

Appendix 1: 'The Paddocks' Subdivision Consent Decision

NEW PLYMOUTH DISTRICT COUNCIL

**Report and Decision of the New Plymouth District Council through its
HEARINGS COMMISSION**

Meeting held in the Civic Centre,

**On Thursday the 16th, Friday the 17th and Monday the 20th of December 2010
commencing at 9.00am**

A Hearings Commissioner was appointed by the New Plymouth District Council with delegated authority to hear the resource consent application lodged by BTW Company on behalf of Oakura Farm Park Limited relating to subdivision of land to create thirty lots (“the application”). The application, made in accordance with the Resource Management Act 1991 (“the Act”), was lodged with the New Plymouth District Council and is referenced as RC 45196.

PRESENT:

Hearings Commissioner

Helen Tobin

APPLICANT:

Mike McKie

Scott Grieve, Counsel for applicant

Cameron Twigley, BTW Company Ltd

Richard Bain, Richard Bain Landscape Architects

Norm Jacobs, BTW Company Ltd

Colin Bell, BTW Company Ltd

Ivan Bruce, Archaeological Resource Management

Cees Beevers, Oecolgico Ltd

CONSENT AUTHORITY:

New Plymouth District Council

Laura Burton, Reporting Officer

Jo Mooar, Solicitor

Mary Buckland, Landscape Architect

SUBMITTERS:

Andy Dodd, New Zealand Historic Places Trust

Mark and Christine Bowden

Tony Walker

Emmalie Wenn (representing herself and Kevin and Maree Fleming)

Doug Hislop, representing the Kaitake Community Board

Paul Goldsmith, representing group Wairau Road residents

Paul Goldsmith as individual

The decision of the New Plymouth District Council is that resource consent be granted for the reasons described in the following report.

1. Description of the proposed subdivision

BTW Company on behalf of Oakura Farm Park Ltd has applied for a 30 lot subdivision at 673 South Road, Oakura. The land is in the Rural Environment Area. The land is currently held in four certificates of titles. The land is open pasture used currently as a dairy farm. The site includes two dwellings with frontage and access to South Road. (South Road is State Highway 45).

The application includes a number of reports. These reports have been subject to amendments and some are the result of a section 92 RMA request. The reports are:

- Application for Resource Consent and Assessment of Environmental Effects (prepared by Cam Twigley, BTW Company, received by the Council on the 23 March 2010)
- Landscape Assessment (prepared by Erin Griffith and Richard Bain, Richard Bain Landscape Architects, received by the Council on the 23 March 2010)
- Ecological Values and Impact Assessment: Wairau Stream, Wairau Road subdivision, Oakura (prepared by Cees Beevers, Oecologia Ltd, amended copy received by the Council on 25 November 2010)
- Archaeological Survey and Assessment of the McKie Subdivision at Wairau Road, Oakura (prepared by Ivan Bruce, Archaeological Resource Management, received by the Council on the 24 June 2010)
- Wairau Road Traffic Engineering Report (prepared by Bruce Chadwick, BTW Company received by the Council on the 23 June 2010)
- Cluster Subdivision Infrastructure Report (prepared by Colin Bell and Norm Jacobs, BTW Company received by the Council on the 1 October 2010)

- Planting Strategy and Photomontage Collection (prepared by Erin Griffith and Richard Bain, Richard Bain Landscape Architects, received by the Council on the 13 October 2010)
- An amended scheme plan (attached as appendix 4) was received by Council on the 16 November 2010. This scheme plan replaces the one lodged with the application and the application is considered against this varied scheme plan.
- A plan identifying the Proposed and Existing Easements dated 5.11.2010. Received by the Council on the 3 December 2010.

The applicant has proposed that it will take place in two stages with an extension of the lapse period from the standard five year period:

- Stage 1: Lots 1 – 15, Lot 28 and Lot 30 (with an eight year lapse period)
- Stage 2: Lots 16 – 27 and Lot 29 (with a ten year lapse period)

The proposal is to create two clusters of large lot residential allotments. The north cluster contains two proposed cul-de-sac roads serving 21 large lot residential allotments. This cluster is bounded on the east and western side by a large shoehorn gully which forms the headwater of the tributary of the Wairau Stream, which defines the eastern portion of the site. These allotments are approximately 4000m² in size.

Lots 27 and 28 are to vest in the Council as legal road and will provide access to the large lot residential allotments within the north cluster.

The second 'south cluster' is located further south along Wairau Road. The land is highly elevated and immediately adjoins the Kaitake Ranges. The cluster contains five allotments that are generally one hectare in size. Access to the allotments is off Upper Wairau Road with Lots 2 and 3 having access off a right of way.

Lot 29 is the balance farm allotment and has an area of 66.5ha in size. It is intended this land will continue to be used for farming purposes. An 8.5ha bush area is included within this allotment. This area, which covers the Wairau Stream tributary gullies and adjacent slopes, will be included with the farm and will be protected by a QE II covenant.

The proposed subdivision will take place in stages. The applicant has requested that Stage 1 include Lots 1 -15 and Lots 28 and 30 with a time period of eight years to complete. Stage 2 is to include Lots 16 -26 and Lot 27 - 29 with a time period of ten years to complete.

2. Description of Site

A site visit was carried out on the 15th of December 2010. The Commissioner made several further informal site visits in the course of writing this report.

The site is an 82.1162ha rural property that gently rises from the north to the south. It is bounded to the northwest by State Highway 45 (State Highway), neighbouring farms to the west, and a portion of the southern boundary borders the Kaitake Ranges which is identified as an Outstanding Natural Landscape (ONL) under the New Plymouth District Plan. The remainder of the southern boundary borders an adjacent dairy farm, which forms a wedge between the site and the Kaitake Ranges. The north-eastern boundary is partly bounded by the Wairau Stream which is a Priority Water Body (PWB) in the District Plan and further south is bordered by the upper section of Wairau Road.

The land form of the site is undulating to rolling in nature. A tributary of the Wairau Stream forms the north-eastern boundary in the lower portion of the property, before splitting forming two gullies which dissect a portion of the property. There are a number of other smaller gullies within the property.

The main branch of this Wairau Stream tributary is well vegetated in predominantly native bush whilst the tributary which runs from near Wairau Road is swampy land. There is also a small area of bush located near the southern boundary of the property. Throughout the remainder of the site there are isolated patches of trees and bush. Through archaeological investigation a pa has been identified by the applicant in the main gully of the site. This pa site is not identified in the District Plan.

There are two existing dwellings located on the property (the farm house and a vacant second dwelling) as well as a number of farm sheds and buildings. Both dwellings are accessed from State Highway 45, which is a limited access road in this locality.

A NPDC lease area for the purposes of water supply to the Oakura urban area and land leased by Telecom for a cell tower are located at the southern end of Upper Wairau Road and adjoin the southern cluster. These areas are located within the proposed balance allotment.

There are a number of easements affecting the property including three pipeline easements for gas and petroleum products, right of ways serving the NPDC and Telecom lease areas and easements associated with water supply. These easements are all located within the balance allotment.

3. Immediate environment

The immediate environment varies in form given the proximity of the site to the Oakura Township and the Kaitake Ranges.

A large portion of the land to the south of the site forms part of the Kaitake Ranges. These share a common boundary of approximately 75m with the subject site. There are two existing rural residential sites located in close proximity, legally described as Lots 1 and 2 DP 336578 which adjoin proposed Lots 1 to 4. These

two allotments were formerly part of the subject land but were subdivided from the parent title in 2004.

The Kaitake Ranges are part of the Egmont National Park; they are bush clad ranges that rise up from the site to approximately 682m above sea level. Mount Taranaki is located south east of the site and the peak is visible behind the Kaitake Ranges. The Kaitake Ranges are a dominant feature in the immediate environment and the site is located at the foothills of the ranges.

The land south east of the proposed site on the opposite side of Upper Wairau Road comprises rural residential allotments and rural farm land used for agricultural purposes. There are seven dwellings located on this eastern side of Upper Wairau Road.

North east of the site (along the lower portion of Upper Wairau Road) is the fringe of the Oakura township, which has residential zoning. Residential zoned land extends from the intersection of State Highway 45 and Wairau Road southwards by approximately 500m, this ends before the Surrey Hill Road, Wairau Road intersection. This residential land is located on the east side of the Wairau Stream.

West of the site is open spaced rural land used for agricultural purposes, primarily dairy farming. Similarly further north of the site, on the opposite side of State Highway 45 is large rural open spaced land.

Council has received an application for a 33 lot residential subdivision located on Lot 2 DP 16742 and Part Section 3 Oakura District located on the opposite side of State Highway 45 from the subject site. The subdivision crosses the residential/rural zoned boundary and was therefore assessed as a non-complying activity. The application is on hold (section 92 of RMA) for further information. A notification decision has not been made on this application and because it has not been approved it cannot be considered as part of the future environment

(Queenstown Lakes District Council v Hawthorn Estate Limited (CA45/05)). This application therefore has been disregarded when considering effects on the environment of the proposed subdivision.

4. Wider environment

The wider environment is defined to the north by the township of Oakura and to the west and east by rural farm land.

To the east of the site Wairau Road intersects with Surrey Hill Road. Surrey Hill Road contains a number of rural residential sites interspersed with open spaces. Wairau Road and Surrey Hill Road both rise towards the Kaitake Ranges. These rural roads form the rural fringe of the Oakura Township. On the eastern side of Surrey Hill Road is the Oakura River.

To the north east of the site is the Oakura Township. The Oakura Township population is approximately 1400 people and is located fifteen minutes south west of New Plymouth. It is well renowned for its close proximity to the Tasman Sea (Oakura Beach), a well recognised surf beach and the mountains (Kaitake Ranges). Because the land is elevated and rises toward the ranges, there are expansive views of the coastline from the subject site, especially at the higher levels.

State Highway 45 runs from New Plymouth heading towards Oakura along the coast. The land is undulating and given the elevation of the subject site the site is visible from various points along the State Highway, from Plymouth Road in the east and through to Ahu Ahu Road on the west side of Oakura.

5. Public notification

The application was publicly notified under section 95A of the Resource Management Act 1991 (RMA). The application was publicly notified in the Taranaki Daily News on Thursday the 8th of April 2010. The application was sent to all persons deemed to be affected under section 95E of the RMA. Submissions closed at 5pm on the 6th May 2010. A total of thirty two submissions were received - ten submissions were in support of the application, three were neutral or in support subject to conditions and eighteen were in opposition.

6. Submissions in support

Submission in support were received from:

- Michael Thurman and Judy Williams, 132 Wairau Road
- Dawn and Vincent Smeal, 46 Donnelly Street
- Jennie Aitken-Hall, 47 Wairau Road
- Graeme Johnson, 3 Tui Grove
- Andy Marshall, 124a Wairau Road
- Karl Watson, 294 Surrey Hill Road
- Paul and Susette Goldsmith, 135 Wairau Road
- Rob Wright, 109 Surrey Hill Road
- Jennifer Blyde, PO Box 31 Oakura
- Ernestine Quick-Looker, 1 Darwin Crescent

Comments in support:

- Clustering of sites
- Maintain and enhances ecological values of land
- Proposal to upgrade Wairau Rd
- Proposed walkways/bridal paths

- Prefer cluster development to the alternative, or 4ha subdivision option for the site
- Positive direction for Oakura community

A number of the submitter's approvals are on the following conditional basis:

- Improving and upgrading roading and traffic issues on Wairau Road.
- Concern regarding covenanting Lot 29 in the future
- Further consultation and negotiation with community
- Upgrading of intersections (Wairau Rd and Surrey Hill Road and Wairau Road and State Highway)

7. Submissions in opposition

Submissions in opposition were received from:

- Paul and Kathy Lobb, 171 Wairau Road
- Emmalie Wenn, 130b Wairau Road
- New Zealand Historic Places Trust
- Heelan Tompkin, 163 Wairau Road
- Mark and Christine Bowden, 157 Wairau Road
- Alexandra and Edward Thompson, 110A Wairau Road
- Grant and Cathy Stewart, 169 Wairau Road
- Alex Ingram, 122A Wairau Road
- Peter Cassie, 34 Dixon Street
- Manna Christian Healing Centre Trust, 134 Wairau Road
- Anthony and Sharlene Walker, 166 Wairau Road
- Kevin and Maree Fleming, 139 Wairau Road
- Stephen and Jeanette Runnesden, 124 Wairau Road
- Oakura Community Group, C/- 259 Surrey Hill Road (signed by 24 people)
- Vector Gas Ltd
- Peter and Glenys Wills, 23 Surrey Hill Road

- John Priest, 11 Prudence Place
- Raechel and Bryan Goodhue, 110B Wairau Road
- Kaitake Community Board

Comments in opposition:

- Inconsistent with the Oakura Structure Plan
- Increased traffic flows
- Service provisions
- Precedent
- Loss of rural character and amenity
- Effects on archaeology
- Rural environment
- Loss of special character of Oakura village
- Proximity to the Kaitake Ranges
- Further subdivision of Lot 29 when part of it could be rezoned residential
- Lack of consultation with community
- Visual impact
- Increase in noise
- Loss of 'green belt' on Kaitake Ranges foothills
- Impact on existing pipelines and the Vector Station adjoining the proposal
- Loss of 'mountain to sea' link
- Effect on Wairau Stream from increase in stormwater run off
- Loss of rural amenity and rural feel
- Cumulative effects

Relief sought

- The application is declined.
 - Imposition of conditions in relation to Vectors concerns
-

8. Neutral submissions

Submission received from:

- Rowan Oldfield, 14 Hussey Street
- New Zealand Fire Service Commission
- Paul Goldsmith on behalf of Wairau Road Neighbours Group (signed by 8 people)

Comments

- Traffic issues
- Water, wastewater and stormwater issues
- Community facilities and associated provisions
- Consideration against objectives and policies of the New Plymouth District Plan
- Impact on rural character and amenity
- Fire risk and water supply

Relief sought

- Condition of consent/ consent notice be imposed requiring sufficient water supply for fire fighting purposes will be provided to all new dwellings in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008
 - An advice note imposed on consent to recommend the installation of a domestic sprinkler system.
 - Further consultation and negotiation with community take place in relation to the application generally
 - Further information provided on impacts on traffic and services
-

9. Written approvals

Section 104 (3) (a) (ii) states that a consent authority must disregard any effect on a person who has given written approval to the application.

A written approval has been provided by the applicant to Council from Nga Mahanga a Tairi Society Incorporated on the 29th of November 2010. Nga Mahanga a Tairi Society Incorporated are the iwi for the area.

10. Pre-hearing Meeting

In accordance with section 99 of the RMA, a pre hearing took place on the 8th of November at the Oakura Hall at 6pm. It provided an opportunity for both the applicant and the submitters to ask questions, ask for points of clarification and outline their points of view.

11. Statutory Provisions

A number of consents are required by the application. These must be bundled and the application judged in terms of the criteria applied to the most restrictive status, which is as a non complying activity. The Commissioner has had particular regard to the matters as set out in Sections 104 and 104D of the RMA. The Commissioner also has had regard to the provisions of the District Plan, other relevant plans or matters, and to Part 2, the purpose and principles of the Resource Management Act.

Section 104

Section 104 provides, in particular, that:

“(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –

(a) any actual and potential effects on the environment of allowing the activity; and

(b) any relevant provisions of –

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits and activity with that effect.

...

(3) A consent authority must not

(a) when considering an application, have regard to –

(i) trade competition or the effects of trade competition; or

(ii) any effect on a person who has given written approval to the application

Section 104D of the Act is effectively the first and major hurdle for a non-complying activity, insofar as it stipulates as follows:

- “(1) Despite any decision made for the purpose of (section 95A(2) (a) in relation to adverse effects), a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –*
- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (b) the application is for an activity that will not be contrary to the objectives and policies of –*
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity*
- (2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity*

It follows that if the application is considered to meet one of the above criteria of Section 104D, it is then assessed against the wider tests of Section 104, including the relevant provisions of a plan or proposed plan. Relevant rules of the New Plymouth District Plan are summarised below.

District Plan

The New Plymouth District Plan was made operative on August 15 2005.

The site is located within the Rural Environment Area. The site has overlays relating to pipelines, a flooding ponding overlay and the Wairau Stream which is a priority water body (PWB). Wairau Road is classified as a local road and South Road is classified as State Highway, Limited Access Road within the District Plan.

The proposal does not comply with the following District Plan rules, **Rural Rule 78, Rural Rule 79, Rural Rule 80 and Overlay Rule 33:**

Rural Rule 78 of the District Plan states:

Minimum allotment size not including the area required to provide access to rear allotments;

Controlled activity	4 ha except that one allotment of not less than 1,000m ² or two allotments of not less than 4,000m ² created out of land covered by Certificate of Title issued before the Plan became operative (5 March 1999)
Discretionary activity	Two allotments of not less than 1,000m ² or Three or four allotments of not less than 4,000m ²

The application site contains four certificates of title.

Title or CFR 149794 is Lots 3 and 4 DP 336578. This title was subject to subdivision in 2004 which created two small allotments of approximately 6000m² both located near the end of Wairau Road. The subdivision is proposing four allotments within this title that are less than 4ha in size, proposed Lots 1 – 4.

Title or CRF 400635 includes Lot 2 DP 400540 and Part Section 30 Oakura District. In 2008 the land in the CFR was subject to a two lot subdivision creating a 2281m² allotment and the balance (subject site) of 9.6 ha. The subdivision proposes to create 21 small lots from this title. All twenty one lots are less than 4ha (the minimum allotment size) in size. These are described as Lots 5 -23 on the plan.

TN129/85 is Part Section 14 Oakura District. No subdivision has occurred within this title since 1929 and the subdivision proposes no further subdivision of this land. This title is 17 ha in size and as a controlled activity two small allotments of not less than 4000m²

could be created. Access to the site is obtained from State Highway and NZTA approval would be required to subdivide, should this allotment be subdivided separately (and not as part of the wider property, where access could be provided via other allotments).

TN129/84 is Part Section 13 Oakura District and no subdivision has occurred within this title since 1929 and the subdivision proposes no further subdivision of this land. However this title is only 6222m² and cannot be further subdivided under the provision of Rural rule 78.

Overall the proposal is to create 26 large lot residential allotments and two new roads and is considered a **Non – Complying Activity**.

Rural Rule 79 of the District Plan states:

Rural rule 79 requires the applicant to provide practicable vehicular access to allotments from a road, except where created solely for network utilities, roads or reserves. Rule 79 refers to requirements to be met in Appendix 22.2A of the District Plan, if one or more of these requirements are unable to be met then the application shall be assessed as a **Discretionary Activity**.

Appendix 22.2A (2)(a)(iii) is relevant where the vehicle access point is onto a local road in which case, table 23.5 and diagram 23.6 – Appendix 23 shall be complied with.

Wairau Road is a local road with a posted speed limit of 100kph and sight visibility of 160m from any new access is required.

South Road is State Highway and is a Limited Access Road, any subdivision of limited access requires NZTA approval and is considered a **Discretionary Activity**.

Rule Overlay 33 of the District Plan states:

Subdivision of an allotment that includes a ‘Ponding Area’ is a Discretionary activity.

The land being subdivided includes an identified ponding area (Flood Hazard Area H2b) in the northern eastern corner of the site

Rural Rule 80 of the District Plan states:

Subdivision of an allotment that will require a road to be vested as legal road is a Discretionary Activity. The subdivision will result in the vesting of two roads in the Council.

Proposed Plan Changes

New Plymouth District Plan is also currently subject of several Plan Changes applicable to the application.

Plan Change 27.

This Plan Change was notified on the 1st of September and submissions closed on the 1st of October 2010. Plan Change 27 is considered as a proposed plan under the RMA. The application was lodged before this plan change was notified but section 88A (2) of the RMA states:

“Notwithstanding subsection (1), any plan or proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1) (b)”

Plan Change 27 is proposed to make changes to the New Plymouth District Plan in relation to the Rural Environment Area and related sections to ensure the retention of rural character. Essentially Plan Change 27 will ‘raise the bar’ for subdivision and development in the Rural Environment Area.

Plan Change 15.

Plan Change 15, Future Urban Development Overlay was publicly notified on the 20th of November 2010 and submission close at 5pm on Friday 17 of December 2010.

The purpose of the Plan Change to the New Plymouth District Plan is to provide for the control of land use activities and subdivision, within and adjacent to, future urban growth areas identified by the Final Framework for Growth (FFG) adopted by the Council in March 2008. The FFG recommends and maps the areas identified as the most suitable to accommodate future urban growth within the New Plymouth District over the next 20 years. In addition to the FFG, the Oakura Structure Plan and the Urenui Structure Plan adopted by the Council in 2006 also recommend future urban growth areas for Oakura and Urenui.

Similarly to Plan Change 27, provisions of Plan Change 15 must be considered with regard to section 104(1)(b)(v). In the case of Plan Change 15, the Environment Court has provided ‘immediate legal effect’ for the rules proposed in the Change. A similar application for Plan Change 27 was recently declined by the Court however the objectives and policies remain relevant for the purpose of section 104(1)(b)(v).

Taranaki Regional Policy Statement

The Taranaki Regional Policy Statement became operative on the 8th of December 2009. The Regional Policy Statement (RPS) provides an overview of the resource management issues of regional significance and the policies and methods that will be adopted to address those issues. The RPS also sets out the strategic directions for achieving integrated management in Taranaki – not just across land, water, air and the coast – but also between the Taranaki Regional Council and the three district councils.

Other Matters

Section 104 (1) (c) allows that the consent authority can consider other matters that are relevant and reasonably necessary to determine the application. Two other matters were considered as important in assessment of the application. These were:

- The Oakura Structure Plan and Coastal Strategy
- Approved 4ha subdivision consent on subject site

12. SUMMARY OF EVIDENCE HEARD

The Commissioner heard evidence from the applicant, expert witnesses, submitters and the Council reporting officers. This is summarised as follows.

Applicant's Evidence

Mr Scott Grieve

Mr Grieve the Counsel for the applicant gave three hours of legal submissions in relation to matters that the Commissioner should consider as part of her assessment of the proposed subdivision. He provided a background to the evidence that would be called by the applicant and what each expert would draw on. He outlined reasons why the application would be consistent with the objectives and policies of the District Plan, consistent with the RMA and that any adverse effects would be no more than minor. He outlined all the special features of the site which included, the pa site, the bush remnant, the wetlands and flora and fauna.

Mr Grieve discussed the relevance of the 4ha, eighteen allotment subdivision on the same site which has already been approved (sub10/45241). Mr Grieve believes that sub10/45241 must be considered as part of the receiving environment and the permitted baseline and discussed case law which he considered supported his argument.

Mr Grieve concluded that:

“the adverse effects of the proposal on the environment, as proposed to be remedied, and/or mitigated and taken as a whole, will be no more than minor (as that term is legally understood following Bethwaite and Stokes)”.

He went on to further outline how the proposal would be consistent with the objectives and policies of the District Plan, with reference in particular to evidence to be called from Mr Bain and Mr Twigley. He submitted that the application would be consistent with the

overall sustainable management purpose of the Act and discussed relevant subsections of section 5-8 of the RMA and outlined why the application will be consistent with these sections by reference to case law and evidence that he intended to call.

Mr Mike McKie

Mr McKie introduced himself and his wife and said that the application was made on behalf of the family business. Mr McKie has 35 years farming experience and 26 years as a real estate agent. He outlined his vision for the proposed development and showed photographs of other farms where he had successfully established riparian planting and other restoration of waterway projects. He said that the balance allotment of this proposed subdivision would be able to be retained as a productive farming unit. He outlined discussion and consultation which has occurred with both Taranaki Regional Council (TRC) and QE11 Trust in relation to planting and protecting the gully areas on the subject site and establishing a QE11 covenant to ensure their protection especially of the ecological values. He said that through the subdivision proposal it would be possible to enhance corridors for native species linking from the National Park to the sea.

Mr McKie discussed the 4ha approved consent on the site and said that the now proposed subdivision was the preferred option and would lead to better results, in particular if the main area is controlled and managed in one ownership it would lead to better outcomes in relation to the protection of the pa, native bush gully area and wetland areas. However Mr McKie said that if the proposed subdivision was not granted consent, he would implement the 4ha subdivision.

Mr McKie discussed the growth of the Oakura community as outlined in the Oakura Structure Plan and said that he believed this form of cluster subdivision provided a form of development that will attract clientele looking for a special lifestyle. Services were available in Oakura township. The beach was about 21km away, as was the Golf Course and Rugby Club.

Mr McKie listed the reasons why the area that was chosen for the cluster development was located on the Wairau Road side of the farm. The area is furthest away from the cowshed, it is hard to manage stock in the gullies where they could become trapped and which were less productive soils, the native bush remnant provided a buffer between the subdivision and the balance lot, there was good road access and good building sites, and development of this area protects the open landscape and the views of the Kaitake Ranges. He said it was a dramatic and beautiful parcel of land and would be a lovely place for people to live.

Mr McKie discussed the consultation that had been undertaken with iwi including discussions on matters such as street naming, and in particular the permanent protection of the Pa site. He also referred to the consultation that had occurred with and the wider Oakura community and submitters. He said that he had maintained an open door policy for anyone wishing to discuss the proposal with him.

Mr McKie finished with several sections of his evidence related to why he had preferred the cluster style development to development in the area identified in the Oakura Structure Plan (triangle zone), the reasons he had also applied for the 4ha subdivision, and finally he commented on the Officers report, where he said there were a number of issues that were of concern. These would however be covered by the expert evidence of witnesses. He also raised issues of concern with regard to Ms Buckland's report concerning landscape matters, in particular that the site was not visible from some locations mentioned by Ms Buckland.

Mr McKie concluded by stating that they are trying to achieve a vision that will stand the test of time and said his vision was for an eco friendly environmentally safe guarded and protected project that was future proofed and enjoyable for generations.

Ivan Bruce

Mr Bruce said the he was employed by the applicant to undertake an archaeological survey and assessment. The result of this survey was recording a previously unrecorded

pa site, P19/340, located within Lot 29, the balance lot of the subdivision and an area which will be protected by a proposed QE11 covenant. He said that no archaeological sites were recorded on Lots 1-28, proposed for rural/residential subdivision.

Mr Bruce outlines that the primary objective of the archaeological investigation was to give surety to the applicant, NPDC and Nga Mahanga A Tairi hapu that the application site did not contain significant archaeological sites. He had looked for evidence of kainga thought to exist on Lots 1 and 2. Archaeological evidence was encountered on proposed Lots 2, 18 and 21 but not at any other location. Mr Bruce said that the area proposed for rural residential development had been heavily ploughed. This has implications for archaeological potential on the site as archaeological deposits will only exist below the plough zone.

Mr Bruce outlined that conditions of consent would need to be imposed to ensure all earthworks for roads, accesses way and building platforms would need to take place under an authority from NZHPT. He said that the pa site will be protected through a QE11 covenant, also that an archaeological management plan would need to be compiled, to outline measures to ensure the long term conservation of the pa site.

Mr Bruce referred to the consultation with Nga Mahanga A Tairi hapu which were consulted throughout the development of the subdivision plans. He also addressed the submissions made and commented on the officer's report.

Mr Bruce concluded by outlining that the sites found as a result of investigation has been recorded. The pa site, which he said is of high archaeological value and regional significance, will be protected under covenant. Mr Bruce acknowledged that this is not the optimum solution because public access will not be allowed but placing the entire site in a QE11 covenant with an archaeological management plan is good practise and will provide for the long term protection of archaeological heritage. He also referred to the proposed 4ha subdivision, which he said would only provide limited protection to the pa site and commented that the District Plan currently did not adequately or accurately

identify all archaeological sites. However he said that the proposed subdivision would provide protection for the significant site, the pa, and also provided for investigation in areas where sites have not yet been identified.

Mr Cees Beevers

Mr Beevers said that he was a practising ecologist and discussed his experience. He said that he had visited the site numerous times and prepared three reports; the Preliminary Ecological Values Assessment, the Ecological Values and Impact Assessment and the Lizard Survey.

Mr Beevers gave a comprehensive description of the fauna and flora, including the flora of the forest remnant on site. These included a number of native bird species, fish species, geckos, trees, plants and shrubs. He said that the western forest remnant represents some 3% of the semi-coastal forest type on the Taranaki ring plain and therefore have significant ecological value. Large canopy trees in the forest include puriri, kohekohe, karaka, rewarewa, puketea, mahoe, pigeonwood, nikau palm and whau.

He summarised the conclusions from his three reports. His conclusions include a number of recommendations which should be imposed on the subdivision consent to provide for the protection and enhancement of the ecological significance of the site. These include removing fish barrier for migratory fish passage to occur in the Wairau Stream, revegetation planting for covenanted area, controls of domestic cats in the subdivision, restrictions on excavation within the site, fencing of the covenanted area and the on going monitoring of the site and the flora and fauna.

Mr Beevers talked to a number of submissions which had expressed concerns in relation to ecological matters. He assured that all the submitters' concerns in relation to ecological matters had been addressed through his evidence and proposed recommendations. He commented on the approved 4ha subdivision of the site to the current proposal and said that in his opinion this cluster subdivision better provided for the ecological protection of

the site. Mr Beevers also discussed the planning officer's report and outlined concerns he has with this and the recommended conditions.

In conclusion, Mr Beevers said that in his opinion the proposed subdivision would provide protection to the current significant ecological values of the site, and that if the recommendation and mitigations measures detailed in his reports were adopted, he believed that the adverse ecological effects of the subdivision would be no more than minor.

Mr Colin Bell

Mr Bell said he had been a practising engineer in New Plymouth for 35 years, currently employed by BTW Company. He outlined his experience and his role in preparing the report 'Wairau Road, Oakura – Cluster Subdivision Infrastructure Report' in conjunction with Norm Jacobs. Mr Bell said his involvement with the project was in respect of the three water services; water supply, sewers and stormwater drainage and summarised his conclusions;

- The proposed subdivision will not result in increases in peak stream flow downstream of the proposed flood detention facility at the two wetlands
- The existing wetlands can be maintained at levels within 300mm of existing levels excepting for short durations during and after heavy rainstorms.
- There will be negligible effect on flood flows in the main channel of the Wairau Stream including in the vicinity of Tasman Parade and the Old Boys Surf Club
- The risk of flooding above the basement floor at 100 Wairau Road will be reduced.
- The full rural residential lots can be serviced by an extension of the existing NPDC sewer located west of Wairau Road.
- The full rural residential lot will be supplied with water from NPDC water supply.
- Adequate provision will be made for firefighting water supply to all rural residential lots, in accordance with the NZ Fire Service requirements,

- A slight improvement in water pressure throughout Oakura is to be expected in periods of high water demand.

Mr Bell discussed submissions on the application, a number of which expressed concern about increased flows and erosion risk in the Wairau Stream but he said he believed the proposed storm water infrastructure would obviate such concerns. Mr Bell also commented on concern that development of new roads and development of private lots would increase storm water runoffs. He said the proposed detention system would fully compensate, and that a larger area in forest would reduce the intensity of water runoff into the wetlands. The total effect would be a reduced peak stream flow in the Wairau Stream tributary below the two gullies. He described the proposed detention system, noting also that it included fish passages at the new culvert outlets.

Mr Bell also commented on the officers report and compared the 4ha subdivision consent to this proposal, noting a potential problem with this if septic tanks were to be installed near the NPDC water supply bore.

Mr Bell in his overall conclusion said that the stormwater, sewage and water supply infrastructure required for the cluster subdivision will have an effect on the environment that is no more than minor, and in some respects will improve the existing situation.

Mr Norm Jacobs

Mr Jacobs said that he had been employed as a Roding Design/Traffic Engineer in the New Plymouth area for 34 years. He gave evidence with regard to the traffic, access and roading issues. He outlined that he had come into this project due to the unavailability of Bruce Chadwick, the author of the Wairau Road Traffic Engineering Report. He stated that he agreed with most of the report and recommendations. He said that he had prepared the Roding Section of the Infrastructure Report prepared as a request for further information, September 2010, and confirmed the findings of the roading section of that report, which varied the recommendations of the original Traffic Report.

Mr Jacobs went through the conclusions of the Traffic Report, noting those he confirmed and those he did not agree with. He set out several other items which had not been included in the Traffic Report but which he considered should be recommended. These included that further measures need to be undertaken at the Wairau Road, Surrey Hill Road intersection, being:

- Trimming of vegetation along the bank of the north side of Surrey Hill Road to improve sight visibility
- Upgrade chevron signs at Wairau Road, Surrey Hill Road intersection with reflectorised yellow backgrounds with black arrows and numbers.
- Relocation of power pole once kerb and channel constructed and pohutukawa trees removed.
- The bank on the west side of Wairau Road and the full length of between Surrey Hill Road shall be cut down to provide a flat area from the water table to the boundary.

Mr Jacobs addressed a number of issues raised in submissions and compared the effects generated from this proposal to that of the 4ha approved consent. He also discussed the Officers Report and Appendix 3 to that prepared by Mr Pieters, Council Roding Engineer. He said that he did not agree with Mr Pieters insofar as he took traffic that could be anticipated from the approved 4ha consent as the basis for considering likely effects of the increase in volumes and the effects on the roading network, in particular Wairau Road, of the proposed cluster subdivision.

Mr Jacobs concluded by saying that provided the parts of the Traffic Report confirmed by him are accepted, those not confirmed by him are deleted and the additional matters presented in his evidence are all confirmed, then the effects of the subdivision on the Roding Network would be no more than minor. He said that although traffic volumes will increase, the measures proposed would improve traffic safety along Upper Wairau Road – the widened carriage way complete with road marking and delineation would make it safer for two lane movements, and the posted speed would be reduced from the current 100km to 60km. On the subdivision side of Upper Wairau Road, widening

roadside verges and cutting back the bank will allow non vehicle users to be off the sealed carriage way. Alterations to the Wairau Road/Surrey Hill Road intersection will improve safety here by increasing visibility. The combined measures will result in an upgraded and safer roading network in the vicinity of the new subdivision.

Mr Richard Bain

Mr Bain said that he had worked as a Landscape Architect in New Plymouth for 18 years, specialising in site design and visual assessment. He assessed the landscape and visual effects of the project with particular regard to effects on rural character and amenity as assessed against the objectives and policies of the District Plan, in particular as set out in Issue 4 – Loss or reduction of rural amenity.

Mr Bain considers that under the District Plan's policies and objectives, spaciousness and pleasantness are key descriptors of rural character. The current rules of the Plan enable subdivision into small lots (one allotment of not less than 1000m² or two allotments of not less than 4000m²) and landowners tend to subdivide to the minimum allowable. In Mr Bain's opinion, subdivision down to 4 hectare lots can have adverse effects on rural character. He considers that 4 hectare 'lifestyle blocks' have a perceptibly different character from the truly 'rural countryside', and that the rural landscape in the district is changing from large tracts of openness to smaller lots with increased enclosure and less spaciousness.

Mr Bain stated that he considers a comprehensive design based approach to subdivision to be preferable to a minimum lot size approach, tailoring a more fitted and site-specific design for better resource management outcomes, and that this is what he did in this case as the applicant's landscape architect.

Mr Bain outlined the site's existing landscape/rural character, visual and aesthetic qualities, amenity values, and natural character values. He described the various boundaries, watercourses, vegetation, gullies and topography, physical manmade features such as pipelines and buildings, and public views of the site.

Mr Bain said that he considered that the receiving/surrounding area is complex, with a mix of residential, rural, lifestyle, and outstanding natural area, and that the area has undergone significant change in recent times. Although the applicant's currently undeveloped farmland has a rural feel, he does not consider that the surrounding landscape character is simply rural. He stated that the site is enveloped by a variety of landscape character types, development, zoning, and activities, and that the proposed subdivision "*would in my view, create a logical extension to that existing residential and rural/residential environment and is a good fit for part of the site and locality in landscape terms.*" He considered that the area of the site containing the proposed new allotments "*is experienced as being surrounded with the noise and activity more akin to a rural residential environment and does not have the amenity values typically associated with open rural areas.*"

Mr Bain assessed the application against the relevant District Plan assessment criteria. With regard to the effects of the proposed lot sizes and shape on the character of the area, Mr Bain considered these in terms of how character is experienced by both passers by and local residents. He described visibility of the land from various roadside locations and stated that for those travelling southwards along SH45, the land proposed for subdivision is peripherally distant and set 'behind' the view most likely seen by travellers heading in this direction. The site would also be at a distant and peripheral location to those travelling in either direction at the north of Oakura; the farm paddocks and dominance of the Kaitake Ranges would command initial and immediate views; and the rural ambience of this view is compromised by Council reservoirs, a Telecom tower, a highly visible earthworks scar on an adjoining property, and the residential area of Oakura that flanks the site.

Mr Bain referred to photographs from various viewpoints along SH45 and Wairau Road, and then proceeded to consider effects on the neighbouring properties on Wairau Road. He identified which properties would see the subdivision and what they would see, in the context of topography, existing vegetation, location and orientation of dwellings. He

considered that the effects of the proposal would be limited by the clustered approach to the rural-residential size lots, and that the clustered lots would be more connected to the Oakura township than in a scenario where the land was cut into 4 hectare lots. The proposed remaining 66.5 hectare farm lot would maintain rural character, particularly with regard to spaciousness, and would maintain extensive views from SH45 up to the Outstanding Natural Area. The proposal would see the protection of the bush and wetland gullies, includes enhanced rehabilitation planting, would provide walkway linkages for improved neighbourhood amenity, and would allow for a productive dairy farm to continue operating.

Mr Bain referred to Mr Beevers' ecological evidence and said that he considered the proposal would enhance natural character in relation to the vegetation, wetlands, habitats and wildlife. Furthermore, he stated that the proposal has been designed to minimise adverse effects on landform, through proposing robust mitigation measures related to earthworks, and improvements to an existing ponding hazard. Pathway linkages to enable pedestrian/cycle access and a conservation covenanted area was proposed.

Mr Bain assessed the proposal against the consented 4ha scheme, and stated that under the consented activity the relatively undeveloped rural nature of the site would not be retained. He considered that the consented 4ha scheme would degrade the site's landscape values, including the loss of open space, the loss of a rural Southern Entrance Corridor, loss of views to the Kaitake Ranges Outstanding Natural Landscape caused by likely roadside screen and shelter planting, and the likely creation of a variety of architectural house styles which could be large, light, bright and reflective. However, the proposed comprehensive design cluster scheme would specifically address landscape and rural amenity issues through comprehensive robust design controls, single storey dwellings, one dwelling per lot, larger setbacks, restrictions on planting along SH45 frontage, and the protection of the 66.5ha farm including 8.5ha of protected bush and wetland.

Mr Bain detailed the mitigation measures proposed at length, and stated that “*In my view, these measures will effectively mitigate effects to the degree that the adverse landscape amenity effects of the proposed subdivision will be no more than minor.*”

With regard to fragmentation as an adverse effect from rural subdivision, Mr Bain considered the test: when do elements such as roads, driveways, boundary features, gates, structures and dwellings become sufficiently widespread that visual clutter eventually fragments the scale of rural landscape and changes its character? As 80% of the site would remain as dairy farm and covenanted bush/wetland, and cluster development would be limited to that land adjacent an existing semi-urban area, Mr Bain considers the effect of fragmentation would be limited by the proposal. He also assessed whether this subdivision would create adverse cumulative effects and considered whether this proposal would be the ‘tipping point’. He believes that the development does not represent a point in the local landscape where the balance is tipped and rural character is subsumed. Furthermore, because the subdivision has been designed as a comprehensive development with sensitive site selection taking into account specific landscape matters of character and identity and sites all differ in nature, Mr Bain considers that the approval of the proposal would not set a precedent.

Mr Bain concluded his evidence by responding to landscape matters raised in submissions, responding to the officer’s report, and summarising his evidence. He finished by stating that, if the carefully considered design controls and covenants are adopted, then in his opinion he adverse effects of the proposed activity would be no more than minor.

Mr Cameron Twigley

Mr Twigley presented his evidence as the applicant’s resource management consultant. He said that he had been a practising planner for 10 years and he outlined his planning qualifications and experience, and his particular experience in rural subdivision. Mr Twigley outlined the scope of evidence he would be presenting.

Mr Twigley began his presentation by addressing points made in the planner's report which he disagreed with, and matters that the planner, in his opinion, had failed to recognise. He felt that the officer failed to recognise that the permitted baseline can include unimplemented consents on the subject site, and that in his opinion the applicants' unimplemented 4ha consent as part of the permitted baseline should be compared with the effects of this proposed subdivision. Furthermore, he said that the planner's report lacked consideration of the many positive effects resulting from the proposal, that some policies and objectives of the District Plan and Regional Policy Statement were overlooked, and some matters under Sections 5 and 7, and Part 2 of the RMA were not applied correctly. He stated that he believed the subdivision was unique and unusual and he disagreed that it would set a precedent.

Mr Twigley described the site and receiving environment, including the future environment. He outlined the proposal and discussed the subdivision technique of clustering allotments. He stated that he supported the comprehensive design based approach to subdivision as opposed to the traditional minimum lot size approach.

Mr Twigley discussed the statutory requirements, in particular with regard to the District Plan and Section 104D of the RMA. He then presented an assessment of environmental effects which he began by noting that the meaning of 'effect' included any positive effect and listing effects that he considered would be positive effects of the proposal:

- Protection in perpetuity of 8.5ha of nationally significant ecosystems as well as the enhancement of plantings, management of pests, fencing off and removal of stock in protected areas;
- Upgrade of existing stormwater detention facility enabling upstream access for fish species;
- Provision and vegetation of an esplanade strip providing public recreation, health and wellbeing;
- Reduction in ponding hazard;
- Protection of an economic dairy farm; and
- Economic benefits of development.

Mr Twigley then considered a wide range of other effects on the environment, including potentially adverse effects in respect of the subdivision.

In terms of landscape effects, Mr Twigley first addressed effects on the outstanding natural landscape (ONL), responding to those submitters who were concerned about the effects on the Kaitake Ranges. He said that the proposed rural/residential lots have been limited to those areas of the site capable of absorbing the visual change. He believed that the proposal avoided adverse effects on the landscape by locating potential dwelling sites between existing areas of rural/residential development rather than extending development into farmland to the west – the proposal thus avoided sprawling and sporadic development. Furthermore, the design controls, proposed to be secured through conditions of consent requiring consent notices registered on the titles, would ensure the location, form and appearance of dwellings were appropriate for their landscape context. Mr Twigley commented on public views of the subject site and stated that he disagreed with Mrs Buckland and the council officer’s opinion that adverse visual effects would be more than minor.

Mr Twigley discussed consultation with Mana Whenua for the site who were the Nga Mahanga A Tairi. He said that they were supportive of the proposal and had provided their written approval. He referred to Mr Bruce’s evidence with regard to steps that would be undertaken to with regard to issues of historic heritage.

With regard to rural character and amenity effects, Mr Twigley described the area and recent development that has occurred in the locality. He stated, “*The areas where the clusters will be developed are on the cusp of the Oakura Village and in my opinion the subdivision will create an appropriate transition of development as one moves away from the village, from higher density residential to rural/residential, with the upper cluster having lower density still. The retention of 80% of the application site as farmland will continue to provide the rural backdrop...*” He stated that the smaller lots were sensitively

located between the gullies and design controls proposed by Mr Bain would ensure that development would be sympathetic to rural character.

Although the subdivision would result in an increase in traffic on Upper Wairau Road, Mr Twigley believed the effects on rural character and amenity of this additional traffic would be minor. The applicant had engaged a traffic engineer (Mr Jacobs) and Mr Twigley believed that the effects on road safety and efficiency would be mitigated, resulting in a safer and more efficient roading network than currently exists.

Mr Twigley referred to mitigation measures to address effects on natural character and ecological values proposed by ecologist Mr Beevers. Mr Twigley stated that, in his opinion, based on the evidence of Mr Beevers and Mr Bain and with the mitigation measures proposed, any effects on natural character and ecological values would be no more than minor.

With regard to effects on Historic Heritage, Mr Twigley outlined consultation undertaken with the New Zealand Historic Places Trust (NZHPT) and the archaeological assessment undertaken by Mr Bruce. Mr Twigley stated that he agreed with Mr Bruce that the proposed covenanted area would protect archaeological sites to perpetuity. Mr Twigley briefly outlined measures proposed by Mr Bruce for the protection of known and potentially unknown archaeological sites and stated that in his opinion the adverse effects of the subdivision on historic heritage would be no more than minor.

Next Mr Twigley addressed reverse sensitivity concerns of some submitters relating to the proposed new rural/residential activities taken place in close proximity to a working dairy farm. Mr Twigley advised that the applicant's dairy shed is located some 600m from the nearest lots, is separated by the native forest remnant, and these two factors would ensure that potential reverse sensitivity effects from the subdivision would be no more than minor.

Mr Twigley also responded to Vector's concern that reverse sensitivity could occur from residences on the rare occasion that gas is required to be vented nearby. He advised that the Vector submission had been withdrawn because the applicant agreed to conditions to mitigate such concerns.

Mr Twigley considered cumulative effects of the proposal, and stated that considering the other small lots in the vicinity, including a four lot subdivision yet to be implemented; cumulative effects were a relevant consideration. He considered whether granting the proposed subdivision could create a further loss of spaciousness and increased built form that would 'be the straw that breaks the camel's back' and adversely affect the existing rural character and landscape character of the local area. However, he stated that he considered the subdivision to be comprehensively and sensitively designed to ensure the landscape is capable of absorbing the development associated with this subdivision, and that it would not 'tip the balance'.

Mr Twigley referred to the evidence of engineer Mr Bell and stated that based on this evidence it was his opinion that the remodelled detention structure, swale drains for the new roading and revegetation of the gullies would ensure that the adverse effects from the increase in stormwater runoff would be mitigated; in fact existing hazards would be improved.

Mr Twigley commented on concerns raised by submitters that crime could increase with an increase of pedestrian traffic at the rear of properties through the creation of a walking track and said he considered that this would in fact provide passive surveillance for these properties. He outlined the consultation which had been undertaken with the local community.

Mr Twigley compared the effects of the unimplemented 4ha consent with the current proposal at length, stating that although the officer's report declined to consider such a comparison as appropriate, he considered that it was necessary. His comments are summarised:

- Landscape effects – he stated that the 4ha consent is ‘open slather’ as the District Plan required no regard to its setting beneath the outstanding natural landscape or to rural character;
- Cultural effects – he advised that both iwi and Mr Bruce support the current proposal and have concerns that the pa site will not be appropriately protected if the 4ha consent is implemented;
- Rural character and amenity effects – Mr Twigley believed that the 4ha consent will result in fragmentation of the open space and a loss of visual amenity and amenity value. Rooding, traffic, shelter belts, design controls and street lighting are some examples of issues discussed by Mr Twigley on this matter;
- Road safety and efficiency – the 4ha consent would see farm traffic on Wairau Road, whereas the current proposal would avoid heavy vehicles associated with the farm driving through the residential area of Upper Wairau Road;
- Effects on natural character and ecological values – Mr Twigley stated that the proposed subdivision would result in significant positive effects on the ecology and natural character of the site, whereas the 4ha consent would not provide such benefits;
- Effects on historic heritage – the pa site would not be protected and managed should the 4ha consent be implemented, whereas the proposed subdivision would see it protected within a covenant including an archaeological management plan;
- Reverse sensitivity – the 4ha consent has a greater likelihood of noise complaints from the Vector gas facility;
- Cumulative effects – the 4ha consent would result in sporadic and sprawling development over the entire property, whereas the current proposal would affect only 20% of the farm;
- Infrastructure effects – similar in both scenarios; and
- Consultation – the 4ha consent was approved non-notified, whereas the community has had the opportunity to comment and shape the current application.

Mr Twigley noted that the application pursuant to Sections 104, including 104B and 104D of the Act. If it passed the gateway tests under 104D then it must be considered against

Section 104 and Part 2 of the Act. He said that he did not consider there any national environment standards, policy statement or other regulations that were relevant. He commented on provisions of the Regional Freshwater Plan, relating to earthworks and discussed the Taranaki Regional Policy Statement. In this case he said that he disagreed in part with the officer's assessment and considered that the proposed subdivision would be consistent with the objectives and policies of the RPS.

Mr Twigley discussed the policies and objectives of the District Plan at considerable length, determined to undertake a complete assessment because of the broad judgement required when assessing a non-complying activity. Mr Twigley summarised this section by stating that in his opinion the subdivision would not be contrary to the relevant objectives and policies of the District Plan, rather the proposal found support from the majority of them.

Mr Twigley assessed the application against Plan Change 27 and concluded that for the most part the proposal would not be contrary with Plan Change 27 but that the plan change should not be given a lot of weight as it is in the early stages of the plan development process.

Mr Twigley assessed the application against the Oakura Structure Plan 2006, and concluded that the proposed cluster subdivision is in accordance with the issues and action points in the Structure Plan.

Mr Twigley considered Part 2 of the RMA. Under Section 6 (Matters of National Importance) he made comments in regard to 6(a) to (f) and summarised that the proposal recognises and provides for these matters. Under Section 7 (Other matters) he made comments in regard to 7(a), (aa), (b), (c), (d), (f), (g) and (i) and stated that the proposal also has regard to the relevant matters. He also stated that the proposal took into account the principles of the Treaty of Waitangi (Section 8).

Mr Twigley concluded his evidence by stating “...*I consider that the weight of the matters I have addressed under Sections 6, 7 and 8 of the RMA, informs the purpose of the RMA under Section 5, and falls strongly on the side of granting the application...Consequently, ...the subdivision will achieve the sole purpose of the RMA 1991 to promote the sustainable management of natural and physical resources.*” (paras 293, 295)

Mr Twigley finally commented on the recommended conditions, appended to the Officer’s report. He noted that the majority were acceptable to the applicant but set out a number where there was disagreement. He also said that the proposed conditions were missing a number recommended to remedy and mitigate adverse effects as well as to achieve positive beneficial effects.

Submissions

New Zealand Historic Places Trust

Andy Dodd Archaeologist presented a submission on behalf of the New Zealand Historic Places Trust (NZHPT). He presented the submission on behalf of himself and his colleague, Sacha Walters who is the Planning Heritage Advisor for NZHPT. Mr Dodd said that he was the Central Region Archaeologist for the NZHPT. He said he had nine years experience in historic heritage management, seven years with the Department of Conservation prior to the last two years when he had worked for the NZHPT

Mr Dodd outlined that the NZHPT when they initially submitted on the proposal were in opposition to the subdivision, however now given the archaeological assessment and work provided on site the NZHPT wished to support the subdivision of the site, subject to relief sought by the Trust being incorporated in the proposal, that:

- Adequate site protection with regard to archaeology and Maori cultural heritage
- Appropriate long term protection and preservation of the Pa site P19/340 which could be through either setting aside as a reserve or be made subject to a covenant with specific requirements to ensure protection and management

- Provision of access and ongoing associated with Nga Mahanga A Tairi with the pa site P19/340
- The consent conditions include an appropriate advice note (NZHPT submission includes an advice note that could be used).

Mr Dodd discussed the importance of archaeology and Maori heritage and its recognition under the RMA, in particular since the 2003 amendments and noted that in the opinion of NZHPT, this has not been given sufficient emphasis either in the application of the Council planning recommendations. He referred to the discovery of the pa site, and other investigations and noted that the applicant had applied for an archaeological authority for earthworks associated with the subdivision.

Mr Dodd said that the effects of the subdivision had potential to be more than minor on historic heritage and discussed mitigation options. NZHPT would support a long term management plan for the site which would provide for the protection and preservation of archaeological earthwork features, including vegetation management, public access, grazing, fencing and maintenance as appropriate. He proposed amendments to the advice note proposed as part of conditions of consent.

Mr Dodd concluded by repeating that there is clear responsibility under the RMA for archaeology and Maori heritage to be addressed as a matter of national importance. He said the proposal had the potential for effects to be more than minor but that NZHPT had suggested appropriate conditions of consent and on that basis it could support the subdivision as proposed.

Mr Mark Bowden

Mr Bowden and his wife reside in the property at 157 Wairau Road. This is opposite the proposed subdivision, directly across from the proposed new road and the main cluster development. He expressed concern that the proposed subdivision did not fit with the unique Oakura village environment that the community had worked hard to shape and define as part of the Oakura Structure Plan. He said that a development of this scale

needed adequate consultation with the community. He considered a robust process was achieved when the Structure Plan was developed but that this form of development went against the Structure Plan and so against the community future direction.

Mr Bowden said that he preferred the 4ha subdivision plan which was possible under the current District Plan provisions.

The written submission provided by Mr and Mrs Bowden also outlined the concerns discussed in their oral submission. As well it noted concern about issues such as precedent, threat to wildlife, loss of rural character and amenity, traffic and services.

Mr Tony Walker

Mr Walker and his wife reside in the property at 166 Wairau Road. This property is located at the southern end of Upper Wairau Road and is surrounded by Lots 1 – 4, the southern cluster of the proposed subdivision.

Mr Walker expressed a number of concerns with the proposed subdivision. He considered the subdivision would degrade the greenbelt that surrounds the Kaitake Ranges. He also considered that the 4ha subdivision on the same site would be a better option by maintaining open space and be consistent with the District Plan.

He considered the proposed development in two clusters was a residential form of development and inconsistent with the rural environment and outlined that he considered his property would be the most affected by this proposal as he would be surrounded by dwellings.

Ms Emmalie Wenn

Ms Wenn said she lived at 130b Wairau Road. She represented herself as well as Mr and Mrs Fleming who live at 139 Wairau Road which is opposite the main cluster area. They had made a written submission.

Ms Wenn outlined that she agreed with the content of the Officers report and for this reason would not discuss a number of issues. She said that she believed the development was inconsistent with the Oakura Structure Plan and that it would change the face of Oakura. She believed traffic was a significant issue along Wairau Road. These concerns were also highlighted in the Flemings written submission.

Mr Doug Hislop

Mr Hislop said that he was the Chair of the Kaitake Community Board and that the submission was on behalf of the community. He stated that he has 47 years experience in education (32 as a school principal) and his skill set has been honed to listen and act accordingly.

Mr Hislop discussed the introduction of the Local Government Act 2002 (LGA) and the increase in the importance of planning at a community level. He said that the proposed development raised a number of complex issues that the Community Board wished to see addressed. In his written statement, Mr Hislop referred in particular to the Oakura Structure Plan. Which had been developed with extensive consultation and while the Community Board acknowledged was 'not set on stone', it believed changes should be planned and controlled and not ad-hoc changes made to accommodate separate planning consents.

He also discussed the subdivision concept, and said that Council had not yet formulated any district wide guidelines for clustering. He said that the area of land for the proposed development was very sensitive to landscape change. The Kaitake Ranges were identified as an Outstanding Landscape. He referred to the loss or reduction of rural amenity, expressed concern about stormwater management, especially insofar as this could add to increased erosion of the Wairau Stream and on the beachfront. He referred to Maori values, and noted there was a need for wider consultation within the community generally before such a large subdivision should come to fruition.

In conclusion Mr Hislop said that the Community Board considered the application was premature, and that not enough information and time had been provided for considered decisions to be made.

Mr Hislop outlined at the hearing that the last consultation with the community on their opinion of the proposal had been back in May when the application was first lodged. He said that the Community Board stood neutral in the decision making process – its duty was to advocate for the community but it would always support best practice approach. He also noted, on a personal level, that he believed the proposal had come a long way since it was first proposed.

Mr Paul Goldsmith (acting for the Wairau Road Neighbours Group)

Mr Goldsmith made an oral submission on behalf of the Wairau Road Neighbours Group which was signed by eight people. He outlined that a meeting had been held earlier that week and the group opposed the subdivision and recommend that the application be declined.

Mr Paul Goldsmith

Mr Goldsmith made a further oral submission on behalf of himself and his wife who reside in the property at 135 Wairau Road, located on the corner of the Wairau Road, Surrey Hill Road intersection. He spoke to his written submission and presented a number of pictures illustrating comments on architectural design and his knowledge of housing developments in a number of countries.

Mr Goldsmith said that was a founding director of BGBBTA architects and has practiced architecture and master planning over a forty year period. He said that Mr McKie approached him in January 2010 to discuss his proposed development. Mr Goldsmith recognised the merits of the proposal but emphasised the importance of consultation and further consideration, which he said has not been adequate. He noted concerns about design and rural character as follows;

“I sympathise with the residents of the Oakura and more particularly upper Wairau Road. They have been offered 29 residential dwelling sites in a ‘regionally significant landscape’ of pasture land with clumps of native shrub and tree species placed to hopefully mask the recessive coloured dwellings set backs and height restrictions. I say ‘hopefully’ purposefully, for there is little assurance that this landscaping will achieve the masking, and further more what will the dwellings look like? There is enormous risk in the visual tools offered by the developer. I suggest therefore we potentially have a clutter development”.

Mr Goldsmith said that there were ways of mitigating these concerns. He went on to discuss ‘Dwelling Design’ illustrated with pictures of French and Swiss developments of cluster type developments, and tabled the design code for a development in the Wairarapa where he said the dwellings and buildings were ‘actually pleasing’

Mr Goldsmith went on to discuss landscape design, noting techniques such as planting to achieve a ‘veil’ rather than a clump. He discussed the role of the Council as caretaker of the Oakura Structure Plan. He noted concern with regard to roading design with regard to Wairau Road – that the road design currently proposed has no consideration for recreation users and that this must occur. Roading development must respect the rural context. He also commented on the proposed Plan Changes, and says they are working in context of changes 15 and 27 at present which is a complication.

Mr Goldsmith recognised the developer efforts in proposing a unique development. He appeared somewhat equivocal in his conclusion. He said, apparently with regard to the proposed development, that a precedent was possible and the ‘wise and sensible development within the district might achieve a refreshing new direction’, but that this was a ‘long way off an appropriate solution at present’ and finished by saying; ‘Thank you for drawing our attention to our vulnerability...where village meets country. It is important to get this solution right for the future of this district.’

Council's Reporting Officers Report and Evidence

Mary Buckland

Ms Buckland provided a summary of her evidence and spoke to several points of clarification during the hearing. She summarised to say her concerns remained and that she considered the proposal would create adverse effects on rural character and amenity of the area. Ms Buckland also had a number of concerns on development in proximity to the Outstanding National Landscape (ONL). She considered that the location of Lots 1 -5 was on the highest slopes of the subject site and that development in this area would create adverse effects on the ONL.

Laura Burton

The officer's report was taken as read.

Ms Burton provided points of clarification to a number of issues raised at the conclusion of the hearing. She outlined that she considered the applicant incorrect in their stating that this proposal must consider sub10/45241 as part of both the receiving environment and the permitted baseline. Ms Burton outlined that the two applications couldn't occur simultaneously on the site therefore could never form part of this proposal's receiving environment because the two applications could never both be implemented.

Ms Burton also provided clarification on the imposition of 'condition precedent' conditions and the 'no further subdivision' consent notice. She provided clarification on the protection of the pa site located on the subject property and wording and techniques taken in her report.

Ms Burton said that she was not against good environmental design that achieved the purpose of the act. However, she considers that this proposed subdivision creating twenty six allotments on a highly visual landscape would not achieve this form of design.

Ms Burton concluded by saying that her concerns and recommendation in the officers report remained and that she considered the proposal would:

- be inconsistent with the overall objectives and policies of the New Plymouth District Plan
- be inconsistent with Plan Change 27 objectives and policies
- create adverse effects on the rural character and amenity of the area
- be inconsistent with Part 2 of the RMA

As a result of the above points the application would be unable to pass either of the 104D gateway tests.

Jo Mooar

Ms Mooar, the solicitor for the Council, provided a memorandum outlining the legal advice and legal tests regarding legal issues the applicant had raised. She clarified the interpretation the applicant had made in relation to both the permitted baseline and the receiving environment.

Ms Mooar outlined that the permitted baseline is a statutory concept that gives the Council discretion to disregard the adverse effects on the environment which are permitted by the District Plan. She said that the officer's report provided the correct legal assessment of the permitted baseline and that the applicant was incorrect in their inclusion of sub10/45241 as part of the permitted baseline.

The District Plan does not permit subdivision (consent is always required). Ms Mooar refers the case *Eyres Eco-store* which the applicant discussed in their legal submissions. Ms Mooar outlines that the Court concluded that:

“The inexorable conclusion is that activities not permitted by the plan are not within the baseline”

Ms Mooar also referred to a more recent case *Tairua Marina v Waikato Regional Council* which also stated that the permitted baseline is only what it permitted by the plan and hence that restricted discretion or discretionary activities cannot be regarded as part of the permitted baseline.

Ms Mooar went on to discuss the receiving environment. The applicant discussed the *Hawthorn* and *Luggate* cases in relation to why the 4ha consent should be considered part of the receiving environment. Ms Mooar discussed the correct interpretation of these cases and outlined why the officers report was legally correct in not considering sub10/45241 as part of the receiving environment. *Hawthorn* relates to off-site effects and the Councils consideration under section 104 of the effects that the current proposal has on the environment. She further discussed *Luggate*. This case was in relation to two subdivision consents, however one been partially implemented and involved split zoning of a site with different rules related to separate parts of the same site. Ms Mooar concluded by stating that:

“For the reasons outlined, I consider that the approach taken in the officer’s report of not comparing the effects of the 4ha consent with the current proposal to be appropriate and in accordance with the current statutory tests and legal authority”.

Ms Mooar further clarified the legal effect of plan change 27 and 15. The applicant had argued that the objectives and policies of these plan changes did not have legal effect. She outlined that in her view the objectives and policies of these plan changes took immediate legal effect from the time of notification, as the RMA only refers to the rules having delayed legal effect. However she noted that the Environment Court had granted an order as of the 17 of December that the rules in Plan Change 15 did have immediate legal effect. (Note. A subsequent application to the Court that the rules of Plan Change 27 might similarly have legal effect was declined on 21 February 2011.)

13. PRINCIPAL ISSUES IN CONTENTION

The principal issues that were in contention that arose from consideration of the application as a non-complying activity were considered to be those relating to the interpretation of various statutory matters, especially as set out in the RMA, section 104 and 104D. These governed the granting or not of any consent, and were the subject of considerable submission during the hearing.

Issue 1: Did the application meet either of the threshold tests set out in section 104D, specifically;

- Whether the adverse effects on the environment were minor, or
- Whether the activity was contrary to the objectives and policies of the relevant district or other plans.

Issue 2: The consideration of, and weighting to be given to, the existing 4ha sub-divisional approval existing for the subject site, in particular in terms of the assessment of the existing environment and recognition of the ‘permitted baseline’ under section 104(2).

Issue 3: Whether the proposed activity was in accordance with the purpose and principles of the Resource Management Act 1991, in particular with regard to its assessment under section 104(1), and against matters set out in Part II of the RMA.

14. MAIN FINDINGS (FROM ISSUES IN CONTENTION)

The Commissioner considers that the following are the main findings relating to this application:

Issue 1: Did the application meet either of the threshold tests set out in section 104D, specifically;

- **Whether the adverse effects on the environment will be minor, or**
- **Whether the activity was contrary to the objectives and policies of the relevant district or other plans.**

Threshold tests of Section 104D.

Consideration of the tests set out in 104D has been subject of considerable case law and a number of Environment Court decisions were referred to during the hearing, however in this evaluation a straightforward approach is taken as far as possible. The first ‘leg’ of section 104D asks for an assessment of ‘whether the adverse effects on the environment will be minor’. This requires assessment of the receiving environment.

Receiving environment interpretation

As noted above, the site is an existing dairy farm, comprising land which is generally undulating to rolling. It is bordered in part by a tributary of the Wairau Stream, which splits and forms two gullies. These gullies are bushed and form the basis of an area proposed to be covenanted and retained for regeneration. The land generally rises to the south, rising toward the lower parts of the Kaitake Ranges, part of the Egmont National Park and identified as an Outstanding Natural Landscape (ONL).

Notwithstanding the existing rural character and use of the site, it is also located on the fringe of the township of Oakura, and Residential zoned land extends to the junction of Wairau Road and Surrey Hill Road, adjacent (across the Wairau Stream tributary) to the north-eastern side of the property. There are also a number of rural-residential style allotments in the vicinity of the site, including two lots which have in the past been subdivided from the south east corner of the block. The applicant presented a plan (Figure 2: Landuse Activities Plan) which generally indicated ‘Rural Residential’ areas bordering the site along Wairau Road to the east and south, and centred around Surrey Hill Road, further to the east.

The receiving environment is therefore mixed. The site is within the existing Rural Environment Area and is presently in rural use. It is bordered on two sides, the west and south west, by existing dairy farms and other rural land. On the east and north east it is either adjacent to the residential zone of Oakura, or bordered by land where some

subdivision has already occurred, or is proposed and is partly developed for rural residential or lifestyle purposes.

The site slopes up toward, and has a short boundary with, the northern edge of the Kaitake Ranges, part of Egmont National Park. Recreational access to the park is provided from the end of Wairau Road. The park is generally bush covered and as a result of its elevation and distinctive character is the dominant feature in this landscape. It is identified as an ONL in the District Plan. Because of the general slope of the land, there are a number of viewpoints, both from Oakura up to the Ranges and, from the higher areas of the site, good sea and coastal views back over Oakura.

Effects on the environment

The first part of Section 104D providing for consent for a non-complying activity is that;

(c) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor;

In her report, the Planning Officer listed a number of broad categories of effect:

- Effects on the rural character and visual amenity of the area
- Effects on existing traffic levels and the road transportation network
- Effect of service provisions
- Effect of subdivision on outstanding landscape
- Cumulative effects
- Precedent
- Positive effects

These are considered these in the context of above criteria.

Effects on the rural character and visual amenity of the area

Ms Burton argues strongly in her report that in her opinion, the proposal will create adverse effects on rural character and visual amenity that are more than minor and cannot be mitigated. She cites Issue 4 of the District Plan, which states;

“It is important to ensure that character of the rural environment is maintained, both to protect amenity values and to ensure sustainable management.”

She says that the proposal will create 26 new allotments with access to Upper Wairau Road and argues that this will reduce the amount of open space and significantly increase density. She considers that the 26 large lot residential allotments clustered together will degrade the amenity values of existing landowners along Wairau Road. Ms Burton discusses the impact of the total development of 26 lots, however the proposed subdivision is better described as divided into several parts. It is not all one cluster. The northernmost lot, No 23, has direct access to Wairau Road. It is a rear section but is effectively contiguous with existing development at the junction of Wairau and Surrey Hill Roads. The southernmost group of lots, Nos 1 - 5 are located at the southern end of Wairau Road, adjacent to the boundary with the Kaitake Ranges. These also have direct or right of way access to Wairau Road. These five lots are all 1ha or over, and with the two existing lots in this area (Messrs Walker and Bruce) will form a southern cluster of somewhat larger lots, or something of a buffer against boundary of the park.

The main part of the proposed development, which can be described as one or two clusters, comprises some 20 lots, and will be accessed from a two ended cul de sac to be developed off Wairau Road. These lots are smaller, around or a little above 4000m² in size. This cluster, or clusters, will have the main impact on the surrounding environment. Lots, and dwellings, are situated generally on the higher terrace levels. Considerable controls and mitigation measures are proposed, both on and off site. In particular lots will be limited to contain one habitable dwelling and building separation distances and boundary setbacks both from Wairau Road and on site are prescribed. Materials for fencing the lots will be compatible with a rural setting and the use of recessive colours and materials required for all structures and habitable buildings. A further control offered during the course of the hearing was to require that some 10% of each site will be re-vegetated.

It is proposed that a planting and maintenance plan will cover the planting, fencing and maintenance of the gullies, the area alongside Wairau Road and around the northern end of the cluster, lots 21 and 22. Concern was expressed by Ms Buckland as to the timing and effectiveness of some of this planting, especially in the gullies, and its validity as a visual mitigation measure. There was discussion about this during the hearing. The applicant confirmed that it is intended to plant up the sides of the gullies, and on the eastern side, to the edge of Wairau Road. The Commissioner accepts that while there may be some concern as to the timing that such mitigation is achieved, it must be anticipated that visual mitigation will be provided by the proposed planting plans, especially as the main areas are intended to be covered by a QEII covenant. Indeed some of the simulations suggest a landscape which will in the future be totally screened from a number of viewpoints.

It is noted that cluster development does not appear to be provided for in terms of the District Plan. Ms Burton says; “*Clustering of allotments is not identified as a tool in the District Plan to manage the rural character effect in a rural landscape*”. References to rural character are to rural outlook and open spaces, not compatible with the concept of clustering. Rural outlook and feelings of open space of the areas immediately adjacent to the main development of 20 lots will certainly be affected, and twenty five, or twenty six lots in total, is a significant addition to the development of Upper Wairau Road. The main cluster will be visible from several viewpoints, notwithstanding proposed mitigation. The amenity of existing residences generated by the current open space and lack of development will be changed. Several of these neighbours, in particular Mr Walker and the Fleming family, were represented at the hearing and expressed their concerns at the effects of likely increased activity and visual impacts.

Mr Bain, landscape architect who was responsible for developing the overall scheme of development for the applicant, gave evidence as to landscape and other design aspects of the proposal. In this he discussed the concept of rural character, and in particular with regard to the District Plan. He said that; ‘*The issue of rural character is often controversial and frequently misunderstood*’ (para 12) and later that he considers that;

‘Wairau Road is actually experienced from a predominantly urban landscape (along most of the road) to a mixed rural-residential landscape along the ‘upper’ extent of Wairau Road. There has been a proliferation of life style blocks or rural-residential land use in the area in recent years, which is my view has seen a significant shift in landscape character.’ (para 26) Further, that; ‘The proposed activity would in my view, create a logical extension to that existing residential and rural/residential environment and is a good fit for part of the site and locality in landscape terms.’(para 28)

Mr Bain assessed the landscape and visual effects of the proposed subdivision and discussed these in terms of the District Plan criteria, in particular under Rural Rule 77, 79. He illustrated the assessment with a number of photomontages, developed from a number of viewing points he selected as important to illustrate effects such as scale and density. He said that significant public views of the farm are primarily experienced from SH45, in particular in the last 1km of open road south of Oakura. This is viewpoint 1. Other viewpoints discussed by Mr Bain are 4 and 5, located along Wairau Road. Views from these points will be both closer to the cluster areas and experienced by slower traffic and also persons walking. The photomontages illustrate the effects of proposed development at various times after development; 3, 5 and 13 years after consent.

In summary, Mr Bain notes that with regard to rural amenity, the proposal represents ‘an holistic comprehensive design approach’. He considers that the views towards the Kaitake Ranges and ONL are preserved as dominant features within the landscape, and claims that adverse effect of the subdivisions is largely avoided through the layout design. Where he had identified effects, mitigation measures had been recommended to attenuate these. He said that if the proposed design controls and covenants were adopted then he considered that the adverse effects of the proposal would be no more than minor.

Mr Twigley, planner for the applicant, said in his discussion of rural character and amenity effects, that; (para 60) *“The areas where clusters will be developed are on the cusp of the Oakura Village and in my opinion the subdivision will create an appropriate transition of development as one moves away from the village, from higher density*

residential to rural/residential, with the upper cluster having lower density still.” He goes on to say; “The retention of 89% of the .. site as farmland will continue to provide the rural backdrop to the land on the west side of the Upper Wairau Road and a traditional rural activity which helps to maintain rural character as described under Issue 4 of the District Plan..” Mr Twigley goes on to conclude this section of his evidence by saying; “In summary I consider that the adverse effects of the subdivision on rural character and amenity values will be no more than minor.” (para 64)

The Commissioner does not have the same degree of concern as Ms Burton as to the adverse effects on rural character and visual amenity that will be generated by the proposed development. Certainly the main clusters of sites will have an impact. However these are seen as contained units and the proposed development must be considered in a wider context. It is planned on and confined to existing terraces, surrounding gullies will be vegetated, and it is intended that they be protected under covenant, and the larger area of the existing farm will be retained in rural use. The Commissioner notes Mr Bain’s analysis of the existing environment of the area. She would not go so far as to say that it is ‘urban’ but does agree that it is not typically rural. Looking from the identified viewpoints, in particular from SH45, and also from the higher areas of Oakura settlement, it is seen as very ‘busy’ landscape with a number of features, including existing buildings, both residential and utility, forestry lots and shelter planting and earthworks being evident in the view. A number of mitigation measures are proposed which the Commissioner believes will soften the effect of the development, and in particular the visual effects, on the surrounding environment. The Commissioner agrees with Mr Bain and Mr Twigley that, in terms of the impact on rural character and visual amenity, adverse effects will be ‘no more that minor’.

It is noted finally that in determining effects on the environment of an activity under section 104D the concept of permitted baseline applies – that is the proviso under section 104(2) that the consent authority may disregard an adverse effect if such activity is permitted by the relevant plan. It was argued by the applicant that the existing 4ha subdivision consent covering the site should be considered as a part of the existing

environment. The status of this consent is discussed later in the report but the Commissioner agrees with the position taken by Ms Burton that, in this context, the 4ha proposal cannot be considered as part of the permitted baseline of the environment.

Effects on existing traffic levels and the road transportation network

Ms Burton summarised the report by Mr Pieters, Roading Engineer, on the effects of the proposed subdivision on traffic levels and roads. Currently Upper Wairau Road has an average of about 140 vpd. It is estimated that this will increase almost threefold, by some 260 vpd. Traffic on Upper Wairua Road however will remain less than that on Surrey Hill Road, hence the main movement at the junction of Wairua and Surrey Hill Roads will remain as at present – right of way to Surrey Hill Road and a give way to Upper Wairau Road. Improvements to the junction will be needed to reduce traffic hazards arising from the higher volumes anticipated. The improvements recommended by Mr Pieters included removing trees for increased visibility, replacing Give Way with a Stop sign, providing a permanent warning sign advising of the ‘Stop’ and installing kerb and channel and white edge lines for some 30m on both sides of Upper Wairau Road leading to the junction with Surrey Hill road.

The carriageway of Upper Wairau Road will need to be widened to some 6m and marked, at least to the junction of the proposed access to the main cluster development, to allow two way traffic on this stretch of road. Mr Pieters noted that the widening of Upper Wairau Road may give the impression of continuity with Middle Wairau Road and create a hazard at the junction with Surrey Hill Road and to mitigate this he suggested an increase in the radius of the curve at the junction. This may involve some private property purchase which will need to be negotiated.

The evidence presented by Mr Jacobs for the applicant noted that he had read the Traffic Report and agreed with most of its recommendations. He noted some additional measures to improve traffic safety at the Wairau Road/Surrey Hill Road intersection. He also recommended a review of posted speeds on Upper Wairau Road, with a limit of 60km/hr proposed for that portion of road and within the subdivision, and that the

existing 70km/hr zone on SH 45 to the west of the SH45/Wairau Road intersection be designated as a 50km/hr zone. There is some discussion of other measures, including treatment of banks and verges where the carriageway is widened, and the applicant proposes to construct a shared pedestrian/cycle way from the lower turning head of the cul-de-sac to Wairua Road and possibly a horse track on the berm of the part of the road to be widened. Mr Jacobs concluded by saying that although traffic volumes will increase, if the recommendations endorsed by him are effected then the effects of the subdivision on the roading network will be no more than minor.

In summary, the proposed development is likely to have a noticeable effect on the local, Upper Wairau Road, traffic. There are some differences of opinion between the traffic experts as to details of the upgrades required to provide for effects of the increased traffic and maintain traffic safety, but overall these differences appear relatively minor, and/or able to be reasonably easily managed or mitigated. Details of improvements need to be finalised but no particular issues are noted.

The effect of the subdivision and consequent increase on traffic on Wairua Road and its intersection with SH45 was subject of a letter from NZ Transport Agency (NZTA) to the Council, dated May 2010, tabled at the hearing. The letter noted; *“The addition of the proposed 31 new residential lots will have the potential to add another 9 left-turn movements at the intersection. This is enough to push the peak hour turning volume over the threshold that is required to justify installation of a dedicated left-turn lane.”* The question of improvements that may be required at this intersection was discussed with relation to responsibility for the work. The applicant, through Mr Twigley, said that it would be unreasonable for the applicant to be responsible. This is a matter which will have to be discussed further between the applicant, NPDC and the roading authority. A condition precedent is included that the intersection shall be upgraded to the requirements of the NZTA prior to a section 223 plan being lodged with the Council..

Effects of service provisions

Ms Burton notes that information provided in the applicant's Infrastructure Report satisfied the Council with regard to the proposals for water, wastewater and storm water provision. Water services may need additional pumping capacity but service will be adequate for a rural supply. Adequate provision can also be made to meet the requirements of the NZ Fire Service. Four of the higher lots will need water storage tanks to meet this standard.

There was some discussion as to storm water provisions. Soak holes will be directed to the main stream and will be managed through a detention pond located at the confluence of the two gullies. Essentially this will be an enhancement of the existing system. In high rainfall events the rate of flow leaving the wetlands (in the gullies) will be throttled and water will be ponded. Mr Bell, engineer for the applicant, gave evidence that; *"My conclusion is that the proposed storm water detention system would have an effect on the environment that is no more than minor, and will not result in adverse effects."*

Mr Bell also noted that the new storm water system will include fish passes at the culvert outlets so that a range of native fish species could move in both directions. This was an improvement on the existing situation where there is a large drop at the outlet. In answer to concerns raised by several submitters, and in particular Mr Hislop for the Kaitake Community Board, as to control of storm water runoff in high rainfall events and consequent beach erosion, Mr Bell said the proposed system should be safer, more permanent and provide better control of runoff than at present.

All allotments can be provided with a gravity sewer connection. An easement will be required to connect with the existing system and Mr Bell said a small area of private property would be affected. This is likely to be at either at 132 Wairau Road as noted in the Council report, or 5 Tui Grove, suggested by Mr Bell. Mr Bell confirmed that it was intended to connect all lots to the system, including lots 1 to 5, where an option of on-site treatment that been considered. Mr Bell noted that this service will be easily within the capacity of the Oakura sewage system and will improve the utilisation of the new sewers.

The Commissioner accepts Mr Bells report that services can be provided without adverse effects on the environment, and in some respects will improve the existing situation. Details of such provision will be subject of relevant conditions as noted by Ms Burton.

Effects of subdivision on outstanding landscape

Ms Burton expressed her concern in her report of the effect of development of the higher cluster, or group of five larger allotments, which extend to the boundary with the Kaitake Ranges, on what is currently seen as a buffer area for this boundary, and she quotes Ms Buckland (para 14.10, Ms Buckland page 5); *“At present there are one or two houses scattered through the mid-ground, but the pasture area on which lots 4 and 5 of the proposed subdivision would be located currently form the green buffer and rural setting up to the bush edge.”*

Ms Burton discusses this in more detail later the report where she notes that the Kaitake Range area is identified in the District Plan as an Outstanding Natural Landscape (ONL). She says that the ‘proposed five large residential lots create the greatest adverse visual impacts on the outstanding landscape given this part of the land’s high degree of visibility to the wider environment’, and cites Ms Buckland where she says (para 17.2, Ms Buckland page 7); *“The importance of the open pasture at the top of the site acting as a buffer to the Kaitake Range is not considered in this (RBLA) assessment. In my opinion this part of the assessment is remiss. Even with the proposed mitigation, I do not agree that the effects of this subdivision on the ONL will be less than minor.”*

Mr Bain in his evidence refers to the overall design and notes that the opens space of the farm or balance lot will create an open rural foreground for views from SH45 to the ONL, and notes that it was therefore appropriate to limit the extent of development by restricting allotments to the proposed area. (para 63) He notes that, in order to maintain rural character, proposed mitigations measures include building design controls, in particular that dwellings be limited to one storey in height and for roofs and cladding to

have colour schemes which have low reflectivity. These measures will reduce the visibility of buildings and help visually to set them into the landscape. (para 64)

Mr Twigley, in his discussion of Landscape Effects, also discusses effects in the context of the total development and notes the proposed mitigation measures. He says (para 40); *“The proposed covenants on the balance lot and the QEII/private covenanted area will protect the foreground/setting of the Kaitake Ranges, avoiding adverse effects of subdivision on that land and achieving long term benefits for the ONL and for the southern gateway to Oakura. The scale of the development in relation to the much larger and dominant ONL, along with the mitigation measures proposed, will ensure the proposed subdivision will not result in adverse visual effects on the ONL.”*

He agrees that the subdivision will result in visual change to a relatively small part of the applicant’s land, but makes the point that the much greater area, and that part most visible from SH45 will remain as open farm land. Mr Twigley also refers to Mr Bain’s landscape report and evidence, in particular the photomontages and simulated views from a number of points in particular views from public roads cited by Ms Buckland, and takes issue with her conclusions. He says that road views of the site are distant and views would be typically fleeting, so that any adverse effects would be no more than minor. He does not agree with Ms Buckland, and the Planning Officer, that such adverse effects would be more than minor.

The Commissioner accepts the views and conclusions of Mr Bain and Mr Twigley. Retention of the farm area will maintain an open green area that generally slopes up to the Kaitake Ranges, especially when viewed from SH45. The development of the upper cluster will add five further dwellings at the higher level of the site in the wedge of land that does share a boundary with the ranges, the edge of the ONL. However this cluster comprises somewhat larger allotments, and mitigation measures are proposed to control the visual impact of the dwellings. This cluster will be visible from the main view points and also from some of the other road view points noted by Ms Buckland, namely the top of Victoria Road, Plymouth Road and Koru Road, however the Commissioner does not

consider, in the context of the total development, that there will be more than minor adverse effects on the identified area of outstanding landscape or ONL.

Cumulative effects

The concept of cumulative effect is referenced by Ms Burton as described by the Environment Court in *Gargiulo v Christchurch City Council* by stating: “...any one incremental change is insignificant in itself, but at some point in time or space the accumulation of insignificant effects become significant.” It is something that while it may appear insignificant, in actuality could ‘be the straw that breaks the camels back’ and change the nature or character of the surrounding environment. Ms Burton is concerned that cumulative effects of the lots to be created by this subdivision will further diminish the rural character and visual amenity of the area.

Mr Twigley notes that the local area is mixed and that the subdivision has been comprehensively designed to ensure the landscape is capable of absorbing the development associated with it. He does not consider that the subdivision will ‘tip’ the balance of the area, but rather combine with the effects of the existing rural/residential development.

The Commissioner notes that this is not an insignificant development. It will not represent an incremental change to the landscape. Rather in a number of respects the changes and effects will be significant, but that, as postulated by Mr Twigley, it has been designed to so that it can be reasonably absorbed into the landscape. There will be effects arising from this, as have been discussed, but the Commissioner does not consider these as adverse or potentially cumulative effects.

Precedent

Ms Burton likewise cites concerns about the establishment of a precedent for further applications for large lot residential subdivision of a similar nature, that is creation of clusters. She notes the Plan does not provide for such development to be used as a tool to retain rural character and amenity where a large balance lot is retained.

The Commissioner appreciates such concern, however notes that in her opinion there are a number of features about the present proposed development, when taken as a whole, make it unlikely to be replicated. In particular this relates to the overall design of the development, the inclusion and enhancement of the gully vegetation and ecology, the historic pa site, and the integration of these features – which were noted in evidence to be unusual if not unique - into a coherent whole.

Positive effects

Several effects considered to be positive have been referenced in the above discussion, and are noted by Ms Burton in her report. These are discussed further later with regard to assessment of the application under the wider provisions of section 104.

Objectives and policies of the relevant district or other plan

The second part of section 104D providing for the consent for a non-complying activity is that;

- (d) the application is for an activity that will not be contrary to the objectives and policies of –*
- (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

District Plan

Ms Burton in her report considers that the proposal is both consistent and inconsistent with objectives and policies of the District Plan. She notes consistency with those to do with matters such as heritage, natural hazards, natural character and vegetation. Specifically she considered the proposal consistent with the following;

- Objective 11 and Policies 11.3 and 11.5
- Objective 12 and Policy 12.1
- Objective 14 and Policy 14.2
- Objective 16 and Policies 16.1 and 16.2

The Commissioner agrees with Ms Burton that the proposed development would not be contrary to those objectives and policies of the plan.

Ms Burton then went on to say that, on the other hand, the proposal was inconsistent with;

- Objective 1 and Policy 1.1
- Objective 4 and Policies 4.1 and 4.2
- Objective 15 and Policy 15.1

Objectives 1 and 4 set out the objectives of the District Plan to do with amenity values and rural character, as follows;

Objective 1 To ensure activities do not adversely affect the environment 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 does not adversely affect those elements that define the

rural character while recognising the diverse nature of rural land and land uses.

Policy 4.1 *Subdivision within the rural environment should not adversely affect the open space or visual elements of rural character.*

Policy 4.2 *Activities should be designed, located and/or of such a density that the visual and open space characteristics of the rural area is maintained.*

Ms Burton discusses in some detail the effects of the proposed development in terms of these provisions. She lists the various elements as defined in the Plan which she considers relevant. She concludes that the proposed development is not in accord with these criteria, also notes that in her opinion ‘clustering’ is not an appropriate mitigation tool, as follows (paras 21.17 and 21.18 of her report);

The District Plan objectives and policies do not provide for this type of clustering as a mitigation tool for maintaining rural character. Rural character is described in the District Plan as open space, production orientated land. The District Plan relies on the above objective and polices and the technique (limiting the number and size of allotments allowed) outlined in Rural Rule 78 through the controlled and discretionary standards to provide a level of flexibility in terms of subdivision whilst ensuring rural character and amenity is maintained.

The proposed development is a non-complying activity and I consider that it is beyond what the District Plan currently considers appropriate. These two clusters of large lot residential development create a development that would result in a loss of ‘spaciousness’ and alter the built environment through dwellings being located in close proximity to one another, vehicle accesses, driveways and fences. Two rural cul-de-sac roads providing access to twenty residential allotments will create a density that does not fit with rural character. In my view, this development will reduce open space and adversely affect visual amenity through

the construction of twenty six large lot residential allotments. Policy 4.1 seeks to protect this.

The Commissioner accepts the gist of Ms Burtons conclusion that the proposal is not in accord with the above objectives and policies of the plan. In particular it is seen to be anomalous with the references to rural character, in particular Objectives 1 and 4, and the criteria set out to define and support them. However this position does not override the previous discussion and conclusion that the overall adverse effects of the development would not be more than minor. It is not considered that there is any anomaly here - the criteria for a non-complying activity are presented as an alternative, and there may be situations where adverse effects are seen as acceptable but the activity is outside of plan objectives and policies.

Ms Burton also considers the development to be inconsistent with the objective and policies relating to outstanding landscapes. This is;

Objective 15 ***To protect and enhance outstanding landscapes and regional significant landscapes within the district***

Policy 15.1 ***Subdivision, use and development should not result in adverse visual effects on, and should enhance, where practicable, the following outstanding landscape***

She notes the derivation of the outstanding landscape (para 21.54);

“The application site adjoins the foothills of the Kaitake Ranges which are considered an outstanding landscape in the New Plymouth District Plan. An outstanding landscape is defined in the District Plan as”

“Those landscapes within the district having exceptional value or eminence or distinction on a national scale; and are identified as an outstanding landscape on the planning maps”

The effect of the development, in particular the higher cluster of 5 lots has been discussed above and it was noted that the Commissioner is satisfied the adverse visual effects on the area of outstanding landscape would not be more than minor hence, in the opinion of the Commissioner, it follows that the development then cannot be seen as ‘contrary to (this) objective and policy of the plan’, unlike the situation above with the more general rural objectives and policies.

Mr Twigley gave a comprehensive discussion in his evidence with regard to the compatibility of the proposal and the relevant objectives and policies. In his opinion, the proposed development would not be contrary to any of the objectives and policies of the plan, including those discussed above. He says in such assessment, a broad judgement should be made, rather than isolating one or two policies to which the activity is contrary. He also cites objectives and policies to do with access along lakes and rivers (Objective 18), relationship of tangata whenua and the environment (Objective 19), road transportation network (Objective 20) and demands on infrastructure (Objective 22). He concludes by saying (para 203);

“Taking the overall broad judgement that is required when assessing the proposal against the objectives and policies of the District Plan, it is my opinion that the subdivision will not be contrary in principle the objectives and policies of the District Plan. In my opinion, the application is not repugnant to the relevant objectives and policies of the District Plan and in fact finds direct support from the majority of them.”

Notwithstanding Mr Twigley’s opinion, the Commissioner accepts Ms Burton’s analysis of the District Plan provisions, in particular with regard to objectives and policies to do with rural character, and concludes that the proposal is not entirely in accord with these provisions of the District Plan.

Proposed Plan: Plan Change 27

Proposed Plan Change 27 was notified on 1 September 2010. Submissions have not yet been heard. Hence while it is a ‘proposed plan’ to be considered in terms of section

104D only limited weight can be attached to its provisions. As noted by Ms Burton, Plan Change 27 relates to the Rural Environment area of the District Plan and is proposed 'to ensure the retention of rural character'. It would 'raise the bar' with regard to subdivision and development, including the provision of a minimum lot size of 20 ha. Smaller lots will be permitted where there is a balance lot, but limited in number to three. A number of other control measures are also anticipated, including with relation to design and visual amenity.

Similarly to the situation with regard to Objectives 1 and 4 of the District Plan, this is a situation where the proposed development is seen to be contrary to a number of the objectives and policies of the proposed plan, notwithstanding that the adverse effects on the environment which are likely to arise are seen to be no more than minor. In fact, insofar as Plan Change 27 represents a tightening of existing provisions in the area of rural character and amenity, the distinction is more marked.

Mr Twigley comments on the provisions of Plan Change 27. He agrees with Ms Burton's report that the subdivision would be contrary to Policies 4.1- 4.3 of the change, those noted above as referring to lot size and development. He notes several other policies that conversely the proposed development would be compatible with, but concludes by saying, that in his opinion, Plan Change 27 should be given very little weight.

The Commissioner is also of the opinion that provisions of Plan Change 27 carry little weight, however she concludes that, similarly to the analysis of District Plan provisions, the proposal is not entirely in accord with the objectives and policies of Plan Change 27.

Proposed Plan: Plan Change 15

Plan Change 15 was notified on 20 November 2010 and submissions closed on 17 December. Ms Burton noted that this plan change was at a very early stage of the process and little weight could be given to it. The purpose of this change is to provide interim controls within and adjacent to future urban areas as identified in the 'Final Framework for Growth' (FFG) which had been adopted by NPDC in March 2008, also areas

identified in the Oakura and Urenui Structure Plans, adopted in 2006. These controls are intended to have the effect that such areas are not compromised by activities that might adversely affect the ability for future zoning and development for urban growth, in effect that existing rural use is frozen for an interim period.

Ms Burton noted that the Plan Change 15 did identify part of the current site as future urban area. This is the portion in the north eastern corner, known as the 'Triangle' which is identified in the Oakura Structure Plan as future expansion for Oakura, but which shall have continued rural zoning at the present time. This area is to be retained as part of the balance area of the proposed subdivision, with protected farm status and rural zoning, hence there is no conflict with Plan Change 15. Mr Twigley notes this and concludes therefore the proposed subdivision will not be contrary to objectives and policies of this change. The Commissioner agrees with this position.

Taranaki Regional Policy Statement

The Taranaki Regional Policy Statement (RPS) was made operative in December 2009. Ms Burton considers that the application is inconsistent with objectives 10.1 and 10.3, to do with inappropriate subdivision and development, and with amenity values. Mr Twigley takes a wider approach, noting that the RPS contains 'higher level' objectives and policies for Taranaki. He disagrees with Ms Burton with regard to objectives 10.1 and 10.3, insofar as he does not consider the proposal to be contrary to the objectives expressed, in terms of either the RPS or the District Plan. Mr Twigley also notes a number of other RPS objectives and policies, to do with matters such as lakes and rivers, wetlands, biodiversity, heritage, natural hazards, kaitiakitanga, and others, and concurs that the proposal will not be inconsistent with any of these. Overall he concludes that the proposed subdivision will be consistent with the objectives and policies of the RPS.

In line with her conclusion as to the District Plan objectives and policies, the Commissioner accepts that there is possibly conflict inherent between the proposed development and the objectives above cited by Ms Burton.

Evaluation under section 104D

Section 104D sets out criteria threshold criteria, one of which must be met before further assessing a non complying activity under the RMA. There are two parts to this – either anticipated adverse effects are no more than minor, or the application itself is not contrary to the policies and objectives of relevant plans. Considerable case law has been built up in this regard and a proposal must be assessed in detail before a conclusion may be reached.

In this case the Commissioner considers, after assessment of the site, consideration of reports and evidence on the proposal and notwithstanding inconsistency with objectives and policies of District Plan, proposed Plan Changes and possibly the RPS, that the proposal does pass the hurdle set up by 104D. In particular the Commissioner considers, based on the evidence of likely effects of the development which includes proposed retention of a large farm lot and covenanting ecological and heritage features and set in the context of the wider existing environment in the vicinity of Wairau Road, that adverse effects will not be more than minor in terms of section 104D(1)(a).

Issue 2: The consideration of, and weighting to be given to, the 4ha sub-divisional approval existing for the subject site, in particular in terms of the assessment of the existing environment and recognition of the ‘permitted baseline’ under section 104(2).

An application for the subdivision of the total site into 4 ha allotments was approved by NPDC on 17 November 2010, sub10/45241. This application was considered a discretionary activity because while the lots were all above the minimum size permitted under the Rural Environment zone provisions, a ponding area was provided within the site, triggering a discretionary activity. The application was non-notified. The design provides for 18 lots, all with access off Wairau Road via right of ways. Conditions include a covenant to protect the bush and trees within the gully, provisions of an

esplanade strip, upgrades to Wairau Road and the intersection of SH45, construction of right of ways and mitigation of stormwater runoff.

Ms Burton noted that reports presented to the Council with the present application had made comparisons between the current proposal and the consented subdivision. She said that such comparison was not appropriate or relevant for the purposes of determining the level of effects generated by the cluster subdivision. She said that the approved subdivision could not form part of the permitted baseline in terms of section 104(2) because, as a discretionary activity, it was not permitted by the district plan as required by this section.

She also said that it could not be considered as part of a future environment for consideration of effects because, firstly, the receiving environment was a wider concept than the subject site, also (quoting the Court of Appeal in *Queenstown Lakes District Council v Hawthorn Estate Limited*) in considering the future environment, a Council must consider resource consents that have been granted, but only where these are likely to be implemented. In the present situation this could not happen because the approved 4ha subdivision was for the same site and hence both consents could not be given effect to as both related to the same property.

Ms Burton concluded that the already approved eighteen lot subdivision could not be considered as part of the future environment when assessing adverse effects generated by the current proposal.

Mr Grieve in his submissions for the applicant presented a different point of view. He cited the situation in the case of *Luggate Holdings Limited v Queenstown Lakes District Council* where the judge found, in the circumstances of that case, that the effects of approving the proposal were less adverse than those that would be generated by an alternative proposal, and had allowed that the current proposal (in that case) remedied and mitigated adverse effects on the environment. Mr Grieve went on to argue that in the present case the effects that would be generated by the 4ha development therefore should

be considered in the assessment of adverse effects of the application. He cited the evidence called for the applicant, in particular that of Messrs Bain, Beever, Bruce, McKie and Twigley to show that when compared to adverse effects that would be generated by sub10/45241, those of the present proposal were no more than minor. The evidence for the experts called by the applicant in a number of areas all took some time to consider the effects of the 4ha development, and in practically all cases found that there could be potentially adverse effects on the environment from development in accord with this consent. (paras 36 – 38)

Mr Grieve made this submission both with respect to the assessment of ‘more than minor adverse effects’ under section 104D, and also in terms of the permitted baseline. He said that an unimplemented consent could be considered as part of the future environment and/or permitted baseline, although it was clear that flexibility should be preserved as to what bearing the unimplemented consent should have on the question of the effects on the environment. (para 104)

Mr Grieve went on to submit that as the evidence of the applicant, Mr McKie, indicated it was his intent to effect the consent 10/45241 (if the current application was declined) it would be unduly simplistic to ignore it, hence evidence had been provided giving a comparison of the effects. In his submission consent 10/45241 should be deemed to be already affecting the environment. (para 106) He further submitted that ..”*consent 10/45241 is now clearly part of the ‘environment’*. *That consent has been granted, it is there, it is the ‘environment’*”. (para 110) Mr Grieve noted that the evidence providing a comparison of the effects of the proposals was called for the applicant primarily because the witnesses had considered that in their judgement a better environmental outcome would be achieved with the present proposal, than from consent 10/45241.

Mr Grieve thus took a diametrically different position with regard to the relevance of the existing 4ha consent in assessment of effects arising from the proposed development to that of Ms Burton. Both Ms Burton, in her report, and the submissions made by Mr Grieve relied on case law, and a number of cases were referenced. Mr Grieve, as noted

above, relied on reasoning in the *Luggate* case, in particular to submit that effects of the 4ha development were relevant to assessment to those of the present application. This was addressed by Ms Mooar in her response to the applicant on behalf on the Council. She submitted that while *Luggate* did compare the effects of two non-complying consents for the same site, it was not an authority for such comparison to be made generally, and one had to go through the facts of that case.

Briefly, Ms Mooar noted that in the *Luggate* case two subdivisions were involved for the site, and the experts agreed the partially implemented consent had significant adverse effects which could be reasonably mitigated by the new application. However this was a situation of two like consents, both for subdivision, which could reasonably be amalgamated so that the current proposal mitigated adverse effects of the former, and existing, consent which had been partially given effect to. She said that this is not the situation with the present application.

The Commissioner accepts the submission by Ms Mooar. In the present case, if granted, the applicant will have to give effect to one or other of the consents. They cannot both apply. Hence the concept that it is relevant to compare the effects arising from the subdivision of the current site into 4ha lots with the present proposal is not considered to be helpful. The nature and levels of effects arising from the proposed cluster development, as part of the overall subdivision of the site, must be assessed independently. To include and to use the effects of the 4ha development as a comparison for assessment of the current application seems theoretical. If the current application is approved, those effects will not occur. In the Commissioner's opinion, each application should be considered on its own merits.

Ms Mooar further submitted that it was not appropriate to consider that 4ha consent in terms of assessment of permitted baseline in considering the environment under section 104(2). She said that it was not appropriate to cite the *Hawthorn* case in this regard as following amendment to the RMA (2003) activities relevant to such assessment were restricted to those permitted by the plan, not which had been subject of consent, as had

the 4ha subdivision. Ms Mooar cited several other Environment and High Court decisions in this regard, in particular *Tairua Marina v Waikato Regional Council* (29/6/06, Asher J, HC, Auckland, CIV-2005-485-1490). This is seen as primarily a legal issue as to interpretation of the RMA and Commissioner accepts Ms Mooar's submission in this regard.

However the 4ha subdivision does have relevance. It cannot be ignored. In particular there were several references to it as a relevant matter under section 104(1)(c). This provision allows a consent authority to have regard to 'any other matter' when determining an application section 104(1). Mr Grieve submitted that it; "*would be superficial to ignore the likely effects which would be generated should consent 10/45241 proceed.*" When addressing this section (para 113). Ms Mooar also notes that it; "*could be a relevant matter for the purpose of section 104(1)(c) of the RMA*".

Mr Grieve also notes that, if the current application is approved, then it would be necessary to include as a condition that the applicant surrender consent 10/45241. Both consents cannot be exercised on the same site. It has to be one or the other. Accordingly a condition of this consent is that, if it is to be effected, then consent sub10/45241 shall be surrendered.

The Commissioner also appreciates that knowledge of this consent has been a factor in a number of the submissions, both in terms of submitters indicating it as a part of the rationale for supporting the present proposal, that it was a preferred option for development of the site, or in the case of Mr Bowden and Mr Walker, who spoke to their submissions, the opposite reasoning applied. Both these submitters, who live in the vicinity on Wairau Road, Mr Walker owning the existing lot which will become effectively a part of the upper cluster, expressed a preference for the 4ha development to proceed. It was considered to be more in line with provisions of the district plan and the resultant pattern of development was preferred by them to that now proposed.

Issue 3: Whether the proposed activity was in accordance with the purpose and principles of the Resource Management Act 1991, in particular with regard to its assessment under section 104(1), and against matters set out in Part II of the RMA.

The provisions of section 104(1) of the RMA which relate to all consents have been set out above (part 11). A good deal of the discussion and evaluation in an assessment under section 104D, discussed under Issue 1, above, is also relevant to a 104(1) assessment, as follows. An attempt has been made to avoid undue repetition, but some is inevitable.

Actual and potential effects on the environment

Under section 104(1)(a) assessment of effects on the environment is not limited to the evaluation of adverse effects, all actual or potential effects may be considered. The earlier, 104D evaluation, related in particular to the assessment of adverse effects, insofar as it was related to the threshold test for a non-complying activity, that adverse effects should not be ‘more than minor’. The Commissioner considers that this was a comprehensive discussion and that the conclusions arrived at are relevant to the consideration now under 104(1). However there are other effects, or aspects of effects, also relevant to this evaluation. In particular a number of matters that came up at the hearing where it was submitted there will be a positive effect as a result to the development.

Positive effects on the environment

Mr Twigley, in his evidence noted it was important to consider positive effects in terms of section 104(1), as these cannot be counted in the gateway assessment of adverse effects under section 104D. He set out a number of what he saw as positive effects arising from the development;

- Protection and enhancement of nationally significant native ecosystems, that is wetland and native forest remnant and the Wairau stream tributary containing ‘at risk’ fauna

- Upgrading of the existing storm water detention system facility, including the improved passage for native fish
- Provisions and vegetation of an esplanade strip along the Wairau Stream tributary for public recreation, including provision of a pedestrian link from the esplanade strip to the Wairau River, which will create opportunity for a loop walk
- Reduction in frequency and severity of ponding within ponding hazard areas in north-east corner. Currently the property at 100 Wairau Road experiences flooding during high intensity rainfall
- Protection of an economic dairy farm. It is intended as part of the subdivision to protect this land from further subdivision, allowing the existing dairy farm to continue.
- Proposed landscaping of the existing water tank.

He noted positive economic benefits resulting from the development and ongoing maintenance work associated with the development.

Ms Burton noted that the protection and enhancement of the existing gully will provide positive outcomes and said that provision of an esplanade strip, which would be triggered by Overlay Rule 58, would be a positive benefit of the subdivision.

The Commissioner is satisfied that there will be as number of positive effects arising from the development, both as set out above and as have been noted from time to time in the previous assessment of effects.

Cultural effects

Mr Twigley also noted that Nga Mahanga a Tairi were the Mana Whenua for the area. The applicant had met with the hapu on site several times and reached an agreement with them in November 2010. The hapu were supportive of the application and had provided written approval. A spokesperson for the hapu attended much of the hearing and confirmed that support, indicating that the hapu preferred the current proposal to the 4ha development. As Nga Mahanga a Tairi have given written approval to the proposal, the effects on it must however be disregarded – section 104(3)(a)(iii) of the RMA.

Natural Character and Ecological Values.

These were outlined in the evidence of Mr Beevers and Mr Bain. Mr Beevers, a consultant ecologist noted that he considered the native forest remnant and wetlands (in the gullies) to be significant, even at national level. He had prepared three reports on the subdivision, two on the ecology and a lizard survey. Mr Beevers presented comprehensive evidence on the result of his surveys, with descriptions of the flora and fauna he found on the site. He set out a number of conclusions and recommendations arising from each of his reports. He concluded his evidence noting; *“In respect of the proposed subdivision application, it is my opinion that it will provide protection to the current significant ecological values found, or likely to be found, on the site, and that these will be enhance by; the proposed revegetation planting in the proposed covenant and esplanade areas, and the improvements to fish passage.”* He went on to say that if recommendations and mitigation measures (within the control of the applicant) are adopted, then he believes that adverse ecological effects of the subdivision would be no more than minor. Conversely because significant habitats will be protected and restored, and large areas of extra habitat will be created, there will also be significant positive ecological benefits.

Mr Twigley listed a number of the key mitigation measures set out by Mr Beevers which were within the power of the applicant to implement and said that these would be imposed as conditions should the consent be granted. Matters listed by Mr Twigley include; maintaining sun light on the raupo beds, revegetation of excavations, controls on domestic animals (cats to be prohibited and dogs controlled), revegetation of the gullies and appropriate fencing of the covenanted areas, and continued monitoring of wetland birds. Mr Twigley also noted that there were a number of Mr Beever’s recommendation that were outside the power of the applicant and he recommended that NPDC implement these measures. He agreed that, with the proposed mitigation, adverse effects on natural character and ecological values arising from the subdivision would be no more than minor.

It appeared to the Commissioner that there were no major areas of disagreement between the parties as to what would be appropriate conditions in the ecological area and that Mr Beever’s recommendations were both practical and applicable

Historic Heritage.

A feature of the hearing was the description by the applicant of the discovery of a previously unrecorded pa site (P19/340). This is located in the higher area generally between the two gullies, adjacent to and toward the northern part of the proposed subdivision. It is now intended to be included in the area of the proposed QEII covenant. The pa site and its discovery were noted in evidence by Mr Bruce, a consultant archaeologist, who described how he had surveyed the site for the applicant. Prior records did not indicate any archaeological sites on the property although a number had been recorded in the vicinity, in particular in the area adjacent to the National Park. There had been kainga recorded on the area now covered by lots 1 and 2, however during his survey Mr Bruce could find no surface evidence to suggest a kainga once existed there. Also the upper reaches of the Wairau Stream bordering the proposed subdivision were indicated to have been the site of skirmishes during the Taranaki Land Wars (1863-1865).

The pa site is described as large, defended by a combination of ring ditch and transverse defences and is described by Mr Bruce as being; *“..in extremely good condition. Earthwork defences are substantially intact and the internal layout of the site can be reconstructed from the evidence of house sites and storage pits still visible as surface features.”* Other minor archaeological features, storage and oven pits were also found on the site, but these were generally small and isolated. Much of the area now proposed for the rural/residential subdivision showed it had been heavily ploughed in the past. Mr Bruce suggested mitigation measures, including a proposed building set back for lots 17 – 21, adjacent to the gully edge to avoid disturbing several storage pits and an oven uncovered there.

He noted that the main pa site would be protected entirely from subdivision by the plan of the development, and an archaeological site management plan would be developed to ensure long term conservation of the site. He said the pa site was of high archaeological value and regional significance. He was unsure that a QEII covenant would be the best option for its long term protection as it did not allow use of the pa as a public amenity, however if the entire pa was placed in a covenant with an archaeological management plan as well, this would be good practise in terms of providing long term care.

Mr Bruce referred to the submission by New Zealand Historic Places Trust (HPT) who initially opposed the subdivision in that then original application did not address archaeological or cultural values and thus had potential to adversely affect the record. Mr Dodd, the Central Regional Archaeologist from HPT gave evidence to the hearing. He said the Trust had changed its position with regard to the subdivision and would be willing to support it, subject to several mitigation measures. These included ensuring long term protection and preservation of the pa site, provision for access and ongoing association of the Nga Mahanga a Tairi with the pa site, and the inclusion of an 'Advice Note' re Archaeological/Waahi Tapu Sites in conditions, if consent was granted. Mr Dodd attached a draft for the advice note incorporating amendments to that included in the Planner's report. Mr Bruce, in his reply, said the relief sought by HPT was agreed by the applicant.

Mr Dodd in his statement also noted that there is a responsibility under the RMA for archaeological and Maori heritage. Since the RMA 2003 amendment, these are section 6 matters of national importance and the Act now contained a comprehensive definition of 'historic heritage'. Mr Dodd said high archaeological values had been established for the site and it was clear that there were Maori cultural values worthy of further consideration and protection. He had suggested appropriate conditions and on that basis could support the proposed subdivision.

It appears to the Commissioner, as with the evidence relating to ecological concerns, that there were no major areas of disagreement between the parties as to what would be appropriate mitigation measures to ensure that effects of the development on heritage and Maori cultural values were no more than minor. Amendments proposed to the 'Advice Note' appear straightforward and the on-going protection of the pa should be a matter of continued co-operation between the parties, namely the Council, landowner, HPT, QE11 Trust and iwi.

Mr Dodd also had concerns of a more general nature, unrelated to the subdivision proposal, about the ongoing protocol between the Trust and the council for identification and recognition of archaeological and heritage features. The Commissioner notes that in her reply, Ms Burton

referred to District wide 'comprehensive review of the waahi tapu and archaeological sites listed in the District Plan, and inclusion of new sites' currently being undertaken by the council. This may well become a basis for HPT to establish a working protocol for its involvement, but such concern is outside the scope of this hearing.

In the case of both Natural Character and Ecological Values, and Historic Heritage, Mr Twigley noted that the effects could be considered no more than minor. The Commissioner is inclined to go further than that and notes that further potentially positive effects will result from the development in both of these areas.

Reverse Sensitivity

Mr Twigley noted that several submitters, including neighbours on Wairau Road, had raised concerns about potential reverse sensitivity issues arising from the development of rural/residential land uses in proximity to the applicant's dairy farm. He noted that the dairy shed will be some 600m from the nearest lots, number 20 and 21, and that they will also be buffered by the area of remnant native forest. He considered factors would ensure any reverse sensitivity effects would be no more than minor.

Mr Twigley also reported that concern had been raised by Vector about the potential proximity of a habitable building to its Oakura Gas Delivery Facility. This can be very noisy on the rare occasion that Vector is required to vent gas. The applicant had agreed that a notice be registered on Lot 5, the closest to the gas pipe and facility, that no habitable building be built within 10m of the shared boundary. Vector had subsequently withdrawn its submission.

The Commissioner is satisfied from the evidence that there are unlikely to be reverse sensitivity concerns that, if established, would give rise to effects that are more than minor. In particular it is noted that the location of the dairy farm milking shed is well away from the proposed subdivisions, which will also be buffered from it by the covenanted gully areas and mitigation planting proposed in these.

Summary of effects

It is considered that the discussion above, together with that of the earlier section, has covered most of the pertinent matters raised by the application, its assessment and in the course of the hearing, in terms of the consideration of ‘any actual or potential effects on the environment’ as required under section 104(1)(a). Ms Burton considered that effects could be categorised under the following headings;

- Effects on the rural character and visual amenity of the area
- Effects on existing traffic levels and the road transportation network
- Effect of service provisions
- Effect of subdivision on outstanding landscape
- Cumulative effects
- Precedent
- Positive effects

Mr Twigley said that in his opinion the main effects for consideration (in no particular order of importance) were as follows;

- Landscape Effects
- Cultural Effects
- Rural Character and Amenity Effects
- Effects on Road Safety and Efficiency
- Effects on Natural Character and Ecological Values
- Effects on historic heritage
- Reverse Sensitivity
- Cumulative Effects
- Stormwater Runoff Effects and Effects on Infrastructure

The Commissioner believes all relevant effects have been covered in the above lists and related evaluations. Both are essentially similar in their focus on what are probably the most important effects, namely those related to landscape and visual impact and in terms of impact on rural

character and amenity. However a number of other effects have been assessed, in some instances in considerable detail, and the Commissioner is satisfied that the effects of the proposal have been considered adequately in terms of section 104(1)(a).

It is noted that the effects of the development, regardless of their degree of adversity, may vary in terms of impact on the community. Amenity and visual effects are probably those most likely to concern the local community, and the Commissioner accepts that some people may see these as strongly negative. There is a time factor here as well, the mitigation planting proposed to shield the view and hence soften the impact of new housing, will take some years to be effective.

It is not considered that infrastructure or traffic effects in this case will be of major concern, as it would seem adequate infrastructure is either already existing or can be provided, without adverse effects, to allow for the development. This includes the local road network, although upgrade work on Wairau Road and its junction with Surrey Hill Road, and the State Highway, will be required. Traffic effects are not anticipated to be significant, other than perhaps to the most immediate neighbours on Wairau Road.

Some effects, on the other hand, will probably have little direct impact on the local community, most neighbours may not be aware of ecological effects for instance.

In all cases the assessment of effects has been such that the Commissioner is satisfied that, in the context of the community and the environment, the effects will be either acceptable or positive, or that, where there is an effect adverse impact arising from the development, the effect of this will be no more than minor. Proposed mitigation features are important in making this assessment, and in particular reliance is placed on the planting proposed to shield and soften the main area of cluster housing, together with the bulk and design controls on dwellings, which otherwise could undoubtedly stand out in the landscape. Proposed mitigation is important in the assessment of matters such as stormwater runoff where new works in the stream gullies, and new culvert, will considerably improve the existing situation. Also the proposed mitigation in terms of protection and enhancement of existing ecological features,

especially bush remnants and the riparian margins of the gullies, and in terms of the protection of the main pa site, will ensure that these are in fact positive effects of the development. In summary, the Commissioner is satisfied that the assessment of effects on the environment required by section 104(1)(a) does not preclude the granting of consent to the application.

Any relevant provision of a plan

Section 104(1)(b) requires that in considering an application the consent authority shall have regard to any relevant provisions of any environmental standard, regulation, policy statement, the coastal policy statement, regional policy statement and plan or proposed plan. It is considered that there are no national environmental standards, national policy statement or other regulation relevant to the application. It is not within the coastal environment and so the Coastal Policy Statement is not considered relevant. Provisions of the District Plan, proposed Plan Changes 27 and 15, and to a lesser degree the Taranaki RPS however are relevant to this evaluation. These have discussed already with regard to the provisions of section 104D. Again, it is endeavoured not to repeat this discussion but the evaluation under section 104(1)(b) is broader than 104D, and some repetition is inevitable.

Taranaki Regional Policy Statement (RPS)

As noted the RPS was made operative in December 2009. The Commissioner's view is consistent with the comment by Mr Twigley that provisions of the RPS are 'higher level' and that provisions of the District Plan must therefore give effect to them. It is noted that there was disagreement between Ms Burton and Mr Twigley as to the consistency of the RPS Objectives, in particular 10.1. and 10.3, with the proposed development. These relate to the protection from inappropriate subdivision, use and development of outstanding natural features and landscapes (10.1) and on amenity values (10.3). Ms Burton considered the proposal was inconsistent with these provisions. Mr Twigley disagreed. He took a broader position and noted that in his opinion, the subdivision would protect the ONL of the Kaitake Ranges, and would make a positive contribution to amenity values. He also noted a number of other provisions of the RPS which he considered relevant and said that in general the proposed subdivision would be consistent with all of them.

The Commissioner considers that the application does not present issues of regional significance. Taranaki Regional Council did not make a submission with regard to it. Insofar as conflict or consistency is seen with Objectives of the RPS, the application of these is discussed below in the context of the relevant district plan provisions, below. Hence the Commissioner does not consider it necessary to give much weighting to the provisions of the RPS in terms of the consideration of the application under section 104(1)(b).

District Plan

It was noted that the proposed subdivision and development was contrary to a number of the rules of the plan, hence its status as non-complying. Ms Burton in her report cited strategy from the plan establishing the pattern of rural subdivision presently permitted in the rural area. This sets a minimum lot size of 4ha and does allow for smaller lots but not to the extent anticipated by the present cluster developments. It is noted that; *“A 4ha minimum has been set on a basis of protecting a level of visual amenity while allowing a range of traditional ‘rural activities’ such as agriculture, horticulture or forestry to occur”* It is acknowledged that there are smaller existing lots within the rural area and the zone permits a limited further number of smaller lots as Controlled or Discretionary activity. The number of smaller lots currently proposed in the cluster developments however is considerably above that anticipated by the plan.

Ms Burton said that the development was contrary to Objective 1 of the District Plan, namely; *“To ensure activities do not adversely affect the environment and amenity values within the district of adversely affect existing activities”*, also to Policy 1.1, that; *“Activities should be located in areas where their effects are compatible with the character of the are”*. She further considered that it was contrary to Objective 4 and associated Polices, 4.1 and 4.2, to do with rural character and amenity.

Mr Twigley took a somewhat wider view. With regard to Objective 1 and Policy 1.1 he noted that these provisions; *“..are very broad in nature... Broadly speaking they seek to avoid conflict between activities that are not compatible with each other.”* (para 143), and that with regard to Objective 4, that, in his view it, *“..emphasises a balancing act for new subdivision,*

use and development. This is a balance between ensuring subdivision, use and development does not adversely affect the elements that define rural character while recognising the diverse nature of rural land and rural land uses. The receiving environment in this case is diverse including residential use, rural/residential land use with small scale hobby farming and more traditional larger scale farming such as occurs on the applicants land” (para 148)

The Commissioner, in terms of the assessment under section 104D, agreed with Ms Burton, that the present proposal is outside of what could be reasonably anticipated under these provisions. She also considered that the adverse effects of the proposal, recognising the intention to maintain a large area of the site as an existing farm, identify and protect areas of ecological and heritage value and set against the existing environment in the vicinity of Oakura, would be no more than minor, and hence complied with section 104D(1)(a).

In terms of the present assessment, she notes Mr Twigley’s approach and considers that there is a matter of balance here. Mr Twigley said that he did not consider the subdivision was contrary to Objective 1 and Policy 1.1. He said that effects from the rural/residential activity would be compatible with the existing character on Upper Wairau Road, also that the proposed subdivision would enhance environmental values of the site and adverse effects on the environment and amenity values were avoided, remedied or mitigated. (paras 144 and 145) With regard to Objective 4, Mr Twigley said that he considered the application achieved the ‘balancing act required by Objective 4’. He said that; *“It responds to those elements that define rural character in this location.... and recognises the diverse nature of rural land use by providing for rural/residential land use, public recreation via the esplanade strip and maintaining a traditional rural land use in a dairy farm. I consider that the proposed subdivision is not contrary to objective 4 and policies 4.1, 4.2, 4.3 and 4.5”* (para 175)

The Commissioner considers that while there is lack of compatibility with these provisions of the District Plan, as discussed by Ms Burton, the wider view and position taken by Mr Twigley is also relevant. Assessment of these plan provisions must take account of the existing character of the Upper Wairau Road area and of the already diverse nature of land use in the vicinity when considering Objectives 1 and 4 and related policies. The Commissioner is

satisfied that, seen in this context, the proposed development is not so incompatible as to be precluded from consent.

Ms Burton also had concerns with the application of Objective 15 of the Plan, concerning the protection of outstanding and regionally significant landscapes, in particular the views of the Kaitake Ranges. Ms Burton considered that the proposed cluster lot developments would be highly visible to the surrounding environment and as the site formed a foreground to the view of the ranges, it would visually detract from the outstanding landscape. Part of the site does adjoin the ranges, the wedge shaped upper portion, which is cut into already by two existing allotments and proposed to be subdivided into five larger lots, (all 1ha or over) to the higher cluster. Proposed planting will help to shield the views of dwellings and other building on these sites and other mitigation measures, in particular bulk and design controls on dwellings, will further lessen their visibility. Development on the lower cluster will also be visible in views of the ranges, but this is lower and hence the impact reduced, and again mitigation planting is designed to shield views. As discussed previously, the Commissioner does not consider the degree of adverse effect on views of the Kaitake Ranges will be such as to be a concern under these provisions of the plan.

A number of other plan provisions were set out and discussed by Ms Burton. She found the proposal was consistent with a number, as follows;

- Rural Rules 78 and 80 to do with vehicular access to allotments and the vesting as legal road, related Objective 20 and Policy 20.7.
- Rule Overlay 33 to do with subdivision of an area containing a ponding area, Objective 12 and Policy 12.1 to do with avoidance of natural hazard.
- Objective 11 and Policy 11.3 and 11.5 to do with the protection of heritage and archaeological sites.
- Objective 14 and Policy 14.2 to do with enhancement of natural character of the coast, wetland, lakes and rives and their margins.
- Objective 16 and Policy 16.1 and 16.2 to do management and enhancement of indigenous vegetation and habitats.

In his discussion of the application in terms of objectives and policies of the plan under section 104D, Mr Twigley cites a number of further Objectives and Policies with which he considers the proposal will be in accord. It appears to the Commissioner, other than the provisions noted above to do with rural character and amenity, visual elements and effects on outstanding landscape, that there is accord that the application would be generally in line with objectives and policies of the Rural Zone.

The Commissioner is satisfied therefore that assessment of the District Plan provisions under section 104(1)(b) does not preclude consent being granted to the proposed development.

Proposed Plan Changes

Two plan changes are relevant to section 104(1)(b)(vi). Plan Change 27 was notified on 1 September 2010, and Plan Change 15 was notified on 20 November 2010. Submissions have been lodged but not yet heard in either case. Hence both have relevance but neither can be afforded a great deal of weight in assessment of the application.

Plan Change 27 is essentially a review of the Rural zone subdivision provisions and has been described as 'raising the bar'. Minimum areas would be increased to 20ha, and while there are proposed provisions to allow for smaller lots, there is nothing at the level now proposed by the application. Ms Burton notes a number of the proposed objectives and policies that consequentially the current application will be inconsistent with, and Mr Twigley also cites proposed rule Rur78 which sets the new minimum sizes. He acknowledges that the proposed subdivision will not comply with Rur78 and will be contrary to the related policies. He also notes that there are a number of the objectives and policies with which it will be consistent. This has been discussed above with regard to section 104D.

Mr Twigley argues that little weight should be given to this change as it is still in the early stage of process and because he was aware (through viewing the submissions) that there was significant opposition to it. He suggests that after the plan change processes, the present proposed objectives and policies 'may look very different' (para 226).

It was argued that even less weighting should be given to Plan Change 15, which was very recently notified. As already discussed this change is to do with protection of a number of likely future urban areas, by effectively freezing these in rural uses in an interim period. It affects a part of the application site (the Triangle) in the north eastern corner, identified in the Oakura Structure Plan as potential expansion. However as this change will continue the rural use of this corner, consistent with the current application, there is no immediate conflict.

The Commissioner notes that both these plan changes are relevant to the assessment of the application under section 104(1)(b)(vi). However she is not inclined to give very much weight to either. Both are at an early stage of process and the outcome of public participation through the submission process is unknown. Whatever the outcomes it is also noted that the rural zone and its provisions are likely to change within the foreseeable future, whether toward making the present application any more compatible, or less so, it not possible to say at the moment. Overall however the Commissioner considers that the application must be considered at the present time primarily in terms of the existing rural zone and its provisions.

Summary of consideration of plan provisions

It is noted in summary that the application is not considered to be in accord with all existing provisions of District Plan, but the degree of incompatibility is not considered so great as to preclude its acceptance. It is seen to be compatible with a number of other plan provisions. A similar comment is made with regard to the RPS, although not very much weight is attached to this. Likewise little weight is attached to the provisions of proposed plan Changes 27 and 15. The application must be considered on its merits in terms of the present district plan and zoning. In these terms the Commissioner does not believe there is anything of sufficient concern to preclude its acceptance under section 104(1)(b).

Any other matter

Section 104(1)(c) allows the consideration of any other matter that is relevant and reasonably necessary to determine the application.

Oakura Structure Plan

The Oakura Structure Plan is a non statutory document dated August 2006, noted by Ms Burton as being developed through a comprehensive process of consultation in line with the Local Government Act 2002 (LGA). Therefore it should be given ‘substantial respect and weight’ in the evaluation process. (*Mapara Valley Preservation Society Incorporated v Taupo District Council*) The Structure Plan identifies future residential areas in the vicinity of Oakura based on anticipated growth and demand for residential development within a 20 year period. It also looks at management and development of the coastal area of Oakura, and proposes (by way of an overlay) an Inland Area with controls on height, scale and form of development designed to protect views of the Kaitake Ranges. The coastal provisions are not of concern to the application but the overlay to protect views of the ranges is related to the consideration of the ONL, discussed earlier. It overlays the area of the upper cluster.

Ms Burton considered that the proposed subdivision was inconsistent with the Structure Plan, because it proposed development outside of the identified future residential area, a triangle of land in the north east corner of the applicants property – an area formed by drawing a line from SH 45 diagonally across to the junction of Wairau and Surrey Hill Roads (the Triangle). In the present application this area is included in the balance lot, or area to be retained as farm, which would preclude its residential development. (This has been noted in the comments on proposed Plan Change 15). She also noted that the clusters are located in rural land which will potentially extend the residential boundary toward the ranges.

Both Ms Burton and Mr Twigley noted that a number of the submitters to the application were concerned about the differences between the development proposed and that anticipated by the Structure Plan. A number of submissions question why the Triangle area is not to be developed as proposed in the Structure Plan, and are concerned that precedent will be set if it is ignored in this way. Mr Twigley however notes the application does not relate to zoning – the area where the cluster development is proposed will remain zoned Rural, and says that the proposed development should not be compared to the residential development proposed for the Triangle. He also states that the applicant, Mr McKie, believes that there is a demand for rural/

residential land in proximity to Oakura, independent of the forecast need for residential expansion of the settlement.

Mr Twigley addressed several other issues. He noted that the lots proposed for the upper cluster have controls on the height, scale and form of building which will be consistent with the intent of control anticipated for land covered by the Inland Area overlay. Mr Twigley also noted that a number of features of the application are consistent with the Structure Plan, including that development generally adjacent to SH 45 is avoided, providing a greenbelt/buffer, stormwater issues have been addressed, provision of an esplanade strip and walkway which will help link the subdivisions to the National Park and to Oakura village, the protection of the pa site is in line with policy in the Structure Plan and the intention to use reticulated water and sewer connections is in line with policy to maintain high standards in these areas. Overall, Mr Twigley does not consider that the proposed subdivisions will be contrary to, or undermine the integrity of, the Structure Plan.

It is clear that the Oakura Structure Plan is an ‘other matter’ which must be taken into account in consideration of the proposed application. It is a non-statutory document but is the result of considerable community consultation and participation, evidenced by the comments of submitters, and the reliance placed on it by them. The Commissioner accepts the greater part of Mr Twigley’s position. She also considers that the development, or not, of the Triangle area is a question for the future in conjunction with Plan Change 15. In the interim rural zoning, as proposed, is appropriate. She considers therefore that the Structure Plan does not raise issues which would preclude acceptance of the application.

Approved 4ha subdivision on the subject site

An eighteen lot subdivision (10/45241) was approved for the site in November 2010. This was considered as a Discretionary Activity because, notwithstanding that all lots were above the minimum subdivisional size for the Rural zone, it contained a ‘ponding area’ which triggered a discretionary consent. The approved plan of subdivision was presented to the hearing. All lots

are 4ha or over and all have access off Wairau Road, several directly but mostly by way of rights of way.

There was a good deal of submission and evidence given to the hearing on behalf of the applicant to support the position that, as this subdivision has been approved and therefore could be effected by the applicant, it should be considered as part of the existing environment in terms of the assessment of effects that will result from implementation of the present application. In particular it was argued that it should be seen as a part of the permitted baseline in terms of section 104(2) which allows a consent authority to disregard an adverse effect on the environment if an activity is permitted by a plan. The Commissioner saw this as a significant submission and it is discussed above as a separate issue.

The Commissioner concluded in that section that the effects of each application should be considered separately and it was not helpful to consider effects of the 4ha development, either in terms of evaluation of adverse effects or as part of the permitted baseline assessment of the environment. The arguments are not repeated. It was noted however that discussion could be relevant under section 104(1)(c). The 4ha subdivision does have status and could be implemented by the applicant at any time. However it would not be possible to implement both consents, 10/45241 and the present application on the same site at the same time. They cannot be effected together, hence if this consent is granted it would be appropriate to include a condition that consent 10/45241 be surrendered prior to this consent being effected. .

In conclusion, despite receiving comprehensive evidence about consent 10/45241 and the likely effects on the environment if it was to be effected, and comparisons made with effects arising from the present application, the Commissioner has given this little weight.

Evaluation under section 104(1)

Section 104(1) of the RMA requires an overall assessment as to whether an application is in accord with the purpose and principles of the Act. Consideration is subject to Part 2, and must have regard to the matters set out in 104(1). The first part of section 104(1) requires assessment of any actual or potential effects on the environment of allowing the activity. The

Commissioner considers, after discussion of the effects likely to arise from the application – both in terms of the effects discussed in this section and the earlier discussion of adverse effects – that there is nothing which would preclude granting the application.

Relevant provisions of the district plan, including proposed Plan Changes 27 and 15, and the Taranaki RPS were considered and, while the application was assessed to be not in accord with several district plan provisions, the degree of incompatibility was not considered so great as to preclude its acceptance, and it was found to be compatible with a number of other provisions. Hence, the Commissioner does not consider that there is reason to preclude acceptance of the application in this regard. Other matters noted were the Oakura Structure Plan and the already approved 4ha subdivision of the site. The Structure Plan is a non-statutory document but the result of considerable community consultation and some weight must be given to it. It anticipates an area of future residential development in the northern corner of the proposed balance lot (Lot 29) but this is a question to be resolved, in conjunction with Plan Change 15, in the future. In the interim, rural zoning as proposed is appropriate.

The Commissioner noted that considerable evidence had been presented with regard to the existing consent 10/45241, for a 4ha subdivision of the site. However she does not consider it appropriate to take account of the effects likely to arise from this consent in terms of the consideration of the present application. Both could not be effected together, and the present application must be considered on a stand alone basis in terms of the existing zoning and district plan provisions. A condition is therefore attached that if the present consent is to be effected, then consent sub10/45241 must be surrendered.

Overall the Commissioner considers that there is nothing arising from the assessment in terms of section 104(1) to preclude granting consent to the application as it stands.

14. Part II of the RMA.

Section 104(1) makes all consideration of consent to be subject to the overarching requirements of Part II of the RMA.

Section 5

Part II of the RMA sets out the purpose of the Act to promote the sustainable management of natural and physical resources. This is set out in section 5(2) as follows;

“(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.”

Mr Twigley notes that section 5 involves a broad approach and judgement with regard to the general purpose of promoting sustainable management of natural and physical resources. The subsequent sections 6, 7 and 8 set out matters of national importance, other matters and the Treaty of Waitangi as matters to be considered as relevant in an assessment under Part II.

Section 6

There is a reasonable measure of agreement between Mr Twigley and Ms Burton with regard to the consistency of the application with matters of national importance set out in section 6, with the exception of (b), which is;

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development

Ms Burton has concern over the impact of development of the higher cluster and location of dwellings here on the boundary of the Kaitake Ranges and considers the development is contrary to this matter. Mr Twigley again notes proposed mitigation planting and design controls as measures which will offset this concern. The Commissioner, as noted earlier, is also of the opinion that these controls, together with the relatively small area of boundary involved, will be adequate to mitigate such adverse effects.

The other matters above are not discussed in detail but the Commissioner is satisfied that the proposal does meet the requirements of the other parts of section 6.

Section 7

Section 7 sets out a number of other matters to which shall be given particular regard. These are specific and not all apply to all applications. In this case, Ms Burton, cites two in particular;

- (c) The maintenance and enhancement of amenity values;
- (f) Maintenance and enhancement of the quality of the environment;

Based on her arguments noted earlier she considers that the number of lots anticipated in the clusters will both adversely affect the rural amenity and the quality of the rural environment. Mr Twigley again does not agree with this, also based on arguments noted earlier. The Commissioner appreciates the arguments as noted earlier but also considers that effects on both amenity values and the environment, as required by section 7, will be acceptable taking account of the development as a whole, and the nature of the environment, which is already diverse.

Mr Twigley notes a number of other matters he considers relevant, including 7(a) kaitiakitanga, 7(aa) the ethic of stewardship, 7(b) efficient use of natural and physical resources, 7(d) intrinsic values of ecosystems, 7(g) finite characteristics of natural and physical resources and 7(i) effects of climate change – the last with regard to controls of stormwater runoff and design of the facility. The Commissioner accepts that these matters may be relevant to some degree but considers that they do not appear to be of major concern in the assessment of the application. Hence limited weight is given to them.

Section 8

This requires that the principles of the Treaty of Waitangi must be taken into account. Ms Burton notes the application is consistent with this. The local iwi have been consulted and provided written approval of the application.

Decision

Pursuant to section 104B of the Act the Commissioner **grants** resource consent to the application for the following reasons.

The application is for a comprehensive development of an existing dairy farm. The development will provide some 26 rural residential lots. One lot is relatively isolated with direct access to lower Wairau Road and compatible with existing development in this area. The other lots are arranged in clusters and will also access Wairau Road at a higher level. The five larger southern most lots have a direct or right of way access, while the largest, or lower group of 20 lots are arranged around two arms of a cul-de-sac, accessing a mid point of Upper Wairua Road.

The main part of the existing site, the balance lot (Lot 29) will be retained as a ‘protected farm’ unit, anticipated to remain as a dairy unit. Generally the balance lot lies to the north and west of the site adjacent to SH45. The residential cluster developments are generally to the south and east of the site. Included in the balance lot, and generally surrounding the main cluster development is an area intended to be placed in a QEII covenant for bush regeneration and revegetation strategy. This area covers two gullies of ecological value, and includes a previously unknown pa site deemed to be of considerable archaeological value.

The environment of the site is generally that area to the south of the existing Oakura settlement. Residential zoning already extends along Wairau Road almost to the boundary of the site. There are a number of other existing smaller lots along Wairau Road and also Surrey

Hill Road. Generally the area, although rural is becoming mixed and presents a ‘busy’ landscape, also including buildings, both residential and utility, forestry lots and shelter planting and earthworks are currently evident.

The smaller cluster of larger lots at the southern most part of the site form a wedge of land which adjoins the boundary of the Kaitake Ranges, a National Park and an ONL. Considerable concern was expressed as to the effects of this cluster on the visual amenity of the ONL boundary. However the Commissioner considers, taking into account the proposed mitigation in terms of building controls and protective planting, and the relatively small area which actually adjoins the Park, that these effects will be no more than minor.

Concern was also expressed as to the effects of the total number of new rural residential lots on the rural character and visual amenity of this area. However again the Commissioner considers, and again taking the proposed mitigation into account – especially the planting of the covenanted areas and controls on the form and nature of building permitted – and taking into account the already ‘busy’ nature of the surrounding environment, that such effects are not likely to be unduly adverse.

The Commissioner notes that the cluster developments can be relatively easily serviced. Lots can be connected to existing water and sewer services. Improvements will be required for Wairau Road, and probably the intersection with SH45, to provide for the likely increase of traffic but again these are not seen to be obstacles to the development.

Overall the development is seen as an attempt to develop a comprehensive design of an existing farm area which will provide a number of rural residential lots in a controlled cluster pattern, retain a significant rural lot and also enhance the ecological and archaeological value of the area surrounding the clusters by way of proposed covenants. The covenanted areas will also form something of a buffer especially to the lower clusters.

It is anticipated that the development will have a number of positive effects, especially in terms of the protection proposed under covenant. The Commissioner believes that overall the type of

development proposed by the application is appropriate for this environment which is already mixed. It will provide a number of rural residential lots in an area where these are seen as compatible with the surrounding areas but which will be contained and further development controlled by the retention of the balance lot, and the covenanted buffer areas.

Such comprehensive development is not anticipated by existing district plan provisions, hence the non-complying status of the application.

Taking into account all material presented to the hearing, and as discussed above in this report, the Commissioner is satisfied that the application both meets the threshold test of a non-complying activity under section 104D, that adverse effects on the environment will be no more than minor, and when assessed against section 104(1) that firstly, actual and potential effects on the environment are acceptable and secondly, there is nothing with regard to consideration of the relevant plan provisions, and other matters, to preclude consent being granted. Hence consent is granted subject to the conditions discussed and set out below.

15. Conditions

In her presentation to the hearing, Ms Burton appended (Appendix 5) a set of conditions which she said would be appropriate in the event of the application being granted. In his evidence, Mr Twigley also appended a set of recommended conditions. He said that this was a full suite as a number of conditions recommended to remedy and mitigate adverse effects, as well as to achieve positive effects, had been missed. On the whole Mr Twigley's recommendations have been adopted and the conditions set out below, based on the format proposed by Ms Burton, have been amended to include these.

Several points should be noted.

- Conditions refer to the two stages of development as proposed by the applicant, but these are varied so that conditions relating to the development of the 'balance lot' (Lot 29) are included in Stage 1, not Stage 2. A number of conditions, especially relating the development of landscape proposals and planting

vegetation relate to Lot 29. These will need to be established at an early stage of the development and may also relate to works to be done with regard to the first stage of the subdivision. Including Lot 29 with Stage 1 means that Stage 2 then relates only to the lower or northern part of the main cluster, some eleven lots, hence conditions for this stage are straightforward. The change of stage does anticipate that works with regard to Lot 29 will be completed sooner than if it was included in Stage 2, but this is not seen as onerous, as noted above it is expected much of that work would in any case be undertaken at an early stage.

- Variations to the proposed condition re the Esplanade Strip proposed by Mr Twigley have not been accepted. These related to the form of fencing, and that the strip should also be a 'Leashed control area for dogs', under NPDC Bylaw. These are not normal provisions for an Esplanade Strip in terms of the District Plan and are not considered to be necessary. The form of fencing is a matter for the applicant and, likewise, dog control can be instituted in this area if this appropriate. It is noted that dogs are prohibited from the covenanted areas.
- Likewise Mr Twigley's recommendation re the wording of the conditions re roading upgrade at the intersection of SH45 and Wairau Road has not been accepted. His concern was that the applicant should not be responsible for such work. However the condition precedent does not require the applicant to do the work, but rather not to allow the subdivision to proceed until such work has occurred. The Council has concerns with regard to the increase of traffic at the point. Consequently the condition is retained.
- The condition with regard to future subdivision of the Lot 29, relating to the no further subdivision of the property as long as it remains in the Rural Environment Area, has been retained as originally proposed. This condition will ensure that open space is retained over the balance allotment. It is also noted that the applicant expressed the intention during the hearing of retaining this lot with a 'Protected Farm' status in the longer term, regardless of the zoning.

- The advice note concerning Archaeological/Waahi Tapu sites has been amended as recommended by the NZHPT.

It is anticipated that these conditions will ensure development of the site in a way so as to remedy and mitigate potential adverse effects and achieve positive beneficial outcomes.

Conditions

All Stages

1. The consent holder is responsible for all costs incurred in complying with the conditions of this resource consent. This includes any costs associated with carrying out works and any approval, inspection or other costs for council services.
2. Approval fees are to be paid in accordance with the councils Schedule of Subdivision Fees and Charges when the survey plan is submitted for approval.
3. All works authorised by this consent shall be completed in accordance with the design and construction standards specified in Appendices 22 and 23 of the New Plymouth District Plan and in the New Plymouth District Council's Earthworks, Roding, Water Reticulation, Sanitary Sewer, Stormwater and Vehicle Crossing Codes of Practice 1997.
4. One copy of the title sheet (A3 size or e-certification) is to be provided when the Survey Plan is submitted for approval for each stage.
5. Consent is granted for the application to be undertaken in two stages, as follows:
 - Stage 1: Lots 1-15 and Lots 28, 29 and 30
 - Stage 2: Lots 16 – 27
6. The subdivision and development shall be in accordance with the plans and information submitted with the application and as amended by the revised scheme plan submitted on 2nd December 2010 identified as follows:
 - 6.1. The survey plan for each stage shall conform to the scheme plan submitted with application SUB10/45196, prepared by Richard Bain Landscape Architect Company, entitled "McKie Subdivision, Wairau

Road, Oakura – Scheme Plan” Job Number: 2552, dated 2 December 2010.

- 6.2. Application for Resource Consent and Assessment of Environmental Effects (prepared by Cam Twigley, BTW Company, received by the Council on the 23 March 2010);
- 6.3. Landscape Assessment (prepared by Erin Griffith and Richard Bain, Richard Bain Landscape Architects, received by the Council on the 23 March 2010)
- 6.4. *“Preliminary Ecological Values Assessment: Wairau Road subdivision, Oakura”* report dated 24th of June 2010 (Preliminary Ecological Values Report), the *“Ecological Values and Impact Assessment: Wairau Stream, Wairau Road subdivision, Oakura”* report dated 18th of November 2010 (Ecological Values and Impact Assessment Report), and the *“Lizard Survey, Wairau Road subdivision, Oakura”* report dated 13th of December 2010 (Lizard Survey Report)
- 6.5. Archaeological Survey and Assessment of the McKie Subdivision at Wairau Road, Oakura (prepared by Ivan Bruce, Archaeological Resource Management, received by the Council on the 24 June 2010)
- 6.6. Wairau Road Traffic Engineering Report (prepared by Bruce Chadwick, BTW Company received by the Council on the 23 June 2010)
- 6.7. Cluster Subdivision Infrastructure Report (prepared by Colin Bell and Norm Jacobs, BTW Company received by the Council on the 1 October 2010)
- 6.8. Planting Strategy and Photomontage Collection (prepared by Erin Griffith and Richard Bain, Richard Bain Landscape Architects, received by the Council on the 13 October 2010)
- 6.9. An amended scheme plan (attached as appendix 4) received by Council the on the 16 November 2010.
- 6.10. A plan identifying the Proposed and Existing Easements dated 5.11.2010 received by the Council on the 3 December 2010.
- 6.11. In the event of inconsistency, the plans and information provided in relation to the revised scheme, shall take precedence.

Stage 1 (Lots 1-15 and Lots 28, 29 and 30)

7. All buildings shall meet the standards specified in the New Plymouth District Plan for a permitted activity relative to the new boundaries.
8. The consent holder shall ensure that any wastewater disposal system serving an allotment lies wholly within the boundaries of that allotment.

9. Landscaping

- 9.1 Lots 1-15 shall contain 10% site coverage of native tree plantings.

This condition shall be imposed by way of a consent notice registered against each of the new computer freehold registers for Lots 1-15 of the subdivision of Part Section 14 Oakura District, Part Section 13 Oakura District, Lots 3 and 4 DP 336578, Lot 2 DP 400540 and Part Section 30 Oakura District.

10. Building Platform

- 10.1 Prior to a survey plan being submitted to the Council under section 223, an inspection and a report shall be carried out of soil compatibility by a suitably qualified person and submitted to the council to confirm the suitability of Lots 1- 15 for on-site stormwater and wastewater disposal. Where it is demonstrated that on-site disposal of stormwater and/or wastewater is not suitable, then an alternative method of disposal shall be identified and provided.
- 10.2 Prior to a survey plan being submitted to the Council under section 223, a report shall be provided from a suitably qualified person to confirm that there is available within Lots 1-15 a stable flood free building platform suitable for building foundations in accordance with the requirements of the New Zealand Building Code – Acceptable Solution B1/AS4 of Approved Document B1/4; Structure Foundations.
- 10.3 Recommendations in these reports in relation to the location of a stable flood free building platform suitable for building platforms shall, if appropriate, be subject to a Consent Notice under Section 221 of the Resource Management Act 1991.
- 10.4 Secondary stormwater flow paths shall be shown on a plan and shall be located clear of proposed building platforms.

11. Vehicle Access

- 11.1 A right of way shall be provided to serve Lots 2 and 3, as shown on the scheme plan 2 December 2010.
- 11.2 The right of way shall be designed and constructed to the standards for a right of way in the New Plymouth District Plan and the Council's Roading Code of Practice, dated 1997.
- 11.3 A type "G" Standard vehicle crossing shall be constructed to serve the right of way. The vehicle crossing shall be located so as to achieve a minimum sight distance of 85 metres in both directions along Wairau Road, measured from:
- a point 5.0m back from the edge of seal; and
 - an eye level of 1.05m height at the vehicle crossing to an object 1.05m above road level.
- 11.4 The vehicle crossing shall be constructed to the Standard specified in the Council's Vehicle Crossings Code of Practice, dated 1997.
- 11.5 Vehicle crossings shall be constructed for Lots 6, 7, 8 and 15 to a type "G" Standard as outlined in the Council's Vehicle Crossings Code of Practice, dated 1997.
- 11.6 Prior to exercising the consent, the consent holder shall provide the council with a copy of an approval notice from the New Zealand Transport Agency pursuant to s93 of the Government Roading Powers Act 1989.

12. Road Upgrading

- 12.1 Prior to submitting a survey plan for stage 1 of the subdivision pursuant to section 223 of the Resource Management Act 1991, the following shall occur:
- (a) The intersection of Wairau Road and Surrey Hill Road shall be upgraded to the standard set out in Austroads Public – Guide to Traffic Engineering Practice Intersection at Grade – Part 5.
- (b) The seal on Wairau Road from its intersection with Surrey Hill Road to the southern boundary of Lot 6 shall be widened to 6.0m. The seal shall be tapered at an angle of no less than 1 in 20 to the existing seal beyond this point.

(c) A wide grass verge shall provide a public walkway along Wairau Road for the length of the headwater gullies in accordance with the document “*Wairau Road Traffic Engineer Report*” (prepared by Bruce Chadwick, BTW Company received by the Council on the 23 June 2010) but subject to the amendments in Mr Norm Jacob’s brief of evidence 16 December 2010.

(d) The intersection of Wairau Road with South Road (State Highway 45) shall be upgraded to the requirements of the NZ Transport Agency.

13. Esplanade Strip

13.1 Pursuant to the provisions of s230 and s232 of the Resource Management Act 1991 the survey plan shall provide for an esplanade strip adjoining the Wairau Stream running along the true left bank of the Wairau Stream from State Highway 45 as shown on the scheme plan submitted to Council by the applicant dated 2.12.10. The width of the strip shall be 20m, measured from the stream edge boundary, and shall be for the purpose of providing riparian protection and pedestrian access.

13.2 The esplanade strip instrument shall be subject to the following requirements:

(a) The following acts are prohibited on the strip:

- (i) Wilfully endangering, disturbing, or annoying any lawful user of the strip (including the owner or occupier of the strip);
- (ii) Wilfully damaging or interfering with any structure adjoining or on the land, including any building, fence, gate, stile, marker, bridge, or notice;
- (iii) Wilfully interfering with or disturbing any livestock lawfully permitted on the strip.

The prohibitions referred to in paragraphs (ii) and (iii) above do not apply to the owner or occupier of the strip.

(b) The following further acts are prohibited on the strip:

- (i) Lighting any fire;
- (ii) Carrying any firearm;
- (iii) Discharging or shooting any firearm;
- (iv) Camping;

- (v) Taking any animal on to, or having charge of any animal on the land;
- (vi) Taking any vehicle on to, or driving or having any charge or control of any vehicle on the land (whether the vehicle is motorised or non-motorised);
- (vii) Wilfully damaging or removing any plant (unless acting in accordance with the Noxious Plants Act 1978 or the Biosecurity Act 1993);
- (viii) Laying any poison or setting any snare or trap (unless acting in accordance with the Agricultural Pests Destruction Act 1967 or the Biosecurity Act 1993).

The prohibitions referred to in paragraphs (v) and (vi) above do not apply to the owner or occupier of the strip who shall be entitled to graze or bring animals and vehicles on to the strip.

(c) Fencing

The grantee may in the future, in order to enhance the conservation values of the strip, erect a fence along the boundary of the strip.

(d) Planting

The grantee may in the future, in order to enhance the conservation values of the strip, undertake riparian planting along the length of the strip

(e) Access to the Strip

Any person shall have the right at any time to enter upon the land over which the esplanade strip has been created and remain on that land for any period of time for the purpose of recreation, subject to any other provisions of this instrument.

(f) Variation of esplanade strip

In the event of the grantee undertaking fencing of the strip and riparian planting, this instrument will be varied in accordance with s234 (3) of the Resource Management Act 1991 and the prohibitions in (a)(ii) and (iii) and (b)(v) and (vi) extended to include the owner and/or occupier of the strip. (With the exception of those parts of the strip where existing access tracks provide vehicular and stock access to other parts of the grantors property.)

- 13.3 Prior to the esplanade strip being set aside, the following works shall be undertaken by the consent holder:
- (a) A 3.0m wide benched and grassed walking track with a maximum gradient of 1:12 shall be constructed along the esplanade strip.
 - (b) Stiles shall be erected over the fence at South Road and any internal fences within the esplanade strip.
 - (c) Trail Markers, as per the New Plymouth District Council Outdoor Sign System Manual, dated 2006], shall be erected at agreed intervals along the esplanade strip to identify the extent of allowed public access.

14. Ecology

- 14.1 Effective fish passage shall be restored at the un-culverted farm track crossing in the eastern gully
- 14.2 The perched farm culvert at the confluence of the eastern and western gullies shall be made passable for native migratory fish.
- 14.3 Conditions 14.1 and 14.2 shall be completed within three (3) months from the date of issue of s223 certificate for Stage 1.
- 14.4 Revegetation of the gullies shall be in accordance with the documents specified in condition 6.4 and shall be carried out before house site and roading earthworks begin.
- 14.5 The occupiers and owners of Lots 1-15 are limited from keeping cats or mustelids on Lots 1-15.

This condition shall be imposed by way of a consent notice registered against the new computer freehold registers for Lots 1-16 of the subdivision of Part Section 14 Oakura District, Part Section 13 Oakura District, Lots 3 and 4 DP 336578, Lot 2 DP 400540 and Part Section 30 Oakura District.

- 14.6 That follow up monitoring of wetland birds (especially the Spotless Crane) by a suitably qualified and experienced ecologist shall be undertaken at the consent holder's expense after the proposed subdivision works and residential development has taken place and into the future. The results of this monitoring shall be forwarded annually to NPDC and TRC for a period of 5 years from issue of s223 certificate.

14.7 Goldstripe Gecko shall be monitored by a suitably qualified and experienced ecologist at the consent holder's expense on-site within the proposed revegetation plantings and proposed covenant and esplanade areas using a mixture of night-time spotlighting surveys, and the placement of artificial refuge stations. The results of this monitoring shall be forwarded annually to NPDC and TRC for a period of 5 years from issue of s223 certificate.

15. Catchment drainage

15.1 The consent holder shall either:

- (a) Undertake a full catchment analysis demonstrating that the proposed subdivision (on both stages) will not create any flooding in the catchment downstream of the subdivision; or
- (b) Undertake an analysis of those catchments south of South Road (SH45) that are within or that pass through the area covered by the subdivision (both stages) demonstrating that a hydraulically neutral surface discharge from the development can be achieved.

15.2 For either option outlined in condition 15.1, the applicant shall provide a report from a suitably qualified and experienced person that provides catchment calculations, and design, calculations and programming for any works necessary to achieve the stated outcome (ie. not creating downstream flooding) for condition 15.1(a) or demonstrating a hydraulically neutral surface discharge for condition 15.1(b)), relative to the development stages.

15.3 Where the report required by condition 15.2 determines that no works or no further works are necessary for the purposes of stormwater control from the subdivision:

- (a) an engineers report shall be provided to the Council that demonstrates the existing culvert and detention dam are structurally sound and appropriate for the catchment; and
- (b) An easement in gross for flood protection shall be created in favour of the Council over any bund, pipe or spillway.

15.4 Where the report required by condition 15.2 determines that works are necessary for stormwater control:

- (a) any works identified as being required in the report as part of stage 1 shall be completed in accordance with the approved plans, per condition 15.2.

(b) Any works required for stormwater control in stage 2 that encroach into stage 1 shall be completed as part of stage 1 unless appropriate easements are put in place that allow the works to be undertaken during those later stages.

(c) An easement in gross for flood protection shall be created [in favour of the Council over any bund, pipe, and spillway and to impound water in the ponding area and for its point of discharge.

16. Access to the catchment works and esplanade strip

16.1 For stage 1 the access leg between Lots 21 and 22 and adjoining Lot 23 (as shown on the scheme plan as a purple line) shall extend to connect to the new road (lot 28).

16.2 The consent holder shall construct the access leg as follows:

(a) The access leg shall be 5m in legal width

(b) The access shall be constructed to the Councils Code of Practice for an urban right of way, dated 1997.

(c) Any cut batters required to construct the access between Lots 22 and 23 shall be located outside the access.

(d) A 1m grass strip shall be provided on either side of the sealed access.

(e) A slip rail shall be installed at the southern end of the access to restrict vehicle access.

(f) Trail Markers, as per the NPDC Outdoor Sign System Manual, 2006, shall be erected at agreed intervals along the access to identify the extent of allowed public access.

17. Engineering Plans, Supervision and Certification

17.1 Detailed engineering plans, calculations, and specifications for the sewer, water reticulation, right of way, stormwater reticulation, catchment drainage, earthworks, new road, road upgrading, pedestrian accessways shall be submitted to and approved by the council prior to the commencement of works.

17.2 All work shall be constructed under the supervision of a suitably qualified and experienced person. This person shall certify that all

the work has been constructed to the approved engineering plan/Code of Practice 1999 requirements.

- 17.3 Supervision, certification of the works and the provision of As-Built plans shall be as prescribed in section 1.5 of NZS4404:2004 Land Development and Subdivision Engineering.
 - 17.4 A schedule of vested assets detailing cost and a brief description within the categories of roading, sewer, water, access and stormwater shall be provided to the Council.
 - 17.5 All fill greater than 1.5 metres in depth that has been identified as able to be built on is to have a certificate in the form of schedule 2A of part 2 NZS4404.
 - 17.6 An approved Traffic Management Plan shall be submitted to the Council for approval prior to commencement of any works within the road reserve.
 - 17.7 A defects liability period of six months from the issue of s224 certificate and from the completion and release of any bonded works shall apply for assets to vest. A bond amounting to 5% of the value of the work for the first \$200,000 and 2.5% of the remaining value of the maximum bond value of \$200,000 is required for the duration of the defects liability period.
18. Water Services
- 18.1 An individual water connection incorporating a manifold assembly shall be provided for all Lots 1 -15 within the development.
 - 18.2 Calculations and engineering plans relating to water services shall be submitted to the Council for approval prior to construction. Designs for water services shall incorporate water demand and peak flow data.
 - 18.3 All new reticulation shall be designed and constructed to the requirements of:
 - (a) The NPDC Consolidated Bylaws 2000 Part 16 Water Supply.
 - (b) The Council's Water Reticulation Code of Practice requirements.
 - (c) The New Zealand Fire Services "Code of Practice for Fire Fighting Water Supplies SNZ PAS 4509:2008" requirements.

- (d) the engineering plans approved by the Council under condition 17.
- 18.4 Confirmation that there are no cross boundary water connections shall be provided to the Council.
- 18.5 An application, together with the appropriate fee, shall be made to the Council for a new water connection from each allotment, and upon approval the connection is to be installed by a Council approved contractor at the applicant's cost. The consent holder shall provide the Council with an as built plan of all connections from the approved contractor.
- 18.6 The existing water main located within Lots 6 -9 and the new road shall be replaced with a 200mm ID water main
- (i) An easement in gross shall be created over this new water main in favour of the Council
- 18.7 An individual restricted rural water connection shall be provided for Lots 1 – 15.
- (i) To achieve this connection a booster pump station (duty and stand-by pumps) to the Council's Water Reticulation Code of Practice requirements as required to serve Lots 1 – 5.

Advice Note: As the pump station will be vested in the Council it is intended to service an area greater than required for this subdivision. Prior to the design of the pump station the consent holder's engineers shall discuss the pump size required for this larger area with the Council's Water and Waste team.

- 18.8 Fire hydrants shall be provided on the water mains serving Lots 6 – 15
- (i) If the requirements referred to in condition 18.3(c) for the provision of fire fighting water cannot be met then condition 18.8(ii) shall apply.
 - (ii) Domestic sprinklers shall be installed in working order at all dwellings on an ongoing basis.
- 18.9 On-site storage shall be provided for fire water supply on Lots 1 -5

- (i) The onsite storage incorporating a ball float valve or similar and an appropriate air gap shall be connected to the rural water connection
- (ii) The vehicle access to the on-site storage shall be hard surfaced.

19. Easements

Easements shall be set out in an instrument of transfer and shown on the survey plan, for the following:

- Right of way and water supply connection (if applicable).
- Easement in gross for catchment drainage works
- Sewer
- Water
- Secondary and overland flow paths
- Easement in gross access leg (right of way)

20. Legal Protection of Wairau Stream Bush Area and Pā site area

- 20.1 A QEII covenant shall be entered into to legally protect in perpetuity the area of native forest remnant and wetlands within the western and eastern gullies, the Pā site within the western gully and the stream margins as shown shaded in green on the Richard Bain Landscape Architect Plan dated 02.12.10.
- 20.2 The QEII Covenant shall be registered on the pertinent Computer Freehold Register(s) prior to approval of the survey plan by the council.
- 20.3 A copy of the registered QEII covenant shall be provided to the Council.
- 20.4 The covenant area shall be fully fenced with standard 8-wire post and batten farm fence, to a height of between 1.1-1.2m, which will effectively control most dogs.
- 20.5 The covenant shall prohibit dogs from the covenanted area.
- 20.6 In the event that the QEII Trust requires more onerous terms than set out in condition 20.4, those more onerous requirements shall prevail.

21. Sewer Services

- 21.1 A connection to the Council's reticulated sewerage system shall be provided for Lots 1 -15 within the development;
- (i) Alternatively Lots 1 – 5 may be serviced with on-site treatment and disposal system to the satisfaction of the NPDC and the Building Code.
- 21.2 All new reticulation shall be designed and constructed to the requirements of:
- (a) The Building Act 2004,
- (b) The NPDC Consolidated Bylaws 2000 Part 15 Wastewater Drainage,
- (c) The Council's Sanitary Sewer Code of Practice 1997.
- 21.3 Capped sewer connections may be installed to serve Stage 2.
- 21.4 Easements in gross in favour of the Council shall be provided over any 150mm dia sewer mains located within private property.

22. Road to vest:

- 22.1 The new road, Lot 28, shall be shown as a lot on the survey plan and shall vest in the Council as road.
- 22.2 The new road shall be designed and constructed to the Council's Roading Code of Practice 1997 requirements and include, earthworks, road pavement, stormwater at the developer's cost.
- 22.3 The new road shall have a road reserve width of 20m with a seal width of 6m. A temporary turning head shall be constructed at the end of the road. There shall be no kerb and channel, streetlights or footpaths except where specifically required for traffic hazard and traffic control.
- 22.4 All services including telephone and electric power cables required to service the subdivision shall be laid underground.
- 22.5 The design and construction of the road shall as far as practicable be integrated with the rural landscape. Consideration shall be given to varied carriageway (cross section and layout) design and regard given to pedestrian and bridle paths.

23. Earthworks

- 23.1 The subdivider shall appoint a suitably qualified engineer to design, control and certify all earthworks.
- 23.2 All uncompacted fill shall be identified and shall be shown on the final plans and be subject to an ongoing condition pursuant to section 221 if required by engineer as a result of condition 10.3.
- 23.3 The area of exposed soils and the length of time it remains exposed during land modification shall be limited and any areas excavated associated with the subdivision development (e.g. roading or stormwater) shall be re-grassed or built over (e.g. road) as soon as practicable after earthworks are complete.
- 23.4 The amount of cut and fill shall be kept at the lowest possible level in achieving the necessary cut to fill balance.
- 23.5 Batters, where required, shall be prepared at a 1m vertical and 3m horizontal gradient and shall be planted/seeded at the time of construction unless otherwise agreed by Manager Consents or his/her nominee. Excavated material shall be spread evenly across the existing contour or removed from site. If the creation of platforms for lawns etc are desired the batters shall be integrated with the adjacent natural contours at a gradient of no steeper than 1 in 6.

24. Limitations as to Further Subdivision

- 24.1 The balance area that incorporates Stage two, Lots 16 -27, shall be shown as a lots on the plan separate from the balance allotment (Lot 29)
- 24.2 Lot 29 shall not be further subdivided while the land remains in the Rural Environment Area.

This condition shall be imposed by way of a consent notice registered against each of the new computer freehold registers for the area of Lot 29 of Part Section 14 Oakura District, Part Section 13 Oakura District, Lots 3 and 4 DP 336578, Lot 2 DP400540 and Part Section 30 Oakura District

25. Bulk, Location and Design Controls

- 25.1 The number of habitable buildings on Lots 1 -15 shall be limited to one (1) per lot.

- 25.2 The maximum height of a habitable building on Lots 1 -15 shall be limited to single storey i.e. 4.9 metres from existing ground level. The levels shall be specified in Taranaki Datum 1970.
- 25.3 The materials to be used for fencing around the boundaries of Lots 1-15 shall be limited to materials and design rural in character. That is no solid fences or concrete structures/pillars, have low reflectivity values (less than 35%) and be finished in naturally recessive colours.
- 25.4 Any building on Lots 1 -15 shall be limited in terms of how the exterior surfaces (roof and walls) are finished including the roof, recessive (shades rather than tints) and colours to have reflectivity values of between 0 and 35% shall be used. Building materials used should be compatible to the rural setting.
- 25.5 The siting of buildings on Lots 1 – 15 shall be setback the following distances. These setbacks shall be marked on the survey plan.
- Lots 1 – 5: 30m from Wairau Road and side boundaries
 - Lots 6 – 15: 20m from new road boundary and Wairau Road and 10m from side boundaries
- 25.6 Driveways to Lots 1 – 15 shall be tar sealed or metalled. No concrete driveways shall be permitted unless they consist of black concrete with 4% oxide.
- 25.7 Lots 1 – 15 shall not be further subdivided
- These above conditions set out in condition 25 shall be imposed by way of a consent notice registered against each of the new computer freehold registers of the subdivision of Part Section 14 Oakura District, Part Section 13 Oakura District, Lots 3 and 4 DP 336578, Lot 2 DP400540 and Part Section 30 Oakura District
- 25.8 Water tanks for firefighting required on Lots 1-5 shall be constructed of recessive coloured materials and/or located to avoid visibility from Wairau Road.
- 25.9 Any habitable building on Lot 5 shall be setback minimum of 10m from the boundary with Lot 1 DP 17721 which contains the Oakura Gas Delivery Facility.

26. Access

- 26.1 A 3m wide benched and grassed walking track with a maximum gradient of 1:12 shall be constructed from Wairau Road along the esplanade strip to the South Road.
- 26.2 A gate with a stile/kissing gate or a slip rail shall be installed at the Wairau Rd end of the track
- 26.3 Styles shall be installed over the fence at South Rd and the internal farm fences along the track alignment
- 26.4 A metalled path shall be constructed along the shoulder of South Road from Wairau Rd to the esplanade strip.
- 26.5 Lot 23 shall be fenced with a post and 7 wire fence
- 26.6 An easement in gross for right of way (access leg) shall be in accordance with the purple line on the plan titled 'Oakura Farm Park Ltd, McKie Subdivision, Stormwater Network Plan' drawing nu: 09379-11-05 shall be created in favour of the Council. This shall only be provided from the edge of the road as described in condition 14.

27. Archaeological/ Waahi Tapu Sites

- 27.1 Prior to any earthworks taking place on the site the consent holder must apply to modify any potential archaeological sites under section 12 of the Historic Places Act 1993.
- 27.2 A management plan shall be compiled by a suitably qualified and experienced archaeologist outlining measures intended to the long term conservation of the archaeological site located on proposed Lot 29 as stated in the report *Archaeological Survey and Assessment of the McKie Subdivision at Wairau Road, Oakura* prepared by Ivan Bruce and submitted to the Manager Consents and/or nominee for approval.

28. Landscaping for Lots 1 - 26

- 28.1 Native vegetation shall be established and maintained along the northern boundary of Lots 3 and 5 as per the Planting Strategy and Photo Montage (prepared by Richard Bain Landscape Architects received by Council on 13th October 2010).
- 28.2 Native riparian revegetation shall be established and maintained in the southern corner of Lot 1 (as it relates to the associated tributary and its banks).

- 28.3 The area of bush on Lots 1 and 2 shall be fenced at a minimum standard of a permanent one wire electric fence.
- 28.4 Prior to 223 approval a planting plan and maintenance programme shall be submitted to the Council for approval.
- 28.5 The planting plan and maintenance programme shall specify the quantities, species, size (PB grade) and location of proposed planting and shall ensure the ongoing release of plants from weed and grass infestation, plants that are dead, and possum control.
- 28.6 Certification from a suitably qualified and experienced independent professional person that the revegetation and rehabilitation planting has been undertaken in accordance with the planting plan and maintenance programme shall be provided to the satisfaction of the Manager Consents or his/her nominee.
- 28.7 The respective owners of each lot shall on a continuing basis, take all reasonable steps to maintain, preserve and protect the established vegetation in a good and healthy condition and shall in the event of loss or destruction of vegetation for any reason, replace and replant such vegetation in accordance with the planting plan to the satisfaction of Council.

This condition shall be imposed by way of a consent notice registered against each of the new computer freehold registers for Lots 1 - 26 of the subdivision of Part Section 14 Oakura District, Part Section 13 Oakura District, Lots 3 and 4 DP 336578, Lot 2 DP400540 and Part Section 30 Oakura District

29. Planting plan for Lot 29

- 29.1 Revegetation and enhancement planting shall be undertaken in accordance with the application, amended report and hearing evidence and the supporting information contained therein.
- 29.2 Certification from a suitable qualified and experienced independent professional person that the revegetation and rehabilitation planting has been undertaken in accordance with the planting plan and maintenance programme shall be provided to the satisfaction of the Manager Planning or his/her nominee.
- 29.3 The owner of Lot 29 shall on a continuing basis, take all reasonable steps to maintain, preserve and protect the vegetation established in accordance with Condition 28 above.

In particular the owner of Lot 29 shall:

- Within 20 working days of the fifth anniversary of the date on which the Section 224(c) certificate is issued, submit to Council a report from a suitably qualified and experienced independent professional person confirming that the vegetation is being appropriately maintained, preserved and protected;
- Thereafter continue to maintain, preserve and protect the vegetation in good and healthy condition;
- In the event of loss or destruction of vegetation for any reason, replace and replant such vegetation in accordance with the planting plan to the satisfaction of Council.

- 29.4 Shelter and screen planting along State Highway 45 road frontage shall be prohibited unless otherwise agreed with the Manager Consents or his/her nominee.
- 29.5 An earth bund covered with planting shall be constructed in front of the council water tanks with the planting to extend to Wairau Road.
- 29.6 The owner of Lot 29 shall on a continuing basis take all reasonable steps to maintain, preserve and protect the existing vegetation within Lot 29 in a good and healthy condition. In the event in loss or destruction of vegetation for any reason replace and replant such vegetation in accordance with the Planting Plan to the satisfaction of Council.
- 29.7 The consent holder shall enter into a bond to the assessed value of the physical works required by Conditions 29.1 – 29.6 The bond shall apply for a period of five years.
- 29.8 Prior to the commencement of revegetation work the applicant shall submit to the Council a formal agreement between NZHPT, Nga Mahanga A Tairi, QEII and the NPDC that enables the fulfilment of condition 29.1 and 29.6 including ongoing monitoring.
- 29.9 The planting plan and maintenance programme shall specify the quantities, species, size (PB grade) and location of proposed planting and shall ensure the ongoing release of plants from weed and grass infestation, plants that are dead, and possum control.

29.10 Certification from a suitably qualified and experienced independent professional person that the revegetation and rehabilitation planting has been undertaken in accordance with the planting plan and maintenance programme shall be provided to the satisfaction of the Manager Consents or his/her nominee.

29.11 The respective owners of lot 29 shall on a continuing basis, take all reasonable steps to maintain, preserve and protect the established vegetation in a good and healthy condition and shall in the event of loss or destruction of vegetation for any reason, replace and replant such vegetation in accordance with the planting plan to the satisfaction of Council.

This condition shall be imposed by way of a consent notice registered against the new computer freehold registers for Lot 29 of the subdivision of Part Section 14 Oakura District, Part Section 13 Oakura District, Lots 3 and 4 DP 336578, Lot 2 DP400540 and Part Section 30 Oakura District

30. The consent holders shall pay the council's costs of any monitoring that may be necessary to ensure compliance of the use with all the above conditions.

31. Road

Lot 30 shall be shown as a lot on the plan and shall vest in the Council as road.

32. Surrender of resource consent sub10/45241

The consent holder shall apply to Council to surrender resource consent sub10/45241 prior to lodgement of section 223 for this application.

Advice Notes:

1. *Archaeological/Waahi Tapu Sites:*

A Pa site has been identified as being located within Lot 29:

- (a) *The Historic Places Act 1993 (HPA) provides for the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand. Under Section 2 of the HPA, an archaeological site is defined as a place associated with pre-1900 human activity, where there may be evidence relating to the history of*

New Zealand. Evidence of archaeological sites may include, oven stones, charcoal, shells, ditches, banks, pits, terraces, stone walls, building foundations, artefacts of Maori or European origin or burials

- (b) *There is “reasonable cause” to suspect that an archaeological site, may be modified, damaged or destroyed in the course of any activity associated with this proposal (e.g. earthworks, landscaping, fencing), an authority from the NZ Historic Places Trust must be obtained for the work to proceed lawfully. An authority is required for such work whether or not the land on which an archaeological site may be present is designated, or a Resource or Building Consent has been granted, or the activity is permitted in a Regional or District Plan.*
- (c) *In the event that an archaeological site is encountered or artefacts uncovered during works for the proposed development, work shall cease immediately and the NZ Historic Places Trust and Nga Mahanga a Tairi shall be notified so that an appropriate assessment can be made and advice given accordingly.*
- (d) *The provisions of the Protected Objects Act apply in the event of the discovery of any artefacts.*
- (e) *In the event that human remains or Koiwi are discovered work shall cease immediately and the New Zealand Historic Places Trust, NZ Police and Nga Mahanga A Tairi shall be notified so that an appropriate action can be taken and advice given accordingly.*

2. Development Contribution

A Development Contribution of \$45,494.18 plus GST for the off-site services for Lots 1-15 (stage 1) is payable by the applicant and will be invoiced separately. The release of this subdivision under section 224 of the RMA will not be approved until this payment is made.

Stage 2 (Lots 16 -27)

- 33. All buildings shall meet the standards specified in the New Plymouth District Plan for a permitted activity relative to the new boundaries.
- 34. The consent holder shall ensure that any wastewater disposal system serving an allotment lies wholly within the boundaries of that allotment.

35. Landscaping

- 35.1 Lots 16-26 shall contain 10% site coverage of native tree plantings

This condition shall be imposed by way of a consent notice registered against each of the new computer freehold registers for Lots 16-26 of the subdivision of Part Section 14 Oakura District, Part Section 13 Oakura District, Lots 3 and 4 DP 336578, Lot 2 DP 400540 and Part Section 30 Oakura District.

36. Building Platform

- 36.1 An inspection and a report shall be carried out of soil compatibility by a suitably qualified person and submitted to the council to confirm the suitability of Lots 16 – 26 for on-site stormwater and wastewater disposal. Where it is demonstrated that on-site disposal of stormwater and/or wastewater is not suitable, then an alternative method of disposal shall be identified and made available.
- 36.2 A report shall be provided from a suitably qualified person to confirm that there is available within Lots 16 -26 a stable flood free building platform suitable for building foundations in accordance with the requirements of the New Zealand Building Code – Acceptable Solution B1/AS4 of Approved Document B1/4; Structure Foundations.
- 36.3 Recommendations in these reports shall, if appropriate, be subject to a Consent Notice under Section 221 of the Resource Management Act 1991.
- 36.4 Secondary stormwater flow paths shall be shown on a plan and clear of building platforms

37. Bulk, Location and Design Controls

- 37.1 The number of habitable buildings on Lots 16 - 26 shall be limited to one (1) per lot.
- 37.2 The maximum height of a habitable building on Lots 16 -26 shall be limited to single storey i.e. 4.9 metres from existing ground level. The levels shall be specified in Taranaki Datum 1970.
- 37.3 The materials to be used for fencing around the boundaries of Lots 16 - 26 shall be limited to materials and design rural in character. That is no solid fences or concrete structures/pillars, have low reflectivity values (less than 35%) and be finished in naturally recessive colours.

- 37.4 Any building on Lots 16 -26 shall be limited in terms of how the exterior surfaces (roof and walls) are finished, including the roof, recessive (shades rather than tints) and colours to reflectivity values of between 0 and 35% will be used. Building materials used should be compatible to the rural setting.
- 37.5 The siting of buildings on Lots 16 -26 shall be setback the following distances and shall be defined on the survey plan:
- 20m from new road boundary and Wairau Road; and
 - 10m from side boundaries.
- 37.6 Driveways to Lots 16 – 26 shall be tar sealed or metalled. No concrete driveways unless they are black concrete with 4% oxide.
- 37.7 Lots 17 -21 shall be 10m setback from the fence line of Lot 29 (QEII area).
- 37.8 Lots 16 -26 shall not be further subdivided

This condition shall be imposed by way of a consent notice registered against each of the new computer freehold registers of the subdivision of Part Section 14 Oakura District, Part Section 13 Oakura District, Lots 3 and 4 DP 336578, Lot 2 DP400540 and Part Section 30 Oakura District

38. Earthworks

- 38.1 The subdivider shall appoint a suitably qualified engineer to design, control and certify all earthworks.
- 38.2 All uncompacted fill shall be identified and shall be shown on the final plans and be subject to an ongoing consent notice pursuant to section 221.
- 38.3 The area of exposed soils and the length of time they remain exposed during land modification shall be limited and any areas excavated associated with the subdivision development (e.g. roading or stormwater) shall be re-grassed or built over (e.g. road) as soon as practicable after earthworks are complete.
- 38.4 The amount of cut and fill shall be kept at the lowest possible level in achieving the necessary cut to fill balance.
- 38.5 Batters, where required, shall be prepared at a 1m vertical and 3m horizontal gradient and shall be planted/seeded at the time of

construction unless otherwise agreed by Manager Consents or his/her nominee. Excavated material shall be spread evenly across the existing contour or removed from site. If the creation of platforms for lawns etc are desired the batters shall be integrated with the adjacent natural contours at a gradient of no steeper than 1 in 6.

39. Water Services

- 39.1 An individual water connection incorporating a manifold assembly shall be provided for all Lots 16 -26 within the development.
- 39.2 Calculations and engineering plans relating to water services shall be submitted to the Council for approval prior to construction. Designs for water services shall incorporate water demand and peak flow data.
- 39.3 All new reticulation shall be designed and constructed to the requirements of:
- (a) The NPDC Consolidated Bylaws 2000 Part 16 Water Supply.
 - (b) The Council's Water Reticulation Code of Practice requirements.
 - (c) The New Zealand Fire Services "Code of Practice for Fire Fighting Water Supplies SNZ PAS 4509:2008" requirements.
 - (d) the engineering plans approved by the Council.
- 39.4 Confirmation that there are no cross boundary water connections shall be provided to the Council.
- 39.5 An application, together with the appropriate fee, shall be made to the Council for a new water connection, and upon approval the connection is to be installed by a Council approved contractor at the applicant's cost. The consent holder shall provide the Council with an as built plan of all connections from the approved contractor.

40. Easements

Easements shall be set out in an instrument of transfer and shown on the survey plan, for the following:

- Secondary and overland flow paths

41. Sewer services

- 41.1 A connection to the Council's reticulated sewerage system shall be provided for Lots 16 -26 within the development.
- 41.2 All new reticulation shall be designed and constructed to the requirements of:
 - (a) The Building Act 2004,
 - (b) The NPDC Consolidated Bylaws 2000 Part 15 Wastewater Drainage,
 - (c) The Council's Sanitary Sewer Code of Practice 1997.
- 41.4 Easements in gross in favour of the Council shall be provided over any 150mm dia sewer mains located within private property

42. Road to vest:

- 42.1 Lot 27 shall be shown as a lot on the plan and shall vest in the Council as road. Lot 27 shall include the portion of the access leg between Lots 21 and 22.
- 42.2 The new road shall be designed and constructed to the Council's Rooding Code of Practice 1997 requirements and include, earthworks, road pavement, stormwater
- 42.3 The new road shall have a road reserve width of 20m with a seal width of 6m. There shall be no kerb and channel or footpaths except where specifically required for traffic hazard and traffic control.
- 42.4 All services including telephone and electric power cables required to service the subdivision shall be laid underground. .
- 42.5 The design and construction of the road shall as far as practicable be integrated with the rural landscape. Consideration shall be given to varied carriageway (cross section and layout) design and regard given to pedestrian and bridle paths.

43. Engineering Plans, Supervision and Certification

- 43.1 Detailed engineering plans, calculations, and specifications for the sewer, water reticulation, right of way, stormwater reticulation,

catchment drainage, earthworks, new road, road upgrading, pedestrian accessways shall be submitted to and approved by the council prior to the commencement of works.

- 43.2 All work shall be constructed under the supervision of a suitably qualified and experienced person. This person shall certify that all the work has been constructed to the approved engineering plan/Code of Practice requirements.
- 43.3 Supervision, certification of the works and the provision of As-Built plans shall be as prescribed in section 1.5 of NZS4404:2004 Land Development and Subdivision Engineering.
- 43.4 A schedule of vested assets detailing cost and a brief description within the categories of roading, sewer, water, access and stormwater shall be provided to the Council.
- 43.5 All fill greater than 1.5 metres in depth that has been identified as able to be built on is to have a certificate in the form of schedule 2A of part 2 NZS4404.
- 43.6 An approved Traffic Management Plan shall be submitted to the Council for approval prior to commencement of any works within the road reserve.
- 43.7 A defects liability period of six months from the issue of s224 certificate and from the completion and release of any bonded works shall apply for assets to vest. A bond amounting to 5% of the value of the work for the first \$200,000 and 2.5% of the remaining value of the maximum bond value of \$200,000 is required for the duration of the defects liability period.

44.0 Ecology

- 44.1 Revegetation of the gullies shall be in accordance with the documents specified in condition 6.4 and shall be carried out before house site and roading earthworks begin.
- 44.2 The occupiers and owners of Lots 16-26 are limited from keeping cats or mustelids on Lots 16-26.

This condition shall be imposed by way of a consent notice registered against the new computer freehold registers for Lots 16-26 of the subdivision of Part Section 14 Oakura District, Part Section 13 Oakura

District, Lots 3 and 4 DP 336578, Lot 2 DP 400540 and Part Section 30 Oakura District.

Advice Notes:

1. *Archaeological/Waahi Tapu Sites:*

A Pa site has been identified as being located within Lot 29:

- (a) *The Historic Places Act 1993 (HPA) provides for the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand. Under Section 2 of the HPA, an archaeological site is defined as a place associated with pre-1900 human activity, where there may be evidence relating to the history of New Zealand. Evidence of archaeological sites may include, oven stones, charcoal, shells, ditches, banks, pits, terraces, stone walls, building foundations, artefacts of Maori or European origin or burials*
- (b) *There is “reasonable cause” to suspect that an archaeological site, may be modified, damaged or destroyed in the course of any activity associated with this proposal (e.g. earthworks, landscaping, fencing), an authority from the NZ Historic Places Trust must be obtained for the work to proceed lawfully. An authority is required for such work whether or not the land on which an archaeological site may be present is designated, or a Resource or Building Consent has been granted, or the activity is permitted in a Regional or District Plan.*
- (c) *In the event that an archaeological site is encountered or artefacts uncovered during works for the proposed development, work shall cease immediately and the NZ Historic Places Trust and Nga Mahanga a Tairi shall be notified so that an appropriate assessment can be made and advice given accordingly.*
- (d) *The provisions of the Protected Objects Act apply in the event of the discovery of any artefacts.*
- (e) *In the event that human remains or Koiwi are discovered work shall cease immediately and the New Zealand Historic Places Trust, NZ Police and Nga Mahanga A Tairi shall be notified so that an appropriate action can be taken and advice given accordingly.*

2. *Development Contribution*

A Development Contribution of \$33,760.44 plus GST for the off-site services for Lots 16-26 (stage 2) is payable by the applicant and will be invoiced

separately. The release of this subdivision under section 224 of the RMA will not be approved until this payment is made.

Issued this 8th day of March 2011

A handwritten signature in black ink that reads "Helen Tobin". The signature is written in a cursive style with a large initial 'H' and a stylized 'T'.

Helen Tobin
Independent Hearings Commissioner

DM1118008