

# NEW PLYMOUTH DISTRICT COUNCIL

## **Vary Consent Notice Condition**

Application# SUB22.48035.03

### **s42A Report**

#### **Report Date**

23 June 2025

#### **Hearing Date**

14 July 2025



Te Kaunihera-ā-Rohe o Ngāmotu  
**NEW PLYMOUTH  
DISTRICT COUNCIL**  
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<b>Applicant / Owner:</b>	Heinrich and Sophie Fourie
<b>Applicant's Agent:</b>	Tanya Hansen
<b>Site Address:</b>	263 Weld Road Lower, Oakura
<b>Legal Description:</b>	Lot 2 DP 582431
<b>Site Area:</b>	4.1574 hectares
<b>Zoning and Overlays:</b>	<p><b>Zone: Operative District Plan:</b> Rural Zone</p> <p><b>Proposed District Plan (Appeals Version):</b> Rural Production Zone</p> <p><b>Overlays: Operative District Plan:</b> Weld Road Lower – Roading hierarchy – Rural Local Road</p> <p><b>Proposed District Plan (Appeals Version):</b> Weld Road Lower – Roading hierarchy – Local Road</p>
<b>Proposal:</b>	<p>To vary a condition specified in consent notice 2565106.1 pursuant to section 221(3)(a) of the Resource Management Act 1991 to provide for the alteration of a consent notice extent on the site related to a habitable dwelling location, such that the location of the consent notice extent will be in a different position to that currently imposed.</p> <p>There is an administrative change required also to correct an error in the lot reference such that the reference should be to Lot 2, not Lot 1.</p> <p>The current consent notice condition reads as follows:</p> <p><i>A maximum of one habitable dwelling shall be permitted on Lot 2 LT 582431. This building shall be located within the Area marked 'Z' on Lot 2 LT 582431. The habitable building shall not be erected outside of the Area marked 'Z' on Lot 1 LT 582431</i></p> <p>and the changes proposed are such that it will read:</p> <p><i>A maximum of one habitable dwelling shall be permitted on Lot 2 LT 582431. This building shall be located within the Area marked 'Z' 'A' on Lot 2 LT 582431 as shown on the Site Plan by BTW Company, Drawing No. 230274-SU-01, Sheet 1, Rev B2. The habitable building shall not be erected outside of the Area marked 'Z' 'A' on Lot 1 2 LT 582431.</i></p>
<b>Land Use Capability Classification</b>	NZLUC Class 4e-2 and 1c-2
<b>Activity Status:</b>	An application for a variation or cancellation to a consent notice under section 221(3) of the Resource Management Act 1991 is assessed in a discretionary manner

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## Attachments

- A**     **Application Documentation (inc. response to further information request November 2024 and additional information March & May 2025)**
- B**     **Notification Report and Decision**
- C**     **Evidence – Landscape and Visual – Mr Brad Dobson (blac.)**
- D**     **Draft Recommended Conditions**
- E**     **Proposed Plan Objectives and Policies**
- F**     **Summary Table and Full Set of Submissions**

## Interpretation

The balance of this report utilises the following terms and abbreviations:

TERM	MEANS
application AEE	The assessment of environmental effects appended to the application
Applicant	Heinrich and Sophie Fourie
Commissioner	Hearing Commissioner
Council	New Plymouth District Council
LUC	Land Use Capability
NPS-HPL	National Policy Statement for Highly Productive Land 2022
Operative Plan	Operative New Plymouth District Plan (August 2005)
Proposed Plan	Proposed New Plymouth District Plan (Appeals Version) (September 2023)
RMA	Resource Management Act 1991
s95 report	Notification report for the proposal prepared under s95 of the RMA
site	The property to which the application relates as described above – 263 Weld Road Lower (Lot 2 DP 582431)
TRC	Taranaki Regional Council
TRPS	Taranaki Regional Policy Statement (January 2010)

## Executive Summary

- i. I have been asked by Council to prepare this report pursuant to s42A of the RMA. The report relates to the proposal to vary a condition specified in consent notice 2565106.1 pursuant to s221(3)(a) of the RMA to alter the consent notice extent on the site related to a habitable dwelling location, such that the location of the consent notice extent will be in a different position to that currently imposed at the site.
- ii. Having considered the application documentation, further information and supplementary revised information provided by the Applicant since lodgement, the submissions, and the recommendation of Council's expert advisor I have evaluated the proposal under the relevant decision-making framework in the RMA.
- iii. The following matters relating to the application require attention to ensure the proposal does not result in an unacceptable level of adverse effects on the environment:
  - a. design and landscaping in relation to the rural character and amenity of the surrounding area; and
  - b. the need for measures to be adopted to ensure effects are appropriately managed.
- iv. For the issue of landscape and visual amenity Mr Brad Dobson, Council's technical advisor – Landscape Architect, has indicated that overall landscape effects are assessed as low and visual effects range from very low to low-moderate and can be sufficiently managed through additional conditions, should consent be granted.
- v. I conclude that, for the reasons that follow, the issues raised relating to RMA matters can be resolved and through the imposition of the draft conditions recommended (or similar), consent may be granted for the proposal pursuant to s221, 104, and 104B of the RMA.

# 1.0 Introduction

## Report Author

- 1.1 My name is Jacqueline Maree Manning (Jacqui). I am a Senior Consultant Planner with Resource Management Group Ltd (also known as RMG), an urban and environmental planning consultancy with offices in Christchurch, Wellington, Nelson, and New Plymouth.
- 1.2 I hold a New Zealand Certificate in Town Planning. I have over thirty-five years' experience in resource management planning in New Zealand. Prior to the last nine years in the employment of RMG, I have worked in the employ of both territorial authorities and multi-disciplinary consultancies, including New Plymouth District and Christchurch City Councils, Opus (as formerly known), and Beca.
- 1.3 My experience includes statutory land use planning, resource consents and outline plans, Notices of Requirement, environmental impact assessments, District Plan development, and presentation of evidence.
- 1.4 I was engaged by Council in October of 2025 to process on behalf of Council the Applicant's proposal, including the coordinating and preparing of this report in conjunction with the other authors identified below.
- 1.5 Along with contextual information and other matters of fact, this report includes my personal views and recommendations on the proposal. These views and recommendations are my own, except where I indicate otherwise.
- 1.6 Though not a requirement of Council resource consent hearings, I have read and agree to abide by the Code of Conduct for Expert Witnesses and have prepared this report in accordance with it. The report content is within my area of expertise except where stated otherwise. I have not omitted to consider the material facts known to me that might alter or detract from the opinion expressed in this report.
- 1.7 In some instances, I have specifically relied on the evidence, expertise and/or views of others, including Mr Dobson<sup>1</sup> and the Applicant's technical advisor, Mr Bain<sup>2</sup>, who authored the Landscape Memo attached to the application AEE (subsequently updated 19 May 2025) and response to the s92 RMA further information request.

## Purpose of this Report

- 1.8 This report is provided pursuant to s42A(1) of the RMA. The primary purpose of the report is to assist the Commissioner in evaluating and making a determination on the proposal.
- 1.9 I note that this report is not a final decision on the proposal. That decision ultimately resides with the Commissioner, under delegation from Council, after the Commissioner has considered the proposal and heard the Applicant and any submitters.

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<sup>1</sup> See Attachment C

<sup>2</sup> See Attachment A

## Report Structure

1.10 The report has been structured as follows:

- a. **Section 2** sets the scene for this report, providing further contextual information and an outline of relevant statutory matters,
- b. **Section 3** summarises the notification process and the submissions received, and
- c. **Section 4** contains an evaluation of key issues and a summary of the recommendations on those issues.

1.11 Attached to the report are the following appendices:

- a. **Attachment A** contains the application documentation, incorporating the further information request response dated November 2024 and the revision to the application dated April and May 2025 (note any superseded material has been removed such as to provide the latest complete suite of documentation)
- b. **Attachment B** includes the notification report for the proposal prepared under s95 of the RMA
- c. **Attachment C** includes evidence from Mr Brad Dobson (blac.) regarding an assessment of the landscape and visual amenity
- d. **Attachment D** contains draft recommended conditions
- e. **Attachment E** contains an index of relevant objectives and policies in the Proposed Plan
- f. **Attachment F** contains a table summarising the submissions received to the proposal and the full set of submissions received

## 2.0 Setting the Scene

### Matters Addressed in this Section

- 2.1. This section of the report presents a factual overview of the proposal and the relevant matters to be considered for determining whether consent should be granted. The discussion here summarises:
- a. the site and existing environment,
  - b. the proposal, including March and May 2025 changes,
  - c. the relevant provisions of the Proposed Plans; and
  - d. the statutory framework for consideration of the proposal.
- 2.2. Where possible, I have relied upon, adopted, or referred to the detailed description of and / or information presented in some of these matters in the:
- a. various documents provided by the Applicant, both within the application and subsequently through the provision of further information: and
  - b. s95 report I prepared for Council in December 2024<sup>3</sup>.
- 2.3. My intent in doing so is to minimise the repetition of material before the Commissioner.

### The Site and Existing Environment

- 2.4. I undertook an initial site visit, including adjoining properties, on Friday, 4th October 2024 to inform any further information request and the s95 report. Subsequently, I have undertaken a further site visit on Thursday, 5<sup>th</sup> June 2025 with Mr Dobson to both the site and all submitters' properties. As a result of my site visit, I provide the following regarding the site which expands on that contained within the application
- 2.5. The site and surrounding environment are described at Section 1.3 of the application AEE and the section entitled *Site Description* of the s95 report, pgh. 18 – 28 (pg. 4 - 7) and I adopt those descriptions for the purposes of this report. In summary:
- a. The site is located at 263 Weld Road Lower, Oakura.
  - b. The site is elevated at the Weld Road Lower entrance and an upper tier exists on the eastern reaches of the site. As the driveway winds down beyond the reaches of the properties either side of the site at the Weld Road Lower entrance, the site opens to a larger flat, fenced, paddocked area.
  - c. Established buildings and structures, consisting of a shed, two above-ground water tanks located immediately west of the shed, and a building to the north of the shed, referenced in the application AEE and supporting documentation as a 'shed', which has been 'converted' to and occupied as a dwelling.

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<sup>3</sup> See Attachment B

- d. Since my last site visit there has been further planting and fencing established within the site.

## The Proposal

### ***Adequacy of the Application***

- 2.6. That section of the s95 report entitled *Adequacy of the Application*, para. 34 – 42 (pg. 8 - 10) addresses the adequacy of the application and that description should be read in conjunction with this report to understand the context that follows.
- 2.7. Subsequently further information was received by Council from the Applicant on 31 March and 19 May 2025 that altered the proposal such that the size of the consent notice extent in relation to proposed Area A was reduced to only pertain to the exterior extent of the existing building (dwelling) on site and was supported by a Landscape Memo Addendum to be read in conjunction with the August 2024 (Rev 1) version, authored by Mr Bain.

To note, Mr Bain advises that the Addendum:

- should be read as superseding the August 2024 Landscape Memo where differences arise, and
  - does not address the five submissions received.
- 2.8. The further information received by Council relating to the Landscape Memo Addendum, which occurred after the limited notification of the proposal and closing of the submission period, was also made available to those parties identified as requiring notice.

### ***The Proposal***

- 2.9. With the extent of the consent notice being the only element having been altered after the issue of the s95 report, the proposal is comprehensively described in Section 1.4 of the application AEE and that section of the s95 report entitled *Proposal*, para. 12 – 17 (pg. 4) and I adopt that description for the purposes of this report.
- 2.10. I note the proposal will result in a key change to the site and environment in that the location of a single authorised habitable building will be on the flat lower extent of the site rather than on the hillside near the entrance to the site.

## District Plan

### ***The Operative and Proposed Plans***

- 2.11. That section of the s95 report entitled *New Plymouth District Plan*, para. 7 – 11 (pg. 2 & 3) addresses the status of the Operative and Proposed Plans. After the issue of the s95 report further appeals to Proposed Plan have been resolved.
- 2.12. Although this application is one that relates to a change to an existing consent notice condition that resulted from subdivision consent (SUB22.48035), a review of the Subdivision District Wide Matters and Dwellings / Residential Units within the Rural Production Zone in the Proposed Plan has identified objectives, policies, and standards relating to subdivision in the Rural Production Zone as no longer being subject to appeal. Given this, all considerations with reference to the objectives, policies, or rules / standards for subdivision in this report have only been given in respect of the Proposed Plan as provided by s86F of the RMA.

## Statutory Considerations

- 2.13. A change to Condition 15 of subdivision consent SUB22/48035, being the condition which imposed the requirement for the consent notice, cannot be and is not applied for, as in relation to subdivision consents this can only occur under s127 (RMA) before the survey plan is deposited.
- 2.14. S221(3) of the RMA affords an owner the right at any time after the deposit of the survey plan to apply to a council to vary or cancel any condition specified in a consent notice.
- 2.15. S88 to 121 and s127 of the RMA apply to applications to vary or cancel a consent notice, with all necessary modifications (s221(3A) RMA).
- 2.16. The decision-making framework for the proposal is contained in s104 and 104B of the RMA. The relevant aspects of s104 for this application are as follows:

### **104 Consideration of applications**

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
  - (b) *any relevant provisions of—*
    - (i) *a national environmental standard;*
    - (ii) *other regulations;*
    - (iii) *a national policy statement;*
    - (iv) *a New Zealand coastal policy statement;*
    - (v) *a regional policy statement or proposed regional policy statement;*
    - (vi) *a plan or proposed plan; and*
  - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
- ...
- (5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.*
- (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*
- (7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*

- 2.17. Section 104B is relevant given the proposal's classification as a discretionary activity, which states:

### **104B Determination of applications for discretionary or non-complying activities**

*After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority —*

- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108.*

- 2.18. My evaluation of the proposal against the relevant provisions of s104 and 104B is set out in Section 4.0 of this report. Before turning to that assessment, I briefly discuss the notification process and submissions received.

## 3.0 Notification & Submissions

### Notification of the Proposal

- 3.1. The notification decision was made 30<sup>th</sup> December 2024 (noting this is a non-statutory working day and would not be considered issued until Friday, 10<sup>th</sup> January 2025). The decision determined that limited notification was required, and those parties to be limited notified were the owners / occupiers identified in Figure 1 below:
- a. 271 Weld Road Lower (Lot 3 DP 582431) [1],
  - b. 249 Weld Road Lower (Lot 1 DP 582431) [2],
  - c. 247 Weld Road Lower (Lot 2 DP 393350) [3],
  - d. 247A Weld Road Lower (Lot 2 DP 500285) [4],
  - e. 247C Weld Road Lower (Lot 1 DP 500285) [5],
  - f. 247B Weld Road Lower (Lot 2 DP 432478) [6],
  - g. Weld Road Lower (Lot 1 DP 432478) [7],
  - h. Weld Road Lower (Lot 2 DP 486355) [8],
  - i. 283 Weld Road Lower (Lot 1 DP 486355) [9], and
  - j. 255 Weld Road Lower (Lot 1 DP 484251) [10].



Figure 1 – Location of Parties Limited Notified

- 3.2. On the issue of the notification decision, the Applicant requested that Council place the application on hold to enable written approvals to be obtained.

- 3.3. The Applicant obtained the written approval of three parties, being the owners / occupiers of (with reference to Figure 1 above):
- [2] 249 Weld Road Lower (Lot 1 DP 582431) – G & T Beatson,
  - [8] Weld Road Lower (Lot 2 DP 486355) - V & B Kalin, and
  - [9] 283 Weld Road Lower (Lot 1 DP 486355) – G Mockett.
- 3.4. On Monday, 31 March 2025 the Applicant requested that Council proceed with limited notification of the application due to not being able to obtain all parties written approvals.
- 3.5. The application was limited notified on Thursday, 3 April 2025 to those parties of the properties identified in paragraph 3.1 above.
- 3.6. With respect to the three parties identified above in paragraph 3.3, who provided written approval, they were advised that unless the Council were advised to the contrary, their written approval remained intact and any effects on them will not be considered in the determination of the application. These three written approvals remain intact.

### Submissions

- 3.7. Five submissions were filed by the closing date for submissions at 5pm on Tuesday, 6<sup>th</sup> May 2025. No late submissions were received. Submissions were received from (with reference to Figure 1 above):
- [1] 271 Weld Road Lower (Lot 3 DP 582431) – Greg & Katy Sheffield,
  - [7] Weld Road Lower (Lot 1 DP 432478) – James Dinnis & Claire Frost,
  - [5] 247C Weld Road Lower (Lot 1 DP 500285) – Steven & Angela Blair,
  - [6] 247B Weld Road Lower (Lot 2 DP 432478) – Nicholas & Abigail Hackling, and
  - [10] 255 Weld Road Lower (Lot 1 DP 484251) – Rebecca & Leanne Shaw.
- 3.8. The following summary of the submissions gives a brief overview of the various issues raised, refer to Attachment F for a submission summary table and the full set of submissions. All five submitters are opposed to the overall proposal.
- 3.9. All submissions stated that the proposal:
- will not promote, meet, enable, and is contrary to, the matters in Part 2 of the RMA,
  - as being contrary to the relevant district and regional planning documents, and
  - is unable to avoid, remedy or mitigate unacceptable and inappropriate adverse effects.
- 3.10. Key issues advanced in the submissions were:
- In respect of building platform within existing Area Z for the dwelling:
    - Where written approval for the original subdivision was obtained from a submitter, the approval was forthcoming due to Area Z being defined, and
    - For purchasers of and for those renovating / developing adjoining properties after consent granted to the subdivision, development of those properties has been planned on basis of the dwelling on the site being within Area Z.

- b. Views impacted and privacy from living areas within dwelling habitable rooms and from outdoor living areas reduced, affecting enjoyment of property given difference between:
    - i. use / activity related to ancillary buildings versus that of a habitable building (residence), and
    - ii. location of the proposed Area A to that of existing platform extent within Area Z.
  - c. Noise and light pollution, and loss of rural open space, including that the building in proposed Area A is visible from Weld Road Lower and does not simulate into the rural landscape.
  - d. Consideration of the opinions expressed in Mr Bain's Landscape Memo supporting the application AEE which differs to that supporting, and as relied upon by the Consent Planner in the processing of, the application for subdivision (SUB22.48035).
  - e. Planting along boundaries of the site adjoining the submitters, particularly the use of Poplar species, in respect of shading and affecting in one instance an effluent bed.
- 3.11. Submitters have also highlighted frustrations, stress, and financial burden resulting from the actions of the Applicant which has resulted in a 'retrospective' RMA consent process, whilst in knowledge of the restriction applying to the location of a dwelling at the site. Concerns are also expressed in respect of Council's enforcement and handling of the process. Key matters raised in respect of this are:
- a. Building Act and RMA not upheld through appropriate processes,
  - b. Consultation and communication by the Applicant,
  - c. Process, or lack of, followed by the Applicant and Council,
  - d. Reference in application AEE and Mr Bain's Landscape Memo to a 'shed' when the building has been established and occupied as a dwelling, and
  - e. Applicant's future intent to run a horse-riding school from the site.
- 3.12. All submitters seek the application be declined and do not support either a variation to the location, or cancellation of, the consent notice. The submissions seek to retain the dwelling building platform within Area Z, with the removal of the dwelling (structure) entirely or removal of those items (fixtures) within the building that allow it to be used as a habitable space / building for that structure outside Area Z, and:
- a. The removal of items / fixtures is such that a motorhome or similar can't be positioned alongside the building and the building be used for domestic purposes.
  - b. The Blairs have requested denser, smaller, planting along the south-western embankment so activity is less obvious to neighbouring properties – supporting proposal of planting by the Hacklings to reduce shading to their property.
  - c. The Blairs seek legal mitigation and actionable pathway:
    - i. to prevent the Applicant from undertaking commercial activities, such as a horse-riding school, at the site such that floodlighting, etc., to be introduced, and
    - ii. if the Applicant steps outside of appropriate processes again.
  - d. The Hacklings and Dinnis / Frosts have requested removal of the Lombardy poplars planted in proximity to the boundary of their properties, suggesting they could be replaced with smaller griselinia or pittosporum hedging kept at 2 metres in height.

## 4.0 Evaluation & Recommendations

### Introduction & Outline

- 4.1. This section of my report addresses the relevant requirements of s104 and 104B of the RMA and considers the matters raised in submissions. I have adopted an issue-based approach as opposed to a submission-by-submission analysis, including any specific outcomes sought by the submitters.
- 4.2. I have adopted an audit approach and focused on the areas arising from submissions, Mr Dobson's landscape and visual evaluation, and my own evaluation of the proposal. Except where I state otherwise, I have generally adopted the assessment of effects in the application AEE.
- 4.3. My discussion is organised as follows, with initial focus on the key issues as relevant to the matters in s104 of the RMA:
  - a. Rural character, including locational difference within the site of the built form,
  - b. Rural amenity, and
  - c. Any other relevant matters under s104(c) of the RMA.
- 4.4. Focus of my discussion then turns to other higher order documents under s104(1)(b) of the RMA.
- 4.5. The sub-sections referenced in 4.3(a) and (b) above commence with a summary of key issues I have identified and of my corresponding assessment. Rather than consider the Proposed Plan's objectives and policies separately to effects, those that are relevant are referred to under the applicable issue below.
- 4.6. For completeness, I have attached a copy at Attachment E of all objectives and policies in the Proposed Plan I consider as having relevance to the proposal.
- 4.7. The provisions of the NPS-HPL are relevant given the site comprises land with LUC Classes 1 (and 4).
- 4.8. No other National Policy Statement or other regulations to those considered within this report, or the New Zealand Coastal Policy Statement, are applicable to this proposal / site.

### Rural Character

#### *Summary of Key Issues*

- 4.9. All submissions address the established built form which has led to the proposal, including comparisons between the expected location of any habitable building within Area Z to the established building within the proposed Area A on the BTW plan attached to the application, raising the following key matters:
  - a. The Sheffields identify the proposed building site (area marked 'A' on the BTW plan to the application) as impacting on various aspects sought to protect when agreeing to subdivision consent SUB22.48035. With respect to the built form this included viewpoints from the submitter's dwelling and outdoor living areas. While Dinnis / Frost

and the Shaws raise the location of the dwelling being within viewshafts of their main dwellings and with the Shaws their outdoor living areas.

- b. On rural character, the Shaws' submission states that the location of the proposed Area A and associated dwelling results in building visibility from Weld Road more significantly than that expected with the dwelling being located within Area Z. This is advanced in the Blairs' submission as to the rural outlook (character) drastically changing a housing cluster due to the Blairs being aware of the second dwelling consented for the Dinnis / Frost property and the buildings on the site being just above the Hackling's dwelling.
- c. The Shaws consider that reliance should be afforded any person on the location related to Area Z on the site in that a subdivision determination should stand long-term. This point follows from the building constructed whilst referred to as a 'shed' is a barn house and the conversion has already occurred.
- d. The Shaws further state that the visibility of the building (dwelling) in the area marked 'A' alters the rural outlook from Weld Road compared to where a dwelling would be erected within Area Z. This is also raised in the Hacklings' submission.
- e. The Blairs and Hacklings' submissions reference the building being prominent as it is right above the Hacklings' dwelling, with the shed and building (dwelling) being visible from all but three windows of the Blair's home with no ability to change that viewpoint.
- f. The Blairs' submission raises concerns that the colour of the buildings does not blend with the rural aspect in which it is located, having chosen large black buildings that stand out in the rural skyline.
- g. Three submitters (Blair, Dinnis / Frost and Shaw) raise the following points:
  - i. the retrospective nature of the process and that the processes are upheld, and
  - ii. action, or lack of, taken by Council to address the shed / dwelling construction.

I interpolate here to note that these are not matters addressed solely through this process, however in terms of the resource consent the correct process has been followed. While these aspects of the submissions are acknowledged, I have not considered them further.

- h. All submitters seek that Area Z is retained such that a dwelling should only be erected within this area subject to the existing consent notice conditions. The result being the change of use of the building from a shed to dwelling not occur, such that the conversion back to the shed does not provide for any other mechanism by which it could be occupied in the form of accommodating residential living.

- 4.10. The Applicant's independent assessment carried out by Mr Bain<sup>4</sup> in respect of the submitters' properties, noting it does not address their specific submissions, finds the effects on visual amenity in respect of viewpoints to be less than minor. I rely upon the independent assessment on landscape and visual effects for Council undertaken by Mr Dobson<sup>5</sup> which finds that effects from public viewpoints are less than minor, while from the private viewpoints of the submitters these vary from less than minor to minor.

<sup>4</sup> Attachment A – Landscape Memo: Addendum (May 2025) – Section 4: Conclusion – Para 4.1

<sup>5</sup> Attachment C – Section 3 – Executive Summary - Para. 3.3.1 and 3.3.2

## **Discussion**

### Objectives and Policies

- 4.11. In relation to the built form in rural areas of the district, the main aim of the Rural Production Zone objectives<sup>6</sup> in the Proposed Plan are for:
- a. predominant character of the zone, as well as the function and role, not to be compromised by incompatible activities; and
  - b. maintaining the predominant character and amenity of the zone which includes extensive areas of vegetation of varying types and a low-density built form with open space between buildings.
- 4.12. Implementing those outcomes are a range of policies that I consider are aligned with the proposal, including to:
- a. avoid activities incompatible with the role, function and predominant character of the zone that will result in adverse effects which cannot be avoided or appropriately remedied or mitigated on rural character and amenity values; and
  - b. maintain the role, function and predominant character of the zone by controlling building height, location, and bulk, setback from boundaries, boundary treatments, and earthworks.
- 4.13. I refer to the independent assessment on landscape and visual effects for Council undertaken by Mr Dobson<sup>7</sup> which finds that effects of the built form from public viewpoints are less than minor, while from the private viewpoints of the submitters these vary from less than minor to minor.
- 4.14. A single dwelling is anticipated on rural zoned land by the Proposed Plan, provided compliance with the standards pertaining to building height, location, bulk, and setbacks from boundaries is achieved. These standards of the Proposed Plan are met with respect to the building (dwelling) located within proposed Area A.
- 4.15. In my view, given the assessment by Mr Dobson and that the bulk and location standards associated with a dwelling on rural site can be met, the proposal is consistent with the policy direction of the Proposed Plan relating to rural character.

### Assessment

- 4.16. The Sheffields, whilst acknowledging that Area Z as identified in consent notice 12565106.1 is closer to their property, consider that the location is more discrete than the proposed Area A, and any building within the extent of Area Z would be either hidden or visible to a lesser extent (i.e. non-intrusive) from all key viewpoints on their property, being the main dwelling and outdoor living areas, to that proposed by the application.
- 4.17. A similar conclusion is reached by the Shaws in their submission in that the location of the building (dwelling) has direct line of sight from the main living areas of their renovated home. They added that their property has direct line and open view to the proposed Area A which

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<sup>6</sup> Subdivision Objectives RPROZ-01 and RPROZ-07

<sup>7</sup> Attachment C – Section 3 – Executive Summary - Para. 3.3.1 and 3.3.2

would not occur if a dwelling was built in Area Z as it would be tucked into the embankment and below their line of sight.

- 4.18. The Shaws clarify that windows and enclosed verandah area in the building (dwelling) within the proposed Area A are viewed a lot differently to that of the three-bay shed that sits next to it.
- 4.19. The site is visible from both Weld Road Lower and Timaru Road Lower, although the submitters' focus is on that as viewed along Weld Road Lower.
- 4.20. The character of the wider area remains as spacious and open with a lack of built form and infrastructure. Within the immediate vicinity of the site more intense 'lifestyle' development has occurred, with several properties in this vicinity being small than 5 hectares, some as small as 1.2 hectares, and in some instances more than one habitable dwelling has been established.
- 4.21. The buildings located adjacent to and within the proposed Area A, as proposed, are of a basic gabled roof structure. The building within the proposed Area A (dwelling) has an enclosed verandah, but the context is that of an ancillary building on the site where it has a shed-like architectural style.
- 4.22. The height of the building within the proposed Area A, being a habitable building, meets consent notice 12565106.1 condition which limits any habitable building to a height of 5.5 metres above existing ground level. Plans provided in support of the application show the overall height of the building (ground level to the roof apex) as being 5.3 metres.
- 4.23. The colour of all buildings (black) and above ground water tanks (green) on the site meet consent notice 12565106.1 conditions in terms of the following 'Light Reflectance Value' (LRV):
- roofs of all new buildings (habitable and non-habitable) shall be a recessive shade (less than 20% LRV,
  - cladding materials (including walls and gable ends, excluding glazing and joinery) of all new buildings (habitable and non-habitable) shall be recessive shade (less than 40% LRV), and
  - water tanks and guttering shall be recessive shade, with a LRV of less than 25%.
- 4.24. For assessment of effects on rural character, particularly as viewed from individual submitter's properties I have relied on the assessment and evidence prepared by Mr Dobson.
- 4.25. Section 13 *Assessment of Effects* by Mr Dobson has considered the character as viewed from Weld Road Lower, Timaru Road Lower, and those properties of the submitters. Mr Dobson concludes that the proposal:
- a. As viewed from Weld Road Lower the site cannot be viewed in isolation, with the wider landscape remaining open, of rural outlook, and spacious. The topography and positioning of earlier development assists with concealing existing buildings and is assisted by established vegetation.
  - b. From Timaru Road Lower, the proposed Area A and the built form are visible but are fragmentally screened by established vegetation. Mr Dobson considers that the

proposed position of the proposed Area A, is such that it is less visible than the existing Area Z from this viewpoint.

- c. As considered in respect of each submitter's property an individual assessment determined:
    - i. An increased visual effect is experienced by the Sheffields with the building located in the proposed position, proposed Area A, to that which would have been experienced in existing Area Z. Consideration in this context has also been taken with the form of the building being less shed-like and more visible as a dwelling and with the consented, to be built second dwelling on the Dennis / Frost property. This is placed in a low-moderate visual effect by Mr Dobson due to the increasing cumulative presence of residential character and activity that will be experienced from the Sheffields' property.
    - ii. Viewshafts were created at the time of subdivision to protect views from the Shaw property, which are relative to the location of Area Z. The building (dwelling) within proposed Area A is visible, at least until such time as mitigation planting reaches certain heights, and the viewshaft is at risk of being affected by planting in that area. A low visual effect is concluded by Mr Dobson taking into consideration that the dwelling (and associated outdoor areas) within proposed Area A is oriented away and at a distance from the Shaw property, compared to a dwelling erected within Area Z.
    - iii. Visual effects on the Hacklings are considered by Mr Dobson to be very low as the location of the proposed Area A and building (dwelling) do not result in any additional visual effects as from the ground level the proposal is not visible and barely visible from higher elevation.
    - iv. Cumulative presence of increase of residential activity and associated buildings, in contrast to a more traditional rural character, is viewed from the Blairs' property whereby Mr Dobson considers visual effects to be low on the Blairs.
    - v. Mr Dobson concludes that the visual effects of the building (dwelling) within the proposed Area A can be reduced over time through existing planting and as such the visual effects are assessed as low.
- 4.26. In considering all the above factors in context to rural character, I am of the view that while the proposal generates visual effects, these can be managed / mitigated, such that they are no more than minor.

## Rural Amenity

### *Summary of Key Issues*

- 4.27. All submissions address effects on the rural environment (amenity) generally through the lens of comparison between the expected location of any habitable building within Area Z to that proposed (established) within the proposed Area A on the BTW plan to the application, and with the following key matters raised and relief sought:
- a. Two of the submissions (Sheffield and Hackling) identify that their written approval to subdivision consent SUB22.48035, which established the site, was given based on consultation and establishment of Area Z as the dwelling location.
  - b. The Sheffields' submission is concerned in terms of amenity with the loss of privacy, outlook, and enjoyment from northern aspects of their dwelling (living rooms and master

bedroom) and outdoor living space immediately adjoining these areas. Similarly, the Hacklings' submission addresses loss of privacy and enjoyment of their property given the proximity of the site's dwelling and outdoor living space being immediately above their property. The Shaws also raise loss amenity through reduced privacy from their renovated home and outdoor living area which has clear views over the proposed Area A.

- c. The submissions of Dinnis / Frost and the Blairs raise light pollution as an effect. The Blairs further consider noise and light pollution, loss of sunlight, loss of rural feel and space, and loss of privacy and enjoyment experienced and the same is considered in J Dinnis' submission in respect of a second dwelling consented (yet to be built) on their property.
  - d. The submissions of Dinnis / Frost and the Blairs are also concerned with the planting of Lombardy poplars on their properties' eastern boundaries which will affect the morning sun and in respect of Dinnis / Frost's second consented (yet to be built) dwelling, the effluent bed on their property in relation to a second dwelling. The relief sought is the removal of the Poplars that have been planted.
  - e. The Blairs are also concerned about the Applicant's plans to run a riding school for horses from the site in the future. They seek relief that prevents such commercial activities operating from the site. This matter is not for consideration as part of this consent and the activity status and need for resource consent of any such proposal in the future would be determined if and when it is proposed. This aspect of the submission is acknowledged but I have not considered it further.
- 4.28. The Applicant's independent assessment carried out by Mr Bain, finds the effects on rural amenity to be less than minor. I rely upon the independent assessment on landscape and visual effects for Council undertaken by Mr Dobson<sup>8</sup> which finds that effects from public viewpoints are less than minor, while from the private viewpoints of the submitters these vary from less than minor to minor.

### **Discussion**

#### Objectives and Policies

- 4.29. In relation to rural amenity values, the main aims of the Rural Production Zone objectives<sup>9</sup> in the Proposed Plan are for:
- a. predominant character of the zone, as well as the function and role, not to be compromised by incompatible activities; and
  - b. maintaining the predominant character and amenity of the zone which includes a range of noises, smells, light overspill, and traffic on a cyclic / seasonable basis.
- 4.30. Implementing those outcomes are a range of policies that I consider are aligned with the proposal, including to:
- a. avoid activities incompatible with the role, function and predominant character and amenity of the zone that will result in adverse effects which cannot be avoided or appropriately remedied or mitigated on rural character and amenity values; and

<sup>8</sup> Attachment C – Section 3 – Executive Summary - Para. 3.3.1 and 3.3.2

<sup>9</sup> Subdivision Objectives RPROZ-01 and RPROZ-07

- b. require effects generated by activities to be of a type, scale, and level appropriate to the zone such that they will maintain rural character and amenity, including managing noise and light emissions.
- 4.31. The Proposed Plan objectives and policies<sup>10</sup> in relation to lighting aim to ensure artificial lighting is designed, located, and operated to maintain the amenity values within zones.
- 4.32. To this extent I have considered:
  - a. both Mr Bain's and Mr Dobson's assessments on landscape and visual effects; and
  - b. the conditions contained within the consent notice relating to amenity matters, such as lighting; and
  - c. what is permitted in terms of bulk and location by the Proposed Plan for dwellings in the Rural Production Zone.
- 4.33. As noted earlier in this report, a single dwelling is anticipated on rural zoned land by the Proposed Plan, provided compliance with the standards pertaining to building height, location, bulk, and setbacks from boundaries is achieved. These standards of the Proposed Plan are met with respect to the building (dwelling) located within proposed Area A.
- 4.34. In my view, a single dwelling on the site is consistent with the policy direction of the Proposed Plan, particularly given the bulk and location standards associated with a dwelling on rural site can be met. In terms of amenity these policy directions are reinforced through various conditions set out in the consent notice relating to the site. The consent notice variation is further addressed below.

### Assessment

#### *Variation to Consent Notice*

- 4.35. I address only in a limited manner prior application for subdivision consent, SUB22.48035, as the current application to vary the consent notice location can be applied for and considered on its own merit. In terms of process, as stated earlier in this report, refer Section 2 *Statutory Considerations* (para. 2.13 – 2.17), the ability for variation to or cancellation of any condition specified in a consent notice is afforded to a landowner at any time after the deposit of the survey plan by s221(3) of the RMA.
- 4.36. While the application has been made retrospectively, in that a habitable building has been established and occupied outside of the extent identified within the consent notice, this does not prevent the landowner (Applicant) applying to vary the consent notice condition specifying the location, etc., associated with the same.

#### *Privacy*

- 4.37. The Sheffields' submission states that they purchased a small triangular parcel of land and the existing strip of land for access from Weld Road immediately to the north and north-west of their property to maintain their privacy from northern living aspects and the master bedroom as part of subdivision consent SUB22.48035. The Shaws and Blairs' submissions

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<sup>10</sup> Light Objectives LIGHT-O1 and LIGHT-O2 and Policies LIGHT-P1 and LIGHT-P2

also raise loss of amenity through reduced privacy as does the Dinnis / Frost submission in relation to their proposed second dwelling.

4.38. The matter of privacy is in part linked with the above assessment on rural character relating to visibility of building. I do note that people have different tolerances in relation to privacy, what is tolerable for one person may not be for another, with various factors such as age, culture, values, and personal experience contributing to this.

4.39. As for the assessment of effects on rural amenity as they relate to privacy, I have relied on the assessment and evidence prepared by Mr Dobson with respect to individual properties, in particular Section 13 *Assessment of Effects* as discussed below.

- a. While residential amenity changes will be experienced from the Sheffield's property, this is more the visual experience as opposed to loss of privacy due to changes in elevation between the Sheffield's property and the location of proposed Area A.

Mr Dobson has considered changes to landscaping that could occur which may assist in giving advantage to reduce views which in turn can be perceived as less of a reduction in privacy. This would be in addition to the viewshaft protected from Sheffield's property by land covenant (Area X of LC: 12565106.5) over the Applicant's site.

- b. In a similar manner to the Sheffield's, the loss of privacy of the Shaws is again owing to the visual context of the building within proposed Area A and a perceived loss of privacy resulting from that building and external residential activities that result. The Shaws' property has two viewshafts protected by land covenant (Areas AA and Y of LC: 12565106.6) over the immediately adjoining north-west property and the Applicant's site. If planted in accordance with those land covenants the Shaws' property could be afforded more privacy.
- c. From the context of visual and shading effects Mr Dobson has considered the Poplars and other vegetation established along the upper side of the embankment adjoining the boundary with the Hacklings' property. The similar argument in respect of the shading and visual effects can apply in relation to privacy.

As noted in Mr Dobson's evidence, Mr Bain originally recommended a double row of mixed native evergreen planting, with interspersed native specimen trees, along the bank adjoining the Hacklings' property. This is considered further in the '*Established Planting*' assessment below (refer para 4.50 – 4.61).

- d. While the Blairs raise privacy concerns, the key effect as identified by Mr Dobson is that of the cumulative presence and increase of residential associated buildings, rather than overlooking or other privacy effects. Moreover, in considering the commentary in respect of the Hacklings' property and recommendations on changes to the vegetation, this will in turn have some limited enhancement for the Blairs in respect of visual and privacy effects.
- e. Mr Dinnis during the June site visit clarified that concerns relating to privacy primarily fall in relation to their proposed second dwelling, given the location of the second dwelling to proposed Area A and the building (dwelling) on the site. Mixed native vegetation has been established along the boundary with the Applicant's site as required by a condition of the resource consent for the Dinnis / Frost's second dwelling. The landscape design recommends the planting be maintained to a height of 3 – 4 metres.

I am of the view, which is supported by the conclusions of Mr Dobson, that the proximity of the building (dwelling) within proposed Area A will have greater privacy effects on the Dinnis / Frost's second dwelling than if the building was to be erected within Area Z.

Mr Dobson has not come to the same conclusion as Mr Bain in respect of the mitigation of privacy effects where there is a level of reliance on the maturing of the Dinnis / Frost vegetation over time (over which the Applicant has no control) and the Applicant's planting of Poplars close to this boundary.

Mr Dobson recommends that the Applicant replace the Poplars with a minimum 5 metre width native planting buffer, considered further in the '*Established Planting*' assessment below (refer para 4.50 – 4.61), which would have the effect of increasing the separation between the activities on the Dinnis / Frost's property and the Applicant's site and affording increased privacy.

- 4.40. I also refer to paragraph 4.22 above where the height of the building at 5.3 metres is confirmed as complying with the consent notice (12565106.1) condition which limits any habitable building on the site to a height of 5.5 metres above existing ground level. There is potential for future development of the existing building where the roofline could be raised to the maximum height with a flattened profile to provide for a mezzanine floor or loft area.
- 4.41. This has not been a matter raised by either submitters or addressed by the Applicant; however, privacy has been raised by several submitters and such redevelopment of the existing building within proposed Area A could result in further privacy effects on the Sheffield's and Dinnis / Frost's properties not considered above, including overlooking. As such, to address this, I recommend an additional condition be imposed should consent to vary proposed Area A be granted, such that any glazing (i.e. windows or skylights) installed within the habitable building within proposed Area A at or higher than 2.4 metres above original ground level comprise of obscured glass.
- 4.42. In addition to the change of consent notice, draft recommended conditions are included in Attachment D to reflect the above.
- 4.43. In considering all the above factors in context to rural amenity, I am of the view that while the proposal generates privacy effects, these can be managed / mitigated such that they are no more than minor.

#### *Light and Noise*

- 4.44. The submission of Dinnis / Frost raises the location as generating nighttime light pollution. They further consider noise and light pollution that will be experienced by the second dwelling consented, yet to be built, on their property. The Blairs have raised a similar concern regarding light and noise. Similar matters are raised by the Sheffield's and Hacklings.
- 4.45. Light, noise, and traffic generated from an ancillary building vary to that of a habitable building and associated domestic outdoor living areas, including more notable variances with night activities. With respect to the location of Area Z versus that of proposed Area A, light and noise, and even traffic, experienced by the various submitters will be to varying degrees and will change based on the vantage point at any dwelling on the site from the receptor.
- 4.46. Regarding the Hackling, Sheffield, and Dinnis / Frosts' properties, the proposal introduces additional residential-type elements such as vehicles and domestic night lighting and

landscaping that would not be experienced to the same extent with a dwelling contained within Area Z.

- 4.47. An ancillary building within proposed area A would be primarily utilised during day hours, as opposed to during the night. Use of sheds are typically more contained in that they are related to storage, versus the overspill of outdoor living areas that occurs with a habitable building, which generates demand for outdoor lighting and increased outdoor noise, including during outside activities / gatherings.
- 4.48. For the assessment of effects on rural amenity as they relate to lighting and noise, I have relied on the assessment and evidence prepared by Mr Dobson with respect to individual properties, in particular Section 13 *Assessment of Effects* as discussed below.

- a. The Hacklings have stated in their submission that Conditions 12 to 25 of subdivision consent SUB22.48035 reflected the concerns and agreed mitigation between the original landowner and those parties who provided written approval. At this point I note that a condition of consent notice 12565106.1 is that no external point sources of light shall be visible from outside the site, with all external light fittings to be 'hooded' and cast down.

As noted by Mr Dobson, the main living areas and outdoor lighting sources are orientated away from the Hackling property. I interpolate here, in that all but the first two conditions (which apply to the habitable building on the site, limiting location and height) of consent notice 12565106.1, are not limited to Area Z or the habitable dwelling. Given this, the light source condition of the consent notice referenced above applies to all external light sources within the site.

- b. Mr Dobson concurs with Mr Bain's assessment based on rural building effects on the Blairs considered in terms of exposure during the day. However, Mr Dobson has considered additional effects which may arise in respect to the Blairs from the associated residential activity at night due to the presence of lighting, distinct to that typically associated with an ancillary building as described above (refer para 4.47). For the Blairs, Mr Dobson has considered lighting alongside that from the Hacklings and anticipated light spill from the future second dwelling on the Dinnis / Frost property would contribute to a more illuminated night-time environment.

Planting implemented in accordance with Blue Marble's Landscape Mitigation Plan, as well as naturally occurring vegetation on the bank of the site facing the Blair's and Hackling's properties is anticipated to grow to heights that in time Mr Dobson considers will screen any ancillary buildings and the building (dwelling) in proposed Area A in respect of the Blairs' property.

- c. Mr Dobson has identified that the Applicant has established the row of Poplars, as recommended by Mr Bain, at the toe of the slope on the site near the Sheffield's boundary. Other exotic specimen trees have been established further within the site, and a broadleaf hedge runs just north-east of proposed Area A, parallel to the building's (dwelling's) wall line. The Poplars have been discounted by Mr Dobson as mitigation given the time over which the Poplars would take to achieve the same,

Given this, and with advice from Mr Dobson, more suitable, taking effect sooner, mitigation of the proposal would be to remove the at or near boundary planting of the Poplars and position planting closer to the building (dwelling) within proposed Area A, to be nearer the source of the amenity effects and not to affect the amenity of neighbouring properties. This would also be of benefit to the Shaws and Hacklings, and to a lesser

extent the Blairs. This is considered further in the 'Established Planting' assessment below (refer para 4.50 – 4.61).

- d. As in paragraph 4.39(e) above I am of the view, which is supported by the conclusions of Mr Dobson, that the proximity of the building (dwelling) within proposed Area A will have greater effects on the Dinnis / Frost's second dwelling than if the building was to be erected within Area Z, this includes lighting and noise effects. As recommended by Mr Dobson the replacement by the Applicant of the Poplars with a minimum 5 metre width native planting buffer, considered further in the '*Established Planting*' assessment below (refer para 4.50 – 4.61), would have the effect of affording dissipation of noise and lighting effects between the residential activities on the Dinnis / Frost's property and the Applicant's site.

- 4.49. In considering all the above factors in context to rural amenity, I am of the view that while the proposal generates light and noise effects, these can be managed / mitigated such that they are no more than minor.

*Established Planting*

- 4.50. The Hacklings, Dinnis and Blairs all raise the issue of established planting. Mr Dobson has also considered both established vegetation (mostly in accordance with Mr Bain's Landscape Mitigation Memo) and whether other landscape mitigation is necessary to address effects on rural amenity. Much of this is considered in the preceding '*Privacy*' and '*Light and Noise*' assessments (refer para 4.37 – 4.48).
- 4.51. Mr Dobson in his evidence, and I have addressed above under the Rural Amenity assessment, the established planting on the site:
- i. Poplars and other vegetation on the upper slope adjoining the Hacklings' property,
  - ii. Poplars at the tow of the slope near the boundary of the Sheffield property,
  - iii. Poplars in proximity to the Dinnis / Frost property's western boundary,
  - iv. Exotic specimen trees within the paddocks, and
  - v. Broadleaf hedge just out from the north-east boundary of proposed Area A (wall line of the building / dwelling).
- 4.52. Not all the above planting was intended as mitigation as advised by the Applicant during the site visits, with the Poplars intended to provide shelter to the site, including proposed Area A and buildings. That aside, the above has been included within the memos prepared by Mr Bain for planting in support of the application and in turn to an extent provides mitigation in respect of the proposal. Assessment of the proposal has been undertaken relying on this.
- 4.53. With respect to the established planting and recommendations made by Mr Dobson, were those recommendations not to occur within the site to assist mitigating rural amenity effects, the conclusions I reached in the preceding '*Privacy*' and '*Light and Noise*' assessments (refer para 4.37 – 4.48) would be different. I expand on this further below.
- 4.54. Mr Dobson in his evidence refers to the Poplar variant established on the site as reaching between 15 – 20 metres tall, over a 10-to-15-year period. They generate both positive and negative effects for several submitters. The locations and heights of the Poplars, with the exception in relation to the Dennis / Frost boundary as considered below, are permitted under the Proposed Plan. While they could provide screening of the dwelling within proposed Area

A and shed on the site, they could also ultimately obstruct open, rural views, and generate a shading effect.

- 4.55. Mr Dobson considers changes to landscaping that could occur in relation to the Sheffield's property to address rural character and amenity affects, in addition to restrictions associated with the viewshaft protected from the Sheffield's property by land covenant 12565106.5 (Area X) over the Applicant's site, as:
- a. Positioning planting closer to the proposed Area A and building (dwelling) within.
  - b. Replace the current boundary planting mitigation approach and implement more substantial planting closer to proposed Area A and building (dwelling), particularly around the existing broadleaf hedge. This should include isolated mounding and planting or a line of clear-stemmed, pleached Hornbeam trees (or similar).
- 4.56. In a similar manner to the Sheffield's, the views from the Shaws' property are protected by two viewshafts (Areas AA and Y) on land covenant 12565106.6 over the immediately adjoining north-west property and the Applicant's site, respectively. Area Y, over the Applicant's site, requires that the Applicant does not *"Permit any vegetation or erect or permit to be erected any building, structure or any other improvements on the burdened land at Areas AA and Y that exceeds a height of 2 metres above the level of the ground as at the date of registration of this instrument."* Area AA relates to the property immediately adjoining that of the Shaws. As such Mr Dobson:
- a. States that the planting in Area Y while it may mitigate in the future the views of the building (dwelling) within proposed Area A, it is at risk of affecting the viewshaft.
  - b. Recommends the removal of planting within Area Y and replacing it with planting consistent with the land covenant.
- 4.57. Mr Dobson in his evidence, and I have addressed in the preceding 'Privacy' and 'Light and Noise' assessments (refer para 4.37 – 4.48) the established Poplars and other planting on the upper slope of the site adjoining the Hacklings' property. In this respect changes to the planting recommended are a double row of mixed native evergreen vegetation as originally recommended by Mr Bain, with occasional specimen trees along the boundary with the Hacklings, as opposed to the Poplar species.
- 4.58. No specific planting changes are recommended in respect of the Blairs; however, the changes recommended in respect of mitigation for the Hacklings would address the same effects in respect of the Blairs' property.
- 4.59. As set out in paragraphs 4.39(e) and 4.48(d) in the preceding 'Privacy' and 'Light and Noise' assessments, and supported by the conclusions of Mr Dobson, changes to planting are recommended in respect of the western boundary of the Dinnis / Frost's property adjoining the Applicant's site. The change recommends replacement of the Poplar shelterbelt with a 5-metre minimum width native planting buffer similar in height and characteristics to the planting that the Dinnis / Frosts have implemented along the boundary between the two properties.
- a. In respect of the Poplars planted within the site 2 metres from the shared boundary with the Dinnis / Frosts as noted by Mr Dobson in his evidence would not comply with Proposed Plan RPROZ-R2/S3 Shelterbelt standard, which limits shelterbelts within 16 metres of a dwelling. I also note that a registered easement for the conveyance of water runs along the site's boundary with that with the Dinnis / Frosts' property and is shown

as varying in width from 3.93 to 2.01 metres. At 2 metres the Poplars could be positioned within the line of the easement.

- b. I acknowledge that the proposed second dwelling for the Dinnis / Frosts has not been erected; however, it has a resource consent granted in 2022 and is considered a part of the existing environment for the purposes of considering this application. Planting that has occurred in relation to the location of the proposed second dwelling location on the Dinnis / Frosts' property is in accordance with the Natural Capital planting plan (refer the Dinnis / Frosts' submission) approved and forming the conditions of the resource consent granted for the second dwelling.

- 4.60. In addition to the change of consent notice, draft recommended conditions are included in Attachment D to reflect the above.
- 4.61. Whether the planting, as proposed or undertaken by the Applicant, within the site acts as mitigation for effects generated by the proposal on rural amenity (privacy, noise and light) was considered in the preceding 'Privacy' and 'Light and Noise' assessments (refer para 4.37 – 4.48). In those I relied on the assessment and evidence prepared by Mr Dobson with respect to individual properties, in particular Section 13 *Assessment of Effects*.

### **Other s104(1)(c) Matters**

- 4.62. There are no other matters considered relevant in my view that haven't already been addressed by the above assessment.

### **Higher Order Statutory Direction**

#### **Summary**

- 4.63. Here I briefly discuss higher order direction from the TRPS, the NPS-HPL, and the RMA in turn.

#### **Taranaki Regional Policy Statement**

- 4.64. I consider that there two suites of provisions in the TRPS of relevance to the proposal., being *Use and Development of Resources* - Objective UDR 1 and *Natural Features and Landscapes, Historic Heritage and Amenity Value* - Objective AMY 1, and their supporting policies.
- 4.65. UDR Objective 1 and Policy 1 recognise the role of resource use and development in the region and its contribution to enabling people and communities to provide for their social, economic, and cultural wellbeing. Objective 1 seeks the integrated management of natural and physical resources of the region while recognising the importance of resource use and its contribution to the development and prosperity of the region.
- 4.66. Objective AMY 1 and Policy 1 signal that high value is placed on such aspects as clean and quiet rural and residential environments, free of nuisance arising from excessive noise, odours and other elements, and attractive development of the built environment.
- 4.67. In rural areas it is recognised that there is a balance between the amenity values and the working environments and places of productions, as such in rural areas there may be effects on amenity values and in many cases are anticipated / expected as part of normal and

accepted characteristics of rural areas, which includes in addition to working machinery, associated dwellings.

- 4.68. For the reasons I have expressed above, my view is that the proposal does not amount to inappropriate use and development. I consider that the proposal is not in conflict with these TRPS provisions.
- 4.69. The District Plan has been designed specifically to give effect to these objectives and policies, albeit to a greater level of specificity. To the extent that I have found above that the proposal is consistent with the provisions of the Proposed Plan, that same finding can be applied to these relevant parts of the TRPS.
- 4.70. In my view, there are no areas of invalidity, incomplete coverage, or uncertainty between the TRPS and the Proposed Plan provisions such that my evaluation need be taken any further.
- 4.71. For the reasons I have expressed above, my view is that the proposal does not amount to inappropriate use and development. I consider that the proposal is not in conflict with these TRPS provisions.

#### **National Policy Statement for Highly Productive Land 2022**

- 4.72. The NPS-HL requires consideration of the potential loss of highly productive land at the time of subdivision and land use / development. While the NPS-HPL does not in itself determine activity status, it does carry directive terminology for the Council to 'avoid' inappropriate use and development of highly productive land that is not land-based primary production.
- a. The NPS-HPL has a single objective *'Highly productive land is protected for use in land-based primary production both now and for future generations,'* with the respective policies stating in respect of land use activity:
    - *Policy 6–The...development of highly productive land as rural lifestyle is avoided, except as provided in this [NPS], and*
    - *Policy 8–Highly productive land is protected from inappropriate use and development.*
  - b. The site is mapped as LUC 1 and LUC 4 in respect of the NZLRI, as shown in Figure 4 of the Notification Report. More specifically the area where development has occurred on the site is mapped as LUC 4.
  - c. In respect of this proposal there is a net benefit in the clustering of buildings within one area as opposed to having the dwelling within Area Z on LUC 1 land and the ancillary buildings on LUC 4. To this extent with the from Area Z of the dwelling to proposed Area A, all buildings will be located within that land with a classification of LUC 4.
  - d. On balance, I conclude that the proposal that Council may consider allowing the site to be developed and used for the purpose proposed.

#### **Part 2**

- 4.73. Schedule 4 of the RMA requires an assessment of the proposal against the Act's purpose (which the Applicant addressed in the application AEE), and the determination of the proposal under s104 is 'subject to Part 2'.
- 4.74. Part 2 sets out the purpose and principles of the RMA, with the purpose being the sustainable management of natural and physical resources.

- 4.75. I note that the Proposed Plan has been prepared in respect of the National Policy Statements published and directly implements these. At least for the purposes of this application, the Proposed Plan remains consistent with the higher-level documents. There is no “inconsistency” or “incomplete coverage” that might warrant resort to Part 2 and I do not consider an assessment against Part 2 is required.

### **Closing Comments**

- 4.76. S221(3) of the RMA affords an owner the right at any time after the deposit of the survey plan to apply to a council to vary or cancel any condition specified in a consent notice, where s88 to 121 and s127 of the RMA apply to applications to vary or cancel a consent notice, with all necessary modifications (s221(3A) RMA).
- 4.77. Under s104B of the RMA Council may grant or refuse consent for this proposal. In doing so Council may also impose conditions as considered appropriate to mitigate effects arising.
- 4.78. Having considered the application documentation, further information and supplementary revised information provided by the Applicant since lodgement, the submissions, and the recommendation of Council's expert advisor I have evaluated the proposal under the relevant decision-making framework in the RMA.
- 4.79. I concur with Mr Brad Dobson, Council's technical advisor – Landscape Architect, that overall, the effects related to the proposal to vary the consent notice can be sufficiently managed through additional conditions, should consent be granted, such that the proposal will result in no more than minor adverse effects on rural character and amenity.
- 4.80. When considered within the Proposed Plans' policy framework I consider the result to be acceptable for the reasons expressed above as adverse effects can be effectively avoided or mitigated.
- 4.81. I conclude that, for the reasons as set out above, the issues raised relating to RMA matters can be resolved and through the imposition of the draft conditions recommended (or similar), refer Attachment D, consent may be granted for the proposal pursuant to s221, 104, and 104B of the RMA.
- 4.82. Overall, I recommend that consent be granted subject to the conditions as set out in Attachment D.