

BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL
INDEPENDENT HEARINGS COMMISSIONER

IN THE MATTER

of the Resource
Management Act
1991

AND

IN THE MATTER

of an application
under section 88
of the Act by
B,M,R Sim to the
New Plymouth
District Council to
undertake a
boundary change
and five-lot rural
subdivision, at 6 &
42 Leith Road,
Okato

OUTLINE OF SUBMISSIONS OF COUNSEL
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MAY IT PLEASE THE INDEPENDENT HEARINGS COMMISSIONER

Introduction

1. It is respectfully submitted that the subdivision proposal enables people to provide for their social and economic wellbeing and health and safety – but through the mitigation measures avoids, remedies, or mitigates any adverse effects that are potentially more than minor. The proposal will promote the sustainable management of natural and physical resources.
2. Whilst some smaller lots are being created for rural/residential purposes - the proposal involves the retention of a complying balance area in accord with the District Plan - and is not considered to negatively impact on the farming operation; hence the farming land resource will continue to be used for productive purposes¹. In addition, the applicant will ensure native riparian planting is established along two tributaries of the Katikara Stream on the property in conjunction with Nga Mahanga a Tairi Hapu / Te Kahui o Taranaki Iwi (as per consultation and consent conditions offered) – being a further positive outcome in this case².

Issues and Effects

3. The critical issues requiring determination in this case are, whether or not granting consent to the proposed (discretionary) activity will promote the sustainable management of natural and physical resources - the purpose of the Resource Management Act 1991 ("RMA"); and, whether or not granting

¹ See paras 62-64, 108, Officer's s.42A Report dated 16 May 2022 ("Officer's Report")

² Officer's Report, paras 72-75

consent will be consistent with the relevant provisions under the relevant statutory instruments³.

4. It is respectfully submitted that the result of this case should be one that the Commissioner believes best achieves the purpose of the RMA: the sustainable management of natural and physical resources as defined in s. 5(2) RMA.
5. Surrounding neighbours, and iwi, deemed potentially affected by the proposal, have given written approval to the application (in terms of s. 104(3)(a)(ii) RMA) - no submissions were lodged in opposition to the application following public notification⁴.
6. Joint witness expert conferencing was held between the expert's being called by the applicant in this case and the Council's expert witnesses on 26 May 2022, which regrettably did not resolve the Council's expert witnesses' outstanding issues.
7. In summary, following that conferencing, the main matter of disagreement is the level of effects of the subdivision on rural character and amenity.
8. It is submitted that when considering those issues in this case it is important to take account of the following:
 - That farm buildings and a second dwelling could be erected as of right on the subject property, and these could, for example, contribute to a reduction in

³ Falling for consideration under s. 104(1)(b) RMA

⁴ See Primary Evidence Zen Gerente, paras 19-24; Supplementary Evidence Zen Gerente, paras 14, 15, Appendix B

spaciousness and open space. In addition, planting could be undertaken as of right on the subject property that could also reduce the spaciousness and views. Therefore, while the proposal may reduce some aspects of spaciousness and open space (to a very limited extent in my respectful submission) – other structures permitted as of right could also contribute to such a reduction (and would not be subject to the same design controls/mitigation measures proposed);

- The buildings and dwellings already existing on site (and some accessways and vegetation) that are part of the existing working rural environment - and part of the character of that environment;
- The written approvals obtained; and
- The mitigation measures proposed.

Mitigation Measures Proposed

9. To address the issues and effects in this case the applicant has proposed a range of mitigation measures throughout the application process. Experts from relevant disciplines have assisted the applicant with the design and location of the proposed subdivision and landscaping etc – and mitigation measures have been proposed in a careful and thorough manner to address concerns raised by the Council's expert witnesses, as far as practicable.

10. The Court whenever it considers adverse effects, does so having regard to their mitigated version: KPF Investments Limited v Marlborough District Council⁵.

⁵[2014] NZEnvC 152, at [18]

11. As a general summary, the mitigation measures proposed in the application⁶, applicant's evidence and proposed consent conditions include:

- Design controls such as colour/light reflectivity controls on all walls and roofs of all buildings (dwellings/habitable and outbuildings/non-habitable) and water tanks;
- Bulk, location and design controls - including reduced height;
- Limitation on the number of habitable dwellings per lot;
- Lighting design controls;
- Large balance area (lot 6) of 41.43ha maintaining the open character of the rural environment, spaciousness and the ability to continue to productively farm that area;
- Rural in character fencing design controls;
- Cut and fill restrictions and controls;
- No build zone within 5m from the highest point of the knoll (within proposed lot 3); and
- Retention (and replacement if necessary) of existing vegetation (including roadside hedge) - and comprehensive landscaping around various parts of the sites (e.g., driveways) and road boundary pursuant to a Landscape Mitigation Plan.

12. It is submitted that this combination of measures - together with setback requirements in the District Plan (as noted in Ms. Gerente's evidence⁷) - will appropriately avoid, remedy or

⁶ Resource Consent Application/Assessment of Effects Juffermans Surveyors Limited, 7 May 2021 ("the Application/AEE"); see also relevant further information requests and responses thereafter including Landscape and Visual Impact Assessment, Bluemarle, 25 July 2021 ("LVIA")

⁷ At para 55

mitigate any adverse effects of the activities on the environment; and will lead to better environmental outcomes than could otherwise be achieved under the relevant permitted activity thresholds of the District Plan; ultimately promoting sustainable management.

13. The finer detail of those mitigation measures is discussed in the evidence presented for the applicant; based on that evidence the adverse effects will be no more (or less) than minor.

Evidence

14. The applicant will call evidence from the following expert witnesses:

Expert Witnesses

- (a) Richard Bain – Landscape Architect, Bluemarble. Mr. Bain prepared the Landscape & Visual Impact Assessment Report, 25 July 2021 (LVIA) – and provides independent expert evidence about landscape context and character; effects on amenity, landscape (including visual and cumulative effects), rural character and the quality of the environment, and mitigation (including responses to issues raised by Ms. Griffith and in the Officer's Report).

For all the reasons provided in his expert opinion, the proposal will have negligible adverse effect on amenity values, rural landscape and character (including visual and cumulative effects).

In arriving at his conclusions, some of the key factors in support of Mr. Bain's views in my submission are as follows:

- The large balance lot 6 in excess of 40ha - double the size required for a minimum balance lot under the District Plan, (as noted in Ms Gerente's evidence⁸); including the open space of that balance area and the open space between the other proposed lots;
- Lot 6 will continue to be managed as a productive farming unit upon subdivision;
- Farm animals and associated rural activity and pasture will be visible around all lots, thereby retaining spaciousness and maintaining rural character and amenity typical in the area;
- Lot 1 is relatively large and is separated from the other small lots⁹ - and has potential to be used for small rural productive activity¹⁰;
- The grouping of houses (lots 2 and 3) that forms a cluster with lot 5 - consistent with the Council's Rural Subdivision & Development Guidelines (2012)¹¹;
- The presence of other smaller sites adjacent to the applicant's property and other dwelling houses in close proximity – providing context and illustrating landscape change (the proposal being similar landscape change in type, scale and extent)¹²;
- The site is not special or distinctive – the proposal maintains elements of existing landscape character such as roadside paddocks and hedge – and new lots and

⁸ At para 89

⁹ Evidence Richard Bain, para 40

¹⁰ Primary Evidence Zen Gerente, para 62

¹¹ Ibid

¹² Evidence Richard Bain, para 20

dwelling will be legible as familiar elements of landscape change in a working rural environment¹³;

- It is a large-scale landscape, and the proposal occupies a small geographical area. Its context and scale are well able to be absorbed into the landscape¹⁴;
- Relatively low extent of subdivision in the area (meaning the capacity for change is nowhere near a point where the area's character is threatened)¹⁵;
- Existing dwellings and/or buildings (lots 4, 5 and 6), and some existing vegetation (including roadside hedge);
- Lot 5 is setback at least 150m from the road¹⁶;
- The lack of views into the sites from most surrounding locations¹⁷;
- All of the mitigation measures recommended;
- All of the written approvals provided (by potentially affected parties).

In Mr Bain's view, the Council's expert witnesses have unduly emphasised potential adverse effects that will not be experienced by neighbouring properties (or those neighbouring property owners have provided written approvals in the context of s. 104(3)(a)(ii)) – or road users¹⁸.

In my respectful submission he is correct for all of the reasons provided in all of the evidence for the applicant and these legal submissions.

¹³ Evidence Richard Bain, para 21

¹⁴ Evidence Richard Bain, para 32

¹⁵ Evidence Richard Bain, para 33

¹⁶ Evidence Richard Bain, para 30

¹⁷ Evidence Richard Bain, paras 25-28

¹⁸ Evidence Richard Bain, para 45

- (b) Martha Dravitski – Landscape Architect, Juffermans Surveyors Limited. Ms. Dravitski has undertaken a peer review role in this case as set out in her evidence¹⁹.

On the facts and circumstances of this case (and certainly not in every case in my experience), Ms. Dravitski agrees with Mr Bain's assessment of landscape and character effects²⁰.

She notes that the retention of the large balance area of proposed lot 6 as a viable productive grazing property, overall, retains spaciousness and other elements of rural character – being the primary mitigating factor in this case. Further, because of the topography and size of proposed lot 1 - built development is not likely to be a prominent new feature in the landscape²¹.

In Ms. Dravitski's view,

"The close location and more typical rural lifestyle size of Proposed Lots 2 and 3 with 5 aligns with good design principles as noted in the Rural Subdivision and Development design guideline by

- Clustering built development,
- Optimising the balance of production orientated land within Proposed Lot 6,
- Limiting the effect of fragmentation in the landscape,
- Ensuring efficient resource use when creating access and servicing rural dwellings."²²

¹⁹ Evidence Martha Dravitski, para 5

²⁰ Evidence Martha Dravitski, para 27

²¹ Evidence Martha Dravitski, para 28

²² Evidence Martha Dravitski, para 29

Thereby minimising the impression of built development – and maintaining most of the property’s Leith Road frontage in open pasture²³.

She agrees with Mr Bain’s conclusions about visual effects on viewers along Leith Road, landscape change perceived from viewers driving along SH45, cumulative effects, and mitigation and consent conditions²⁴ for all of the reasons she provides.

Overall, based on careful consideration of all the relevant facts and circumstances of this case – Ms. Dravitski agrees with Mr Bain that, with mitigation, the proposal will not create significant adverse rural character or visual effects²⁵.

- (c) Zen Gerente – Independent Planning Consultant, Landpro Limited. Ms. Gerente did not prepare the application; but has reviewed all relevant materials and provides expert evidence about the proposal, the site and receiving and surrounding environment and key mitigation measures proposed and conclusions from the AEE and applicant’s evidence generally (expanded on in her evidence); planning issues; relevant regulatory framework; effects and written approvals; the Officer’s Report, and sustainable management under Part 2 RMA.

Overall Ms. Gerente’s view is that granting consent is consistent with the relevant objectives and policies of the District Plan, Proposed District Plan and Taranaki Regional

²³ Evidence Martha Dravitski, para 30

²⁴ Evidence Martha Dravitski, paras 33-41

²⁵ Evidence Martha Dravitski, para 42

Policy Statement and will promote the purpose and principles of the RMA²⁶.

While she is at odds with Ms. Buttimore's overall view in this context – in my submission that is because Ms. Buttimore does not accept the expert evidence of Mr. Bain and Ms. Dravitski in terms of the mitigation proposed.

Had the applicant accepted Ms. Griffith's peer review suggestions and "rectified"²⁷ the proposal accordingly – it is respectfully submitted that Ms. Buttimore would have come to a different conclusion as is evident from the Officer's Report²⁸.

Law/Legal Principles

Section 104(1) and Part 2 RMA

15. Section 104 (1) identifies the matters to which the consent authority must have regard, subject to Part 2;

[104 Consideration of applications

- (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:

²⁶ Primary Evidence Zen Gerente, paras 84-114

²⁷ Officer's Report, para 108

²⁸ See for example Officer's Report, paras 60, 61, 102 and 108

- (v) a regional policy statement or proposed regional policy statement:
- (vii) a plan or proposed plan; and]]
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

Part 2 RMA

16. "Subject to Part 2" – has recently been considered by the Court of Appeal in RJ Davidson Family Trust v Marlborough District Council²⁹. In short, the Court held that a consent authority may generally have regard to the provisions of Part 2 (depending on the circumstances of each case). In the present case - it is particularly appropriate to do so due to the Proposed District Plan (relevant in this case).
17. That is because the Proposed District Plan is still in the relatively early stages of its statutory process - it has been notified, submissions and further submissions received – few decisions have yet been made and some hearings have not yet been held, nor any Environment Court appeals and/or determinations³⁰. Therefore, the Proposed Plan has not necessarily, as yet, been finalised in a manner that appropriately reflects the provisions of Part 2 RMA – therefore the Consent Authority will be required to give emphasis to Part 2 in this case.
18. Section 5 RMA is paramount:

²⁹ [2018] NZCA 316

³⁰ The weight to be given to a proposed plan depends on what stage the relevant provision has reached, the weight generally being greater as a proposed plan moves through the notification hearing process.

5 Purpose

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

19. The method of applying s. 5 still involves the well-known overall broad judgement set out in North Shore City Council v Auckland Regional Council³¹ – as noted in: KPF Investments³².
20. Application of that method in this case requires an overall broad judgement of whether the subdivision and use of the site for three new habitable dwellings and large balance lot retained for productive farming will promote the sustainable management of natural and physical resources; recognising that the RMA has a single purpose.
21. Such a judgement allows for comparison of conflicting considerations and the scale or degree of them, and their relative significance or proportion in the final outcome³³ – provided it is recognised that the weight to be given to the relevant considerations must be carefully allocated by reference to the

³¹[1997] NZRMA 59 (EnvC)

³²Supra, at paragraph [202]

³³North Shore City Council, supra, at page 94

strong directions in ss. 6 to 8, and to any particularisation of those in the statutory instruments from national policy statements down to district plans: KPF Investments³⁴.

22. In my submission, the proposal will clearly contribute in a positive way to the social, cultural, and economic wellbeing of people and the communities of, for example (but not necessarily limited to), Okato and New Plymouth in terms of section 5(2) of the RMA; and is suitable for consent on the conditions proposed. In particular, it is submitted that ss 5(2)(a) to (c) are met.
23. The relevant ss. 6 - 8 considerations in this case are set out in the application³⁵, and Ms Gerente's evidence³⁶.
24. It is submitted that the proposal has particular regard to ss 7(a), (b), (c), (d), (f) and (g).
25. Amenity values can be assessed by the consent authority/Environment Court (in terms of assessing effects on the environment) - which must apply the law objectively in performing these functions: Gisborne District Council v Eldamos Investments Ltd³⁷.
26. In terms of ss. 6(e), 7(a) and 8 - the applicant has undertaken appropriate consultation with tangata whenua, whose participation in the proceeding has been properly enabled, and whose views have been (and will be) appropriately taken account of.

³⁴Supra, at paragraph [202]

³⁵ At section 15, page 41

³⁶ At paras 106-109

³⁷HC GIS CIV-2005-485-001241 [26 October 2005], Harrison J, at paragraph [42]

Section 104(1)(a) RMA

27. Section 104(1)(a) requires the consideration of any actual and potential effects on the environment of allowing the land to be subdivided.
28. Actual and potential beneficial positive effects must be considered, as well as actual and potential adverse effects.

Adverse Effects

29. These have been comprehensively addressed in the application, s.92 responses and evidence for the applicant (and these submissions). It is submitted that the evidence called for the applicant establishes that adverse effects are no more (or less) than minor (subject to the implementation of appropriate conditions).

Positive Effects

30. The positive effects of the proposal are predominantly discussed in the application³⁸ and Ms. Gerente's evidence³⁹ and include the provision of modern good quality additional housing in an attractive environment for people to live in (relatively close to the town of Okato and New Plymouth city); future work for consultants, contractors, builders, and the like; and will assist current farming operations.
31. It is respectfully submitted, therefore, that the proposal will have positive effects in terms of providing for the social and

³⁸ At page 29, see positive social and economic effects

³⁹ At paras 69, 74-80, 100, 108 and 110

economic wellbeing of the applicant – through assisting in the ongoing sustainability of the farming operation – together with the provision of additional housing for people in a rural environment – which will also provide for people's health and general wellbeing in my submission.

32. It is further respectfully submitted in this case that the Officer's Report does not adequately and objectively address, or give any weight to, the positive effects in this case as is required under s. 104(1)(a).
33. Apart from acknowledging that there will be positive effects in terms of native riparian planting along the two tributaries of the Katikara Stream on the property in conjunction with Nga Mahanga a Tairi Hapu / Te Kahui o Taranaki Iwi⁴⁰ - the Officer's Report is silent on these positive effects.
34. Therefore, it is submitted that Ms Gerente's evidence must be preferred and given more weight in this case (because she has properly taken those positive effects into account, as required).

Section 104(1)(b) RMA

35. All the relevant provisions applicable under s. 104(1)(b) have been thoroughly canvassed in this case by Ms. Gerente⁴¹.
36. Overall, she finds that the proposal is consistent with those provisions in my submission⁴².

⁴⁰ See Officer's Report, para 73

⁴¹ Primary Evidence Zen Gerente, paras 35-70, 84-101

⁴² Primary Evidence Zen Gerente, paras 89, 94 and 101

37. Mr Bain and Ms. Dravitski agree with her in the context of their expertise⁴³; and, also, both observe that the proposal is in alignment with the Council's Rural Subdivision & Development Guidelines (2012)⁴⁴ (notably Ms. Dravitski was the lead author of those Guidelines)⁴⁵ – which outline design principles that should be considered when development is undertaken in the rural area (and which have been considered and applied by the applicant in this case – although it is acknowledged that the guidelines are just that i.e. guidelines).
38. For all the reasons provided in that evidence it is submitted that the proposal, when considered against the elements of rural character, will overall retain such elements with implementation of the range of mitigation measures. Whilst the proposed new lots 1, 2 and 3 will be utilised for new rural residential purposes – the production orientated farming activity will be retained.
39. In my respectful submission – the dominance of open space over built form will be retained, together with the feeling of spaciousness and low density.
40. The mitigation measures proposed (previously canvassed) all contribute in my submission to effectively address Policies 4.2, 4.4 and 4.5. These measures, though the imposition of conditions, put in place requirements that are greater than what would apply to a dwelling, or buildings, permitted as of

⁴³ Evidence Richard Bain, para 23; Evidence Martha Dravitski, paras 15-17, 26-30

⁴⁴ Evidence Richard Bain, para 40; Evidence Martha Dravitski, para 29

⁴⁵ Evidence Martha Dravitski, para 2

right (as is also observed in Ms. Gerente's and Mr. Bain's evidence)⁴⁶.

41. Hence the proposal and mitigation measures, considered as a whole, ensure that the proposal is in accord with the policy and objective framework of the District Plan (and Proposed District Plan). The Officer (Ms. Buttimore), in my respectful submission, has applied a narrow view in her findings to the contrary – and for that reason Ms. Gerente's evidence must be preferred and given more weight in this case.
42. It is submitted that the proposal is generally consistent with the objectives and policies of the District Plan, Proposed District Plan, and is in general accord with the policy and objectives framework of the Taranaki Regional Policy Statement, evaluated holistically. The proposal is, therefore, appropriate in this context.

Section 104(2) RMA

43. Under Section 104(2), when forming an opinion for the purposes of Section 104(1)(a), the consent authority may disregard an adverse effect of the activity on the environment if a plan permits an activity with that effect.
44. Ms. Gerente's evidence correctly highlights the permitted activities relevant in this case in this context in my submission.⁴⁷

⁴⁶ Primary Evidence Zen Gerente, paras 44, 51, 55, 76; Evidence Richard Bain, para 34

⁴⁷ Primary Evidence Zen Gerente, paras 26-34

45. The Officer's Report also acknowledges the establishment of other buildings is permitted and could potentially occur in various places on the applicant's land⁴⁸.
46. Following the planning expert witness conferencing, those experts also now agree that the construction of a second dwelling is permitted (subject to meeting bulk and location requirements etc, which can be met)⁴⁹ – as was originally opined by Ms Gerente in her prior evidence⁵⁰.
47. This is particularly relevant in respect of amenity effects (such as the intrusion of buildings into a vista) as the District Plan does permit houses and ancillary buildings, and other buildings/structures, and earthworks, within stated dimensions.
48. So, there are permitted activities which could produce relevant comparable effects in those respects - and it is respectfully submitted that there is no good reason not to exercise your discretion to disregard those effects under section 104(2).

Section 104(3) RMA

49. Under Section 104(3)(a)(ii) the application *must* be considered without regard to any effect on a person who has given written approval to it.
50. Significantly in this case, all (but one) relevant surrounding landowners, and iwi, have provided written approval; moreover, all of those with clear views of the proposed new lots (noting that

⁴⁸ Officer's Report, para 42.

⁴⁹ See: Expert Planning Witness Conferencing Statement, L. Buttimore & Z. Gerente, 1 June 2022, at para 4.2

⁵⁰ Primary Evidence Zen Gerente, para 29

there will only be three new dwellings in this context) have provided such approval – including the owners of 43 Leith Road as noted by Mr Bain⁵¹.

51. In my submission it is those neighbours with clear views of the proposed new lots (which are contemplated to have new dwellings built thereon) who enjoy the particular amenities of the area that are in the best position to judge the effect the activity will have on them in this case.
52. Although the effects of the proposal on the persons most closely affected by it in this case (i.e., those neighbours with clear views of the proposed new lots (which are anticipated to have new dwellings built thereon)) cannot be considered (as they have given their approval) – I note that the fact of that approval is a relevant consideration when weighing the question of public confidence in the administration of the District Plan: Transit New Zealand v Nelson City Council⁵².
53. The Officer's Report is flawed (inter alia) in the context of s. 104(3)(a)(ii); neither does Ms Griffith's evidence properly consider or give weight to the written approvals received in this case in my submission.
54. Unlike Section 104(2), the requirements of Section 104(3)(a)(ii) RMA are mandatory (not discretionary).
55. For those reasons, once again, in my respectful submission, the expert evidence for the applicant must be preferred and given more weight in this case.

⁵¹ Evidence Richard Bain, paras 45, 49

⁵² W021/94 (PT), at page 3

Other Legal Issues

Cumulative Effects

56. A consent authority's duty to have regard to the effects of allowing an activity extends to cumulative effects that will arise in combination with effects of other activities⁵³.
57. Cumulative effects are those that will occur, rather than those that may occur; and they are distinct from precedent effects: Dye v Auckland Regional Council⁵⁴.
58. Accordingly, conclusions about adverse cumulative effects must be predicated on actual adverse effects.
59. The evidence in this case does not show any indication that the subdivision, or the activities that it would facilitate, would have actual adverse effects that, in combination with effects of other activities, would have any adverse impact on the environment.
60. In my submission the above mentioned written approvals (under Section 104(3)(a)(ii)) are also highly relevant to this issue; and reinforce Mr Bain's compelling evidence in respect of same⁵⁵ (supported by Ms Dravitski's evidence⁵⁶, and Ms Gerente's evidence⁵⁷).

⁵³ Section 3, RMA

⁵⁴[2001] NZRMA 513 (CA), at paragraphs 37-49.

⁵⁵ Evidence Richard Bain, paras 29-33

⁵⁶ Evidence Martha Dravitski, para 37

⁵⁷ Primary Evidence Zen Gerente, paras 72-73

Compliance with Consent Conditions

61. There was, I understand, some debate at the planner's expert conferencing as to whether or not the applicant could in fact comply with proposed consent condition 12(h) - and Ms. Buttimore was dubious in this regard.
62. It is respectfully submitted that the applicant can and will comply with conditions imposed - and is entitled to be treated in the basis that will do so.
63. The High Court has held that an applicant is entitled to be treated on the basis that it will comply with the consents it holds, and with the RMA: Guardians of Paku Bay Assn Inc v Waikato Regional Council⁵⁸.

Consent Conditions

64. The proposed consent conditions are generally supported by the applicant (and expert witnesses called for the applicant), subject to the matters raised in Ms. Gerente's evidence⁵⁹.
65. With regard to Ms. Gerente's proposed amendment to consent condition 14 e. (discussed at sub-paragraph 82g. of her evidence; and earlier at paragraph 58 for the reasons provided therein) – in my submission her suggested amendments are consistent with s. 10(1) RMA in the context of the words "*same or similar*"⁶⁰. Conversely, the wording "*limited in size and scale*" proposed by the Officer is inconsistent with s. 10(1) RMA and

⁵⁸ (2011) 16 ELRNZ 544, at paragraph [134]; [2012] 1 NZLR 271 (HC)

⁵⁹ At para 82

⁶⁰ See sub-section 10(1)(a)(ii) RMA

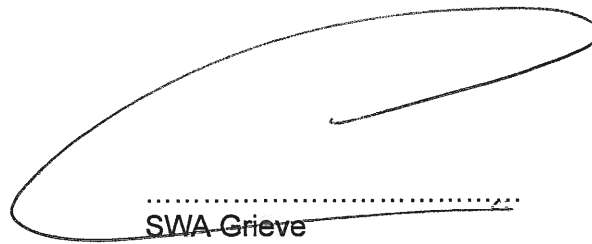
potentially more restrictive than *same or similar* size and scale in my submission.

Submissions and Conclusions

66. Each case must be considered and determined on its merits in light of the particular facts and circumstances.
67. The applicant has put forward a firm proposal for subdividing and efficiently using the natural and physical resources of the land in a way which will enable people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety - without significant adverse impact on the surrounding environment. The evidence for the applicant in this case shows that the proposed subdivision will have very little environmental effect.
68. Furthermore, the proposal achieves a high degree of certainty about the appearance, location and intensity of the future use and development of the land; and provides future certainty to the community about the appearance of the sites, and their integration with the surrounding environment. The proposal respects and enhances the surrounding environment in my submission.
69. The discretionary activity status contemplates that subdivision to smaller lots will be allowed in appropriate cases. In my submission this is an appropriate case (for all the reasons in the evidence for the applicant and these submissions), and the subdivision is not contrary to the outcomes that the District Plan seeks.

70. Amenity values is a central issue which overlaps with the quality of the environment; and it is submitted that the applicant has sufficiently addressed the possible adverse effects, and ways to avoid, remedy or mitigate them, to the point where those effects are not an impediment to the granting of resource consent.
71. The proposal would assist to facilitate existing rural productive farming activity on the land (proposed lot 6) - and provide new quality housing for people in a pleasant surrounding environment (proposed lots 1, 2 and 3).
72. On the other hand, the proposal will have little change to the character, appearance, or amenity of the relevant environment.
73. That combination of activities will conform with the rural character and amenity of the area.
74. In summary, it is submitted that there are no significant adverse effects on the environment that would result from the proposed subdivision. The adverse effects on the environment would be minor; however, there are a number of positive effects that would result from the proposed subdivision.
75. The proposed subdivision would not be contrary to the objectives and policies of the District Plan, Proposed District Plan or Regional Policy Statement for all the reasons provided in the evidence called for the applicant.
76. It is respectfully submitted that the proposal meets the purpose of the RMA – it promotes the sustainable management of natural

and physical resources; and the necessary consent should be granted.



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SWA Grieve
Counsel for Applicant