd will need to be improved to the appropriate cross-section from NZS4404 to cater for the increased traffic, cycling and pedestrian volumes, with a crossing point located at the Donnelly St pedestrian link. A footpath link between Upper Wairau Rd and the esplanade strip needs to be created. The existing footpaths at the Wairau Rd intersection need to widen to match that proposed on the remainder of Wairau Rd and a crossing point created to the east of the intersection. Mr Skerrett concludes that the extent of the proposed upgrades can be determined at the sub-division consent stage, including any staging strategies in line with the development stages of the proposal.²⁶
49. It is noted that Mr Skerrett recommends that NZTA implement some speed calming measures on State highway 45. These matters, and the introduction of the speed lowering measures, are outside the ambit of decision making on the plan change, and cannot be assumed or guaranteed

²⁶ Statement of Evidence of Andy Skerrett dated 11 October 2019; paras 22-26

under this plan change process. However, they can be matters which are assessed at subdivision and land use resource consenting stage.

50. For Council, Mr Docherty concluded that in the short-term, interim measures can be installed at the intersection of Wairau Road/State Highway 45 to effectively manage the traffic effects of the revised proposal. However, in the longer-term, a roundabout is the preferred solution for this intersection.
51. Mr Doherty suggests a trigger point for traffic on Upper Wairau Road on when this roundabout is required, and that further analysis is needed to consider the traffic effects on the wider network. To enforce this trigger, a District Plan provision could be applied to the plan change area which would be assessed at the time of subdivision and/or development.
52. In terms of the wider network, like many submitters in opposition, Mr Docherty considered there was residual uncertainty about the nature and magnitude of the traffic effects, and what measures (if any), are required to ensure a resilient and safe transport network throughout Oakura.²⁷ While the applicant rejects the suggestion that there remains material uncertainty regarding these wider network effects, the s42A report records however that;

3.20 ...the risk of acting (in the form of approving the plan change) with insufficient or uncertain information may be able to be addressed through District Plan provisions and other methods outside the District Plan. The applicant may wish to suggest specific Plan provisions at the hearing which provide trigger points or other mechanisms to manage the traffic effects.

53. This conclusion was reinforced in the s42A report which issued at the conclusion of the hearing in December which stated that the plan

²⁷ S42A report dated 22 November 2019; para 3.18

provisions should address *traffic effects, particularly the trigger or timing for implementation of traffic measures and the specific improvements proposed (i.e. traffic calming to reduce speed on the State Highway, configuration of the Wairau Road/State Highway 45 intersection, safe crossing on State Highway, shared pathway on Upper Wairau Road/southern side of State Highway 45, and any works in the wider context such as Donnelly Road and Dixon Street intersections).*

54. In accordance with these suggestions, the traffic effects are addressed in the provisions at Policy 23.9 and method of implementation 23.9 via subdivision rules Res 100 and the matters of discretion to be addressed.

CULTURAL IMPACTS

55. This issue took on significance during the hearing of evidence in July 2019. Despite the applicant having engaged since May 2016 with Ngati Tairi, wider engagement with Taranaki Iwi in January 2019 was deemed to be unsatisfactory from an Iwi perspective. The applicant acknowledges that it had not met the wider Iwi's consultation expectations, despite its early and ongoing good faith consultation with representatives from Ngati Tairi.
56. These cultural issues were addressed by the s42A report author at the conclusion of the hearing in July 2019, where it was concluded;

4.107 In response to this evidence, I consider the cultural impact assessment (CIA) should be commissioned prior to determining this plan change. This assessment would assist in understanding whether the matters in Section 6(e) and 7(a) of the RMA have been recognised and provided for. This information and engagement, and further consideration of Taiao Taioara would inform the outcomes for the proposal, and how these outcomes could be incorporated into the plan change provisions and structure plan. I also recommend Ngāti Tairi is more actively engaged with on all aspects of the proposal and their influence is seen in the Structure Plan design and outcomes, as well as implementation itself.

57. In response to these matters the applicant immediately took steps to engage with Iwi, and agreement was reached on the commissioning of a Cultural Impacts Assessment (CIA), to be prepared by and with input from Ngati Tairi. The CIA was completed on 29 November 2019. The CIA confirms that the site and receiving environment are a landscape of cultural significance, and contains a number of significant cultural features, including the Pahakahaka Pā site, and the Wairau Stream and its tributaries. The CIA concludes that the proposal has the potential to adversely affect this cultural landscape, the Pā site and its surroundings, and the Wairau Stream and tributaries through the construction and development of residential living. It also has the potential to protect, acknowledge and remediate the environment, and respond to cultural values present in this location.²⁸
58. The cultural issues identified in the CIA, and the recommended amendments to the plan change were comprehensively addressed in the supplementary evidence of Mr Comber dated 2 December 2019.²⁹ Mr Comber confirms that the plan change will be amended to address the remaining areas of concern to iwi, and concludes that;

Incorporating the matters identified by Ngati Tairi in the CIA into the Operative District Plan (in the first instance) within an appropriate and relevant framework of objectives, policies methods and rules and the Wairau Estate Structure Plan will ensure the matters required to be recognised and provided for as matters of national importance under s6 (e) will be appropriately managed.

59. These ongoing drafting requirements were echoed in the final s42A response dated 2 December 2019 which stated;

Based on my reading of the draft Cultural Impact Assessment (CIA), I understand the following matters are still to be resolved in finalising the CIA:

1. Impacts on Kaitake.³⁰

²⁸ CIA dated 29 November 2019; para 8.0 Summary and conclusions

²⁹ Supplementary evidence of Colin Comber dated 2 December; pages 21 -26

³⁰ Paragraph 7.11 of CIA

2. Pahakahaka Pa³¹
3. Stormwater management and Te Mana o to Wai³²
4. Wastewater management, including proposed planting³³
5. Outstanding matters set out in paragraphs 7.33 and 7.34³⁴in the CIA

In resolving these matters, it would assess the appropriateness of the overall proposal, potential changes to the Structure Plan/extent of zoning, District Plan provisions and measures outside the District Plan.

Impacts on Kaitake

60. It is noted at para 7.11 of the CIA that Ngati Tairi had been unable to reach a conclusion in respect of the landscape effects and its relationship with Kaitake. The preferred precautionary approach of Ngati Tairi is to recognise Kaitake and avoid, remedy or mitigate any such adverse effects. In response, the following matters reflect the precautionary approach being taken by the applicant:

- a) The extent of the plan change area proposed for urban development takes its cues from the natural features of the site and avoids the upslope 'Inland Area' identified in the Oakura Structure Plan Area 2006.
- b) Wairau Estate will locate on the lowest land of the site and will not compete with the dominant landform that is Kaitake.
- c) Building controls, and limitations on height and reflectivity values in particular, are mitigations that show sensitivity toward Kaitake.³⁵

³¹ Paragraph 7.16 of CIA

³² Paragraphs 7.26 – 7.31 of CIA

³³ Paragraph 7.33 of CIA

³⁴ The CIA paragraph numbering is 7.44 which follows paragraph 7.33

³⁵ Residential rules Res 94-100

- d) Emphasis on minimal disturbance of the Wairau Stream and tributaries, together with the enhancement of these areas with indigenous plantings to screen the urban component.³⁶
- e) The enhanced open space areas will provide support for wildlife habitat and will help to restore a 'living link' between the coastal edge and Kaitake.

Pahakahaka Pa

- 61. The CIA incorrectly notes that the Pa is within the plan change site. While the Pa site is within Lot 29, the QEII Covenant Area that the Pa is located within is not included in the plan change site area. However, it is recognised that the interface between the plan change area and the Pa requires sensitive management.
- 62. The proposed amendments to the plan provisions are designed to ensure these matters of concern to Ngati Tairi are addressed through the consenting process, namely:
 - a) The Pa is identified on the Structure Plan – a consequential amendment can be made on planning map A61;
 - b) Rules providing for the open space areas to vest as reserves, which in turn will require the preparation of reserve management plans by the Council;
 - c) The land adjoining the Pa and within 50m being set aside as open space reserve and rules controlling development.³⁷

Stormwater management and Te Mana o te Wai

³⁶ Res 96

³⁷ Policy 23.10, subdivision and Pahakahaka Pa OLxx

63. The cultural issues relating to stormwater management are comprehensively addressed at the subdivision consent stage. The plan provisions enable a full assessment of the proposed development at subdivision stage to ensure cultural issues are addressed.³⁸ The evaluation will consider the extent to which the subdivision addresses the following matters, using the references in the CIA;

7.23–The habitat within the tributaries and the extent of enhancement through planting and formation of waterbodies behind detention bunds while also achieving hydrological neutrality.

7.24, 7.29- - The existing habitat within vegetated stretches of the unnamed tributaries and the extent of its protection if it is considered appropriate by iwi and ecologists.

7.25-The mitigation of contaminant release to the receiving environment through the installation of either constructed wetlands or stormwater pollutant containment structures.

7.25–Resource consent requirements regarding onsite disposal of stormwater within individual lots and treatment of road stormwater prior to discharge.

7.26-The vesting of unnamed tributaries as esplanade reserve land under the management of Council allowing for ongoing maintenance and management in consultation with all affected parties.

7.26-The vesting of road reserve, the road network and supporting stormwater infrastructure and ongoing maintenance under an agreed management policy.

7.26-The resilience of the selection of plants to the environment they are in and capability of supporting wildlife known to be present in the area such as crane and gecko.

7.27–The extent of Water Sensitive Urban Design features by minimising road formation width and setting limits on non-permeable lot development.

7.29-The vesting of the un-named tributaries and associated constructed wetlands as reserve land under the direct control of Council which will manage the stormwater structures and maintain planted vegetation and weeds within the reserve land.

7.30–The extent to which the developer has worked with Hapu/Iwi and Council to provide appropriate Water Sensitive Urban Design.

7.31–The imposition of consent notices requiring planting along the road frontages.

Wastewater management and proposed planting

64. Like the stormwater effects, the practical aspects of the wastewater management strategy, and how it addresses cultural issues, will be

³⁸ Residential rules Res 99, Res 100, Res 101 and associated assessment criteria

assessed at subdivision consenting stage. Again, using the numbering in the CIA, an assessment will be made of;

7.32- The compliance with the requirement that all wastewater reticulation be gravity mains, with no requirement for pump stations.
7.32,7.33 – The extent to which the wastewater is conveyed within road reserve and does not intersect waterways, including capture and collection of surcharging.

Outstanding matters in 7.33 and 7.34 of the CIA

65. The CIA sets out at Appendix 1 a series of suggesting plan provision drafting edits which are designed to address cultural issues. Those suggested edits are incorporated into the proposed plan provisions through the introduction of new Amendment 3 Policy 23.10.1 through Policy 23.10.6, which provide a comprehensive set of policy provisions and implementation methods, which are then reflected in the residential rule framework.
66. Overall, the applicant is confident that with its long established working relationship with Mana Whenua, Ngati Tairi, this will continue to be a partnership with Iwi that will be ongoing throughout the land development process. The CIA is the first step in that relationship, and the ongoing consultation which will precede any subdivision consent application will be the next step. The Applicant is confident that with this level of engagement, Ngati Tairi will be informed and involved at all stages to ensure the development reflects their aspirations for the whenua.

SOCIAL IMPACTS

67. The issue of social impacts arising from the plan change was signalled as a key concern for local residents of Oakura, and took on a high degree of significance as the hearing progressed.
68. It is clear that the Oakura community 'mobilized' to form a barrier to this proposed development. That was evidenced in the number of submissions

received, with a total of 436 submissions and 38 further submissions, with 14 submissions in part support and the balance in opposition. For a residential land use development of the scale proposed, in an area signalled for that land use, this level of community opposition is unusual in RMA terms. That of itself tells the commissioner something of this community.

69. The issue of social impacts arises directly pursuant to s5 of the RMA, which sets out the purpose of the Act, and seeks to enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety, while addressing the matters set out in s5(2)(a) –(c).³⁹ Section 5 states;

5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—
 - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

70. In this context the focus of sustainable management means the use, development and protection of the natural and physical resources of Oakura in a way, or at a rate which enables people and communities to provide for their social, economic and cultural wellbeing.

71. It is important to recognise that s5 is forward looking, and directs development to occur in a way, and at a rate, that enables communities

³⁹ Section 5 RMA purpose and s5(2) which defines sustainable management

while sustaining the potential for resources to provide for future generations.

72. This factor is relevant to the commissioner's assessment of social impacts, because the analysis should have a broader focus than simply the existing community, and should also account for the future communities of the Oakura area whose lives are enabled by the proposed development.
73. Understanding the social impacts of the plan change is a key task for the commissioner. Often these impacts are presented within a social impact assessment (**SIA**), which is based on consultation with a wide cross section of a community of interest. There had been a suggestion proffered by the s42A author at the conclusion of the hearing in July that the applicant should commission an SIA in order to fully understand how the plan change would contribute or detract from the *social prosperity* of Oakura.⁴⁰
74. The applicant has not commissioned an SIA for one simple reason; the extensive body of evidence presented on behalf of submitters in opposition can leave the commissioner in no doubt that he has a full and complete understanding of the community concerns regarding the potential social effects arising from the plan change. The commission has 'better evidence' than an SIA, the commissioner has direct evidence from an extensive cross section of the Oakura community on this issue. Based on this evidence there is no evidential gap, and the commissioner, as a highly experienced planner, can properly evaluate that evidence.
75. The applicant's position in this point was accepted by the s42A author in the closing discussion at the reconvened hearing on 2 December 2019⁴¹, and by Mr Grieve in the following exchange with Mr Coffin;

⁴⁰ S42A report dated 19 August 2019; para 4.100

⁴¹ Transcript page 296

MR COFFIN: Mr Grieve, you have not had the opportunity to hear all of the evidence that has been presented this morning. So just let me know if you think the question is unfair. We have heard views from the experts, particularly in regards to social impact; that there did not appear to be a need from the applicant's point of view to commission a cultural impact assessment.

THE COMMISSIONER: Social impact.

MR COFFIN: What did I say?

THE COMMISSIONER: "Cultural."

MR COFFIN: Did I say "cultural"? Sorry. That is what happens if I have not had lunch, social impact assessment. And we heard very clearly from the community submissions and opposition a range of social issues and concerns and potential effects. And I just want to ask you the question in terms of having heard all of those submissions in opposition. And you may have heard some of the responses to the need or not the need to conduct a social impact assessment. What is your view, notwithstanding that cultural impact assessment can come in many guises?

MR GRIEVE: Yes.

MR COFFIN: What is your particular view in this regards?

MR GRIEVE: My view, sir, is I –

MR COFFIN: Did I say "cultural" again? I apologise.

MR GRIEVE: (overspeaking) I understand the question.

MR COFFIN: Do not worry. I will be much better after lunch.

MR GRIEVE: It is a Monday, too, sir. My view, sir, is that, yes, I do not think it would have assisted the case much further to be honest. I think the social impacts are clear. I do not think a report is needed to tell you that. If anything, it would have just reiterated what the 400-odd people have already told you.

76. The commissioner has heard a vast amount of evidence on this issue. However, the core social effects were summarised in the s42A report in these terms;⁴²

4.97 A reoccurring theme throughout the evidence from submitters at the hearing was the potential social impacts that the development could have on the village, its occupants and people's enjoyment of Oakura. Of particular note was the loss of Oakura's character and risk to community values was repeatedly raised. Submitters contended the proposed extent, scale and form of the development was at odds with the character of Oakura, the anticipated organic growth of Oakura, the community's strategic plans and the village lifestyle.

77. This evidence was augmented by further evidence regarding the community infrastructure within the Oakura village, such as the Oakura Primary School, Okura Playcentre, Oakura Volunteer Firefighting services,

⁴² S42A report dated 19 August 2019; para 4.97

the Four Square and other local shops and its inability to cope with a sudden surge in demand which might arise under the plan change.⁴³

78. This issue was comprehensively addressed in the s42A report which concluded that;⁴⁴

4.84 I consider that under Policy 23.1 b) community infrastructure is a relevant consideration and needs to be provided in a co-ordinated manner, so that population growth is steady and existing community infrastructure can cope with the increase in demand. The increased housing and population in the plan change area is likely to undertaken progressively in response to market demand. The applicant indicated the development rate could be in the order of 10-30 lots/dwellings per year depending on the market. If development occurred at a relatively slow rate, then community infrastructure may be able to cope with the incremental increase as has been the case with historical development at Oakura. However, there is no mechanism in the plan change which manages this rate of development, or link with the capacity of the community infrastructure (for example, as recommended for water supply). In addition, it is uncertain whether the existing community infrastructure can be expanded or new community infrastructure developed to cater for the entire development. Therefore, I consider there to be a lack of information as to how Policy 23.1 b) will be meet, specifically how community infrastructure will be provided in a co-ordinated manner or how existing infrastructure can cope.

4.85 The Commissioners asked what mechanisms are available to them for providing for community infrastructure within the jurisdiction of the plan change, as this matter is something which the PPC48 request is silent on. I am not aware of any such mechanisms for the plan change apart from managing the scale/extent or rate of development. There could be mechanisms which relate to the upgrading or construction/provision of new community infrastructure. However, no specific or measurable upgrades or new facilities have been identified apart from the new sports field/facility in the West FUD.

4.86 In terms of Section 32 (2)(c) RMA, based on the available information, the effects on community infrastructure could be significant for the full development or if it developed at a rate which the community infrastructure could not cope with. Therefore, I consider the risk of acting (in the form of approving the plan change) with insufficient or uncertain information could result in significant effects which have not avoided, remedied or mitigated.

⁴³ Ibid; para 4.83

⁴⁴ Ibid; para

79. These concerns regarding effects on community infrastructure, and the related social impacts, were carefully reflected on by the applicant at the conclusion of the July hearing, and were significant factors in the applicant's decision to pursue the revised plan change. As Mr McKie stated in evidence, he and his family decided to make the changes as a positive response to the community concerns.⁴⁵

80. As Mr Comber notes in his final statement of evidence, the revised plan change will not result in widespread expansion, but rather a modest and logical expansion of the township, being a development in 5 stages ranging in size from 24 to 33 lots.⁴⁶ As he observes, in comparison to other historic development in Oakura;

22. By contrast, the historic size of greenfield subdivision in the township (1974 – 2010) has ranged from 6 to 31 lots – average: 18; median: 22. Four of these developments were 22 lots (2004), 23 lots (1979), 26 lots (1974) and 31 lots (1983). The largest of the historic subdivisions was a 31-lot subdivision in Arden Place in 1983. The most recent subdivision given effect was a 6-lot subdivision in Cunningham Lane in 2010.8 I am not aware of any adverse social impacts arising from these historic subdivisions within the Oakura township.

81. In terms of the staged release of sections, which is controlled via the provisions at method of implementation Policy 23.8 h) vi and i), and residential rule Res 101, he explains;⁴⁷

23. It is proposed, to avoid any prospect of rapid expansion, that the rate of development will be managed with District Plan rules controlling the staging of development. A proposed rule framework for staging the (s42A Response; para 3.25 8 Request – pg. 45; para 4.3.8.6) development of Wairau Estate in a manner that can be readily controlled by the Council through its regulatory function is set out in Appendix C hereto.

24. The rule framework provides for Stage 1 of 33 lots to proceed through subdivision consent to development with no time restriction; i.e. following the plan change PPC 048 coming into effect.

⁴⁵ Statement of evidence of Mike Mckie dated 2 December 2019.

⁴⁶ Statement of Colin Comber dated 11 October 2019; paras 20-21

⁴⁷ Ibid

25. The development of Stage 2 can be commenced no sooner than two years following the approval of Stage 1. Thereafter Stages 3, 4 and 5 can only proceed to development following the sale of no less than 75% of the lots in the preceding Stage. Consenting to each Stage will be by way of controlled activity for landuse, in addition to the subdivision approval that will be required for each Stage.
82. Social impacts and effects on community infrastructure will be manageable over the development life cycle. The rule framework will ensure the rate of development is in keeping with what Oakura has experienced in the past, and the establishment of a community liaison group will provide an additional mechanism through which community concerns can be voiced, and where possible, addressed by the developer.⁴⁸ It is clear that impacts on community infrastructure can be assessed as subdivision and land use consents are applied for, and where such effects are directly linked to the development, conditions can be imposed to address those effects.⁴⁹
83. However, it is commonplace for not all community infrastructure effects to be managed through the consenting process. Council has in place the *New Plymouth District Council Development and Financial Contributions Policy* which enables Council to recover development contributions for community facilities and infrastructure pursuant to s199(1) of the Local Government Act 2002. As growth occurs in Oakura over time, Council will recover development contributions from developers to assist in the funding of community facilities in Oakura. Leveraging this revenue opportunity is 'business as usual' for growth councils across New Zealand.
84. Accordingly, the commissioner can be satisfied that the social impacts, and effects on community facilities, will be appropriately managed through the controls over the rate and scale of development, the consent conditions imposed, and the development contributions levied over time as

⁴⁸ See provisions at Policy 23.8 and implementation method 23.8 (j)

⁴⁹ S108AA RMA

development progresses. These mechanisms will ensure the community's concerns are squarely addressed.

THE CONSENT NOTICE

85. The existence of the consent notice has been deployed by the submitters in opposition as a barrier to the plan change. As a matter of law they are wrong. For the reasons which follow, the consent notice is no barrier whatsoever, and is largely a red herring in the proper and orderly sequence of the decision making process.
86. Firstly, the consent notice is not part of the *environment* as defined in s2 of the RMA. It is simply a legal instrument which carries with it rights and obligations which must be strictly applied. The commissioner's consideration of the consent notice must reflect this.
87. A consent notice issues pursuant to s221 of the RMA, which establishes the following legal framework;

s221

Territorial authority to issue a consent notice

- (1) Where a subdivision consent is granted subject to a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners after the deposit of a survey plan (not being a condition in respect of which a bond is required to be entered into by the subdividing owner, or a completion certificate is capable of being or has been issued), the territorial authority shall, for the purposes of section 224, issue a consent notice specifying any such condition.
- [(2) Every consent notice must be signed by a person authorised by the territorial authority to sign consent notices.]
- [(3) At any time after the deposit of the survey plan,—
- (a) the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice:
 - (b) the territorial authority may review any condition specified in a consent notice and vary or cancel the condition.]
- [(3A) Sections 88 to 121 and 127(4) to 132 apply, with all necessary modifications, in relation to an application made or review conducted under subsection (3).]
- (4) Every consent notice shall be deemed—

- (a) to be an instrument creating an interest in the land within the meaning of [section 51 of the Land Transfer Act 2017], and may be registered accordingly; and
 - (b) to be a covenant running with the land when registered [under the Land Transfer Act 2017], and shall, notwithstanding anything to the contrary in [section 103 of the Land Transfer Act 2017], bind all subsequent owners of the land.
- (5) Where a consent notice has been registered under the [Land Transfer Act 2017] and any condition in that notice has been varied or cancelled [after an application or review] under subsection (3) or has expired, the [Registrar-General of Land] shall, if he or she is satisfied that any condition in that notice has been so varied or cancelled or has expired, make an entry in the register and on any relevant instrument of title noting that the consent notice has been varied or cancelled or has expired, and the condition in the consent notice shall take effect as so varied or cease to have any effect, as the case may be.
88. The consent notice is set out in the original plan change request dated March 2018.⁵⁰ It sets out a number of conditions of the Paddocks subdivision which are required to be complied with on an ongoing basis, including section 4 which provides;
- 4. Lot 29 shall not be further subdivided while the land remains in the Rural Environment Area.
89. The wording of section 4 is critical to the rights and obligations which arise. It is not a protection which lasts in perpetuity. Indeed Mr Mckie confirmed that when the consent notice was imposed, he was advised that was not possible.⁵¹ As a consequence, the words *while the land remains in the Rural Environment Area* were included.
90. This qualification is critical, and places an important limit on the legal rights which are secured by the consent notice.
91. Returning to the environmental effect which it was designed to mitigate, it was clearly imposed to protect the rural amenity and views of the rural

⁵⁰ Oakura Farm Park Ltd Request for Private Plan Change and Variation of Consent Notice dated March 2018; see section 1.5 page 8 and page 101 for a copy of the consent notice

⁵¹ Statement of Mike McKie dated 2 December 2019; para 12

environment within the Rural Environment Area Zone adjoining the Paddocks. That protection benefited both the new landowners within the Paddocks, and other resource users who valued those particular views and amenity.

92. Recognising these values, the decision maker determined that for so long as the land is zoned rural, there shall be no further subdivision of Lot 29. This restriction was a condition of the subdivision consent, and reflected in the consent notice.
93. But the ability for Lot 29 to be rezoned to residential is not constrained by the consent notice. Rather, the only relevance of the consent notice is to remind the commissioner that these rural views and amenity have a value, and that any loss should be part of the evaluation of the plan change.
94. The impact on these rural views and amenity arising from the urbanisation of that part of Lot 29 which is the subject of the revised plan change has been the subject of close examination and evaluation in this process. The commissioners have heard extensive evidence on this point. The evidence clearly establishes that the loss of rural amenity and impact on views will be adverse, but minor considering the overall mitigations to be imposed. Whatever the commissioner's finding in respect of any residual adverse effect, in the overall evaluation of the revised plan change, the effects are not so significant as to require that the revised plan change request be declined.
95. Returning to the consent notice, the correct approach is for the commissioner to evaluate the revised plan change in the orthodox RMA manner. The consent notice is only relevant to the extent that it signals a set of values which are to be evaluated. That evaluation should recognise that the consent notice explicitly recognises that the rural zoning of Lot 29 may change in the future.

96. For the convenience of the Commissioner, set out at **Attachment A** to these submissions is a checklist of the relevant statutory considerations which are 'in play' in terms of your evaluation and decision making. This checklist has evolved from the original and oft cited *Long Bay*⁵² decision, later updated and best captured by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council*.⁵³ **Appendix A** incorporates the 2013 and 2017 amendments to the RMA.
97. Finally, once evaluated in this manner, should the plan change be approved, the consent notice requires addressing. If approved, part of Lot 29 will be in the Rural Environment Area, and part will be in the Residential Area. Under the strict wording of the consent notice, Lot 29 (or at least part of it) will remain in the Rural Environment Area, and so Lot 29 cannot be subdivided, even that part of it which is now in the Residential Area. This restriction on land zoned for residential subdivision is inefficient and must be removed in accordance with section 221(3)(a) of the RMA which provides:
- At any time after the deposit of the survey plan,-
(a) the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice.
98. As the High Court held in *Green v Auckland Council* [2013] NZHC 2364, when considering an application for a variation of the consent notice under section 221(3)(a) it is necessary to carry out an examination of the purpose of the consent notice and then undertake an enquiry into whether some change of circumstances has rendered the consent notice of no further value.⁵⁴ Clearly that is established in the present case.

⁵² *Long Bay-Okura Great Park Soc Inc v North Shore City Council* EnvC Auckland A078/08, 16 July 2008.

⁵³ [2014] NZEnvC 55.

⁵⁴ *Green v Auckland Council* [2013] NZHC 2364; para 129

99. To give effect to the plan change, pursuant to section 221(3)(a) of the RMA, the application was originally made to vary the consent notice to read as

4. Subdivision of Lot 29 is permitted subject to such subdivision being in accord with the Structure Plan incorporated within Plan Change XX as approved by the New Plymouth District Council on xxx and subsequently incorporated in the Operative District Plan as Plan Change No.xx.'

100. Having had the benefit of hearing the evidence and carefully evaluating the legal position, it is submitted that the following amendment to section 4 is preferable:

4. Subdivision of that part of Lot 29 within the area approved under Plan Change 48 is authorised subject to the relevant Operative District Plan provisions. The balance of Lot 29 shall not be further subdivided while the land remains in the Rural Environment Area.

CONCLUSION

101. The hearing of submissions on PC48 has encompassed a vast amount of evidence, from technical experts, and lay witnesses with detailed local knowledge. It is clear that Oakura is a special place, and the residents of Oakura have much to be proud of.

102. However, Oakura is a resource for all to enjoy. Housing supply is a significant social, economic and environmental issue concerning all New Zealanders. Enabling communities, both now and into the future to provide for their well being requires housing supply. Oakura has been identified as a strategic growth node by New Plymouth District Council. PC48 gives effect to that long term strategy in an efficient and effective way. The revised plan change reflects and responds to the community concerns raised through this process.

103. It is time for growth to be enabled in Oakura, so that the positive benefits of a lifestyle at Oakura can be enjoyed by an expanded community. That

expansion will occur at a rate which is sensitive to the existing community, and ensures that the growth of Oakura is sustainably managed.

104. On this basis the applicant requests that the commissioners recommend that the revised plan change be approved.

Dated 20th December 2019



L F Muldowney

Counsel for the applicant

ATTACHMENT A

Colonial Vineyard Ltd v Marlborough District Council [2014] NZEnvC 55 checklist incorporating the 2013 and 2017 amendments to the RMA.

A. General requirements

1. A territorial authority must prepare and change its district plan **in accordance with**⁵⁵, and to assist the territorial authority to **carry out**, its functions under s 31⁵⁶ so as to achieve the purpose of the Act⁵⁷.
2. The district plan (change) must also be prepared in accordance with any national policy statement, New Zealand Coastal Policy Statement, a national planning standard⁵⁸, regulation(s)⁵⁹ and any direction given by the Minister for the Environment⁶⁰.
3. When preparing its district plan (change) the territorial authority **must give effect to**⁶¹ any national policy statement and New Zealand Coastal Policy Statement and a national planning standard⁶².
4. When preparing its district plan (change) the territorial authority shall:
 - (a) **have regard to** any proposed regional policy statement⁶³;
 - (b) **give effect to** any operative regional policy statement⁶⁴;
5. In relation to regional plans:
 - (a) the district plan (change) **must not be inconsistent with** an operative regional plan for any matter specified in section 30(1) or a water conservation order⁶⁵; and
 - (b) **must have regard to** any proposed regional plan on any matter of regional significance⁶⁶ etc.

⁵⁵ Section 74(1) (replaced on 3 December 2013 by section 78 RMAA 2013).

⁵⁶ Section 31.

⁵⁷ Sections 72 and 74(1).

⁵⁸ Section 74(1)(ea) (inserted, on 19 April 2017, by section 59 of the RLAA 2017). Although note comment in paragraph

⁵⁹ Section 74(1)(f).

⁶⁰ Section 74(1)(c).

⁶¹ Section 75(3).

⁶² Section 75(3)(ba) (inserted, on 19 April 2017, by section 60 of the RLAA 2017).

⁶³ Section 74(2)(a)(i).

⁶⁴ Section 75(3)(c).

⁶⁵ Section 75(4).

⁶⁶ Section 74(2)(a)(ii).

6. When preparing its district plan (change) the territorial authority must also:
 - a) **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Heritage List/Rarangi Korero and to various fisheries regulations⁶⁷ to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities⁶⁸;
 - b) **take into account** any relevant planning document recognised by an iwi authority⁶⁹; and
 - c) not have regard to trade competition⁷⁰ or the effects of trade competition;
 7. The formal requirement that a district plan (change) must⁷¹ also state its objectives, policies and the rules (if any) and may⁷² state other matters.
- B. Objectives [the section 32 test for objectives]
8. Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act⁷³.
- C. Policies and methods (including rules) [the section 32 test for policies and rules]
9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies⁷⁴;
 10. Each proposed policy or method (including each rule) is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan by:⁷⁵
 - Identifying other reasonably practicable options for achieving the objectives;⁷⁶ and

⁶⁷ Section 74(2)(b) (amendments to 74(2)(b)(iia) on 20 May 2014 by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014).

⁶⁸ Section 74(2A) (replaced on 1 April 2011 by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 – however no fundamental difference in relation to the test).

⁶⁹ Section 74(2A) (replaced on 1 April 2011 by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 – however no fundamental difference in relation to the test).

⁷⁰ Section 74(3).

⁷¹ Section 75(1).

⁷² Section 75(2).

⁷³ Section 74(1) and s 32(1)(a).

⁷⁴ Section 75(1)(b) and (c) and s 76(1).

⁷⁵ Section 32(1)(b).

⁷⁶ Section 32(1)(b)(i).

- Assessing the efficiency and effectiveness of the provisions in achieving the objectives by:⁷⁷
- Identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposed policies and methods (including rules), including the opportunities for:
 - (i) economic growth that are anticipated to be provided or reduced;⁷⁸ and
 - (ii) employment that are anticipated to be provided or reduced⁷⁹.
- If practicable, quantify the benefits in costs referred to above.⁸⁰
- Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods;⁸¹
- Summarising the reasons for deciding on the provisions;⁸²
- If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances⁸³.

D. Rules

- II. In making a rule the territorial authority **must have regard** to the actual or potential effect of activities on the environment⁸⁴.
- 12. Rules have the force of regulations⁸⁵.
- 13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive⁸⁶ than those under the Building Act 2004.
- 14. There are special provisions for rules about contaminated land⁸⁷.

⁷⁷ Section 32(1)(b)(ii).

⁷⁸ Section 32(2)(a)(i).

⁷⁹ Section 32(2)(a)(ii).

⁸⁰ Section 32(2)(b).

⁸¹ Section 32(2)(c).

⁸² Section 32(1)(b)(iii).

⁸³ Section 32(4).

⁸⁴ Section 76(3).

⁸⁵ Section 76(2).

⁸⁶ Section 76(2A).

⁸⁷ Section 76(5).

15. There must be no blanket rules about felling of trees⁸⁸ in any urban environment⁸⁹.
- E. Other statutes:
16. Finally territorial authorities may be required to comply with other statutes.

⁸⁸ Section 76(4A).

⁸⁹ Section 76(4B).