

When replying please quote: SUB21/47781 and LUC22/48312

SECTION 42A HEARINGS REPORT

RESOURCE CONSENT APPLICATION FOR A DISCRETIONARY SUBDIVISION AND LANDUSE CONSENT AT 6 AND 42 LEITH ROAD, NEW PLYMOUTH APPLICATION NO. SUB21/47781 AND LUC22/48312

Report prepared by: Laura Buttimore, Consultant Planner

Consent No:	SUB21/47781 and LUC22/48312
Applicant:	B, M and R Sim
Site Address:	6 and 42 Leith Road, New Plymouth
Legal:	Lot 1 DP 19869 and Part Lot 1 DP 8787 held in RT TNK4/798 and TNK4/799
Site Area:	46.9ha and 2459m ²
Application:	Revised 4 lot subdivision and side boundary setback breach for a proposed dwelling on Lot 5
Zoning:	Operative District Plan: Rural Environment Area Proposed District Plan: Rural Production Zone
Overlays:	Operative District Plan (ODP): State Highway 45 (Limited Access), Proposed District Plan (PDP): State Highway 45 (Limited Access), waterbodies under Proposed District Plan
Relevant Rules:	Rules Rur 17 and 78 -83 of the ODP and WB-R5 of the PDP
Application status:	The Proposal is Discretionary Activity under the New Plymouth District Plan (Operative 15 August 2005). The proposal is a Controlled Activity under the Proposed New Plymouth District Plan
Notification:	The subdivision application was publicly notified on the 21 st of January 2022 and submissions closed on the 22 nd of February 2022. A notification decision was made on the 20 th of October 2022 for the land use application to proceed on a non-notified basis.

I, Laura Buttimore, Consultant Planner acting for the New Plymouth District Council (NPDC) have written this Section 42A report. It has been prepared to assist the Independent Hearings Commissioner in his consideration of the applications referenced as SUB21/47781 and LUC22/48312. The report has no status other than as a Section42A report on the application. It is not a decision, and the recommendation should not be construed as such.

Statement of Experience

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

Site Description and surrounding environment

4. The site and surrounding environment is accurately described in the Section 42A report prepared for Commissioner St. Clair for a six lot subdivision referenced as SUB21/47781. A brief summary of the site is provided below.
5. The subject site is comprised in two Record of Titles (RT) on Leith Road. The site is 47ha, with a separate 2459m² title. The site has frontage to Leith Road along its eastern boundary and State Highway 45 (SH45) along its southern boundary. The smaller title has recently had a dwelling removed from the site and is now vacant of habitable buildings with only a shed provided on site. The larger farming title contains an existing dwelling in the south western corner of the site on the corner of Leith Road and SH45, farm implement and milking sheds are also located near this dwelling adjacent to Leith Road.
6. The site is steep to rolling in topography but primarily flat to rolling along the Leith Road frontage, with portions of the site sitting above the road. Two unnamed tributaries of the Katikara Stream dissects the site in generally a north, south direction.
7. The subject site is located within the Rural Environment Area (zone) under the Operative District Plan (ODP) and Rural Production Zone under the Proposed District Plan (PDP). Leith Road is a local road and South Road is State Highway 45. The site is affected by three overlays under the Proposed District Plan (PDP), these being:
 - The State Highway 45 (Limited Access) notation;

- the Site of Significance to Māori and Archaeological Site ID 197 being Puketi Pa which is an unverified site and the 200m extent of the site extends into the western extent of the subject site and;
- the tributaries of the Katikara Stream that dissect the site are considered waterbodies under the PDP.



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

Proposal

History of subdivision and land use application

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

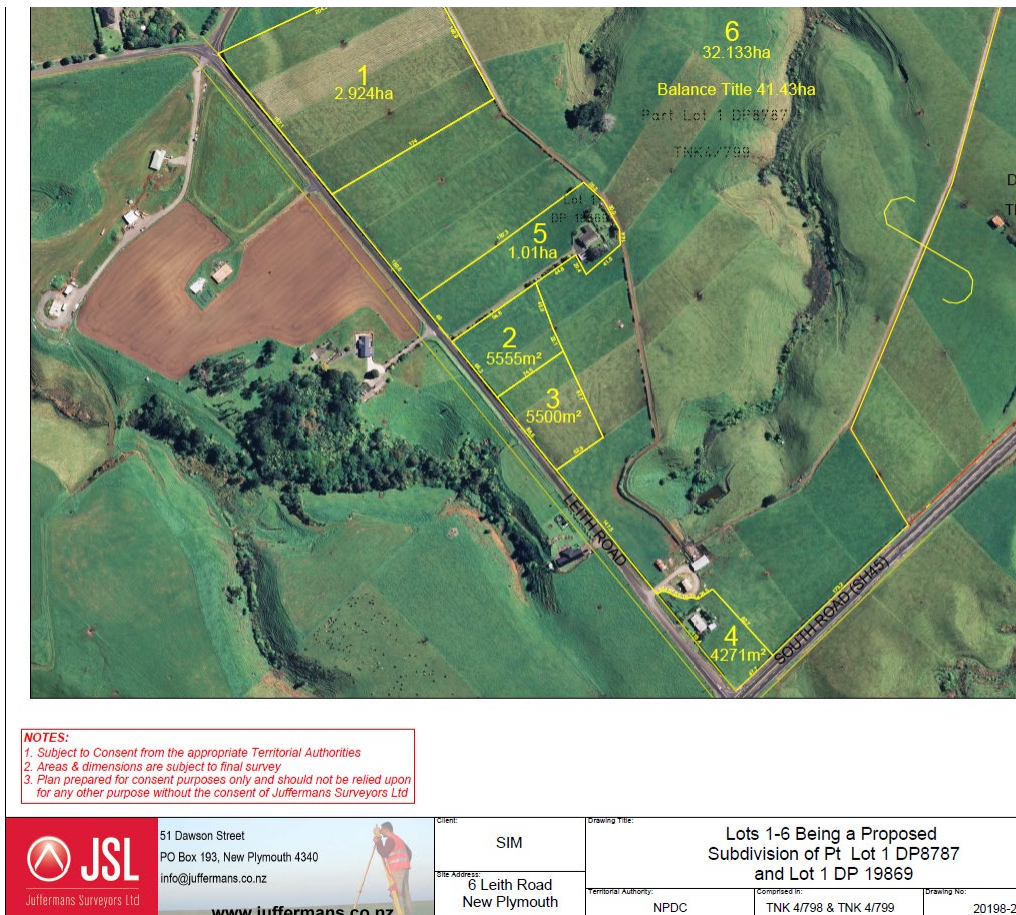


Figure 2: Scheme plan for SUB21/47781 (Source: Juffermans Surveyors Ltd)

9. A hearing commenced on Wednesday the 8 of June 2022 for this subdivision with Independent Commissioner St. Clair the appointed Commissioner to hear and decide this subdivision application. It was identified prior to that hearing (expert witness conferencing with myself and Ms Gerente) and addressed in Minute 5 by Commissioner St. Clair that a separate land use consent was required for the proposed activity. Commissioner St. Clair directed that this land use consent application be made to New Plymouth District Council (NPDC) and that SUB21/47781 be placed on hold under section 91(1) of the RMA until the land use consent application is made and a notification decision made on this application.
10. This land use consent is the application made as directed by Commissioner St. Clair in Minute 5. However, I do note that Minute 5 item (e) did direct the nature of the land use consent application to be determined between parties and this has not clearly translated in the application.
11. The land use consent application was prepared and lodged by Ms Gerente from Land Pro Ltd. This application was made on the 23rd of August 2022. A non-notified decision for that land use consent was made as a non-notified decision on the 20th of October. Following the notification decision the Commissioner directed that I prepare a Section 42A report for the land use consent. My recommendation was that the land use consent be declined because it would be inconsistent with the National Policy Statement for Highly Productive Land (NPS-HPL). Following this recommendation, the

applicant sought approval to provide further evidence in response to the NPS-HPL from the Commissioner.

12. On the 25th of January 2023 the applicant provided further evidence in response to the NPS-HPL which included a revised application to reduce the subdivision from a six-lot subdivision to a four-lot subdivision. This reduction in the subdivision also effectively reduces the land use aspect of the proposal to only a side yard infringement setback requirement and removes the requirement for consent under the PDP in relation to the adjacent Puketi Pa. Therefore, this revised s42A report now addresses the change in the application since previously preparing a S42A report for SUB21/47781 and LUC22/48312.

Revised application

Land use component

13. The applicant now requires land use consent only for the proposed building platform identified on Lot 5 which will be within 7.8m of the southwestern boundary. Figure 3 below identifies the proposed building area for the proposed dwelling.



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

14. The applicant in the land use consent application has indicated that the proposed new dwelling on Lot 5 will be in a similar location to the dwelling that was recently removed from this location and that a consent notice is offered on the subdivision SUB21/47781 that states that any new habitable building on Lot 5 will be a similar scale to that of the former dwelling in this location.

15. No land use consent is now required for earthworks in proximity to Puketi Pa as required by the PDP as the allotments requiring earthworks (former Lots 2 and 3) have been removed from the subdivision.

Subdivision component

16. The applicant has provided a revised subdivision scheme plan as detailed below in Figure 4, which reduces the subdivision from six allotments to four and removes Lots 2 and 3 from the subdivision.



Figure 4: Revised subdivision scheme (Source: Appendix B, K Hooper Planning Evidence dated 24 January 2022)

17. The now applicant proposes to undertake a subdivision as follows:
- Lot 1 – 2.924ha;
 - Lot 4 of 2130m² containing the existing dwelling near the corner of Leith Road and SH45;
 - Lot 5 – 1.03ha containing existing dwelling in the centre of the site; and
 - Lot 6 of 32.93ha (to be amalgamated with Lot 2 DP 18489 for a combined area of 42.7ha).
18. The revised application has removed Lots 2 and 3 from the scheme plan and reduced the size of Lot 4 from 4000m² to 2100m².
19. A suite of mitigation measures offered in the subdivision application will remain, these are:

Lots 1, 4 and 5

- *Only one habitable building on each allotment;*
- *Fencing limited to post and rail or post and batten only;*
- *All new buildings roofs shall have a light reflectance value of less than 20%;*
- *All new buildings walls and gable ends shall have a light reflectance value of less than 40% (excluding glazing);*
- *Buildings shall be no higher than 6m above existing ground level;*
- *Watertanks should be black in colour or screened by vegetation;*
- *All exterior lighting shall be hooded and cast down;*
- *Earthworks over 1.5m in height is prohibited, unless it is created at a batter of no steeper than 3 horizontal to 1 vertical. Any earthworks shall be grassed.*
- *No building shall be located within 5m of the highest point of the knoll on Lots 2 and 3;*
- *Hedging along the Leith Road frontage shall be retained, if this is removed it shall be replaced with a minimum of two of native vegetation at 1m spacing capable of reaching a minimum height of 3m in six years.*

Lot 6

- *No habitable building shall be located within 180m of the Leith Road boundary.*
- *Esplanade planting and fencing along the waterways*

STATUTORY REASONS FOR THE APPLICATION

National Environmental Standards

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

Statutory Acknowledgement Area

22. The site is not considered a Statutory Acknowledgement Area as the tributaries of the Katikara Stream are not listed as Statutory Acknowledgement areas. However, the applicant has indicated they will plant the waterbodies in accordance with discussions with Te Kahui o Taranaki Trust.

Operative New Plymouth District Plan (2005)

23. The site is identified in the New Plymouth District Plan (District Plan) as being within the 'Rural Environment'.
24. The New Plymouth District Plan was made operative on 15 August 2005. The proposal has been assessed as requiring consent for the following District Plan rules:

Rule #	Rule Name	Status of Activity	Comment
Rur17	Minimum side yard setback for habitable building	Discretionary	The proposed building footprint proposed on Lot 5 will be 7.8m from the southwestern boundary of the site as shown in Figure 3 above.
Rur78	Minimum allotment size and number of allotments	Discretionary	A discretionary activity provides for up to 5 allotments from one parent title. The subdivision is creating three small allotments across two separate records of title. Both titles are considered the 'parent title' and the larger title is creating two small allotments as a discretionary activity and the second smaller allotment is not seeking an additional allotment but increasing the size of this record of title. The subdivision is considered to meet the discretionary minimum allotment size requirements.
Rur79	Access	Discretionary	The proposed access for Lots 4, 5 and 6 are existing. A new crossing will be needed for Lot 1 and is likely to be within 10m of another access to ensure 160m setback from the intersection.
Rur81	Water/ Waste water and storm water services	Controlled	Each allotment will be able to achieve on-site management for all services.
Rur82	Building Platform	Discretionary	The applicant has outlined that each allotment will achieve a stable and flood free building platform. However, the building platform proposed on Lot 5 will not achieve the required side yard setback requirement as per Appendix 22.1.
Rur83	Existing buildings bulk and Location	Controlled	All buildings will meet the setback requirements for new boundaries. This is because the applicant has indicated that the dwelling on Lot 4 complies with the 15m side yard setback to the new boundaries on Lot 6. The dwelling on Lot 4 has an existing non-compliance with the road boundary.

25. There are no interests on the record of title that would restrict the proposal, noting the Limited Access notation as Lot 6 fronts State Highway. However, no access to the State Highway is being sought as a result of this application and no change in use to the state highway frontage will result.

26. Overall, the proposal is a Discretionary Activity under the Operative Plan.

Proposed New Plymouth District Plan (Notified 23 September 2019)

27. The site is located within the Rural Production Zone and contains the waterbodies being two tributaries of the Katikara Stream within the subject site. The site also includes Site of Significance to Māori (SASM) site 197 and Archaeological Site 197 as the extent of the 200m radius of Puketi Pa extends into the subject site. No decisions have yet been made on the Proposed Plan.

28. It is noted that subdivision of land remains an anticipated activity under the Rural Production zone.

29. The following rules of the Proposed District Plan relevant to this proposal have immediate legal effect:

Rule #	Rule Name	Status of Activity	Comment
WB-R5	Subdivision of land containing or adjoining a waterbody	Controlled	This rule has immediate legal effect and the proposal complies with standard SUB-R9. The proposal requires consent as a controlled activity under this rule, as Lot 6 (which contains the waterbodies) is over 4ha in size.
HH-R18	Subdivision of land containing any part of a scheduled archeological site	Discretionary	This rule has immediate legal effect and the proposed site includes Archaeological site 197.
SASM-R9	Subdivision of land that contains any part of a scheduled site or area of significance to Māori	Discretionary	This rule has immediate legal effect and the proposed site includes SASM site ID 197 (Puketi Pa).

30. Overall, the proposal is a Discretionary Activity under the Proposed Plan.

31. The Proposed Plan seeks to retain the same type of zone on the subject site, it will change from Rural Environment Area to Rural Production Zone.

Notification Summary

32. As detailed above a decision was made on subdivision application on the 22nd of February 2022 for the subdivision to be publicly notified and the 20th of October 2022 for the land use consent application to proceed on a non-notified basis. The

applications are now being combined for efficiency and given that they are connected, ie the land use consent is only necessary as a result of the subdivision.

33. A submission was received in opposition to the subdivision from Fire and Emergency New Zealand (FENZ) requiring that the application consider and provide for dedicated measures for fire safety.
34. The applicant went back to FENZ confirming a consent notice detailing the following would be imposed on each allotment subject to the subdivision:

'Each new dwelling shall be supplied with a dedicated firefighting water supply, and access to such supply, in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008, which must thereafter be maintained.'
35. FENZ confirmed that based on that consent notice being offered that FENZ withdraw their right to be heard. FENZ also suggested the inclusion of an advice note would be welcomed as detailed in their submission. This consent notice and advice note recommended by FENZ are provided for in the revised set of conditions provided below in Appendix 1.

Assessment of the Application

36. The following relevant matters have been considered in the assessment of this application under section 104 of the RMA in relation to the Operative District Plan:
 - Rural character;
 - Traffic effects;
 - Building platforms and servicing; and
 - Cumulative effect

Permitted baseline assessment

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

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

Rural character and amenity

40. The subdivision s42A report dated 16th of May discussed in detail the potential effects of the subdivision on rural character and amenity. The focus of this assessment was on potential effects created from proposed Lots 2 and 3. These allotments have now been removed from the subdivision and the scale of the subdivision reduced.
41. The subdivision is now limited to the creation of three small allotments, with Lot 5 (one of the small allotments) being around an existing record of title and being effectively a boundary adjustment to increase the size of the allotment. The built form therefore on Lot 5 forms part of the permitted environment as another dwelling could be established on this allotment as of right and the proposed building platform site is limited to the area where a former dwelling was located (removed in 2022). Proposed Lot 4 is around an existing dwelling and therefore potential effects are primarily related to around proposed Lot 1. It is assumed the proposed package of mitigation measures offered in the subdivision remain. Therefore, only one habitable building is proposed on each allotment with controls relating to colour, single storey etc to ensure rural character measures are maintained.
42. Lot 6 the large balance allotment will be retained and a large road frontage of the open spacious elements of this allotment will be provided. The mitigation measure ensuring any dwelling on Lot 6 is well setback from the road will further enable open space rural character elements are retained.
43. I am satisfied that the reduced subdivision scheme alongside the package of mitigation measures offered in the original subdivision application and set out in the draft conditions for SUB21/47781 will ensure the maintenance of rural character and amenity. This further aligns with the memo provided by Ms Griffith attached in Appendix 2.
44. The proposal also seeks land use consent application for the erection of a dwelling on Lot 5 that will be within 7.8m of the southwestern boundary. The effects of this non-compliance are isolated to the subject site given that it is an internal non-compliance with proposed Lot 6 which is the larger balance allotment. Given the proposed building platform for Lot 5 is well setback from the road and screened by existing and proposed landscaping (as offered by proposed conditions of consent for SUB21/47781) the effects of this non-compliance on the wider rural environment are negligible.
45. The proposed dwelling will be screened by the road and consistent with the built form once established on this site by the former dwelling. Any potential effects on this side yard setback non-compliance are limited to proposed Lot 6. Lot 6 is larger balance allotment, and this part of Lot 6 is a pastoral grazing paddock. For this reason, the non-compliance is considered appropriate from a rural character and amenity perspective. The proposed location of the dwelling on Lot 5 will ensure it is consistent in scale with the former dwelling that is well setback from the road and screened from the surrounding rural environment by existing and proposed landscaping.
46. Overall, it is considered that this side yard setback is considered appropriate and a positive design for the subdivision to ensure future built form on Lot 5 is mitigated.

Traffic Effects

Amenity

47. The site has two independent and existing crossing points for each dwelling on site and an access to the existing sheds on Lots 6. These accesses will all be retained, with the unused crossing on Lot 4 being requested by Council Development Engineers to be removed.
48. A new vehicle access point will be required for Lot 1. The addition of two allotments, beyond the existing two records of title will increase traffic in the immediate environment but not to a discernible level that it is likely to significantly alter the amenity of the existing environment. Any loss of amenity from an increase in traffic is not likely to impact the character and amenity of the environment.

Traffic safety and efficiency

49. The existing crossings have been through an approval process and are fit for purpose that currently service the subject site, these are the crossings for Lots 4, 5 and 6.
50. In reliance on the comments and recommendations of the NPDC Development Engineer, Mr Matt Sanger I conclude that the adverse effects of the proposal in relation to traffic safety and the efficiency of the roading network can be mitigated through conditions on consent. Mr Sanger has outlined that the access to Lot 1 can be left until Building Consent stage but in order to ensure an appropriate setback from the Perth Road intersection it will need to be near the southern end of this allotment, with a minimum of 160m from the intersection. Given the likely location for a vehicle access to Lot 1 it is assumed it will be within 10m of the vehicle access on the opposite side of Leith Road. The Council Development Engineer has confirmed this wouldn't create a safety issue provided the necessary sight visibility requirements were met.
51. In addition, to the above access requirements, it is acknowledged that the site (proposed Lot 6) fronts State Highway 45 and has a Limited Access Notation on the record of title. Given that the subdivision will not result in a change or access requirements off the state highway any potential effects on the state highway are considered to be acceptable.

Building Platforms and servicing

52. Each allotment has suitable flat area of land available to achieve a stable flood free building platform. A condition of consent will be required, if consent is approved to confirm this suitability via on site testing.
53. Each allotment will be required as a condition of consent (if consent approved) to provide onsite wastewater treatment, water collection and stormwater management. In addition to these requirements the applicant has offered a consent notice to ensure each new dwelling on each allotment is required to provide dedicated firefighting water supply. The consent notice proposed is as requested by FENZ in their submission. This consent notice will be provided in the set of draft conditions provided in Appendix 3, along with the other conditions to ensure stable flood free building platforms and on site servicing is achieved.

Cumulative effects

54. A cumulative effect is one that arises over time or in combination with other effects. Cumulative effects are included in the definition of 'effect' in Section 3 of the RMA which provides as follows:

In this Act, unless the context otherwise requires, the term effect includes—

- *(a) any positive or adverse effect; and*
- *(b) any temporary or permanent effect; and*
- *(c) any past, present, or future effect; and*
- *(d) any cumulative effect which arises over time or in combination with other effects— regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*
- *(e) any potential effect of high probability; and*
- *(f) any potential effect of low probability which has a high potential impact.*

55. The term cumulative effect encompasses two concepts;
- Effects arising over time; and
 - Effects arising in combination with other effects.
56. The proposed subdivision will result in three small allotments and a balance allotment. The western side of Leith Road, opposite the subject site has five small allotments, with the larger farming unit flanking these small allotments at the northern and southern extents.
57. The creation of these small allotments around an existing dwelling and an existing record of title along side the package of mitigation measures ensures the open expansive views across the site (being proposed Lot 6) are retained. In my opinion, the proposed application with the reduction in the number of allotments ensures, alongside sufficient mitigation that the proposal will not result in an adverse cumulative effect.

Conditions

58. A set of draft conditions have been revised since the previous hearing and is provided in Appendix 3 for the Commissioner's use if he is of the opinion the application can be approved. These conditions include the package agreed between Ms Gerente and I and, subsequent to those discussions, further changes to reflect the changes to the subdivision scheme.

Overall effects summary

59. Overall, it is considered that the proposed subdivision will not result in a loss of open space and low-density built form and that rural character is able to be maintained. Further, the overall actual and potential effects identified above are able to be appropriately mitigated.

Proposed New Plymouth District Plan (notified 23 September 2019)

60. The Proposed District Plan was notified on 23 September 2019 and is now awaiting decisions, with the Rural Production Zone Chapter and the Subdivision Chapters being heard in late 2021 and early 2022. Decisions are likely to be made mid 2023.

61. The land is proposed to be zoned as Rural Production Zone. Subdivision of land remains an anticipated activity within this zone. The following s104 matters are considered relevant in relation to the PDP:
- Waterbodies;
 - Cultural; and
 - Heritage

Waterbodies

62. Tributaries of the Katikara Stream dissect the site which are considered waterbodies under the PDP. Waterbodies and their margins are an important part of the district. The Waterbody section of the Proposed District Plan has immediate legal effect.
63. WB-R5 and WB-R6 requires that subdivision of land containing or adjoining waterbody (or significant waterbody) must have consideration to effects standard SUB-09 and in this instance (1)(2) *Where subdivision of land creates an allotment of less than 4 hectares which adjoins or contains a significant waterbody, an esplanade reserve or esplanade strip of 20 metres (for a significant waterbody) or 5m (any waterbody) or more in width shall be provided along the bank(s) of the waterbody.*
64. Where compliance with these rules cannot be achieved the activity status becomes Restricted Discretionary under WB-R5 and Discretionary under WB-R6. The application contains the waterbodies solely within Lot 6, the balance allotment, an allotment over 4ha in size and therefore the activity is a controlled activity in this respect.
65. It is a matter of national importance to preserve the natural character of wetlands, lakes, rivers, and their margins, and to protect them from inappropriate subdivision, use and development. It is also a matter of national importance to maintain and enhance public access to and along lakes and rivers. The application offers a condition of consent to ensure the waterbodies are fenced and planted with native riparian planting in conjunction with Te Kahui o Taranaki. The retention of the waterbodies in the balance allotment and the protective mechanisms as discussed will ensure the water bodies will preserve their natural character and have the opportunity to be enhanced through planting and fencing.

Cultural

66. As outlined above the land use component no longer requires land use consent for the setback in relation to the Puketi Pa site. However, the site is still considered to contain the Puketi Pa which is listed as both a SASM and Archaeological site under the PDP. The extent of this site is not mapped and hence why the 200m radius extends into the western central portion of the site adjoining the road. The applicant has engaged with Nga Mahanga A Tairi Hapu, whom are the relevant mana whenua for the subject site and are a hapū to Te Kahui O Taranaki Iwi. The correspondence between the applicant and the hapū are provided in the response to further information provided by the applicant for the land use consent LUC22/48312.
67. The applicant has provided a suite of conditions to SUB21/47781 to address cultural effects and these conditions will ensure any potential cultural effects are avoided, this includes planting of the riparian margins of the waterbodies. Overall, it is considered

that any potential cultural effects can be avoided and or mitigated subject to conditions of consent being imposed as outlined above.

Archaeological

- 68 The subject site is partially within the extent of archaeological site 197 being Puketi Pa site. The application for land use being LUC22/48312 includes an Archaeological Assessment by Mr Ivan Bruce and conclusions by Mr Bruce that determine the site does not contain any archaeological sites in the NZAA recording scheme or from his pedestrian survey of the site. Mr Bruce does make recommendations that would form conditions of the land use consent which are cultural monitoring of earthworks associated with building platforms on Lots 1 to 6 of SUB21/47781 and accidental discovery protocols. These will be included in the suite of recommended conditions of consent.
- 69 The applicant has also engaged with Heritage New Zealand which also confirm that they have no concerns with the proposed subdivision and suggest appropriate wording for conditions of consent and advice notes in relation to accidental discovery protocols, these will also be included in the suite of recommended conditions of consent.
- 70 Given the information provided by the applicant on the location of the archaeological site being Puketi Pa, on the opposite side of Leith Road it is considered that the proposed subdivision and land use for reduced side yard setback on Lot 5 will not adversely affect this heritage site and feature. Proposed conditions of consent offered by the applicant in relation to this consent will ensure any potential effects are avoided and or mitigated. It is therefore considered the proposed subdivision and land use in relation to a reduced side yard for Lot 5 won't create adverse effects on the historic heritage values of archaeological site ID 197.
71. Overall, the application is considered to ensure any potential adverse effects in relation to the PDP are effectively mitigated through design and proposed conditions of consent. An assessment of the relevant objectives and policies applicable to the Proposed District Plan is provided below.

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

National Environmental Standards

72. There is no NES relevant to this application.

National Policy Statements

73. The only relevant National Policy Statement is the National Policy Statement for Highly Productive Land 2022 (NPS-HPL).

74. About 15% of New Zealand's land is categorised as highly productive. That means it's the country's most fertile and versatile land¹. The National Policy Statement (NPS) for Highly Productive Land will improve the management of this land. The NPS came into effect on 17 October 2022. The purpose of the NPS is to ensure highly productive land is available for growing vegetables, fruit, and other primary production, now and into the future.
75. Protection of highly productive land is forefront of the policy, the objective of which is "*Highly productive land is protected for use in land-based primary production, both now and for future generations.*".

Relevant policies include:

- *Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.*
 - *Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.*
 - *Policy 8: Highly productive land is protected from inappropriate use and development.*
 - *Policy 9: Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land.*
76. The land subject to the proposal to subdivide is located on highly productive land made up of a small portion of Class 1 land and approximately two thirds of the site being Class 2 land as shown in Figure 5. The Manaaki Whenua Landcare Research website is the current tool we have available for identifying land class, this mapping has been usefully adapted onto the Regional Council mapping system as shown in Figure 5 below. This website identifies the flat land near the Leith Road frontage subject to SUB21/47781 and LUC22/48312 as Land Use Capability Class 2 land (mid green shown in Figure 5 below) except for a small portion which is Class 1 (shown as the darkest green in

¹ Ministry for the Environment (<https://environment.govt.nz/facts-and-science/land/how-land-is-used-in-new-zealand/>).

Figure 5 below) in the north-eastern corner of the site. Proposed Lots 1, 4 & 5 are included on the part of the Site which is identified as Highly Productive Land. The classification of the subject site is not in contention and the applicants evidence supports this classification.

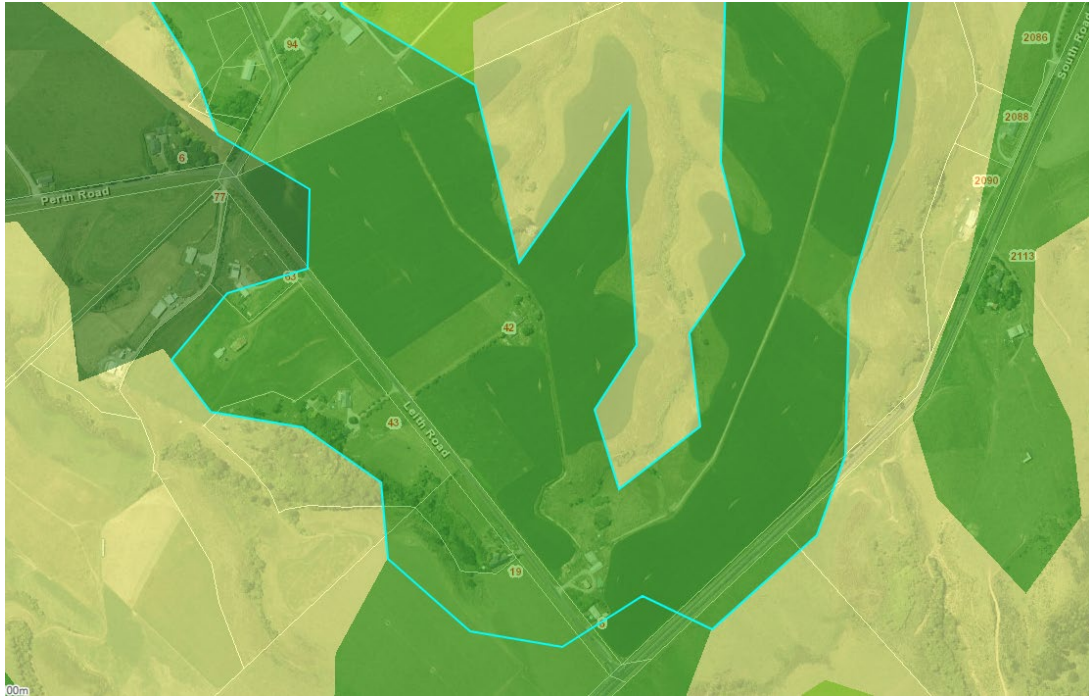


Figure 5: Site plan showing Land Class (Source: Taranaki Regional Council Maps)

Clause 3.8:

77. Clause 3.8 is the section of the NPS-HPL which deals with the subdivision of HPL. I will provide an analysis of each relevant subsection of this clause. Clause 3.8 (1) states:

"Territorial authorities must avoid the subdivision of highly productive land unless one of the following applies to the subdivision, and the measures in subclause (2) are applied"

- a) The applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term;*
- b) The subdivision is on specified Māori land;*
- c) The subdivision is for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a functional or operational need for the subdivision.*

The starting point here is the avoidance of subdivision on HPL. The following assessment makes an analysis of Clause 3.8 (1) a – c against the proposed subdivision.

Clause 3.8.(1)(a)

78. Under clause 3.8 (1)(a) territorial authorities must avoid subdivision of HPL unless the applicant can demonstrate that the proposed lots will retain overall 'productive capacity' of the subject land over the long term.
79. In the absence of any case law on this NPS-HPL I have relied on the Guidance Document provided from the Ministry for the Environment (MfE). This document states that *"the direction that subdivision of HPL be "avoided", apart from the specific exceptions in the NPS-HPL, is intended to provide a stringent approach for any subdivision proposal on HPL to avoid further fragmentation of this finite resource."*² It is therefore clearly set out that the NPS-HPL is a clear strong directive to avoid fragmentation of this HPL land.
80. The applicant has provided an assessment of the NPS-HPL in the evidence of Ms Hooper and Mr Allen. The evidence of the applicant is that the subdivision will retain the 'productive capacity' of the HPL as set out in Clause 3.8 (1) (a). Mr Allen in his role as a farming consultant sets out how economically the smaller allotments can retain their overall productive capacity and Ms Hooper agrees with this conclusion.
81. The MfE Guidance Document usefully sets out productive capacity and how this should be assessed under the NPS-HPL. The document states:

*"The productive capacity of the land does not depend on whether the current use is land-based primary production, or its past history of land uses. The key measure of productive capacity depends on the potential capacity of the land to support land-based primary production activities"*³

82. The above summary is important as it uses the word 'potential' and does not rely on the former land use. I believe the potential of the subject site following the subdivision has not been accurately portrayed by the applicant. Subdivision results in different ownership with often different desires for how to use and run their properties, physical boundary demarcation and the creation of additional permitted activities (eg habitable buildings, ancillary buildings (sheds), driveways, garden area and outdoor living spaces) for each allotment which could subsequently occur without regard to the NPS-HPL.
83. The MfE Guidance document states that economic viability is not a consideration under Clause 3.8. This document states the following:

*"Note that economic viability is not a consideration in an assessment of productive capacity under Clause 3.8. Any constraints on using land as HPL for land-based primary production that are not short term and result in land no longer being economically viable for land based primary production must be assessed under Clause 3.10"*⁴

84. I believe the applicant in the evidence of Ms Hooper and Mr Allen have incorrectly applied the 'productive capacity' test under Clause 3.8 and rely on the economic

² Page 20 of Mfe NPS-HPL Guidance Document

³ Page 21 of Mfe NPS-HPL Guidance Document

⁴ Page 23 of Mfe NPS-HPL Guidance Document

viability of each allotment rather than the required 'potential productive capacity'. It is my opinion that the NPS-HPL clause 3.8 (1) (a) is not intended to be applied to rural lifestyle allotments as they cannot achieve the overall productive capacity of the land long term and result in fragmentation of HPL as is stated in the Guidance Document and detailed below:

"The NPS-HPL deliberately does not contain direction on the size of a lot that will guarantee the productive capacity of HPL will be retained. This will be dependent on range of factors and will vary from region to region. Whether or not a particular lot can remain productive will vary depending on, for example, fluctuating markets or local conditions in each district. As discussed above, the determining factor is whether the site is large enough so that the predominant use of the site is land-based primary production and not residential lifestyle."⁵

85. From my reading and interpretation of the NPS-HPL and the Guidance Document rural lifestyle allotments are not intended to meet the 'productive capacity' test provided for in Clause 3.8 as they simply cannot retain the overall productive capacity of the land. Generally speaking rural lifestyle living is not at a scale where productive land uses occur on the land.
86. Individually I am going to assess the productive capacity consideration for each of the proposed small allotments being Lots 1, 4 and 5 which are all located on HPL.

Lot 1 – productive capacity consideration

87. Lot 1 is a vacant allotment of 2.9ha in size that includes both Class 1 and 2 land as detailed in Figure 5 above. Mr Allen concludes in his evidence for the applicant that it is of sufficient size to continue the current cropping regime and wouldn't impact on the productive capacity of HPL. Mr Allen does acknowledge that some of the land would be lost for house and curtilage area but that wouldn't impact on the overall productive capacity of HPL.
88. I believe the acknowledgement here of Mr Allen that some land would be lost for rural lifestyle purposes clearly demonstrates that there would be reduction in the overall productive capacity of HPL. Clause 3.8 is very directive in using the word 'avoid' for subdivision of HPL and I do not believe Lot 1 can meet the 3.8 (1) (a) requirement to ensure the productive capacity of HPL is retained. Cropping of rural lifestyle allotments is less apparent than larger land holdings and fragmentation of this land from the wider farming unit reduces its overall productive capacity in the long term which the NPS-HPL is clearly trying to avoid. Rural lifestyle living with dwellings and their curtilage areas including outdoor living spaces are less likely to desire cropping in their immediate paddocks. Rural lifestyle living is more accompanied with hobby farming with a few animals like sheep or beef to maintain grass length where the productive

⁵ Page 22 of the Mfe NPS-HPL Guidance Document

capacity of the land is not essential or prioritised. Overall, I do not believe Lot 1 can retain the overall productive capacity of the land as required by Clause 3.8 (1) (a).

Lot 4 – productive capacity consideration

89. Lot 4 is a subdivision around an existing dwelling, the revised scheme has reduced the area of land proposed for Lot 4 to 2130m². This reduced scale is intended to retain the productive capacity of the property as the area of land lost to rural lifestyle is limited to surrounding an existing dwelling and ancillary area. Mr Allen refers to the proposed 2130m² as already being unproductive and therefore wouldn't result in a reduction in productive capacity.
90. Whilst I understand the intention here to subdivide around an existing dwelling and curtilage area and the logic seems reasonable that it is existing and not of productive purposes. However, the NPS-HPL doesn't distinguish or provide for this scenario in my opinion as it clearly sets out to avoid fragmentation of HPL into rural lifestyle regardless of the existing nature of the dwelling. Also, in assessing whether the overall productive capacity of the subject land is being retained over the long term Cl3.8(1)(a), the productive capacity of the land to support land-based primary production is informed by an assessment of the following three criteria:
- *Physical characteristics (such as soil types, properties and versatility); and*
 - *Legal constraints (such as consent notices, local authority covenants, and easements) and;*
 - *The size and shape of existing and proposed land parcels⁶.*
91. In other words, the presence of an existing dwelling or other buildings, is not able to be taken into account in informing whether the productive capacity will be retained and hence the proposal achieves the requirements of cl3.8(1)(a). There is also an argument to be made that a loss of a dwelling on a productive rural land holding to rural lifestyle purposes has the potential to result in further loss of productive capacity of the balance farming allotment if a dwelling is needed for management of the land holding.
92. I consider Lot 4 is creating a 2130m² rural lifestyle allotment that will result in the fragmentation of HPL that is expressly sought to be avoided in the NPS-HPL Clause 3.8 (1) (a).

Lot 5 – productive capacity consideration

93. Lot 5 is over land that is held in an existing record of title of 2459m² of land. The proposal is to increase this land holding from 2459m² to 1.01ha. This boundary adjustment between two records of titles results in approximately 8000m² being taken from the larger farming unit to a lifestyle allotment. Ms Hooper and Mr Allen believe the proposal will retain the productive capacity of the land as it can still be used for maize purposes. However, no adequate assessment is made by the applicant as to

⁶ Definition of productive capacity in the NPS-HPL (Cl1.3).

how the productive capacity of the 8000m² will impact the overall productive capacity of the existing larger land holding.

94. The intent of clause 3.8 as set out in the guidance document is to not result in further fragmentation of the HPL. The boundary adjustment to remove 8000m² from a productive farming unit into a lifestyle allotment is considered to fragment HPL and is not consistent with Clause 3.8 (1) (a). I therefore do not consider Lot 5 can retain the overall productive capacity of HPL as it results in further fragmentation through the subdivision process.

Clause 3.8.(1) (a) summary

95. Overall, I am not satisfied that the applicant has accurately demonstrated that the proposed lots can retain the productive capacity of the subject land and therefore does not satisfy Clause 3.8 (1) (a).

Clause 3.8 (1) (b)

96. The subdivision is not on specified Māori land and therefore this sub clause is not considered relevant to the proposal.

Clause 3.8 (1) (c)

97. The subdivision is not specified for infrastructure related to the New Zealand Defence force and this sub clause is not considered relevant to the proposal.

Clause 3.8 (2)

98. As well as my assessment that I am not satisfied that the applicant has satisfactorily demonstrated that the subdivision will retain the overall productive capacity of the land over the long term. I note also that even if the applicant otherwise did, then an assessment of whether the measures in subclause (2) would also apply.
99. Subclause (2) requires territorial authorities to ensure that any subdivision of HPL avoids or mitigates cumulative loss of the availability of HPL (CI3.8 (2) (a)) and it avoids or mitigates reverse sensitivity effects on surrounding land based primary production (CI3.8 (2) (b)).

Clause 3.8 (2) (a) Cumulative loss

100. I believe the application for subdivision would result in the cumulative loss of the availability and productive capacity of the HPL on the subject site. If the subdivision could successfully meet the retention of productive capacity of HPL then applications like this could be made to enable lifestyle subdivision in HPL. In my opinion this would result in a cumulative loss of HPL.
101. For example, proposed Lot 4 would result in only a small loss of HPL around an already established existing dwelling. However, if this argument were accepted then further

subdivision on HPL around existing built form would occur which would result in a further cumulative loss.

Clause 3.8 (2) (b) reverse sensitivity

102. Reverse sensitivity effects would also be necessary to protect existing adjacent (including Lot 6) land-based production activities. A no-complaints covenant could be offered on these smaller lifestyle allotments to avoid reverse sensitivity effects. Regardless of the requirements set out in sub clause 2 (b) it is my opinion that the first arm of Clause 3.8 is not satisfied as the subdivision cannot retain the overall productive capacity and therefore further assessment is not necessary.

Clause 3.8 (3)

103. This clause relates to partitioning orders under the Te Ture Whenua Maori Act 1993 and is not relevant to this subdivision.

Clause 3.8 (4)

104. This clause relates to territorial authorities including objectives and policies and rules in District Plans to give effect this clause. This will occur in time but the ODP and PDP are yet to give direct effect to this NPS. This sub clause is not relevant to the proposed subdivision.

Clause 3.8 summary

105. Overall, as detailed above I do not believe the subdivision can pass Clause 3.8 and its relevant sub clauses. It is my opinion that the applicant has not demonstrated that the proposed lots will retain the overall productive capacity of HPL.

106. I believe subdivision of HPL for rural lifestyle purposes is clearly contrary to 3.8. Whilst the NPS-HPL does not reference rural lifestyle subdivision the Guidance Document provides further direction in relation to subdivision which creates rural lifestyle allotments and states:

"While rural lifestyle zones may allow primary production to occur, the reason that rural lifestyle on HPL should be avoided is that use of the HPL for predominantly rural lifestyle purposes is an inappropriate use of a scarce resource. Rural lifestyle zoning prevents HPL being used efficiently for land-based primary production as it increases the potential for reserve sensitive effects, and allows for lot sizes that make land-based primary production less viable.

Subdividing land to create smaller land parcels for rural lifestyle use is not provided for unless there are exceptional circumstances (refer to Clause 3.10). The focus on avoiding rural lifestyle subdivision is intentional, as the fragmentation of HPL and its inefficient use for rural lifestyle development was identified through the development of the HPL as one of the key contributing factors to ongoing losses of HPL nationally."

107. This document usefully clarifies that the NPS-HPL establishes a high bar for consideration of rural lifestyle subdivision for HPL. I believe it intentionally sets out to

avoid subdivision of HPL for non-productive activities. I do not believe the subdivision can meet the tests set out in Clause 3.8.

Clause 3.10

108. The NPS-HPL does apply exemptions for subdivision and use of HPL. The tests of exemptions provided in 3.10 are detailed and provide a list of 'and' tests which makes the threshold for passing through 3.10 extremely difficult.
109. The first test of Clause 3.10 (1) (a) is for a territorial authority to be satisfied that there are permanent or long-term constraints on the land that mean the use of HPL is not able to be economically viable for at least 30 years. No such case has been made by the applicant that a permanent or long-term constraint exists for the subject site.
110. The applicant through the evidence of Ms Hooper has ruled out the applicability of Clause 3.10 and the exemptions provided for in that clause⁸. I do believe in the absence of a clear case and rationale the application would not meet an exemption provided for in Clause 3.10.

Summary NPS-HPL

111. Overall, I believe the subdivision and land use consent applications will result in a loss of productive capacity of the subject site which is in conflict with the NPS-HPL.
112. In conclusion for the reasons listed above, I believe the application is in conflict with the NPS-HPL, specifically Clause 3.8 and that the proposed subdivision and land use application will impact on the productive capacity of HPL.

Taranaki Regional Policy Statement

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

Operative District Plan

115. The following objectives and policies of the Operative District Plan are considered relevant to this proposal and tabled below for reference:

⁸ Paragraph 47 of Ms Hooper's evidence dated 24th of January 2023.

116. **Table 1:** Applicable Operative District Plan Objectives and Policies

Obj/Pol #	
Objective 1	To ensure activities do not adversely affect the environmental and amenity values of areas within the district or adversely affect existing activities.
Policy 1.1	Activities should be located in areas where their effects are compatible with the character of the area.
Objective 4	To ensure the subdivision, use and development of land maintains the elements of RURAL CHARACTER.
Policy 4.3	<p>Control the density, scale, location (including on-site location) and design of activities by;</p> <p>(a) Imposing a maximum HEIGHT for all buildings to allow for rural uses to operate.</p> <p>(b) Providing a maximum area that can be covered by BUILDINGS to control the effects of larger scale activities on small sites.</p> <p>(c) Requiring BUILDINGS to be setback from the ROAD BOUNDARY in order to maintain spaciousness.</p> <p>(d) Requiring BUILDINGS to be setback from the SIDE BOUNDARY to maintain separation between BUILDINGS and related activities.</p> <p>(e) Providing for the RELOCATION of BUILDINGS to ensure they are reinstated.</p> <p>(f) Requiring landscaping (planting and screening) to mitigate the effects of:</p> <p>(i) OUTDOOR STORAGE areas visible from an adjoining RESIDENTIAL ENVIRONMENT AREA or New Plymouth entrance corridor and;</p> <p>(ii) VEHICLE parking either visible from the ROAD or an adjoining RESIDENTIAL ENVIRONMENT AREA or New Plymouth entrance corridor;</p> <p>(iii) of large SUBSTATIONS and SWITCHING STATIONS.</p> <p>(g) Imposing controls on the size, HEIGHT, location, content, number and duration of ADVERTISING SIGNS.</p> <p>(h) Imposing controls on the quantity, composition and reinstatement of EXCAVATION and FILL to ensure adverse effects are mitigated.</p>
Policy 4.1	Control the density and scale of subdivision by providing for one small ALLOTMENT where there is a large balance area, that promotes Spaciousness and a Low Density, Production Orientated Environment.
Policy 4.2	<p>Control the density, scale, location and design of subdivision by providing limited opportunities for small ALLOTMENT subdivision, having consideration to the following matters:</p> <p>(a) The environment is spacious, maintains a low density and the subdivision provides a large balance area.</p> <p>(b) The subdivision is of such a scale to ensure the intensity of use is typical of the rural environment and not of an urban or lifestyle area.</p> <p>(c) The subdivision and resulting development is not highly visible in the landscape and there is no apparent aggregation of development because of;</p> <p>(i) the undulating nature of the landscape;</p> <p>(ii) the design and layout of the ALLOTMENTS and any servicing requirements;</p> <p>(iii) the design and visual treatment of the resulting development.</p> <p>(d) The contours of the landscape are retained and there is limited need for EXCAVATION and FILLING.</p> <p>(e) The subdivision does not impact OUTSTANDING LANDSCAPES and REGIONALLY SIGNIFICANT LANDSCAPES and other features protected by other OVERLAYS.</p>

	<p>(f) There are no community costs associated with upgrading INFRASTRUCTURE as a direct result of the subdivision and development.</p> <p>(g) The rural nature and purpose of rural INFRASTRUCTURE (small scale, unserviced with a lack of urban INFRASTRUCTURE) is maintained. (h) The proposed ALLOTMENT size, shape and resulting land use will recognise the production orientated nature of the rural area.</p> <p>(i) Consistency of the proposal with Policy 4.5.</p>
Policy 4.3	<p>Control the density, scale, location (including on-site location) and design of activities by;</p> <p>(a) Imposing a maximum HEIGHT for all buildings to allow for rural uses to operate.</p> <p>(b) Providing a maximum area that can be covered by BUILDINGS to control the effects of larger scale activities on small sites.</p> <p>(c) Requiring BUILDINGS to be setback from the ROAD BOUNDARY in order to maintain spaciousness.</p> <p>(d) Requiring BUILDINGS to be setback from the SIDE BOUNDARY to maintain separation between BUILDINGS and related activities.</p> <p>(e) Providing for the RELOCATION of BUILDINGS to ensure they are reinstated.</p> <p>(f) Requiring landscaping (planting and screening) to mitigate the effects of:</p> <p>(i) OUTDOOR STORAGE areas visible from an adjoining RESIDENTIAL ENVIRONMENT AREA or New Plymouth entrance corridor and;</p> <p>(ii) VEHICLE parking either visible from the ROAD or an adjoining RESIDENTIAL ENVIRONMENT AREA or New Plymouth entrance corridor;</p> <p>(iii) of large SUBSTATIONS and SWITCHING STATIONS.</p> <p>(g) Imposing controls on the size, HEIGHT, location, content, number and duration of ADVERTISING SIGNS.</p> <p>(h) Imposing controls on the quantity, composition and reinstatement of EXCAVATION and FILL to ensure adverse effects are mitigated.</p>
Policy 4.4	<p>Control the density, HEIGHT and on-site location of HABITABLE BUILDINGS by:</p> <p>(a) Allowing additional HABITABLE BUILDINGS at appropriate densities and of a size that maintain Spaciousness and a Low Density, Production Orientated environment, while allowing some flexible living opportunities.</p> <p>(b) Allowing HABITABLE BUILDINGS to a maximum HEIGHT that allows typical residential use to occur.</p> <p>(c) Requiring HABITABLE BUILDINGS to be setback from the SIDE BOUNDARY to ensure privacy between dwellings and separation from other rural uses.</p>
Policy 4.5	<p>Ensure that the design of subdivision and development is sensitive to the surrounding environment. In particular the following design principles will be considered:</p> <p>(a) Ensure appropriate overall density by maintaining the level of built form expected in the rural environment.</p> <p>(b) Ensure the intensity and scale of the development is in keeping with RURAL CHARACTER.</p> <p>(c) Ensure that ALLOTMENTS and BUILDINGS are in context with the surrounding environment and are positioned to recognise natural features in the landform.</p> <p>(d) Ensure that ALLOTMENTS and BUILDINGS are sited and designed in a manner that is integrated with the surrounding environment with minimal disturbance to the landform by considering:</p> <p>(i) softening with vegetation related to the area and treatment of boundary elements;</p> <p>(ii) BUILDING design of a form and scale that is in keeping with the landscape;</p>

	(iii) the use of materials, that are in keeping with the environment, including consideration of colour and low reflectivity; (iv) low level INFRASTRUCTURE and services that is rural in nature. (e) Consistency of any full discretionary activity with design guidelines. (f) Consideration towards any recommendations from a design panel.
Policy 4.8	Activities within the rural environment should not generate traffic effects that will adversely affect RURAL CHARACTER and the intensity of traffic generation should be of a scale that maintains RURAL CHARACTER.
Objective 20	The safe and efficient operation of the ROAD TRANSPORTATION NETWORK should not be adversely affected by land use activities that have insufficient or substandard parking or loading areas.
Policy 20.7	Subdivision should not adversely affect the safe and efficient operation of the ROAD TRANSPORTATION NETWORK.

117. Objective 1 and Policy 1.1 are about protecting amenity values and ensuring activities are compatible with the character of the area. As outlined above the reduced scheme proposed for the subdivision is able to ensure the protection of amenity values across the subject site. The application is consistent with Objective 1 and Policy 1.1.

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

Objective 4:

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

119. As outlined above the application is now considered to be able to ensure the maintenance of rural character through the reduced subdivision scheme and the package of mitigation measures offered by the applicant. The proposed consent notice controls will ensure future built form on each allotment is in keeping with rural character as anticipated by the District Plan.

120. Overall, the application is considered to be consistent with the objectives and policies of the Operative Plan.

Proposed District Plan

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

Table 2: Applicable Proposed District Plan Objectives and Policies

Obj/Pol #	
Strategic Objective UFD-24	Productive, versatile land and natural, physical and cultural resources located within rural areas that are of significance to the district are protected and maintained.
SASM-O1	Sites and areas of significance to Māori are recognised, protected and maintained.
SASM-O2	The relationship of tangata whenua with sites and areas of significance to

	Māori is recognised and protected.
HH-O1	Historic heritage is recognised, protected and maintained.
WB-O1	Waterbodies with natural character and ecology, recreation, cultural, spiritual and heritage values, and their margins are protected from inappropriate activities.
WB-O2	Public access to and along waterbodies with high recreation, scenic or amenity values is maintained and enhanced.
WB-O3	The adverse effects of activities on the values of waterbodies are avoided, remedied or mitigated.
WB-O4	The relationship of tangata whenua and their traditions, values and interests associated with waterbodies are recognised and provided for.
RPROZ-O1	Productive land and resources support a range of production oriented and resource dependent activities which are innovative and efficient.
RPROZ-O2	The Rural Production Zone is predominantly used for primary production.
RPROZ-O3	The role, function and predominant character of the Rural Production Zone is not compromised by incompatible activities.
RPROZ-O4	<p>The predominant character and amenity of the Rural Production Zone is maintained, which includes:</p> <ol style="list-style-type: none"> 1. extensive areas of vegetation of varying types (for example, pasture for grazing, crops, forestry and indigenous vegetation and habitat) and the presence of large numbers of farmed animals; 2. low density built form with open space between buildings that are predominantly used for agricultural, pastoral and horticultural activities (for example, barns and sheds), low density rural living (for example, farm houses and worker's cottages) and community activities (for example, rural halls, domains and schools); 3. a range of noises, smells, light overspill and traffic, often on a cyclic and seasonable basis, generated from the production, manufacture, processing and/or transportation of raw materials derived from primary production; 4. interspersed existing rural industry facilities associated with the use of the land for intensive indoor farming, quarrying, oil and gas activities and cleanfills; and 5. the presence of rural infrastructure, including rural roads, and the on-site disposal of waste, and a general lack of urban infrastructure, including street lighting, solid fences and footpaths.
RPROZ-O5	<p>The Rural Production Zone is a functional, production and extraction orientated working environment where primary production and rural industry activities are able to operate effectively and efficiently, while ensuring that:</p> <ol style="list-style-type: none"> 1. the adverse effects generated by primary production and rural industry activities are appropriately managed; and 2. primary production and rural industry activities are not limited, restricted or compromised by incompatible activities and/or reverse sensitivity effects.
RPROZ-O6	Natural features, soil productivity, versatility of land and rural character and/or amenity are not compromised by adverse changes to landform, intensification of land use and/or built form, or urbanization.
RPROZ-O7	Sensitive activities are designed and located to avoid, remedy or mitigate adverse reverse sensitivity effects and/or conflict with primary production.
SUB-O1	Subdivision results in the efficient use of land and achieves patterns of

	development which deliver good quality community environments that are compatible with the role, function and predominant character of each zone.
SUB-O2	<p>Subdivision is designed to avoid, remedy or mitigate adverse effects on the environment and occurs in a sequenced and coherent manner that:</p> <ol style="list-style-type: none"> 1. responds positively to the site's physical characteristics and context; 2. is accessible, connected and integrated with the surrounding neighbourhoods; 3. contributes to the local character and sense of place; 4. recognises the value of natural systems in sustainable stormwater management and water sensitive design; and 5. protects or enhances natural features and landforms, waterbodies, indigenous vegetation, historic heritage, sites of significance to tangata whenua, and/or identified features; and 6. provides accessible and well-designed open space areas for various forms of recreation, including sport and active recreation, for the health and wellbeing of communities.
WB-P2	<p>Protect the natural character, ecological, recreational, cultural, spiritual, heritage and/or amenity values of waterbodies, including significant waterbodies, by:</p> <ol style="list-style-type: none"> 1. managing the potential adverse effects of subdivision on the values of the waterbody; 2. requiring buildings and earthworks to be set back from waterbodies to avoid, remedy or mitigate potential adverse effects on their values; and <p>maintaining and enhancing public access to waterbodies with recreation, scenic, cultural or amenity values through the creation of esplanade reserves or strips at the time of subdivision, especially where it would provide connections to existing reserves.</p>
SASM-P2	<p>Protect and maintain sites and areas of significance to Māori from inappropriate activities by:</p> <ul style="list-style-type: none"> ○ 1. ensuring identified sites and areas of significance to Māori are not disturbed, destroyed, removed and/or visually encroached upon; and ○ 2. requiring activities on, or in proximity to sites and areas of significance to Māori to avoid adverse effects on cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua.
SASM-P3	<p>Allow the following activities to occur on, or adjacent to scheduled sites and areas of significance to Māori, while ensuring their design, scale and intensity will not compromise cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua:</p> <ol style="list-style-type: none"> 1. Land disturbance...;
SASM-P4	<p>Manage activities that occur on, or adjacent to scheduled sites and areas of significance to Māori that have the potential to compromise cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua, including:</p> <ol style="list-style-type: none"> 1. Erection of, additions to and relocation of structures; 2. Earthworks; and 3. Subdivision of land containing sites and areas of significance to Maori.

SASM-P5	<p>Ensure that activities on, adjacent to or affecting sites and areas of significance to Māori avoid adverse effects on the site or area, or where avoidance is not possible, appropriately remedy or mitigate adverse effects, having regard to;</p> <ol style="list-style-type: none"> 1. the particular cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the site which may be affected; 2. the extent to which the activity may compromise tangata whenua's relationship with their ancestral lands, water, sites, wāhi tapu, and other taonga, and/or the ability to protect, maintain or enhance sites of significance to tangata whenua; 3. tangata whenua's responsibilities as kaitiaki and mana whenua; 4. any opportunities for tangata whenua's relationship with the site or area to be maintained or strengthened on an ongoing or long term basis, including practical mechanisms for mana whenua to access, use and maintain the identified site; 5. the outcomes of any consultation with and/or cultural advice provided by mana whenua, in particular with respect to mitigation measures and/or the incorporation of mātauranga Māori principles into the design, development and/or operation of activities that may affect the site; and 6. where the site is also an archaeological site, the relevant objectives and policies in the Historic Heritage Chapter.
HH-P13	<p>Protect and maintain archaeological sites from inappropriate activities by:</p> <ol style="list-style-type: none"> 1. ensuring scheduled archaeological sites are not disturbed, destroyed, removed and/or visually encroached upon; and 2. requiring activities on or adjacent to archaeological sites to avoid adverse effects on the sites' historic heritage values.
HH-P14	<p>Allow the following activities on or adjacent to an archaeological site provided they do not compromise the site's historic heritage values:</p> <ol style="list-style-type: none"> 1. land disturbance; 2. demolition or removal of existing buildings and structures; 3. alterations to existing buildings and structures; 4. maintenance and repair or upgrading of existing network utility structures; and 5. erection of signs
HH-P15	<p>Manage activities that occur on or adjacent to scheduled archaeological sites, including:</p> <ol style="list-style-type: none"> 1. erection of, additions to and relocation of structures; 2. earthworks; and 3. subdivision of land containing archaeological sites.
RPROZ-P2	<p>Manage activities that are potentially compatible with the role, function and predominant character of the Rural Production Zone and ensure it is appropriate for such activities to establish in the Rural Production Zone, having regard to whether:</p>

	<ol style="list-style-type: none"> 1. the activity is compatible with the character and the amenity of the rural area; 2. the activity will limit or constrain the establishment and operation of agricultural, pastoral and horticultural activities; 3. the activity will reduce the potential for versatile land to be used for productive purposes and in a sustainable manner; 4. adequate on-site infrastructure and services are available and/or can be provided to service the activity's needs; 5. adverse effects can be internalised within the activity's site; and 6. the activity will not result in conflict at zone interfaces.
RPROZ-P3	<p>Avoid activities that are incompatible with role, function and predominant character of the Rural Production Zone and/or activities that will result in:</p> <ol style="list-style-type: none"> 1. reverse sensitivity effects and/or conflict with permitted activities in the zone; or 2. adverse effects, which cannot be avoided, or appropriately remedied or mitigated, on: <ol style="list-style-type: none"> a. rural character and amenity values; b. the productive potential of highly productive soils and versatile rural land. <p>Incompatible activities include:</p> <ol style="list-style-type: none"> 1. residential activities (except papakāinga) and rural lifestyle living that are not ancillary to rural activities; <p>...</p>
RPROZ-P4	<p>Maintain the role, function and predominant character of the Rural Production Zone by controlling the effects of:</p> <ol style="list-style-type: none"> 1. building height, bulk and location; 2. setback from boundaries and boundary treatments; and 3. earthworks and subdivision.
RPROZ-P5	<p>Require the effects generated by activities to be of a type, scale and level that is appropriate in the Rural Production Zone and that will maintain rural character and amenity, including by:</p> <ol style="list-style-type: none"> 1. managing noise and light emissions to an acceptable level, particularly around sensitive activities; and 2. managing high traffic generation activities that compromise the safe and efficient use of the transport network
RPROZ-P7	<p>Require sensitive activities to be appropriately located and designed to minimise any reverse sensitivity effects, risks to people, property and the environment and/or conflict with activities permitted in the Rural Production Zone, including by:</p> <ol style="list-style-type: none"> 1. ensuring sufficient separation by distance and/or topography between sensitive activities and zone boundaries, transport networks, primary production, significant hazardous facilities and rural industry; 2. adopting appropriate design measures to minimise the impact of off-site effects of rural industry that cannot be internalised within the rural industry activity's site; and 3. utilising landscaping, screen planting or existing topography to minimise the visual impact of rural industry.
SUB-P10	<p>Manage the scale, design and intensity of subdivision in the Rural</p>

	<p>Production Zone by:</p> <ol style="list-style-type: none"> 1. allowing one small allotment only where there is a large balance area, and where the subdivision design reinforces the role, function and predominant character of the zone; 2. managing subdivision that involves multiple small allotments with a large balance area; and 3. avoiding subdivision that would compromise the role, function and predominant character of the Rural Production Zone, or is more typical of patterns of development in urban areas.
SUB-P12	<p>Ensure that that subdivision in the Rural Zones results in lot sizes and lot configurations that:</p> <ol style="list-style-type: none"> 1. are appropriate for the development and land use intended by the zone; 2. are compatible with the role, function and predominant character of the zone; 3. maintain rural character and amenity; and 4. are consistent with the quality and types of development envisaged by the zone objectives and policies, including by minimising any reverse sensitivity effects and/or conflict with activities permitted in the zones.
SUB-P13	<p>Require subdivision design and layout in the Rural Zones to respond positively to, and be integrated with the surrounding rural or rural lifestyle context, including by:</p> <ol style="list-style-type: none"> 1. incorporating physical site characteristics, constraints and opportunities into subdivision design; 2. minimising earthworks and land disturbance by designing building platforms that integrate into the natural landform; 3. avoiding inappropriately located buildings and associated access points including prominent locations as viewed from public places; 4. incorporating sufficient separation from zone boundaries, transport networks, rural activities and rural industry to minimise potential for reverse sensitivity conflicts; 5. incorporating sufficient separation between building platforms and identified features to minimise potential adverse effects on those features; 6. considering whether a subdivision has the potential to compromise cultural, spiritual and/or historic values and interests or associations of importance to tangata whenua, and if so, also considering the outcomes of any consultation with and/or cultural advice provided by tangata whenua and: <ol style="list-style-type: none"> a. opportunities to incorporate mātauranga Māori principles into the design and/or development of the subdivision; b. opportunities for tangata whenua's relationship with ancestral lands, water, sites, wāhi tapu and other taonga to be maintained or strengthened; and c. options to avoid, remedy or mitigate adverse effects; 7. promoting sustainable stormwater management through water sensitive design solutions; and 8. in the Rural Lifestyle Zone, achieving patterns of development and allotment sizes that provide opportunities for rural lifestyle living.
SUB-P14	<p>Ensure that rural subdivision in the Rural Lifestyle or Rural Production Zones maintains or enhances the attributes that contribute to rural character and</p>

	<p>amenity values, including:</p> <ol style="list-style-type: none"> 1. varying forms, scales, spaciousness and separation of buildings and structures associated with the use of the land; 2. maintaining prominent ridgelines, natural features and landforms, and predominant vegetation of varying types; 3. low population density and scale of development relative to urban areas; 4. on-site servicing and a lack of urban infrastructure; and 5. in the Rural Production Zone, the continued and efficient operation of rural activities and productive working landscapes.
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122. The application is consistent with Historic Heritage and SASM objectives and policies as the evidence provided by the applicant and Nga Mahanga A Tairi has confirmed that the subdivision and land use can occur subject to conditions without any adverse effects resulting on Puketi Pa site (SASM and HH ID 197).
123. It is considered that the proposal is consistent with rural production zone objectives and policies in relation to rural character. However, UFD-24 and RPROZ objectives RPOZ-O1, O2, O3, O5 and O6 send a clear direction about protecting finite resource and the productive capacity of rural farm land within the RPOZ. The subdivision and development do not align with these objectives. RPROZ-P2 requires activities occurring in the RPOZ that are potentially compatible like lifestyle development shall have regard to whether they 'will reduce the potential for versatile land to be used for productive purposes in a sustainable manner'. The assessment provided above demonstrates the subdivision will impact on the productive purposes of the subject site. The subdivision does not align with this policy.
124. Further RPOZ-P3 requires activities to be avoided that will result in adverse effects that cannot be avoided, or appropriately mitigated on 'the productive potential of highly productive soils and versatile rural land'. This policy aligns with the NPS-HPL and the subdivision cannot avoid or appropriately mitigate the effects on the loss of the HPL. The subdivision is contrary to objectives RPROZ O1, O2, O3, O5 and O6 and policies RPROZ- P2 and P3.
125. The subdivision is consistent with RPROZ-O4 which is about maintenance of rural character and amenity and the relevant policies being RPOZ-P4, P5 and P7. The subdivision of HPL as detailed above would result in a loss of productive farming capacity and RPROZ-O1, O2, O3, O5 and O6 set out clear direction to ensure the protection of versatile soils and the production orientated nature of the RPOZ land. The proposed subdivision is not consistent with these objectives which clearly seek to protect HPL from fragmentation and align with the direction of the NPS-HPL even though they were drafted prior to the NPS-HPL coming into effect.
126. Overall, the proposal is inconsistent with the relevant objectives and policies of the Proposed District Plan outlined above that relate to the protection of versatile soils and production orientated activities within the RPROZ.

Other Matters - s104(1)(c)

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

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

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

Part 2 of the RMA

128. The Court of Appeal's decision in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 was released on 21 August 2018. The Court of Appeal held that the Supreme Court's rejection in *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38 ("*King Salmon*") of the "overall broad judgement" approach in the context of plan provisions applied in the particular factual and statutory context of the NZCPS which, the Supreme Court confirmed, already reflects Part 2 and complies with the requirements of the RMA. The Court of Appeal did not consider the Supreme Court in *King Salmon* "intended to prohibit consideration of Part 2 by a consent authority in the context of resource consent applications (paragraph [66])".
129. In the context of resource consents, the Court of Appeal determined that:
- a) RMA decision makers should usually consider Part 2 when making decisions on resource consents (this is the implication of the words "subject to Part 2" in section 104); and
 - b) However, doing so is unlikely to advance matters where the relevant plan provisions have clearly given effect to Part 2, or where it is clear the plan is "competently prepared" with "a coherent set of policies" such that there is no need to refer to Part 2.
130. In the present application, it is appropriate to apply Part 2 as it cannot be said the Operative District Plan or Proposed District Plan contains a coherent set of policies or gives effect to the NPS-HPL due to the timing of the NPS-HPL only recently coming into effect. Therefore, there is potential for incomplete coverage in the ODP and PDP in relation to the protection of highly productive soils. This is one of the three caveats where the Supreme Court in *King Salmon* said recourse should be had to Part 2. Accordingly, it is appropriate to provide an assessment of the application against Part 2 below.

Section 8 – Treaty of Waitangi

131. Section 8 concerns the principles of the Treaty of Waitangi. The application has engaged with mana whenua and offered conditions of consent to ensure potential cultural effects are avoided. Further, from the archaeological and cultural advice

received from the applicant it is unlikely the site is within the physical extent to the Puketū Pa site. Given this information and the conditions of consent offered it is unlikely the proposal will offend section 8 of the RMA.

Section 7 – Other matters

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

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

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

133. In terms of the efficient use and development of natural and physical resources (7(b)) and the finite characteristics of natural and physical resource (7(g)), the resources relevant this proposal is the soil resource and the protection of highly productive soil.

134. The subject site is zoned for rural purposes in both the ODP and the PDP. The application is for a subdivision and associated land use of HPL. For the reasons provided above it is therefore considered that the proposed application is not the most efficient use of highly productive soils and doesn't recognise its finite characteristics that make it worthy of retention as a productive farming unit. Furthermore, the proposal conflicts with the NPS-HPL.

135. Regarding Section 7(g) I do consider the consent application clashes with Section 7 (g).

136. Regarding 7 (b) I do consider the proposed application would result in an inefficient use of the highly productive soil land and soils which is inconsistent with Section 7 (b). It is considered this application also clashes with Section 7 (b).

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

137. In terms of the maintenance and enhancement of amenity values (7(c)) and the maintenance and enhancement of the quality of the environment (7(f)), the proposal in my opinion is able to ensure the avoidance of adverse effects with respect to amenity values and quality of the environment as outlined above.

138. The proposal accords to Section 7 (c) and (f) of the RMA.

139. Taking the above into consideration, it is my opinion that the proposal only partly meets the relevant principles of Section 7.

Section 6 – Matters of National Importance

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

Section 5 – Purpose

141. As stated above, Sections 6 – 8 all serve to inform the analysis and consideration of whether the purpose of the Act under section 5 will be achieved by the proposal. The overriding purpose of the RMA is 'to promote the sustainable management of natural and physical resources'. While the proposal meets the applicant's family's social and economic wellbeing, that consideration must be balanced against the remaining matters in Section 5(2).

142. The proposal involves the creation of three small allotments and larger balance allotment with the associated land use to allow for a side yard setback breach on proposed Lot 5. The application must therefore ensure it can achieve the following in addition to the social and economic well-being of the applicant:

Section 5 (2)...

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

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

Recommendation

145. That for the above reasons the application be declined pursuant to Section 104 & 104B of the Resource Management Act.
146. Further if the Commissioner were of a mind that the subdivision and land use consent application being SUB21/47781 and LUC22/48312 could be granted then the following conditions contained in Appendix 1 should be considered.

Report and recommendation by:



Laura Buttimore
Consultant Planner

Date: 17th of March 2023

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

Appendix 2: Memo from Natural Capital