



## **New Plymouth District Council**

### **Report for a publicly notified resource consent application**

### **Section 42A Resource Management Act 1991 (RMA)**

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#### **APPLICATION DETAILS**

<b>Applicant:</b>	Manor Property Limited (the Applicant)
<b>Application:</b>	Proposed subdivision for two additional lots and land use consent to provide for industrial activities on land not zoned for industrial activities.
<b>Location of activity:</b>	19 Egmont Road, New Plymouth.

#### **REPORT DETAILS**

<b>Date:</b>	1 May 2023
<b>Prepared by:</b>	Todd Whittaker <b>Independent Planning Consultant</b>
<b>Approved by:</b>	Richard Watkins <b>Principal Planner</b>
<b>Application IDs:</b>	SUB 19/47312 and LUC19/47535

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## **1 Executive Summary**

- 1.1 Manor Property Limited (the Applicant) has lodged an application to create two 1.2ha lots and a land use consent for industrial activities. The site is located at 19 Egmont Road and is zoned Rural under the Operative District Plan (ODP).
- 1.2 The application process goes back to 2019 and the Applicant has been working through a number of planning issues raised by Council and has also endeavoured to address concerns raised by mana whenua. Late last year, mana whenua confirmed their opposition to any development on the site until a full and proper structure plan process is completed. This followed on from their submissions and evidence to the Proposed District Plan (PDP) review.

- 1.3 The original application was lodged prior to the PDP being notified. The notified version of the PDP provided for a new Industrial Zone over the subject site supported by the Oropuriri Structure Plan (Oropuriri SP). The hearings on the PDP have been completed and the decisions are scheduled to be issued on 13 May 2023. The final Council staff evidence recommended that the Industrial Zone be retracted and a Future Urban Zone (FUZ Zone) be adopted. As no PDP decisions are currently available, this creates significant uncertainty on the plan provisions which has affected the assessment presented in this planning report. Once the PDP decisions are available, supplementary evidence is proposed on the final zone provisions for the site.
- 1.4 The consent application for the industrial subdivision and land use was publicly notified in January 2023. The key issues arising from submissions relate to cultural values and sites, existing issues with stormwater and traffic issues along Egmont Road, and the interface of residential properties with the proposed industrial sites including construction effects.
- 1.5 The proposed industrial lots are contiguous with an existing industrial area and there is the opportunity for mitigation of the effects from the proposed industrial activities in relation to off-site effects including landscape values, interface with Egmont Road dwellings to the south, and servicing.
- 1.6 The opposition from mana whenua is based on the relationship of the site to the Oropuriri Pā and the Mangaone Stream and the 'cultural landscape' of the area. In principle, mana whenua are opposed to any development in this area until such time as appropriate recognition and protection of cultural values and sites is provided through a new structure plan process.
- 1.7 In terms of stormwater and transportation, there are matters arising from the consenting process where further assessment of impacts and infrastructure solutions across the network and catchment will be required. This includes potential impacts on the Egmont Road/SH3 intersection and the timing and likelihood of cross connections along the local roading network to reduce traffic generation onto the state highway. Regarding stormwater, Council is seeking to undertake further catchment analysis with engagement with mana whenua identified as a key part of this process.
- 1.8 I have reviewed Council land supply work under the NPS-Urban Development 2020 and the evidence provided to the PDP hearings. This confirms appropriate industrial land supply is available for the New Plymouth district. As such, the proposed application is not addressing a short fall of industrial land supply.
- 1.9 I consider that there are aspects of the proposed industrial development which are supportable given the site and its locational attributes, and the ability to mitigate and manage off site effects through consent conditions. However, there are unresolved matters associated with cultural values and sites, outstanding work has been identified on transportation and stormwater networks, and there is uncertainty around the structure plan provisions. The proposal also has a non-complying activity status. In my opinion these matters combine to outweigh the positive aspects of the application and matters which can be addressed through consent conditions. As such, I do not support the granting of consent and recommend that the Commissioners decline the application.

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## 2 Introduction

- 2.1 This report has been prepared by Todd Whittaker. I am an independent planning consultant and Director of Planning Works Limited. I have a Bachelor of Resource and Environmental Planning from Massey University, 1994 and I am a full member of New Zealand Planning Institute (NZPI). I have 28 years of professional experience in the resource management field and have previously served on the Board of the NZPI.
- 2.2 I have held senior planning and management roles within the statutory planning sector and have prepared S.42A reports for a multitude of planning applications including discharges to water bodies and land use affecting significant water bodies. I have also presented evidence to the Environment Court, Board of Inquiry and have prepared expert statements for the District and High Court.
- 2.3 I have read and complied with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 in preparing this report. I agree to comply with it in presenting this report and any evidence at the hearing. The opinions and assessment within this report are within my area of expertise, except where I have stated my reliance on other identified evidence.
- 2.4 For full disclosure, in 2022 I was engaged by Council to assist with the preparation of hearings evidence and the review of submissions on two specific topics as part of the Proposed District Plan (PDP) review process. I was asked to assist the policy team given the resource demand generated by the intense hearing programme and substantive number of submissions. I was not involved with the submissions on the Industrial Zone or Structure Plan provisions for the subject site. However, I was involved with assessing the general submissions to the Future Urban Zone (FUZ) and I also provided an assessment and recommendations on the Area Q Structure Plan at Bell Block. In undertaking my role as part of the planning team providing the Council evidence, I engaged directly with the other planners, including Laura Buttimore who prepared the evidence on the Oropuriri Structure Plan and who was originally assigned as the reporting planner on the current application. I was also involved with discussions on the submissions with Council legal advisers, other technical experts including economic and traffic experts and Council management staff involved with the hearings process and review of evidence.
- 2.5 In preparing this report, I have taken into account and relied upon the independent technical reports and advice received from;
- Mark James – Three Waters and Structure Planning
  - Andrew Skerrett – Transportation Assessment
  - Debbie Taplin/Matt Sanger – Engineering Conditions



### **3 Procedural Matters**

- 3.1 There is likely to be a procedural matter arising from the decisions due to be released from the PDP review. The hearings on the PDP were completed in 2022. At the time of writing this S.42A report, no decisions on submissions have been released. The Council meeting to endorse the PDP Commissioner's recommendations and approve the notification of the decisions is scheduled for Tuesday 2 May 2023. Provided that Council approves the notification, the decisions on the PDP are scheduled to be publicly notified and issued on Saturday 13 May 2023.
- 3.2 Assuming the decisions released on submissions received to the PDP are issued prior to the hearing on the current application, then I would seek leave to provide supplementary evidence to this S.42A report to address any final zone and plan provisions affecting the site. The Applicant and other hearing parties may also request additional time and the opportunity to provide supplementary evidence. The Commissioners for this consent hearing have the opportunity to issue directions on any supplementary evidence if considered appropriate.
- 3.3 If the decisions on submissions received to the PDP are notified after the hearing, but prior to any decision on this subdivision and land use application, then the Commissioners for this consent hearing will need to determine whether it is appropriate to call for any further submissions or evidence ahead of the final decision.

## 4 Application

### **Overview of Application Process**

- 4.1 A significant period of time elapsed since the original application was lodged. As such, and before discussing the details of the application, it is appropriate to provide some background and context to the application process.
- 4.2 An original subdivision application was lodged in late 2018 for a three-lot subdivision to create two new lots for future industrial development at 19 Egmont Road (SUB 19/47421). This was superseded by a combined subdivision and land use consent which was lodged in June 2019. Notably, the combined application was lodged prior to the Proposed District Plan (PDP) being notified however the application anticipated new Industrial Zone and Structure Plan provisions for the site based on the Draft District Plan. The application was for industrial lots although the assessment was primarily based on the Rural Zone provisions and Future Urban Development (FUD) overlay which were operative at the time of lodgement.
- 4.3 The Applicant progressed technical work to support the assessment of effects from 2019 to 2022 and reached a clear expectation that a consent decision could be issued in mid 2022 given the work and additional assessment completed. This included engagement with both Council and mana whenua.
- 4.4 Council issued a summary of outstanding issues (email from Richard Watkins dated 15 August 2022) which set out a number of matters requiring further assessment and resolution. This included further engagement with mana whenua, infrastructure issues and zoning issues arising from the PDP process. The Applicant responded and disputed various aspects of the outstanding matters.
- 4.5 With regard to cultural values, the Applicant obtained a Cultural Impact assessment (CIA) from Ngāti Tawhirikura early in the process. The CIA is undated however the timeline and file record shows that this was submitted to NPDC in January 2020. It appears that the Applicant attempted to engage with Ngāti Tawhirikura over an extended period to ascertain whether the additional information including stormwater treatment and design addressed the matters set out in the CIA. A meeting with Ngāti Tawhirikura, the Applicant and Council staff was held in November 2022 to discuss the status of the application and the position of Ngāti Tawhirikura. Ngāti Tawhirikura provided an email response on 15 November 2022 confirming their final position that any development within this area should only take place once a full structure plan process was completed. This also confirmed the key issues for mana whenua being the proximity of the site to the Te Oropuriri Pā and surrounds, the health of the Mangaone Stream, and work towards giving effect to Te Mana o Te Wai. It also questioned whether industrial activities were the most appropriate land use for this area.
- 4.6 Following this advice, the Applicant decided to seek a public notification process to enable the application and outstanding issues to be progressed through a submissions and hearings process.

### **Proposed and Subdivision and Land Use for Industrial Activities**

- 4.7 The application for subdivision and land use includes and relies on the original AEE and application material dated 17/06/2019 and the subsequent information, technical assessments and reports and amendments to the application which have been submitted since that time.

- 4.8 In summary, the proposal is for a subdivision to create two industrial lots, each containing 1.2ha with a land use application proposed to provide and enable the scale and type of industrial activities which may establish on the future lots. This includes for example a proposal to dispense with the 30m set back which is required for buildings within a Rural Zone. The site and surrounding land use is shown in **Figure 1**.



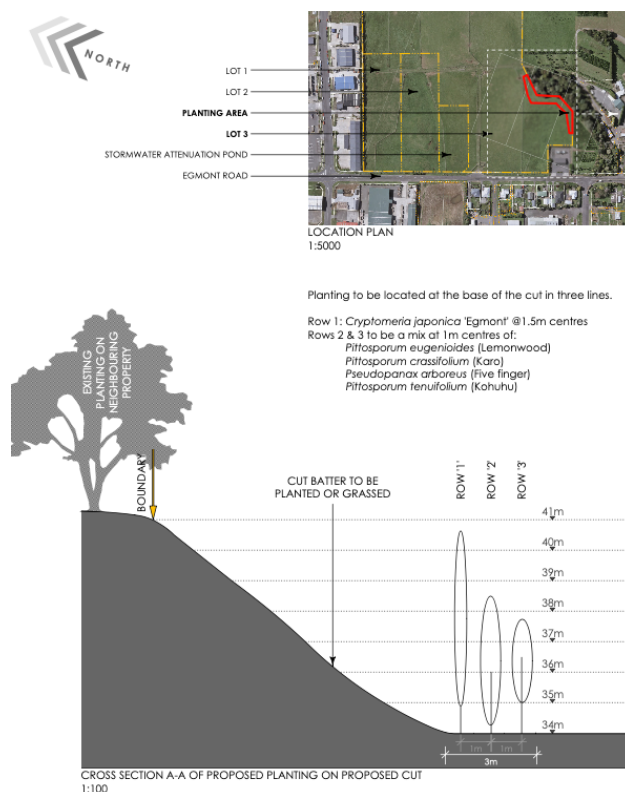
**Figure 1: Site and Location plan (Source: AEE Material)**

- 4.9 The proposal involves significant earthworks to create level building sites including cutting of an elevated knoll by up to 7.5m on the southern boundary of the site. A series of application plans have been presented in association with the AEE and technical reports. The key plans are provided in **Figures 2 and 4 overpage**.





Graphic Supplement



Manor Properties - 19 Egmont Road, New Plymouth

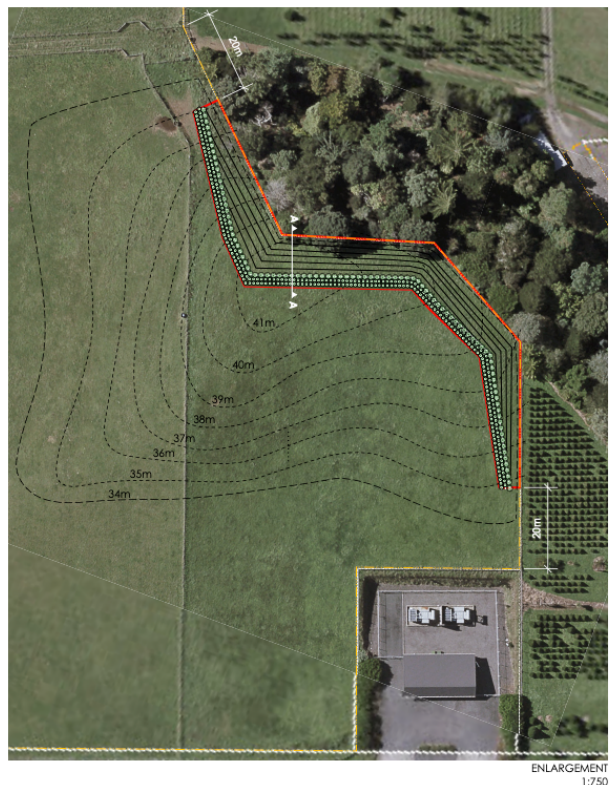


Figure 4: Planting Plan for Lot 3

- 4.10 Key reports and assessments submitted in support the application include;
- Initial Cultural Impact Assessment - Ngāti Tawhirikura (undated),
  - Archaeological Assessment dated September 2010 and Heritage NZ Authority dated 18 May 2022,
  - Assessment of Landscape and Visual Effects – Bluemarble, Updated 18 November 2022,
  - Various technical assessment in terms of infrastructure and servicing,
  - Assessment of potential wetland areas – BTW Wetland Delineation Assessment dated 1 April 2022,
  - Assessment of transportation effects including TIA dated 17 June 2019, and
  - Proposed condition to mitigate effects associated with both the subdivision and land use application. This includes built form and activity standards for future industrial activities as set out in letter from BTW dated 30 November 2022.
- 4.11 It is noted that while Ngāti Tawhirikura has provided an updated position on the application, the original CIA has not been withdrawn or retracted. I also note that the Applicant has engaged with NPDC Infrastructure Team over the design and management of stormwater flows within this catchment.

## 5 Notification and Submissions

- 5.1 The application was publicly notified in January of this year following the request for public notification by the Applicant.
- 5.2 The submissions process resulted in seven submissions. Given this relatively low number of submissions, I have elected to provide a brief summary of each submission to assist with the framing of issues arising from submissions:

Sub	Party	Summary of Key Submission Points
Sub#1	Ngāti Tawhirikura Hapū, Puketapu Hapū and Te Kotahitanga o Te Atiawa Trust	<ul style="list-style-type: none"> <li>• Ngāti Tawhirikura Hapū and Puketapu Hapū are mana whenua for this area;</li> <li>• The application site was a native reserve taken by the Crown;</li> <li>• The site has cultural significance given the proposed land use around the Te Oropuriri Pā and the cultural values, health and mauri of the Mangaone River;</li> <li>• The Mangaone River catchment has historically been, and continues to be, affected by development and discharges;</li> <li>• Te Mana o Te Wai needs be considered and given effect;</li> <li>• Any development within this area should only progress once a Structure Plan has been prepared in accordance with the mana whenua evidence to the Proposed District Plan (PDP) hearings. This will also enable a more informed decision on whether industrial activities are appropriate for this site;</li> <li>• Any development in this area should support the restoration of the Mangaone River and the strategies by mana whenua to restore the river and mahinga kai sites;</li> <li>• The degree of earthworks and land modification, as well as exotic planting adjoining the Mangaone River, is opposed;</li> <li>• The evidence to the PDP hearings is that there is no shortage of industrial land which would justify early development on this site;</li> <li>• The Council Right of Reply (RoR) evidence to the PDP hearings accepted that the notified version of the Structure Plan to enable industrial activities should be withdrawn and this outcome should also apply to the land use application;</li> <li>• The input of mana whenua will be necessary to inform any future structure plan process;</li> <li>• The Council Right of Reply (RoR) evidence to the PDP hearings accepted that the notified version of the Structure Plan to enable industrial activities should be withdrawn and this outcome should also apply to the land use application;</li> </ul> <p><i>Relief Sought</i></p> <p>The application is opposed and mana whenua seek the application be declined.</p>

Sub#2	Heritage NZ	<ul style="list-style-type: none"> <li>Heritage NZ is neutral on the application subject to conditions;</li> <li>The Applicant has obtained the appropriate Archaeological Authorities from Heritage NZ for exploratory works and a general authority.</li> </ul> <p><u>Relief Sought</u></p> <p>That any conditions of consent should be consistent with the approved authorities.</p>
Sub#3	Leslie and Kasey Ross (38 Egmont Road)	<ul style="list-style-type: none"> <li>The Applicant has a 'dubious' track record with regards to previous development complaints (dust &amp; silt control);</li> <li>Concerns over appropriate controls on any site works given proximity to site;</li> <li>The area of Egmont Road provides for 22 homes and the road is heavily used by residents and visitors to the area;</li> <li>The area is a mixed use area comprising rural, residential and industrial activities and any new development must be compatible with the existing area;</li> <li>Stormwater issues exist in the area and the submitters property has previously been 'devastated by severe stormwater flooding problems';</li> <li>Any new development must absolutely resolve the stormwater problem;</li> <li>Potential traffic safety issues with new development, need to consider speed limit, provision for footpath and intersection design;</li> <li>The site is the habitat of hawks, morepork, pukeko and ducks and the loss of this habitat will be a great loss;</li> <li>The development in this area includes a mix of commercial and retail activities and the future use should be Future Urban Development;</li> <li>The development will affect day to day lifestyle and may devalue their property;</li> </ul> <p><u>Relief Sought</u></p> <p>Decline application, or grant with appropriate amendments/conditions.</p>
Sub#4	David and Noeline Sampson (55 Egmont Road)	<ul style="list-style-type: none"> <li>Support for application subject to conditions as set out in private deed which is attached to submission. Deed provides agreement over works associated with fencing, tree removal and the proposed tying in of the final earthworks into existing contours.</li> </ul> <p><u>Relief Sought</u></p> <p>Any consents should take into account and give effect to agreed terms of deed.</p>
Sub#5	Janelle Brown	<ul style="list-style-type: none"> <li>Opposition based on stormwater and drainage issues, cultural/iwi land, traffic issues, noise issues and decreased property values.</li> </ul> <p><u>Relief Sought</u></p> <p>Decline Application.</p>

Sub#6	Fire and Emergency NZ	<ul style="list-style-type: none"> <li>• The existing water supply does not provide sufficient capacity for fire fighting;</li> <li>• An alternative means of compliance may be through a sprinkler system;</li> </ul> <p><u>Relief Sought</u></p> <p>A condition be imposed on any consent to require a sprinkler system to be installed in accordance with NZS 4541:2013.</p>
Sub#7	Powerco	<ul style="list-style-type: none"> <li>• Powerco is neutral to the application;</li> <li>• Powerco has a substation adjacent to proposed Lot 3;</li> <li>• Any earthworks will need to ensure that there is no risk to the integrity or operation of existing gas and electricity lines;</li> </ul> <p><u>Relief Sought</u></p> <p>A condition be imposed on any consent to require compliance with the Code of Practice for Electrical Safe Distances (NZECP34:2001) and any landscaping shall take into account the Electricity (Hazards from Trees) Regulations 2003.</p>



## **6 Pre-Hearing Meeting**

- 6.1 At the time of writing this report, the Applicant and the mana whenua submitters are still in discussions regarding a pre-hearing meeting. If this meeting takes place, then any outcomes can be reported to the Commissioners as part of further evidence.

## 7 Plan Provisions and Activity Status

- 7.1 As discussed above, the District Plan provisions are currently very uncertain at this time with the decisions on the PDP scheduled to be issued prior to the consent hearing.
- 7.2 Given this context, and the matters which have been raised through the application and submissions process, I have taken some time to summarise the zone provisions and evidence from the PDP hearings process.
- 7.3 It is acknowledged that this background and context will largely be redundant once the PDP decisions are issued. However, if for any reason the PDP decisions are delayed, then this background and context may help inform the S.104 assessment and any weighting that can be given to the respective ODP and PDP provisions.

### **Operative District Plan**

- 7.4 The 'operative' zone for the site under the Operative District Plan is the Rural Environment with a Future Urban Development (FUD) Overlay.
- 7.5 The Rural Environment establishes a set of plan provisions which support rural production activities while the FUD overlay signals that the future development of these areas should not be compromised by inappropriate subdivision and/or development.
- 7.6 The activity status under the Operative District Plan provisions is non-complying in accordance with the following rule provisions which retain legal effect and status.

*Rur 5C [Any structures] associated with any INDUSTRIAL ACTIVITY within 500 metres of a Future Urban Development OVERLAY*

*OL33F a minimum ALLOTMENT size of 20ha; or no minimum ALLOTMENT size for MINOR BOUNDARY ADJUSTMENTS*

- 7.7 The land use and subdivision applications are also subject to a multitude of activity status rules which are triggered given the Rural Zone performance standards. The original application identified a full set of activity status provisions which I have adopted and included as **Appendix 1**.

### **Proposed District Plan (PDP)**

- 7.8 As notified in September 2019, the PDP provided for an Industrial Zone over the subject site supported by specific provisions for the Oropuriri Structure Plan Development Area (Oropuriri SP). The Oropuriri SP is provided in **Appendix 2**.
- 7.9 The provisions for subdivision and structure plans were not notified with legal effect such that these rules have no legal status until such time as the PDP Hearing Commissioner decisions are issued.
- 7.10 Significantly, the final recommendations as submitted in the Council evidence and Right of Reply (RoR) was for the Industrial Zone to be retracted and replaced by a Future Urban Zone (FUZ Zone).

- 7.11 The PDP hearings process and evidence relevant to the subject site is referenced in the submissions on the current land use and subdivision application and the Applicant has also challenged the nature and relevance of the Council PDP evidence.

### **PDP Submissions and Evidence**

- 7.12 The PDP Hearing 18 Report on the most appropriate zone for the subject site was prepared for the PDP Hearing 18 – *Structure Plan Development Areas* with the hearing held on 15 and 16 March 2022.
- 7.13 Section 7.6 of the PDP Hearing 18 Report addresses the Oropuriri Structure Plan and sets out an analysis of the five submissions relevant to this area. Three submissions were from mana whenua – Ngāti Tawhirikura Hapū, Puketapu Hapū and Te Atiawa. Submissions were also received from Heritage NZ and Kainga Ora who provided conditional support for the Zone/Structure Plan provision. The PDP Hearing 18 report discussed the key submissions points from mana whenua as follows.

*As summarised above Ngāti Tawhirikura Hapū (519.6), Puketapu Hapū (589.1d) and TKOTAT (459.347) all opposed the Oropuriri Structure Plan Development Area as mana whenua advice and engagement had not occurred to inform the area and proposed provisions. They request that mana whenua engagement occur and be used to make amendments to the chapter provisions or the rural environment zoning is retained (submission point 589.1d) until such time that appropriate mana whenua engagement occurs.<sup>1</sup>*

- 7.14 The PDP Hearing 18 Report discussed the consultation and engagement process in some detail both in terms of the notified version of the PDP and work completed after the PDP submissions were received. The recommendation of the PDP Hearing 18 Report was that modifications be adopted into the structure plan provisions and along with other plan provisions (i.e., earthworks performance standards) that the Industrial Zone and Oropuriri SP be retained.
- 7.15 Pre-circulated evidence from Sarah Mako on behalf of Te Atiawa was presented which discussed the demand for industrial land and provided the following position on the most appropriate zone and PDP provisions for the subject site:

*In my opinion, following kōrero with Ngāti Tawhirikura and Puketapu Hapū in regard to the Oropuriri Structure Plan Development Area, I am of the understanding that hapū would in principle be comfortable with an urban zoning in this location; however, given the legacy issues of FFG [Framework for Growth (2008)] and the actions of developers and applicants in the vicinity of the structure plan development area, I consider the rezoning of this area from Rural Environment Area under the ODP to General Industrial under the PDP should be delayed. I consider that the process set out in policy FUZ-P7 should be followed with more complete structure planning undertaken in this area.<sup>2</sup>*

- 7.16 This evidence was further supported by statements provided to the PDP Hearing 18 from Sera Gibson on behalf of Tawhirkura Hapū, from Fern Bran on behalf of Puketapū Hapū and a further statement from Sarah Mako. The key themes expressed in these statements (each dated 16 March 2022) repeated the concerns over a lack of appropriate engagement and failure to recognise cultural values and sites through the PDP review process, that there was sufficient industrial land supply and that the most appropriate zone would be a FUZ Zone to allow proper consideration of any future development in this area.

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<sup>1</sup> S.42A PDP Report – Hearing 18 – Structure Plan Development Areas, para. 289.

<sup>2</sup> Statement of evidence to Hearing 18, Sarah Mako on behalf of Te Kotahitanga O te Te Atiawa Trust (TKOTAT) dated 1 March 2022.

### **Applicant – Absence of PDP Submission/Evidence**

- 7.17 The Applicant did not make any submissions to the PDP in relation to the proposed Industrial Zone or Oropuriri SP for the subject site. In earlier discussions with the Applicant, I was advised that they were comfortable with the PDP as notified and did not consider it necessary to lodge a submission<sup>3</sup>.
- 7.18 In my opinion, this decision to not make a submission and be party to the PDP review is surprising as this meant that the Applicant was not able to participate in the PDP hearings for the rezoning or contribute any evidence or material that would help inform the PDP review process. The Applicant also had an opportunity to make further submissions to the original submissions which included the direct opposition to the Industrial Zone proposal from mana whenua submitters. Again, a further submission would have provided an opportunity for the Applicant to be part of the PDP review process and to provide evidence associated with the land use and subdivision process and the opportunity which they saw for retaining the Industrial Zone.
- 7.19 I also note that the Applicant has land at the end of Oropuriri Road which is also affected by PDP process and zone changes.

### **Council Right of Reply Evidence and S.32AA**

- 7.20 While the Council evidence submitted to the PDP Hearing 18 was for retention of the Industrial Zone and Oropuriri SP (with modifications and amendments to address the issues raised in the mana whenua submissions), this changed with the final Council evidence submitted as the Right of Reply (RoR). For each hearing, the PDP Hearing Commissioners sought a written RoR from the Council reporting planner to provide any final recommendations following the hearing and submission of evidence. In some cases, the Commissioners directed specific matters to be addressed in the RoR.
- 7.21 The RoR for Hearing 18 is dated 20 July 2022, and this recommended that the Industrial Zoning and Oropuriri SP be retracted and be replaced by a FUZ Zone. The following extract from the RoR report provides the rationale for this change;

#### *Analysis*

65. *Through engagement with tangata whenua both before the hearing and subsequently through the conferencing process, it has become apparent that significant cultural concerns remain with this development area. Ngāti Tawhirikura Hapū, Puketapu Hapū and TKOTAT have expressed concerns about the following key areas:*

- *Loss of natural landform – bulk earthworks;*
- *Destruction of sites of significance to Māori;*
- *Degradation of natural wetlands;*
- *Further degradation of the Mangaone Stream;*
- *The nature and scale of industrial activities within the area;*
- *The recognition and protection of the cultural landscape with its proximity to Oropuriri Pā; and*
- *The protection of the viewshaft towards Taranaki Maunga.*

66. *The intention was to continue to workshop these issues with tangata whenua through the conferencing process to get to a point where these issues could be adequately addressed. However, through this process it became clear that these issues could be not reasonably resolved in the current time frame provided*

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<sup>3</sup> I took over the role of the reporting planner in September 2022. As part of this handover, the Applicant helpfully provided a bundle of documents setting out the history of the application and I also had the opportunity to discuss the application and PDP process with the Applicant to help clarify any questions I had on the process to that stage.

67. *Given that NPDC currently has surplus industrial land capacity it was agreed through conferencing with tangata whenua, that this land would be removed as a Structure Plan Development Area and rezoned to Future Urban Zone. This rezoning would allow Council the time to undertake further analysis and investigation to determine if this development area was suitable to proceed as a Development Area. It was recognised and acknowledged that a FUZ would be the most appropriate zoning, with policy FUZ-P7 providing for a robust process to establish a structure plan area in the future and can be considered alongside the wider existing Oropuriri FUZ area already identified in the PDP.*
68. *By way of summary, it was considered that the following work was needed as a starting point to progress this area:*
- *Mangaone Catchment Analysis – catchment master plan;*
  - *A Cultural Impact Assessment for the entire area;*
  - *A restoration plan to outline how the Mangone Steam (including its wetlands) can be restored and enhanced;*
  - *Stormwater management plan for the entire area to understand how stormwater will be managed and treated;*
  - *Analysis of the types of activities that would occur in the area and consideration for light industry;*
  - *Consideration of the future roading link at the end of Bishop Road that will connect to Henwood Road and what will happen with the land in between this proposed development area and this road link; and*
  - *Greater analysis and consideration of mechanisms to achieve the retention of the landform and the protection of viewshaft from State Highway 3 towards the Maunga.*
69. *Given this outcome and recommendation it was agreed with Ms Johnson that conferencing on the RL height limit matter was not necessary and that this could be dealt with at the time of any future plan change.*

- 7.22 In my opinion, the RoR recommendation is significant as it presents an fundamental shift in the Council staff position on the most appropriate zone and rule provisions for the site. The RoR was supported by a S.32AA assessment such that this effectively superseded the provisions of the PDP as notified and as recommended in the original Council S.42A report.

### **Implications for the current Land Use and Subdivision Application**

- 7.23 The implications for the current consent application and hearing process, is that there is no certainty of zone or plan provisions for the subject site under the PDP. This will only be resolved once the PDP decisions are issued.
- 7.24 The potential outcomes from the PDP hearings are.
- Industrial Zone and Oropuriri SP provisions retained as notified;
  - Industrial Zone and Oropuriri SP provisions retained with modifications in response to submissions (and potentially aligned with the original PDP Hearing 18 Report from Council);
  - Adoption of a FUZ Zone with or without modification to the PDP provisions as notified;
  - Adoption of a Rural Zone (as set out in the original evidence from the mana whenua submissions to the PDP hearings). It appears through evidence that this position transitioned to a recommendation for a FUZ Zone.

- 7.25 There is no opportunity to retain a Rural Zone with a FUD Overlay as this planning mechanism is not aligned with the National Planning Standards.
- 7.26 Clearly, there is no jurisdiction or ability of the Commissioners for the current consent hearing to examine or determine the merits of the submissions and evidence to the PDP hearings. In addition, it will be important that any evidence in relation to the adverse and positive effects of the current land use and subdivision application are presented directly to the Commissioners so these can be evaluated as part of the consent assessment and hearings process.
- 7.27 Unless the PDP decisions are issued prior to the consent hearing (or decision), the uncertainty around the PDP will require a determination of the extent of weight that can be afforded to the PDP provisions and how any effects are determined under S.104 of the RMA. I address this further in Section 10 of this report.

**Final Activity Status**

- 7.28 The subdivision and land use are both non-complying activities under the ODP provisions.
- 7.29 The zone and rule provisions of the PDP were not notified with legal effect and while a weighting assessment is required in relation to the objectives and policies, no such approach is required for the rule provisions.
- 7.30 As such, the application status retains a **non-complying activity** status, and this will continue to be the case unless the decisions of the PDP result in a different zone and activity rule framework.

## 8 Assessment of Effects – S.104 of RMA

### Overview

8.1 I have presented an assessment of effects based on the following topics;

- Cultural values including Mangaone Stream,
- Industrial Land Supply,
- Landscape Effects,
- Servicing and Infrastructure Issues including stormwater,
- Transportation Effects,
- Development within a FUD overlay 'potential' FUZ area,
- Construction effects,
- On-going Amenity Effects and
- Positive Effects.

### Cultural Values including Mangaone Stream

8.2 The assessment of cultural values is informed by the CIA and the submissions, as well as the engagement and consultation which has taken place between the Applicant and mana whenua and the provisions of the iwi management plan. The voice of mana whenua will need to be heard directly as part of the hearings process and I am conscious of the need not to present the tikanga and korero from mana whenua through a pakeha lens. However, to fulfil my role as the reporting planner, I have set out my assessment of the relevant matters and evidence to be considered and my assessment and conclusions on cultural values and effects.

### Cultural Impact Assessment and Heritage NZ Authority

8.3 In the early part of the application process, the Applicant obtained a Cultural Impact Assessment (CIA) prepared by Ngāti Tawhirikura. I have attached the CIA as **Appendix 3** for ease of reference.

8.4 I note that the CIA includes clear statements about the impacts of urbanisation on the wider cultural landscape including effects on waterways and landform. In my opinion, this cultural context and identified values will need to be recognised, protected and designed/planned for as part of any future development within this area. The CIA also expresses dissatisfaction with the Structure Plan and rezoning process under the PDP review<sup>4</sup> and that further work is necessary to help inform all parties on the cultural values and sites within this area.

8.5 The CIA identifies matters which require further assessment and adoption from the Applicant including Heritage NZ consents, stormwater design, and ongoing engagement with mana whenua. On my reading of the CIA, and particularly the summary and conclusions, it is presented in a way that there is a pathway forward for the Applicant to engage further with mana whenua and to achieve consent for the subdivision and land use proposal. Subsequent to the CIA, the Applicant sought to work towards addressing the matters raised in the CIA to gain further endorsement from mana whenua.

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<sup>4</sup> Ngāti Tawhirikura CIA, paras. 51 to 54.

- 8.6 The mana whenua position on the CIA and overall response to development on the site has evolved, or at least, has been clarified and affirmed through the evidence and submissions to the PDP hearings and now through the current consenting process. Mana whenua have affirmed that no development is supported without a new structure plan process including full engagement and consultation with mana whenua. This position was set out in the following email which was received after a consultation meeting with mana whenua, the Applicant and Council representatives:

**From:** Sera Gibson <[seragibson@hotmail.com](mailto:seragibson@hotmail.com)>  
**Sent:** Tuesday, 15 November 2022 1:06 pm  
**To:** Darelle Martin <[darelle.martin@btw.nz](mailto:darelle.martin@btw.nz)>; Ngamata Skipper <[office@tawhirikura.org](mailto:office@tawhirikura.org)>; Sarah Mako <[sarah@teatiawa.iwi.nz](mailto:sarah@teatiawa.iwi.nz)>  
**Subject:** RE: [#BTW180802] 19 Egmont Road Development

EXTERNAL MESSAGE

Kia ora Darelle,

On behalf of Ngāti Tawhirikura Hapū and Te Kotahitanga o Te AtiawaTrust, below is our feedback:

- As set out in the evidence to the Proposed District Plan, it is our view that any development within this FUZ area should only progress following the structure planning of the area. This is yet to occur. This is especially important given the implications around zoning and landuse for Te Oropuriri Pā and surrounds, the health of the Mangaone, and work towards giving effect to Te Mana o Te Wai, and more strategic outcomes like through roads and the like.
- A structure plan process can also consider whether industrial zonings are in fact the best zone for this area, something that is not able to be done on a site by site basis through the consent process.
- You will note that this is in line with the recommendations in the CIA that was developed to inform this proposal. As set out in that document, the ability for the development of this area to be done so in a way that works towards the restoration of the Mangaone is not clear at this point, and a key outcome that can be designed better through structure planning.
- It is our understanding, based on the economic evidence produced in the hearings to the PDP that there is sufficient zoned and available industrial land in the short term, and that this should provide time to complete the structure planning exercise as set out above.

Nā Sera.

- 8.7 I note that a recent Heritage NZ authority has been granted with the decision issued on 18 May 2022.

Submissions

- 8.8 A collective submission from mana whenua has been received through the notification process and this reinforces the cultural values and sites associated with the subject site and the potential adverse effects of the proposed land use and subdivision which are listed as including;

- *Loss of natural landform resulting from bulk earthworks.*
- *The loss of highly productive soils.*
- *The potential destruction of sites of significance to Māori, both identified and yet to be rediscovered.*
- *The resultant built environment, and how opportunities for applied cultural expression can be realised.*
- *Potential cumulative effects, should this proposal be approved there is the potential for this to provide precedent for other similar sites in this area.*
- *Further degradation of the Mangaone Stream, and by extension the Waiwhakiho, both scheduled Statutory Acknowledgement under the Te Atiawa Claims Settlement Act 2016, failing to give effect to Te Mana o te Wai.*
- *The recognition and protection of the cultural landscape.*



- 8.9 I anticipate that mana whenua will expand and speak directly to these matters through further evidence and korero

Engagement and Consultation

- 8.10 In my view the Applicant has undertaken an appropriate level of, and approach to, consultation to help inform the assessment of effects. While this has not led to a resolution on the nature and extent of effects and possible mitigation measures, there has been an exchange of information and feedback, a formal CIA has been prepared, and there is and continues to be a willingness to further engage with mana whenua. The Applicant also requested a notification process to allow for submissions to be received.
- 8.11 Notwithstanding this consultation and engagement process, there has unfortunately been some frustration and a degree of antipathy that has emerged through the process, including how Council has managed the PDP review and consenting process. The Applicant has expressed frustration with the lack of progress or feedback from mana whenua on the consent application (which may have been impacted by the intense resourcing demands involved with the PDP process). This has made it difficult for them to understand whether progress was being made to address the matters arising from the CIA. At the same time, mana whenua have expressed some frustration in having to respond further to the subdivision and land use proposal when they have presented substantive evidence to the PDP process that no further development should be considered until such time as a full and proper structure plan process has been completed.

Scope and nature of effects

- 8.12 The opposition from mana whenua is underpinned by the principle that no development should occur until such time as an appropriate structure plan process has been completed. In addition, there is an overriding concern of how urbanisation has occurred across this area and the cumulative effects on the cultural landscape and water bodies. As a consequence, the mana whenua submission provides less emphasis to, or quantification of, the effects arising from the actual scale, nature and location of the proposed industrial lots and activity. For example,
- (a) The scale and nature of earthworks is significant and the modification and reduction of the knoll for borrow material will certainly have an impact on the existing rural landscape. However there is no evidence on what parts of the site are most significant and whether the knoll is more sensitive to modification than other parts of the site. The knoll is located approximately 200m from the Mangaone Stream with other buildings and land use located between the knoll and the stream. The knoll is also approximately 850m from the Oropuriri Pā which offers a substantial separation distance. It appears that the key issue with the loss of cultural landscape is the significant amount of development within this area which has eroded or detracted from the ability of mana whenua to connect to the areas of hapu occupation prior to European settlement,
  - (b) It is not clear to me how mana whenua have assessed the specific design of the proposed stormwater detention pond and discharge method or whether any recognition has been given to the opportunity to achieve stormwater solutions to existing problems. This could involve additional treatment as part of the retention pond design or potentially at the discharge point. Again, the main driver for opposition is the cumulative effects and the urban development and effects on water bodies that have occurred over time,

- (c) Whether the loss of highly productive land has a cultural dimension or not requires some further discussion. I also consider that the application is not caught by the NPS- Highly Productive Land (NPS – HPL)<sup>5</sup>,
- (d) In my opinion, there is an opportunity to develop conditions to establish ongoing framework to foster a meaningful engagement and relationships through the consenting process. The Applicant and mana whenua may wish to comment on whether they consider this is possible as any such conditions rely on good faith and a genuine to be successful, and
- (e) There has been no real attempt to engage with the formulation on mitigation measures or alternative forms of development to address the actual or potential effects of the proposed subdivision and land use proposal.

8.13 Having reviewed and considered the application and submissions material, I make the following observations and assessment;

- (a) Mana whenua have provided evidence and material to demonstrate the cultural values and significance of this area. These cultural values and sites are primarily related to the historical occupation and 'cultural landscape' of the area including its locational and cultural connection to the Oropuriri Pā and Mangaone Stream,
- (b) The mauri and ecological values of the Mangaone Stream have specific cultural values to mana whenua and it must also be recognised that all water bodies have a collective association and cultural value. Mana whenua are seeking to restore the mauri and ecological values of the Mangaone Stream which have been degraded by previous development within this area and seek to stop any additional development which may further degrade the Mangaone Stream,
- (c) Mana whenua consider that the cultural landscape and identify has been eroded and impacted by historical development and this provides the core grievance and basis for resisting any further development to protect remaining values,
- (d) Significant weight has been given on the PDP process and the 'success' that has been achieved in gaining recognition of mana whenua interests and specifically in relation to the subject site and the retraction of the Industrial Zone in favour of a FUZ Zone in the Council evidence, and
- (e) In my view, the position of mana whenua has evolved or at least been affirmed from the original CIA which provided an opportunity to work through the identified cultural values to one where opposition to any development is affirmed until a full structure plan process has been undertaken,
- (f) Heritage NZ has granted consents for bulk earthworks which incorporate explicit conditions to protect archaeological sites (P19/417) and any unrecorded sites and to adopt cultural protocols in any circumstance where sites are uncovered. I note that the borrow area was subject to exploratory investigations and no archaeological sites were identified in this area. It is not clear whether mana whenua dispute the assessment and decision made by Heritage NZ,

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<sup>5</sup> As the subject land was notified as Industrial Zone in 2019 as part of the PDP process, then it is excluded from being considered highly productive land by virtue of Regulation 3.5(7)(b)(ii).

- (g) The proposed lots are located in the furthest corner of the Oropuriri SP from the Mangaone Stream and this location is adjacent to the existing industrial area and partly shielded in term of a direct line of sight to the Oropuriri Pā. It would appear that if any area of the Oropuriri SP could be developed, then the applicants site would have the least potential for effects in terms of its spatial location to the pa and stream. In terms of adopting 'cultural expression' into the development, I understand that the Applicant continues to be open to further engagement with mana whenua on mitigation measures, and
- (h) I do not have significant concerns in relation to precedent effects as the back ground and nature of this development is unlikely to be repeated. I note that the Applicant has lodged a separate application for industrial development off the end of Oropuriri Road. It is therefore perhaps understandable that mana whenua may be concerned that any consents that are granted for 19 Egmont Road may provide a consenting platform for the Oropuriri Road site. However, there are no other applications that were lodged prior to the PDP being notified and the specific scale, nature and locational attribute of this proposed development should be assessed on their merits.

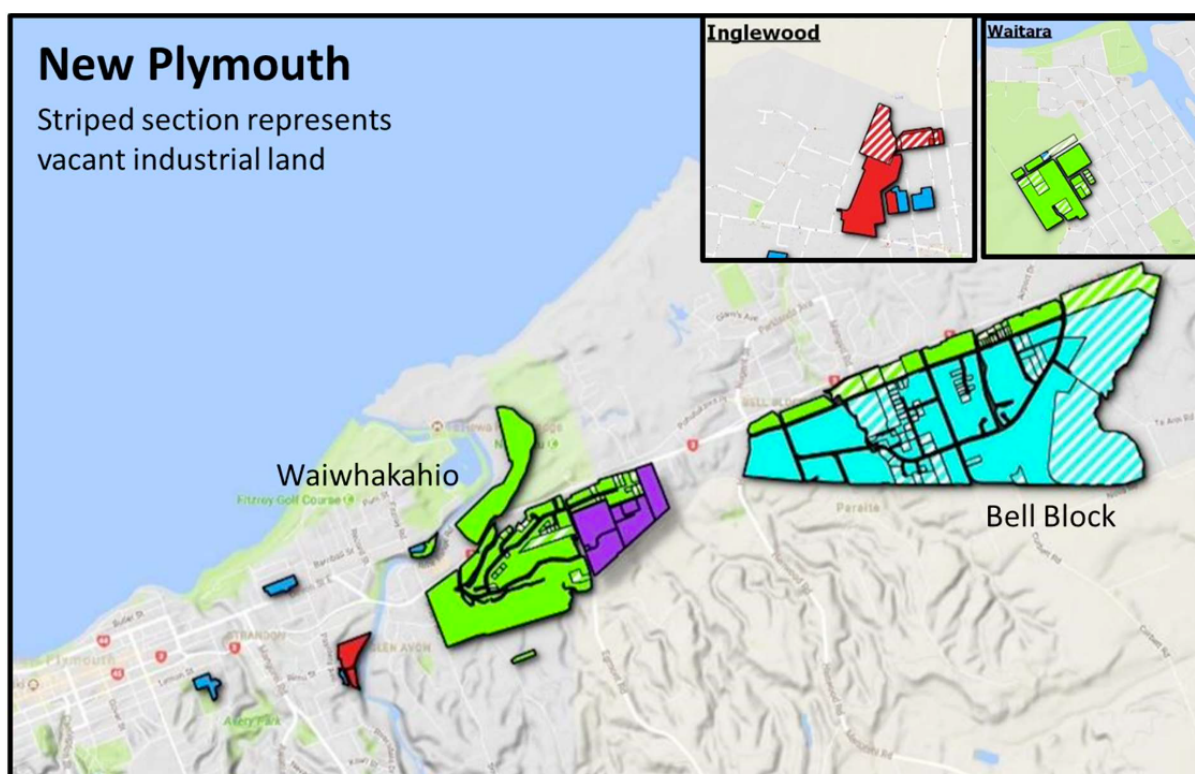
### Conclusion

- 8.14 Overall, it is my view that the effects on cultural values and sites have not been adequately defined or mitigated. The CIA and submissions provide context to the cultural values and sites of significance to mana whenua. It is difficult to evaluate the nature and scope of effects that can specifically be attributed to the proposed and subdivision and land use proposal while the opposition from mana whenua is primary based on the principle that a full structure plan process must be completed before any additional development occurs.
- 8.15 In my opinion, this puts the Applicant in a difficult position as they are faced with an opposition with limited ability or opportunity to engage further on specific mitigation measures. In my opinion, the concerns of mana whenua do need to be recognised and taken into account as part of the broader determination of the merits of the proposal. If the PDP decisions provide a FUZ Zone over the subject site, then certainly the whole structure plan area and areas for appropriate industrial development will need to be revisited. However, I also consider that there would be further opportunity to consider mitigation measures for the specific subdivision and land use proposal if mana whenua were prepared to engage further with the Applicant and Council.

### **Industrial Land Supply**

- 8.16 The issue of available industrial land supply is raised in the submissions from mana whenua and this is also a matter which I have discussed with the Applicant.
- 8.17 In my view, if there is a demonstrated and quantified undersupply of land available for industrial development and land use, then this would provide more impetus to explore and reach resolution on the challenges that exist for any new industrial development proposal.
- 8.18 The Applicant did not present an assessment on land supply as part of the original application material and this may be a matter which they wish to address as part of the hearings process.
- 8.19 I have not sought to engage any specific evidence or experts for the purpose of this consent hearing and have relied upon the work that Council is undertaking as part of its obligations under the NPS - Urban Development 2020 and which has also been relied upon in evidence to the PDP hearings.

- 8.20 The key report which has been provided to me is the 'Quarterly Monitoring Report on Urban development Indicators Report No. 6' prepared for Council and dated March 2022 (Urban Development Report #6). New Plymouth District Council as a Tier 2 Council must assess housing and business demand and capacity across the district. The Council must then provide sufficient development capacity to meet demand over a 30-year time period.
- 8.21 The Urban Development Report #6 provides an analysis of population projections, land value, building consents, and employment data to provide land demand and supply analysis. Indicator 3 and Indicator 4 address vacant industrial land and capacity within existing buildings and includes the following figure and tables (overpage):



Indicator 3: Vacant Industrial land by location

Area (ha)	Operative District Plan
Vacant Land Bell Block	170.8
Vacant Land Inglewood	3.8
Vacant Land Waitara	4.4
Vacant Land Waiwhakaihō	12.7
<b>Total</b>	<b>191.8</b>

Source: Internal GIS Analysis, October 2018

## Indicator 4: Capacity within existing and new built facilities – industrial

Suburb	Vacant Gross Floor Area SQM 2022	Percentage %
Bell Block	56,930	67%
Glen Avon	889	1%
Moturoa	2,088	2%
New Plymouth	1,698	2%
Waiwhakaiho	22,401	26%
Westtown	120	0%
Waitara	540	1%
	<b>84,666</b>	

- 8.22 The Urban Development Report #6 provides a conclusion that industrial capacity has increased over the monitoring period and that;

*In summary, there does not appear to be any shortfall of industrial land in New Plymouth. However, expanded monitoring of these indicators and other datasets will be incorporated into future quarterly reports.*

- 8.23 The above findings of the Urban Development Report #6 builds on the initial data and assessment of land supply which was presented as part of the Housing and Business Development Capacity Assessment dated June 2019 (HBDCA 2019). The HBDCA 2019 identified that 193 ha of industrial land was required to serve the long term (up to 2048) industrial sector requirements<sup>6</sup>.

- 8.24 Table 5.10 of the HBDCA 2019 then sets out how this land demand can be catered for as follows:

Area (ha)	Operative District Plan	Draft District Plan	Total
Vacant Land Bell Block	170.8		170.8
Vacant Land Inglewood	3.8		3.8
Vacant Land Waitara	4.4		4.4
Vacant Land Waiwhakaiho	12.7		12.7
Oropuriri Structure Plan		33.5	33.5
Urban Growth Area N		25.8	25.8
<b>Total</b>	<b>191.8</b>	<b>59.3</b>	<b>251.1</b>

Table 5.10 – Industrial Land Sufficiency

- 8.25 This table and data refers to the Draft District Plan and there have been substantive changes to the areas for industrial zone proposed in the PDP including the current recommendation to retract the Industrial Zone and Oropuriri SP from the subject site and surrounding area.

<sup>6</sup> HBDCA 2019, table 5,6, pg. 50.

- 8.26 The total 'supply' of Industrial Land following the final Council recommendations was reassessed and presented as part of the RoR evidence for PDP Hearing 22 – General Industrial Rezoning Requests. This identified that with the changes in Council recommendations, including the retraction of the Oropuriri SP area, that a 49.39ha net loss of industrial land supply would result from the recommended changes to the PDP as notified<sup>7</sup>. The RoR goes on to discuss various scenarios of the final land industrial supply noting that the final quantum will depend on the PDP Commissioner decisions across all the rezoning submissions. The RoR updated the long term time horizon from 2048 to 2051 and reassessed the total industrial demand over this period to 185ha. This long term demand was projected to be comfortably met with an Industrial Zone capacity ranging from 216ha to 224ha over the long term. Significant excess supply over the short term (2024) was also projected to be 177ha and over the medium term (2031) the excess supply projection ranged from 147ha to 154ha<sup>8</sup>.
- 8.27 I am mindful that housing and business land assessment are often carried out at a high level and that ground-truthing can introduce more details of land use and constraints that affect actual market supply and capacity. This can include factors such as infrastructure supply and capacity, locational attributes to transportation corridors, co-location benefits and also geotechnical attributes. I note that the Applicant has expressed a lack of confidence in the supply analysis which I understand is based primarily on ground conditions and potential issues of peat layers affecting the ground conditions within the Bell Block industrial area. The proposed lots are each 1.2ha and represent large lots and there may well be a lack of similar sized lots which are available.
- 8.28 In my view, Council has certainly invested resourcing and time into fulfilling its obligations under the NPS-UD and this work has helped to inform the PDP process. Based on the material and evidence that I have reviewed, there does not appear to be any shortfall of industrial land supply which would provide a context to consider that the proposed industrial subdivision and land use is serving an identified shortfall of industrial land supply.

### **Landscape Effects**

- 8.29 The Applicant has provided an Assessment of Landscape and Visual Effects from Bluemarble Consultants with the final revision dated 18 November 2022 (Bluemarble Landscape Report).
- 8.30 The Bluemarble Landscape Report provides an expert assessment of the landscape context of the site, that planning and policy framework, viewing audience and an assessment of actual and potential effects on landscape values including proposed mitigation measures for any future development on proposed Lot 1 and Lot 2 as well as landscape mitigation for the earthwork areas on the balance Lot 3. It also discusses the potential effects of the land use activities in relation to the CIA which was prepared by Tawhirikura Hapū and the provisions of the Tai Whenua, Tai Tangata, Tai Ao Environmental Management Plan.
- 8.31 The Bluemarble Landscape Report's overall assessment is that the proposed industrial development will be contiguous with the Oropuriri/Hurlstone/Katere industrial area, that the proposed development will be legible as a part of the wider area's industrial character and that Lot 3 will leave a rural balance area which can form part of future structure plan process<sup>9</sup>.

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<sup>7</sup> PDP Hearing 22 Right of Reply Evidence, Table 1

<sup>8</sup> PDP Hearing 22 Right of Reply Evidence, Table 2

<sup>9</sup> Bluemarble Landscape Report, para 5.17 and Section 8 - Conclusion.

- 8.32 Having reviewed the mitigation measures and application material, the CIA and submissions, I have the following views on landscape values;
- (a) I concur with the Bluemarble Landscape Report in that any new industrial development on Lot 1 and Lot 2 will have a direct spatial and land use connection to the existing industrial development surrounding this area,
  - (b) While the site has a Rural Zone under the ODO, the context of the site and surrounding land use is one of mixed use with the proposed industrial lots located adjacent and opposite existing industrial land use,
  - (c) There are no specific landscape values or overlays identified within the ODP or PDP on the subject site,
  - (d) The Applicant has amended the maximum height of the buildings to 10m to reflect the height controls that apply to the Oropuriri Area,
  - (e) There are existing dwellings located on the opposite side of Egmont Road and these will be exposed to additional built form and industrial activity. However, these properties are currently bordered by industrial zone properties and in my opinion any adverse effects in terms of landscape effects/building dominance will be moderated by the surrounding industrial activities, separation and set back from the lots and the conditions and mitigation measures proposed by the Applicant,
  - (f) In terms of the cultural landscape values and context, there is a lack of definition of the specific effects associated with the proposed industrial lots and activity, with the opposition from mana whenua made in principle to all development.
- 8.33 In my opinion, given the location and nature of the surrounding land use and mitigation measures proposed it is unlikely that the adverse effects on land use values will be inappropriate or of such a magnitude, that the adverse effects would undermine the ability to grant consent. There is a lack of definition on the actual and potential effects in terms of the 'cultural landscape' and it will be difficult to advance the understanding and scope of effects without further input from mana whenua.

#### **Servicing and Infrastructure Issues including stormwater**

- 8.34 Council's Mark James (NPDC - Network Planning Engineer), has prepared and collated a three waters technical memo to assist with the assessment of infrastructure effects including the matters raised in the submissions – refer **Appendix 4**.
- 8.35 In summary, there are no substantive issues arising from connection to the water and wastewater networks although the specific requirements for firefighting will need to be determined through any future building consent process. FENZ has made a submission specifically in relation to firefighting supply and capacity which can be addressed in the conditions/advice notes on any decision if the applications are granted.
- 8.36 The stormwater situation is less straightforward. The three waters memo identifies a number of issues affecting the surrounding catchment and deficiencies in the existing flood mitigation and stormwater management network.

- 8.37 Submitters from Egmont Road have raised issues with stormwater and flooding issues and are concerned that the proposed industrial development may exacerbate the existing issues. The three waters memo confirms that there are existing issues with the stormwater network in this catchment and along Egmont Road. However, it is apparent that there are design solutions which will ensure that there are no additional issues created by the proposed development and that the design solution for the subdivision includes initial works to assist with the management and disposal of stormwater along Egmont Road.
- 8.38 While the three waters technical memo confirms that there is a design solution for the proposed industrial development however the preference is for a more holistic and integrated stormwater solution for the catchment and incorporating any future development on the subject site.
- 8.39 The Applicant's position is that the stormwater retention pond provides a solution to capture the flow from Egmont Road and the proposed industrial lots that then be utilised as part of any future development and structure plan process.
- 8.40 In my opinion, there may well be some benefit in enabling the retention pond to manage stormwater from Egmont Road and to provide assurance that the identified stormwater issues along Egmont Road will not be exacerbated. However, the wider stormwater issues for the catchment and surrounding area will require further time and investigation to complete and the technical memo emphasises the need to engage with mana whenua. I also note that that any stormwater network and management design will now need to serve the national policy directives set out in the National Policy Statement for Freshwater Management 2020 including the adoption of the management hierarchy and the need to give effect to Te Mana o te Wai. Therefore a higher threshold for stormwater management and discharge quality is likely to be required as part of any new catchment/area strategy.
- 8.41 It does strike me that given Council notified the subject site and the wider area with an Industrial Zone and the Oropuriri SP that the infrastructure issues and solutions would have already been quantified to inform the rezoning and PDP process. From my review of the PDP S.32 material and supporting technical information, it appears that the infrastructure assessments were completed however much of this work will need to be revisited should a FUZ Zone be adopted for the subject site as part of the PDP Decisions. This will include the identification and protection of wetlands located on the wider area.
- 8.42 In my opinion, there are stormwater solutions and mitigation measures available for the proposed industrial lots and these could include additional treatment and retention measures to align with the need for protection of the Mangaone Stream as identified by mana whenua.

### **Transportation Effects**

- 8.43 Through the earlier processing of the application, there were S.92 requests issued in terms of intersection separation and indicative road layouts, however there was no focus on the capacity of Egmont Road and in particular the SH3/Egmont Road intersection.
- 8.44 The submissions from Brown and Ross raise issues with vehicle and pedestrian safety and connectivity and specific concerns associated with the SH3/Egmont Road intersection.



- 8.45 I note that the application was served on Waka Kotahi as part of the notification process with no submission received from Waka Kotahi.
- 8.46 To help inform the assessment of transportation effects, Andy Skerrett (Independent traffic Consultant) has been engaged by Council to provide an overview of the roading network and intersection performance. A technical memo is attached as **Appendix 5**.
- 8.47 This memo raises concerns over the lack of certainty in terms of the cross connections (Smart/Katere/Egmont/Henwood Roads) and modelling with the local roading network. In addition, the level of service for the Egmont Road/SH3 intersection is very poor and there are no currently confirmed upgrades or network improvements to address the safety and efficiency issues at this intersection apart from a proposal to reduce the speed limit along this section of the state highway to 60km/h.
- 8.48 It is also apparent that Council is continuing to receive applications for industrial activities within the existing Industrial Zone along Oropuriri Road. This raises issues in terms of additional and incremental increases in traffic generation which will continue to add to the existing deficiencies at the intersection. Given the Industrial Zone provisions for these sites it would be difficult in my opinion to withhold consent and both NPDC and Waka Kotahi should be compelled to provide certainty on what network upgrades and measures will be implemented with assurances around timeframes to address these issues.
- 8.49 The issues with the intersection and need for network upgrades should be part of any structure plan process in the first instance. The Applicant may well contest the justification of raising these traffic issues given that their site forms part of the notified Oropuriri SP area and that they have not been raised until the submissions process. This is understandable and if the Industrial Zone and Oropuriri SP are confirmed in the PDP decisions (and subject to no appeals), then in my opinion, the obligation to provide solutions will fall back to NPDC and Waka Kotahi.
- 8.50 Submitters have raised concerns about safety for pedestrians and the provision of footpaths along Egmont Road. In my opinion, the urbanisation of Egmont Road should be addressed through the structure plan process. The proposed lots are on the opposite side of Egmont Road to the majority of the dwellings and closer to the Egmont Road intersection. While immediate frontage treatment and crossing will need to be considered for the proposed industrial lots, it would only be possible to impose conditions for further urbanisation of Egmont Road and additional footpaths if this was required through a structure plan or there was a direct effect of the proposed development.
- 8.51 In my opinion, given the application has a non-complying activity status and that there is significant uncertainty regarding the District Plan zone provisions, then establishing additional industrial lots and associated activities on this part of the roading network without clear and defined measures to maintain traffic safety and efficiency is inappropriate. In my opinion, these measures will need input and implementation through a structure plan process and are beyond the scope of measures that can reasonably be imposed through consent conditions.

**Development within a FUD overlay and 'potential' FUZ area**

- 8.52 The existing provision of the ODP provide for a Future Urban Develop overlay over the site. While limited weight can be given to the PDP provisions, in my opinion, it would be short sighted to ignore any potential issues arising from the development of the industrial lots within an area which is currently part of the FUD overlay and which may become a FUZ Zone.

- 8.53 Having reviewed the application material, the technical evidence for this hearing, the submissions and also material prepared as part of the PDP review process, I consider that development of industrial lots at this stage is pre-mature and will lead sub-optimal outcomes. A properly informed and structure plan process will enable;
- A more informed understanding on cultural values and sites and a stronger relationship between Council, mana whenua and developers to achieve long term outcomes,
  - The opportunity to consider the most appropriate extent of industrial land including appropriate buffers and interface with Oropuriri Pā and the Mangaone Stream,
  - Appropriate stormwater and discharge management networks and treatment which support the outcomes sought by mana whenua and that give effect to Te Mana o te Wai,
  - Appropriate roading connections to service any final extent of industrial, and
  - An assessment of transportation connections across the local roading network and any upgrades necessary to improve the Egmont Road/SH 3 intersection,
  - A schedule of works and sequencing of land release to ensure that there is an alignment of land development and infrastructure/transportation provision.
- 8.54 In coming to this position, I also consider that there are three waters solutions available for the two industrial lots which are capable of mitigating the adverse effects directly associated with the effects of the two additional lots.

#### **Construction effects**

- 8.55 Should consent be granted, then a period of bulk earthworks will be required to create the building sites across Lot 1 and 2 with a borrow area identified with the knoll on the southern boundary. In additional, large building projects also have potential to create off-site construction effects.
- 8.56 One submitter (Ross) has specifically raised concerns with the Applicants 'track record' with their other development sites and the failure to mitigate off-site effects. The hearing will enable the Applicant to address these concerns directly and to provide reassurance on how and what steps and approaches will be undertaken to ensure the appropriate mitigation.
- 8.57 If the Commissioner is mindful to grant consents, then it is recommended that a Construction Management Plan is a requirement of consent and that this will need to set out clear methodologies to mitigate off site noise and dust nuisance, as well as sediment and erosion control.
- 8.58 I note that the Sampson submission refers to specific conditions which have been agreed between the Applicant and the submitter for the earthworks associated with the borrow area and which are located adjacent to the submitter's property located at 55 Egmont Road.
- 8.59 In my experience, with appropriate conditions and a responsible and proactive approach by land developers will largely manage off site construction effects. There are also complaint, compliance and enforcement remedies available that can be employed by the consent authority if these are required.

**On-going Amenity Effects**

- 8.60 There are existing dwellings located on the opposite side of Egmont Road and I note that the Residential Zone under the ODP for these sites was proposed to change to an Industrial Zone under the notified version of the PDP.
- 8.61 In my opinion, if consent is granted, then it will be both necessary and appropriate to include operational conditions on noise and lighting effects to manage the effects of any new industrial activities on the existing dwellings.

**Positive Effects**

- 8.62 The positive effects of granting consent will be that the Applicant has certainty and consent for an industrial development and this will provide an additional land resource for industrial activities. Economic benefits will accrue from additional employment and economic activity although these have not been quantified by the Applicant.

## 9 National Policy Statements and Standards

- 9.1 A series of National Policy Statements (NPS's) and National Environmental Standards (NES's) have been issued to support the sustainable management purpose of the RMA. I discuss those of relevance and which have been raised in the application and notification process below.

### **National Policy Statement - Urban Development 2020 (NPS-UD)**

- 9.2 The NPS-UD recognises the national significance of well-functioning urban environments and providing sufficient development capacity to meet the different needs of people and communities.
- 9.3 New Plymouth is a Tier 2 urban environment and while much of the NPS-UD is focussed on the supply of land for urban development and the zoning and plan provisions which support land supply, it also provides direction for the assessment and decision making on resource consents (Regulation 1.3(2)).
- 9.4 Objective 1 is as follows:
- Objective 1:*** *New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*
- 9.5 The NPS-UD places a heavy emphasis on regional and district councils to ensure that plans provide the correct and appropriate plan mechanism to provide well-functioning urban environments and that planning decisions ensure appropriate provision of supporting infrastructure (Objective 6).
- 9.6 In addition, the NPS-UD requires Māori involvement in decision-making on resource consents and that planning decisions take into account the principles of Te Tiriti o Waitangi (Policy 9 and Objective 5).
- 9.7 From my assessment of the application material, technical reports and evidence associated with the PDP review process, and the submissions received, I do not consider that there is a justification for the proposed land use and subdivision in terms of addressing a shortfall in industrial land. The land supply and capacity reports prepared by Council show a significant excess supply within the planning framework including the recommendations to retract the Industrial Zone from the subject site and original Oropuriri SP area.
- 9.8 The current consent process has provided for engagement with mana whenua and appropriate steps have been made in terms of the decision making process.
- 9.9 In my opinion there are outstanding infrastructure and transportation matters to be resolved for the industrial area including the provision of transportation links across the local roading network, the performance of the SH3/Egmont Road intersection, and the catchment wide stormwater solutions. Until these matters are resolved with appropriate engagement and recognition of cultural values and sites, then I consider the proposed industrial development falls short of the outcomes promoted by the NPS-UD.

**National Policy Statement – Highly Productive Land (NPS-HPL)**

- 9.10 I have addressed this briefly in paragraph 8.12(c) of this report. In my view the application for industrial development is not caught by the NPS-HPL given that the land was notified with an Industrial Zone in 2019 as part of the PDP process. If the PDP Decisions confirm a Rural Zone on the site, then the NPS-HPL will need to be considered further as part of any new rezoning/structure plan process.

**National Policy Statement – Freshwater Management 2020 (NPS-FM)**

- 9.11 The NPS-FM seeks to establish a national framework for the management of freshwater which gives effect to Te Mana o Te Wai with direct input and decision-making by tangata whenua and prioritising the health and well-being of water bodies. Objective 2.1 states

- (1) *The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*
- (a) *first, the health and well-being of water bodies and freshwater ecosystems*
  - (b) *second, the health needs of people (such as drinking water)*
  - (c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

- 9.12 In my opinion, it will be necessary to revisit the stormwater management and network options in light of the NPS-FM including the adoption of the management hierarchy and Te Mana o te Wai.
- 9.13 As discussed above, there are identified issues with the existing network which discharges to the Mangaone Stream. The Applicant has proposed a retention pond and concept design for hydraulic neutrality and this will at least ensure that any existing stormwater issues for the Egmont Road properties are not exacerbated.

## 10 District Plan Provisions

### Introduction

- 10.1 As discussed earlier, there is significant uncertainty in terms of the District Plan provisions and this has a significant bearing on how any assessment of the planning instruments is applied up until the PDP decisions are issued.

### Weighting of the Planning Instruments

- 10.2 It is accepted practice that where a District Plan is under review, then a respective weighting of the planning instruments should be determined taking into account how advanced the review process is, the scope of submissions and the evidence which affects the planning provisions in question.
- 10.3 Having considered the reasonably unique context of the PDP review process and zoning recommendations, I have come to the following conclusions;
- (a) Limited weight can be afforded to the provisions of the ODP. The PDP was notified in 2019 with a proposed change in the underlying zone from Rural to Industrial Zone. In addition, under the National Planning Framework, there is no opportunity to retain a FUD overlay and as such there is no option for a Rural Zone with a FUD overlay to be retained as part of any PDP decisions,
  - (b) Limited weight can also be given to the PDP provisions given the substantive change in position from the PDP as notified, the scope and nature of the submissions and the final Council evidence and recommendation for a FUZ Zone on the subject site,
  - (c) If the decisions on the PDP are issued prior to the consent hearing or prior to any decision, then substantive weight can be afforded to the PDP. Any weighting would also have to recognise the appeal period before final weight is applied,
  - (d) In these circumstances, I consider the Commissioners will need to exercise a broad assessment and determination of the application with reference to Part 2 of the RMA. This is appropriate given the uncertainty that existing with the provisions of the ODP and PDP and in my opinion is in accordance with the direction given in the Davidson decision<sup>10</sup>, and
  - (e) Once the PDP decisions are available, then this uncertainty will largely be resolved unless any appeals are lodged.

### Assessment of Planning Instruments

- 10.4 Following on from my assessment of the weighting, or lack thereof, that can be afforded to the ODP or PDP provisions, there is limited value in undertaking a full assessment of the objectives and policies from either the ODP or the PDP.

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<sup>10</sup> Court of Appeal - *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

- 10.5 At the same, I consider it useful for the Commissioners to have some understanding of the respective zone and key policy directions which will need to be considered if the PDP decisions are not available prior to the consent hearing/decision.

Operative District Plan – Rural Zone/FUD Overlay

- 10.6 The ODP provides a fairly typical approach to the issues and policy directive for Rural Zones with a heavy emphasis on maintaining rural character and amenity. I note that there is an effects based approach to the plan provisions and limited use of prescriptive lists with the underlying rules. The Rural Zone objectives and policies include;

*Objective 4*

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

*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 4.3*

*Control the density, scale, location (including on-site location) and design of activities by;*

- (a) Imposing a maximum HEIGHT for all buildings to allow for rural uses to operate.*
- (b) Providing a maximum area that can be covered by BUILDINGS to control the effects of larger scale activities on small sites.*
- (c) Requiring BUILDINGS to be setback from the ROAD BOUNDARY in order to maintain spaciousness.*
- (d) Requiring BUILDINGS to be setback from the SIDE BOUNDARY to maintain separation between BUILDINGS and related activities.*
- (e) Providing for the RELOCATION of BUILDINGS to ensure they are reinstated.*
- (f) Requiring landscaping (planting and screening) to mitigate the effects of:*
  - (i) OUTDOOR STORAGE areas visible from an adjoining RESIDENTIAL ENVIRONMENT AREA or New Plymouth entrance corridor and;*
  - (ii) VEHICLE parking either visible from the ROAD or an adjoining RESIDENTIAL ENVIRONMENT AREA or New Plymouth entrance corridor;*
  - (iii) of large SUBSTATIONS and SWITCHING STATIONS.*
- (g) Imposing controls on the size, HEIGHT, location, content, number and duration of ADVERTISING SIGNS.*
- (h) Imposing controls on the quantity, composition and reinstatement of EXCAVATION and FILL to ensure adverse effects are mitigated.*

- 10.7 As the subject site has an interface with an existing industrial area, then in my opinion the site is less sensitive to the establishment of non-rural activities industrial activities.

- 10.8 The FUD overlay provisions include;

*Objective 1A*

*To ensure that activities within and adjacent to the Future Urban Development OVERLAY do not adversely affect the ability to rezone and subsequently develop areas identified as FUTURE URBAN GROWTH AREAS.*

*Policy 1A.1*

*Activities within the Future Urban Development OVERLAY should be located and undertaken in a manner that does not have any actual or potential adverse effects on the future rezoning and subsequent development of land identified as a FUTURE URBAN GROWTH AREA.*

- 10.9 The FUD overlay provisions clearly establish a regime to restrict activities and I note that Policy 1A.1 directs that no actual or potential effects are acceptable as opposed to the typical approach to 'avoid, remedy or mitigate' effects.
- 10.10 The ODP also includes amenity, infrastructure and transportation provisions.
- 10.11 In my opinion, while industrial activities of the scale and nature proposed in this application would generally be difficult to reconcile with the objectives and policies of the Rural Zone, the site location and the mixed use nature the surrounding environment provides a pathway for a favourable assessment in terms of the objectives and policies. I am less satisfied that there is sufficient information and analysis at this stage to reach a conclusion that there will not be any effects on future development

Proposed District Plan – Industrial Zone/Oropuriri SP

- 10.12 The PDP as notified provides for an Industrial Zone including the Oropuriri SP over the subject site.
- 10.13 The Industrial Zone and Oropuriri SP provide for industrial activities as permitted activities and 'complying' subdivision as a Controlled Activity. There are matters to guide and manage the effects of development including the scale of activities, indicative road corridors, landscape treatment, and cultural values. The key objectives include;

*GIZ-O1 Industrial activities contribute to the economic and social well-being and prosperity of the district and are enabled and able to operate effectively in the General Industrial Zone.*

*DEV4-01 Urban development is enabled within the Development Area, provided it occurs in accordance with the Oropuriri Structure Plan.*

- 10.14 In my opinion, there would be no material issues with the proposed subdivision and land use activity gaining consent (and/or satisfying the performance standards for a permitted activity) under the Industrial Zone and Oropuriri SP as notified.
- 10.15 As discussed above, the S.42A Hearing 18 reported recommended amended to the Oropuriri SP provisions to give more weight and emphasis to cultural values and the incorporation of matauranga Māori into the design and development of activities. Even taking these amendments into account, I find it highly unlikely that there would be any substantive impediments for gaining consent or approval for the proposed land use and subdivision proposal under the Industrial Zone provisions.

Proposed District Plan – FUZ Zone

- 10.16 The FUZ Zone was developed as a new zone mechanism for the PDP and while it had some connection to the FUD overlay under the ODP, the FUZ Zone provided a more comprehensive approach to future urban areas with its own set of objectives, policies and rule mechanisms.
- 10.17 The FUZ Zone as notified includes the following key objectives and policies;

*FUZ-O2 Until rezoning for urban growth purposes occurs and the area to be rezoned is comprehensively planned by a structure plan:*

- 1. urban growth is avoided within the Future Urban Zone areas; and*
- 2. the Zone is predominantly used for agricultural, pastoral and horticultural activities and low density rural living activities*



*FUZ-P3 Avoid activities that are incompatible with the role, function and predominant character of the Future Urban Zone and/or activities that will:*

1. *constrain, limit or compromise the ability to comprehensively develop and use the Future Urban Zone for urban growth purposes;*
2. *result in [reverse sensitivity](#) effects and/or conflict:*
  - a. *with permitted activities; and/or*
  - b. *between incompatible activities once urban development occurs;*
3. *result in adverse effects on the character and amenity of the surrounding area which cannot be avoided, or appropriately remedied or mitigated; or*
4. *inhibit the efficient provision of [infrastructure](#) to service future urban growth needs.*

*Incompatible activities include:*

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*9. Industrial Activities*

- 10.18 The FUZ Zone provides a very directive policy directive to 'avoid' urban growth until a structure plan has been completed. In my opinion, the proposed land use and subdivision is contrary to these provisions.
- 10.19 The provisions of the FUZ Zone were also subject to substantive submissions from iwi and hapu as well as other parties, including Kainga Ora. I authored the S.42A report and RoR evidence for the PDP Hearing 17b on the FUZ Zone provisions and recommended that these were modified to provide additional guidance on any future structure plan process. This included additional emphasis on how cultural values should be recognised and protected through this process. Apart from administrative changes to align the FIZ Zone with other zone chapters, there were no changes recommended to FUZ-O2 or FUZ-P3 referred above. As such, the proposed land use and subdivision would remain contrary with these provisions.
- 10.20 In summary, I consider that there is limited weight that can be given to the objective and policies of either the ODP or the PDP given the imminent timing of the PDP decisions and the divergent zone and plan provisions for the site which need to be determined through the PDP process.
- 10.21 The proposed land use and subdivision while 'out of zone' in the context of the ODP Rural Zone could have a pathway through the planning framework however this would require a full resolution of all effects and infrastructure issues which in my opinion are not currently available. The non-complying activity status and objections and issues raised by mana whenua would also require careful consideration.
- 10.22 If the Industrial Zone and Oropuriri SP is confirmed by way of the PDP decisions, then there would not be any material issues arising from the planning framework which would prevent to industrial development from proceeding.
- 10.23 In my opinion, the FUZ Zone provisions would represent a significant hurdle for the favourable consideration of the proposed industrial development.
- 10.24 As previously discuss, assuming that the PDP Decisions are available prior to the hearing, I would seek leave to provide supplementary evidence on the PDP decisions and final zone provisions.

## 11 Iwi Management Plans

- 11.1 The Iwi Environmental Management Plan for Te Atiawa iwi is *Tai Whenua, Tai Tangata, Tai Ao*. I note that the printed version was prepared for launch in December 2019 which would have been after the PDP was notified and after the lodgement of the current subdivision and land use application.
- 11.2 I have not been involved in the preparation, whakapapa or implementation of the management plan and therefore attempting to summarise or paraphrase it may well lead to a disservice. The mana whenua submitters will have the opportunity to speak on *Tai Whenua, Tai Tangata, Tai Ao* as part of their evidence and korero which should assist the Commissioners if there are any questions or matters that require a more in depth understanding.
- 11.3 To help support and inform my evidence I have reviewed *Tai Whenua, Tai Tangata, Tai Ao* and provide the following observations and assessment;
- (a) *Tai Whenua, Tai Tangata, Tai Ao* represents a comprehensive and 'living' document which seeks to affirm the role of Te Atiawa as kaitiaki and to assist others to '*.. understand the matters of significance to Te Atiawa and guide a set of tikanga (behaviours) through the regulatory system to incorporate Te Atiawa values and interests*'.<sup>11</sup>
  - (b) The settlement of the region, the spatial extent of the rohe, eight hapu and location of marae and creation of the Te Atiawa Trust are described in some detail to give context to how the plan has been prepared and how it is to be implemented,
  - (c) A series of guiding principle are presented that set out the iwi requirements for environmental management. These include whakapapa, kaitiakitanga, wairuatanga and kotahitanga among a full set of twelve principles,
  - (d) Part 6 sets out issues, objectives and policies based on eight domains being,
    - Te Tai Hauora – Guardianship
    - Te Tai Awhi–Nuku – Inland and Coastal Whenua
    - Te Tai o Maru – Freshwater
    - Te Tai o Tangaroa – Coastal and Marine Environment
    - Te Tai Awhi–Rangi – Air and Atmosphere
    - Te Tai o Tānetokorangi – Flora and Fauna
    - Te Tai Hekenui – Heritage
    - Te Tai o Rua Taranaki – Taranaki Maunga
  - (e) In terms of Te Tai Hauora – Guardianship, I note that mana whenua have expressed concerns and frustration with the PDP review process and the lack of appropriate engagement with mana whenua which led to opposition to the Industrial Zone and Oropuriri SP as notified over the subject site. For the consenting process, a CIA has been prepared and there has been consultation between the Applicant and mana whenua with the submissions process also helping to inform the assessment process

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<sup>11</sup> Tai Whenua, Tai Tangata, Tai Ao, Foreword, pg. 4.

- (f) Te Tai Awhi–Nuku – Inland and Coastal Whenua includes an overview of the effects of urbanisation with industrial activities specified cited for the potential adverse effects (Issue TTAN2) and a specific objective for the Mangaone Stream which is as follows

*Ob. TTAN 2.1*

*Restore, protect and enhance catchments which are directly or indirectly impacted by industrial activities within our Te Atiawa rohe including and not limited to Waitara, Waiongana, Mangaoraka, Waitaha, Waihowaka, Mangati, Mangaone, Herekawe and Waiwhakaiho and their tributaries.*

- (g) Te Tai o Maru – Freshwater sets out key issues and objectives regarding inappropriate management of water resources, the lack of proper recognition of statutory acknowledgements and seeks to adopt a regime of enhancement of waterbodies.

*Ob. TTOM 1.8*

*Waterbodies that originate or migrate through urban and industrial areas are restored to their previous condition, wherever possible, through techniques such as daylighting.*

- (h) Te Tai Hekenui – Heritage refers to the need to recognise and protect cultural sites and specifically to cultural landscapes.

*Issue. TTHE 1*

*The lack of acknowledgement and protection of cultural landscapes can generate adverse effects on Te Atiawa's values, and our health and wellbeing*

*Issue. TTHE 1*

*Acknowledge and protect geographical areas with a concentration of interconnected wahi tapu/wahi taonga, urupā and sites of significance to Māori*

- 11.4 The above 'snapshot' of *Tai Whenua, Tai Tangata, Tai Ao* is certainly not to be taken as a comprehensive analysis of the scope and application of the management plan. However, it is clear to me that there is a very strong nexus between the matters discussed in the management plan, the matters raised by mana whenua in submissions to the PDP and the CIA and submissions which have been prepared for the consent application process.
- 11.5 In my view, the Applicant has endeavoured to address the specific nature and effects of the proposed industrial development however it is not clear to me how the proposal gives meaningful and appropriate recognition of *Tai Whenua, Tai Tangata, Tai Ao*.

## 12 S.104D Assessment

- 12.1 S.104D of the RMA places a 'gateway' test on applications which have a non-complying activity status.
- 12.2 A non-complying activity may only be granted consent under S.104, if it is first determined that the application satisfies one of the following statutory tests.
- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
- (b) the application is for an activity that will not be contrary to the objectives and policies of—*
- 12.3 Based on my assessment of environmental effects and the policy provisions of the District Plan, I consider that the application is able to pass both tests and can therefore be considered under S.104.
- 12.4 My rationale for this is a little unorthodox. I consider that many of the adverse effects of the proposed industrial development will be minor and are capable of mitigation through conditions of consent. In terms of adverse effects on cultural values and sites, it is difficult to fully quantify these as the opposition from mana whenua is presented in principle to any development on the site until such time as an appropriate structure plan has been completed. This position indicates that there is an opportunity for some form of industrial development in the future and that the adverse effects of specific development may well be managed and mitigated. Based on the material and submissions presented I have not reached the view that the adverse effects will be more than minor and as such I consider the application is able to pass the first threshold test.
- 12.5 The transportation issues are also difficult to quantify as the existing Egmont Road/SH3 intersection has a very low level of service and the Oropuriri SP as notified provided little certainty in terms of future upgrades or network improvements. Incremental increases in traffic generation from existing urban zoned areas will continue to affect the safety and efficiency of the intersection and both NPDC and Waka Kotahi will be obliged to pursue upgrades across the network. The proposed subdivision provides for large industrial lots and any final traffic generation will be dependent on the final land use and occupation.
- 12.6 The existing approach by NPDC and Waka Kotahi to manage the effects of additional traffic generation appears to be largely by reference to medium or long term network improvements. I am mindful that a high impact/low probability effect would include a major traffic accident or fatality. In this situation, the consequences are severe and any contributing factors would need to be fully assessed. Any additional traffic generation from the proposed lots would need to be assessed alongside all other development and urbanisation which is also increasing traffic generation across the network.
- 12.7 Given the very uncertain nature with the ODP and PDP provisions and the limited weight that can be afforded to either plan, I do not consider that it is possible to make an affirmative decision that the proposed subdivision and land use is contrary to the planning instruments. Once the PDP Hearing decisions are issued, this assessment may be revisited. At this stage, I also consider that the application is able to pass the second threshold test.

## 13 Part 2 Matters

- 13.1 As discussed in Section 10 of this report, I consider that a broad assessment under Part 2 is required in light of the uncertain nature of the ODP and PDP provisions. A Part 2 assessment maybe dispensed with or at least will have less significance upon issue of the PDP decisions.
- 13.2 Part 2 consists of Sections 5-8 and establishes the purpose and principles of the Resource Management Act 1991 (RMA).

### ***Section 5 – Purpose***

- 13.3 Section 5 defines sustainable management as;
- '... 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 well-being and for their health and safety while - ...'.*
- 13.4 In my opinion there are no land supply issues to support a premise that the proposed industrial development will address a short fall in industrial land supply and therefore an economic well-being argument cannot be sustained. In addition, there are outstanding issues associated with the transportation and stormwater networks which require further assessment and most importantly, solutions, to ensure that social well-being and health and safety is maintained.
- 13.5 Mana whenua have opposed any development on the site until such time as a new structure plan process has been completed and have established the cultural values and sites which may be compromised or affected by inappropriate development.
- 13.6 In my opinion, the proposed industrial development does not serve the sustainable management purpose of the RMA .

### ***Section 6 - Matters of National Importance***

- 13.7 Cultural values and the protection of heritage are also listed as matters of national importance. Specifically, S.6(3) refers to;
- (e ) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- 13.8 Mana whenua have presented evidence in terms of the cultural values and sites across the subject site, including the relationship with the Oropuriri Pā and the significance of the Mangaone Stream and the need to enhance and improve the mauri and values of this and other water bodies.
- 13.9 While there is limited quantification of the specific effects of the proposed industrial development, mana whenua have, in my opinion, established that further work and engagement with mana whenua will be necessary to ensure that their relationship with their ancestral land and sites will be appropriately recognised and protected.

### ***Section 7 - Other Matters***

- 13.10 Section 7 lists other matters which consent authorities shall have particular regard to in making decisions under the RMA.
- 13.11 Sub-Section 7(b) refers to *katiakitanga* and mana whenua have clearly expressed their position that all development in this area is opposed until such time as a proper engagement process is adopted through a new structure plan process.
- 13.12 Sub-Section 7(b) is '*the efficient use and development of natural and physical resources*'. As discussed in this report, there are aspects of the proposal and locational attributes which in my opinion support the efficient use and development of the land for industrial activities. However, the development of the wider area requires further work and assessment including engagement with mana whenua. In my opinion, the efficient use and development of the wider area will be better served by holding back any development until such time as the structure plan area and extent of industrial land development can be revisited.
- 13.13 Matters of amenity values (sub-section 7(c)) and the quality of the environment (sub-section 7(f)) are raised in submissions. In my opinion, off-site effects are moderated by the site and locational context of the proposed lots and the ability to impose conditions to manage and mitigate off-site effects.

### ***Section 8 - Treaty of Waitangi***

- 13.14 This section requires those involved in the development of natural and physical resources to take into account the principles of the Treaty of Waitangi. These principles may be presented as partnership, protection and participation although it is acknowledged that there is a wide range of perspectives on the legal, social and cultural meaning and implementation of these principles.
- 13.15 In my opinion, at a district or regional level, mana whenua have a partnership role through the development of planning policy and mana whenua have had a significant role in the PDP review process to date. At the same time there are outstanding issues associated with the protection of cultural values and sites and the meaningful role and participation of mana whenua in the policy review process.
- 13.16 Overall, it is my opinion that the consideration and determination of cultural values and sites and how these can be recognised and protected from inappropriate development are able to be addressed and determined through the consenting process.

## **14 Conclusion and Recommendations**

- 14.1 There are a number of aspects to the application and consenting process which distinguish this proposal from other applications. These aspects include the extended timeframe from lodgement to the current submissions and hearings process and the PDP review which has been running in parallel to the application process.
- 14.2 It also occurs to me that expectations have a role in this process. The Applicant has secured rural land and presumably anticipated that the land would transition to a full Industrial Zone under the PDP process. I note that up to and including the PDP hearings in March last year, Council staff were recommending that the Industrial Zone on the subject site be retained. It is notable that the Applicant did not lodge a submission and was therefore unable to participate in the PDP review process.
- 14.3 Mana whenua have left no doubt as to their position on the notified provisions of the PDP and that no industrial development should occur until a new and appropriate structure plan process has been completed. This position has also been affirmed through submissions to the current consenting process. There is an expectation from mana whenua that they have already made their case and views clear through the PDP process and that there is limited value in revisiting the same issues through a consent application and hearings process.
- 14.4 The expectation of submitters is that Council needs to ensure that any impacts on the roading and stormwater network are not only mitigated, but that existing deficiencies are also addressed and remedied. In addition, appropriate measures and conditions need to be applied for any consents to maintain a reasonable standard of amenity and interface with the proposed site and industrial activities.
- 14.5 It does occur to me that there are valid questions around the PDP process and the notified plan provisions for an Industrial Zone and Oropuriri SP. Council did undertake engagement with mana whenua through the PDP process and it also carried out transportation and infrastructure reviews. However, it is not clear to me how this work translated into a robust and integrated analysis of the cultural, infrastructural, and environmental issues necessary to inform the zone and structure plan provisions as notified.
- 14.6 The planning framework under the ODP and PDP is very uncertain, and it is anticipated that the PDP decisions will be available before the current consent hearing is held. This will help to provide a more affirmative assessment of the application under the District Plan.
- 14.7 I consider that the Applicant has set out to genuinely address the planning, infrastructure and cultural issues that have been raised throughout the extended consenting process. This has focussed on the specific scope and nature of their application for subdivision and land use with work also undertaken in terms of the integration of the proposed development with the Oropuriri SP as notified in the PDP.

- 14.8 In preparing this planning report and reviewing the consent process to date, I have come to the conclusion that the challenges for the Applicant and their project have increased over the application process. This includes the Council RoR recommendation to retract the Industrial Zone in favour of a FUZ Zone, identified issues that are outstanding in terms of infrastructure and transportation networks and the affirmed position from mana whenua in opposition to any development on the site. In addition, the new provisions and direction of the NPS-FM will require a new approach to stormwater management and discharges to give effect to the new management hierarchy for freshwater management and Te Mana o te Wai.
- 14.9 The submitters in opposition have raised a number of legitimate issues and while there are some matters that I am satisfied can be addressed through conditions of consent, I consider there are wider stormwater and transportation effects matters which cannot be resolved through consent conditions.
- 14.10 As there is significant uncertainty in relation to the District Plan provisions, a broad consideration of the application is appropriate in accordance with Part 2 of the RMA. This will largely be resolved upon issue of the PDP decisions. At this stage, I am not satisfied that granting consent will serve the 'sustainable management' purpose of the RMA or be consistent with Sections 6 and 7.
- 14.11 Ultimately, I am unable to recommend that the application for industrial development at 19 Egmont Road be granted. Notwithstanding the assessment and work completed by the Applicant, there are several outstanding issues associated with cultural values and sites, as well as wider infrastructure and transportation issues which in my opinion require further work and resolution before any industrial development should take place. In my opinion these matters outweigh the positive aspects of the application and matters which can be addressed through consent conditions. As such, I do not support the granting of consent and recommend that the Commissioners decline the application.
- 14.12 I have prepared a draft framework for consent conditions, and this may be used to assist the Commissioners with their decision if they are mindful to grant consent. These will require further input from the Applicant and submitters.
- 14.13 As discussed, if the PDP decisions are issued prior to the hearing, then there will be merit in supplementary statements of evidence being prepared.



Todd Whittaker  
**Consultant Planner**

1 May 2023