

**IN THE MATTER** of the Resource Management Act 1991  
(RMA or Act)

**AND** an application pursuant to Section 88 of  
the RMA, to the New Plymouth District  
Council by Layne and Helen Greensill for  
a three-lot rural subdivision, in respect  
of a property located at 1303 South  
Road, Oakura and legally described as  
Lot 3 DP 447811.

## **1. INTRODUCTION**

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### **1.1 APPLICATION**

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The applicant proposes to undertake a three-lot rural subdivision in respect of a property located at 1303 South Road, Oakura and the proposal is summarised as follows:

- Creation of two rural lifestyle allotments each approximately 4400m<sup>2</sup> in area
- A balance lot of 19.5 hectares in area
- Addition of two additional allotments to an existing ROW
- Landscape mitigation in the form of specimen tree planting (row of Native Evergreens) and 3m wide planting strips at strategic locations
- Provision of no build areas to promote separation of proposed and existing buildings
- Provision of building controls within the rural lifestyle allotment to mitigate effects; and
- The provision of greater protection of riparian planting areas within the balance lot<sup>1</sup>.

The proposal falls to be considered as a Discretionary Activity under Rule Rur76 (Additional lots off an existing ROW); Rule Rur78 (minimum allotment size), Rule Rur79 (Practicable vehicular access from a road); Rule Rur81 (Requirement for services); Rule Rur82 (Requirement for building platform); and Rule Rur83 (Existing buildings in relation to boundaries).

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<sup>1</sup> S42A report- Para 18

## 1.2 SITE & SURROUNDING ENVIRONMENT

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The section 42A report describes the site and surrounding environment as follows:

*“The site has an irregular shape and is located on the foothills of the Kaitake Ranges. The sites eastern boundary adjoins the National Park. The National Park is identified as an Outstanding Natural Feature and Landscape (ONFL) within both the Operative District Plan (ODP) and Proposed District Plan (PDP) – “Mount Taranaki and the Kaitake and Pouakai Ranges”. To the north the site adjoins a large rural allotment and to the south the site adjoins smaller rural allotments, one over 4 hectares in area and the remaining 5475m<sup>2</sup>. Toward the west the site adjoins two small rural allotment (approximately 4000m<sup>2</sup> respectively) and State Highway 45 (SH45).*

*Within the site’s boundaries are four existing buildings, including one dwelling, two farm sheds/garages and a milking shed. The site is grazed by a herd of dairy cattle and has a metal farm track running through the site to the rear of the property. There is a further existing dwelling that has Right of Way access over the farm. The dwelling described is located within a neighbouring allotment described as Section 175 Oakura Dist and is not owned by the applicant.*

*The ROW described above also serves the parent title and two other properties located between the site and SH45, Lot 1 DP 447811 and Lot 2 DP 447811. The part of the ROW serving the dwelling within the site and the two smaller adjoining properties is sealed up to the end of the hedge as illustrated on figure 2. The remainder of the ROW is metal. The applicant owns the ROW which is also used by the applicant for the purposes of operating their Dairy Farm and “boutique” milk production business called “Kaitake Fresh Creamery” which includes onsite bottling and the local distribution of fresh whole milk.*

*The site has an undulating topography within its eastern half that generally slopes down steeply from the foothills of the Kaitake ranges and toward SH45. There is a single stream within the site which is a tributary of the Wairau stream which eventually flows into the sea at Oakura Beach. There are several existing culverts along the stream where it traverses the site. A majority of the stream’s margins have been planted in accordance with Taranaki Regional Council’s Riparian Farm Management Plan – Mapbook # 901874. The western third of the site is generally flat. Some sites boundaries are lined with hedges while remaining boundaries are simply*

*fenced in a rural style.*

*The existing dwelling within the site boundaries is surrounded by well-established vegetation. There is also a tall, dense, and well-established shelterbelt along a portion of the ROW where adjacent to dwelling.”*

### 1.3 IMMEDIATE RECEIVING ENVIRONMENT

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The following extract from the section 42A report provides a description of the immediate receiving environment as follows:

*“The site adjoins rural properties to the north, south, east, and west (across SH 45). Surrounding properties are a mixture of sizes with some carrying rural lifestyle characteristics and others having characteristics more typical of the Rural Zone i.e., spaciousness, vegetation, rural production activities, farm sheds and natural features.*

*Some adjoining properties contain a level grazing (small scale) while others are simply used as rural lifestyle lots. Adjoining rural properties typically contain a single dwelling. The site itself is rural in character and includes features such as openness, natural features, and rural production activities*

### 1.4 APPOINTMENT

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I was appointed by the Council as an Independent Commissioner in terms of section 34A of the Resource Management Act 1991 (“the RMA”) to hear the applicant, submitters, and the Council’s reporting officer and to determine the application. The information available to me prior to the hearing included the application, assessment of environmental effects (AEE) report and other information; the submissions and a report prepared by Council’s reporting officer, being the section 42A report, and expert technical evidence.

### 1.5 ACTIVITY STATUS & BUNDLING PRINCIPLE

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The proposal involves ODP rules that cannot be complied with having both controlled and discretionary activity status. It also involves a PDP rule WB-R5 which had immediate affect with notification of the PDP related to subdivision of land containing or adjoining a waterbody which is a controlled activity. These are outlined in the s42A report and are as follows:

	<b>Operative District Plan</b>		
<b>Rule#</b>	<b>Rule Name</b>	<b>Status of Activity</b>	<b>Comment</b>
Rur76	Additional lots off an existing Right of Way	Discretionary	Two additional allotments will be served from the existing Right of Way (ROW) which currently serves four existing allotments/dwellings.
Rur78	Minimum allotment size	Discretionary	The proposed subdivision creates 2 additional allotments from the parent title greater than 4000m <sup>2</sup> in area and with a balance area of 19.5 hectares. The parent title was previously subdivided in 2013 to create Lots 1, 2 and 3 DP 447811.
Rur79	Requirement to provide practicable vehicular access from a road	Discretionary	<p>Vehicle access is from a state highway. The number of lots to be served by the ROW is 6 and the applicant proposes to meet the minimum design standards for a rural ROW serving six allotments. However, the intersection is unable to comply with relevant sight distance requirements for access to a State Highway with a posted speed limit of 100kph.</p> <p>Travelling South the sight distance available is approximately 145m and travelling north the sight distance available is approximately 240m (there are no design standards for vehicle access points onto state highways that are Limited Access Roads – see Appendix 23 – section 23.1 (a)) of the ODP, of which instead requires consultation with Waka Kotahi.</p>
Rur81	Requirement services	Controlled	Each lot will be able to be serviced to a rural standard.
Rur83	Existing buildings in relation to boundaries	Permitted	Proposed boundaries are appropriately Setback from existing buildings and dwelling on site.
	<b>Proposed District Plan</b>		
<b>Rule#</b>	<b>Rule Name</b>	<b>Status of Activity</b>	<b>Comment</b>
WB-R5	Subdivision of land containing or adjoining a waterbody	Controlled Activity	The standards of SUB-S9 are met. All streams are contained within the balance lot.

The principle of bundling applications, a concept developed by the Environment Court, applies in respect of this manner. Where an activity is unable to comply with multiple District Plan provisions of differing activity status, they must be considered at the most onerous activity status and assessed using the more stringent criteria (King & Ors v Auckland City Council; [2000] NZRMA 145).

In regard to this application, the status of individual rules that are infringed include both controlled and discretionary activities under the ODP, and under the PDP, the status of Rule WB-R5 which had immediate effect upon notification, is that of a controlled activity.

The reporting officer has advised that in this instance, it is appropriate to use the bundling approach given the more stringent activity status which in this case, is discretionary.

Having considered this matter and relevant case law, I concur with that conclusion, and have therefore considered the proposal as a discretionary activity.

#### **1.6 LIMITED NOTIFICATION**

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The application was subject to 'limited notification' and the parties were served notice of the application on 14 April 2021. Two parties were considered to be potentially affected by the proposal, and those parties subsequently lodged submissions in opposition to the proposal.

The written approval of three parties had been received and these are documented in the s42A report. I note that given potentially affected party written approvals had been received, I cannot consider any effects the proposal may have on those parties.

I was advised that Waka Kotahi had provided conditional written approval. The conditions of their written approval are detailed within the letter to the applicant and included with the AEE document. The applicant had confirmed that they are willing to include all conditions of the written approval to mitigate potential adverse road safety effects.

#### **1.7 PRE-HEARING MEETING**

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I was advised that a pre-hearing meeting had been held on 25 February 2022 but no resolution or agreement in respect of the issues occurred.

### **2. HEARING**

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The hearing was conducted on 1 July 2022 in the Plymouth Room, Civic Centre, Liardet Street, New Plymouth. Appearances were from:

## 2.1 APPLICANT

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- Ms Connor Marner- Planner
- Mr Layne Greensill- Applicant
- Mr Richard Bain- Landscape Architect

## 2.2 SUBMITTERS

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- Mr Brendon Hart
- Ms Jannaya Ruttley

## 2.3 COUNCIL

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- Mr Luke Balchin- Reporting Officer
- Ms Erin Griffiths- Landscape Architect

Ms Jane Hickmott was in attendance as Committee Advisor

## 2.4 SITE VISIT

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I conducted two site visits, the first being on 30 June 2022. No parties were in attendance, and I did not enter any properties. This site visit was for me to see the context of the subject site and the locality in which it is situated.

A subsequent post hearing site visit which I conducted also without the parties being present, was undertaken on 1 July 2022. Ms Rowan Williams was in attendance with me given I was going onto private property (applicant and submitter (Hart) properties). She is a Council staff member but was not involved with the hearing.

## 2.5 HEARING MINUTES 1 AND 2

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### **Hearing Minute 1**

This minute related to receiving the right of reply in writing and outlining the process and timeframes for that to occur. It also directed the parties to undertake without prejudice discussions in respect of the potential mitigation proposed, and any potential mitigation options.

### **Hearing Minute 2**

This minute related to the written right of reply that was subsequently received by me. It noted the parties had participated in without-prejudice discussions in accordance with my direction, but those discussions had been referred to in the right of reply which should not have occurred. The reason

for this is as noted in Hearing Minute 2 as follows:

*“In accordance with the principles outlined in the Environment Court Practice Note 2014 for Court-assisted mediation, and expert conferencing, discussions conducted on a without-prejudice basis are private, confidential to the parties, and apart from any agreed statement produced as a result of any such discussions, cannot be referred to or relied on in any proceeding. This feature of without prejudice discussions allows for open engagement on material issues in contention, which may enable the parties to find solutions that can settle disputes. Most importantly, if such discussions or negotiations are unsuccessful, the information shared during these without-prejudice discussions cannot be used against any party who participated in good faith on the understanding that the discussions would remain confidential to the parties.”*

On reviewing Ms Marner’s right of reply, it was apparent that it contained details of the without-prejudice discussions between the parties. Mr Hart had also contacted the Council about the disclosure of details regarding the without prejudice discussions. The reply was subsequently removed from the Council’s website, and I issued Minute 2, which included the following statement:

*“The disclosure of information exchanged or discussions between the parties during the without-prejudice discussions should not have occurred, and it is important that all parties have a clear understanding of how I propose to treat this matter. The parties need to understand that the relevant information / comments **will not** be taken into account as part of my deliberations.*

*I note that there is no indication that the disclosure was intentional, and so this Minute is not intending to be critical of Ms Marner in any way. What is more important is ensuring that there is no prejudice (inadvertent or otherwise) to any party, and that the process remains fair and transparent.”*

I also outlined the process for the receipt of an amended right of reply, which was to be received by 19 August 2022 which duly occurred and was placed on the Council’s website.

## 2.6 CLOSURE OF HEARING

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I formally closed the hearing on 29 August 2022 after I had concluded that I had sufficient information on which to determine the application, which included the amended right of reply.

## 3. SUBMISSION & MAIN ISSUES RAISED

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The section 42A report highlighted matters that were of concern to the submitters in opposition to the application. These are summarised as follows:

#	Name	Key Submission Points Raised	Status of Submission
1	Brendon Hart	<ul style="list-style-type: none"> <li>Traffic effects including increased effects associated with the applicants' fresh milk delivery business which has intensified since the application originally being lodged.</li> <li>Effects on Rural Character and Amenity values and particularly: <ul style="list-style-type: none"> <li>Effects on outlook including the dominant feature being the Kaitake Ranges.</li> <li>Urbanisation of the area and reduced feeling of "spaciousness".</li> <li>Reduced privacy'</li> <li>Adverse effects on rural production</li> <li>Likely building platform location will not suitably mitigate effects.</li> </ul> </li> <li>Effects associated with poor stormwater management.</li> </ul>	<ul style="list-style-type: none"> <li>Oppose</li> </ul>
	Mohammed Zabidin & Jannaya Ruttley	<ul style="list-style-type: none"> <li>If granted the proposal will call into question the integrity of the District plan.</li> <li>Considers that the proposal will have more than minor adverse effects on rural amenity, landscape values and character in the area.</li> <li>Primary concerns around traffic safety – there are increasing issues occurring. Particularly with the Creamery business.</li> <li>ROW / driveway widths and formation are not sufficient.</li> <li>Additional users on the ROW are likely only to create additional adverse effects and have not provided sufficient consideration of the potential traffic effects.</li> </ul>	<ul style="list-style-type: none"> <li>Oppose</li> </ul>

#### 4. PRINCIPAL MATTERS IN CONTENTION

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Having considered the application, submissions and evidence provided, and being guided by the assessment criteria of the District Plan, I consider that the principal issues requiring consideration are:

- Effects on rural character and visual amenity values
- Landscape and outstanding natural values
- Cumulative effects
- Traffic, access, and road safety
- Loss of rural production land
- Servicing
- Cultural effects
- Effects on waterbodies
- Reverse Sensitivity



## 5. SUMMARY OF EVIDENCE

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The following summary is not intended to be a full coverage of all matters raised at the hearing. Relevant parts of the evidence presented by the parties are referred to in the Main Findings section of this decision, where it forms a component of the findings by me, in deciding the application.

### 5.1 APPLICANT

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- **Ms Marner** presented her opening submissions and observed that she agreed with the majority of Mr Balchin's assessment apart from in particular, commentary in respect of the permitted baseline and rural character and amenity. She noted that regarding the permitted baseline, a second dwelling could be constructed as of right and to be located within 25m of the existing dwelling. Additional structures could be erected to a maximum height of 10m and located 10m from a side boundary.

She disagreed with Mr Balchin's statement that 'without mutual agreement on the mitigation proposed' with the owner of 1305A South Road (Hart property), any effects would be more than minor.

Ms Marner noted that while such agreement would be beneficial, it is not a requirement for the determination of adverse effects. She outlined that appropriate mitigation had been offered and that the provision of an additional 15m of land to Mr Hart would not result in a significant change in the effects from the mitigation proposed.

Ms Marner also discussed matters related to stormwater, traffic safety and associated draft conditions.

While noting general agreement with the s42A report assessment in respect of objectives and policies, she did not believe the proposal was contrary to Objective 1 and Policy 1.2 as effects can be mitigated to an acceptable level. Ms Marner was concerned that undue emphasis was being placed on the Hart property as any perceived adverse effects are being applied to the wider environment.

Ms Marner did not believe an assessment in respect of Part 2 of the RMA was relevant regarding the ODP and concluded that with consent conditions, any effects can be adequately mitigated, avoided, or remedied.

- **Mr Bain** summarised key elements of his evidence and was of the opinion that having regard to landscape character effects, they are likely to be very low due to the small amount of land that will change, and that because the area's character includes rural residential development.

In respect of visual effects, the level of effect when taking orientation and boundary planting into consideration for the Hart property without mitigation, would be 'low to moderate.'

Mr Bain was of the view that with mitigation such as design controls on buildings, building setback and planting, that visual effects would be reduced. He further noted that in his view the primary amenity that derives from the Hart's north facing property will remain while the south-eastern outlook will change, although it will continue to have elements of rural character such as vegetation and spaciousness through the setbacks proposed on the proposed lots.

## 5.2 SUBMITTERS

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- **Mr Hart** presented his submission that included outlining when his site was purchased and the erection of dwellings on it. He also outlined the history of his involvement with the applicant regarding the proposal and that the proposed mitigations did not compensate for the loss of rural character. Mr Hart was of the view that the applicant and representatives did not adequately engage with his family as an affected party to enable full understanding of the impact of the proposal.

He further discussed concerns regarding stormwater and that it flows into his property. In addition, he noted that the proposed landscape mitigation will visually impact and block views of the Kaitake ranges and the rural foreground.

Mr Hart outlined that living in the rural environment with an adjacent dairy block, is part of the appeal of their location.

He outlined that the proposal and landscape plan do not go far enough to mitigate the potential loss of character in the area and avoid the visual impact that comes with an urban type of subdivision in the rural environment. Mr Hart was of the opinion that the application has not considered the overall visual impact, loss of rural character and the impact of the loss of rural lifestyle. He sought that the application be declined.

- **Ms Ruttley** outlined that the biggest concern was the current state and safety of the ROW, and that increased traffic on the ROW would only exacerbate those concerns. She noted that there

appeared to be existing concerns about safety of the ROW and that the 20kph speed restriction signs are not legally enforceable.

Ms Ruttley sought clarity and further information of what the design of the ROW would look like, and would vehicles be able to pass safely. She also noted that removing the hedge would address current visibility issues with the driveway entry points but would replanting of hedges create visibility issues on the ROW.

Ms Ruttley was of the view that the SH45 intersection with the ROW was dangerous and therefore had safety concerns about it. She was concerned that visibility was affected by hedges and shelter trees located on 1305B South Road.

### 5.3 COUNCIL

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- **Mr Balchin's** section 42A report was taken as read. He was of the opinion that the proposal should not be granted consent. He believed that a number of potential effects such as servicing, access, traffic and road safety, landscape and outstanding natural features, effects on waterbodies, cultural effects, and reverse sensitivity could be mitigated, avoided, or remedied, Mr Balchin noted that effects on rural character and amenity values would be more than minor, and would not be mitigated by the landscaping and planting plan.

He outlined that particularly in respect of the Hart property, the proposal would result in a loss of those elements which contribute to rural character, specifically open space, and rural built form. Mr Balchin outlined that the increased built form and non-rural activities would result in adverse effects on the rural character and amenity of adjoining land- owners such as 1305A South Road which cannot be appropriately mitigated.

Mr Balchin was of the opinion that potential adverse effects on rural character and amenity were not considered appropriate, and inconsistent with Objective 4 of the ODP.

In addition, Mr Balchin considered that cumulative effects would arise with the proposal and the additional lots giving rise to a built form that was more lifestyle than rural particularly having regard to effects likely to be experienced by those living at the Hart property.

Mr Balchin noted that change is different to effect and that the way a rural environment is able to absorb change without significant adverse effects is different to the urban environment as they are more sensitive to activities that increase urbanisation such as dwellings and driveways. He noted that Mr Hart had commented regularly on his perception of effects including

urbanisation and the effects on the rural characteristics of the area that he and his family appreciated.

He noted that the proposal was for a lifestyle subdivision that would have adverse effects on rural character and amenity that cannot be mitigated notwithstanding the mitigation proposed by the applicant, and that consent should be refused on that basis.

#### 5.4 APPLICANTS RIGHT OF REPLY

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- **Ms Marner** submitted a right of reply dated 27 July 2022. The right of reply referenced without prejudice discussions that had occurred between the parties after the hearing which was not appropriate. I have discussed this matter in section 2.5 of this decision.

Accordingly, the following summary focuses on matters that were outlined in the amended reply dated 12 August 2022.

Ms Marner discussed the permitted baseline and the provisions applying to shelter belts in the rural area. She also noted that various structures and activities could occur in the area in proximity to property boundaries and do not need to be rural in nature.

Ms Marner noted that the District Plan does not provide any protection for views and only provides protection in respect of rural character and amenity. She also outlined that given the definition of structure which she quoted in her reply, that it would not be practical to restrict structures as well as buildings from the 'no-build' area.

Ms Marner noted that landscaping of the no-build area would not be prevented except shelter belts would be required to comply with rule Rur75 as noted previously in the reply.

It was further noted that all proposed mitigation sought by Mr Hart in his email of 17 March 2022 had been provided with the exception of the readjustment of the common property boundary by 15m in width at the cost of the applicant's.

The reply outlined that agreement had been reached on the provision of a convex mirror for the benefit of identified properties.

Ms Marner noted that an agreed version of consent conditions had been submitted to the Council on 27 July 2022.

## 6. MAIN FINDINGS

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The main findings that have led to this decision are as follows.

### 6.1 DISTRICT PLAN

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The New Plymouth District Plan is an operative document, and it was common ground that the proposal was to be considered as a discretionary activity, because it did not comply with several District Plan rules.

The Proposed District Plan has been notified and the hearing of submissions were underway. No decisions have been notified in respect of this plan.

Relevant matters relating to both plans are discussed elsewhere in this decision.

### 6.2 EFFECTS: RURAL CHARACTER & AMENITY

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The retention of rural character is identified in the District Plan through its objectives, policies, and rules. Rural land within the district is an important resource and the District Plan aims to ensure that the character of the rural environment is maintained both to protect amenity values and to promote the sustainable management of rural resources over the long term.

Rural character is defined in the district plan as *‘the combination of elements that make an area ‘rural’ rather than ‘urban.’ Rural areas are typically distinguished by a dominance of openness and rural practices over manmade structures not related to the primary use. Rural character includes the key elements of spaciousness, low density, vegetated, production orientated, working environment, rural based industry, and rural infrastructure. The elements of rural character are further defined under these categories in the reasons to issue 4.’*

People’s appreciation of that rural character is rural amenity. The RMA defines amenity values as *‘those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes’.*

In respect of spaciousness, the District Plan highlights that “although there are a variety of landscapes and uses in the rural area it has an overall feeling of spaciousness.” In respect of low density, the District Plan outlines “widely spaced built form, with dwellings dispersed in the wider landscape and some limited lifestyle opportunities.”

The character of the area as noted elsewhere in this decision can be described as predominantly rural in nature but that lifestyle lots are located in the immediate area and in proximity to the state highway.

The proposal adjoins existing lifestyle lots, in particular the Hart property located at 1305A South Road. The subject site contributes to rural characteristics<sup>2</sup> given its openness and production orientated activities being pastoral farming. The Hart property has an expansive outlook of pastureland and the Kaitake Ranges which as Mr Hart outlined are key elements of the rural amenity enjoyed by his family together with the working farm environment and all its attendant activities and smells.

The proposal would result in a significant change to this situation with two additional lifestyle lots, associated access to each of the proposed lots, landscape mitigation including a line of specimen trees between the proposed building sites and the Hart property. Building controls are also proposed as part of the mitigation.

The Bluemarble LVIA had concluded that the submitter (1305A South Road) would notice the proposal because of its proximity to the proposal and that without mitigation, it would have a minor to more than minor effect. With the mitigation proposed, Mr Bain was of the opinion that any effects in respect of the Hart property related to rural character and amenity, would be less than minor.

I do note that the planting of the specimen trees would over time result in the view and outlook from the Hart property being reduced including a loss of openness that is currently enjoyed, and increased urbanisation in the form of two lifestyle blocks in close proximity. The current outlook to the Kaitake Ranges is also likely to be reduced overtime and while views are not protected in their own right, it is an element of openness and spaciousness as part of the consideration of rural character and amenity.

I further note that Ms Griffiths believed that with two additional dwellings on the proposed lots, that this would change the character of the area and the immediate relationship with and appreciation of rural amenity.<sup>3</sup>

Ms Griffiths also outlined that the mitigation vegetation needs to be substantial enough to provide privacy to the Hart property while retaining visual connection to the Kaitake Ranges and a sense of spaciousness and openness between the dwellings on the proposed lots and the Hart property.

Given the nature of the proposed planting including the line of trees, I am not convinced that the views of the ranges, the openness and spaciousness that is currently evident in respect of the Hart property, will overtime be able to be maintained particularly as the vegetation matures.

Therefore, the appropriateness of the mitigation does not in my opinion address the concerns of Mr

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<sup>2</sup> S42A Report- Para 63

<sup>3</sup> Natural Capital Peer Review- Section 9

Hart as a submitter and therefore does not contribute to the maintenance of openness, spaciousness. The submitters property would become part of a grouping of lifestyle properties and as noted by Mr Balchin, would be essentially encircled by lifestyle lots. This is not something in my view that would maintain rural character and amenity.

In respect of the Zabidin and Ruttley property, I concur with Mr Balchin's assessment that given the distance their property is from the proposal and the proposed landscape mitigation and building controls, that any effects in respect of rural amenity and rural character would be less than minor.

- **Rural Design Guide considerations**

The section 42A report noted that the Council has Rural Subdivision and Development Design Guidelines (May 2012) which outlined design principles that should be considered when development is undertaken in the rural area. Matters for consideration include design and layout, building location, landscaping servicing, and building appearance. The guidelines are just that and do not have any legal status in terms of the RMA.

While the guidelines promote clustering of smaller lots to reduce adverse effects associated with rural subdivision, they also specify that the location of lots should consider neighbours and how lots and associated buildings would relate to existing properties. This is particularly relevant in how to reduce conflict and ensure that any proposal is compatible with existing activities in an area.

I note that the applicant proposes a range of mitigation measures including restriction on further dwellings and only one dwelling per lot, location height, exterior colour, building setbacks, rural fencing, and driveway planting. The mitigation measures generally in themselves appear appropriate and address matters highlighted in the design guidelines.

The additional lots in the locations proposed are not however in my view compatible with the existing lots in the locality, given the potential adverse effects on rural character and amenity as previously discussed.

### 6.3 EFFECTS: LANDSCAPES AND OUTSTANDING NATURAL FEATURES

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I was advised<sup>4</sup> that the subject site was not within an ONFL but does adjoin one that is defined in both the ODP and PDP being 'Mount Taranaki and the Kaitake and Pouakai Ranges.' The adjoining land is also part of the National Park.

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<sup>4</sup> S42A report- Para78

Accordingly, because of this proximity, the subject site is located within a sensitive environment from a landscape perspective and Mr Balchin notes that:

*“The cumulative effects of ribbon like development between SH45 and the landscape feature, particularly between Oakura and Ahu Ahu Road is notable. Landscape effects are different to amenity effects; however, I would note it is my opinion that landscape features do contribute to amenity values. Bluemarble have defined landscape effects as follows.*

*” Derive from changes in the physical landscape, which may give rise to changes in its character and how this is experienced. This may in turn affect the perceived value ascribed to the landscape.”*

It is noted that both the Landscape Visual Impact Assessment prepared by Mr Bain, and the peer review undertaken by Ms Griffiths, that having regard to the proposed mitigation, they both conclude that any landscape effects would be very low or otherwise less than minor.

The subject site where the lots are proposed to be located, is generally of flat contour which mitigates any potential effects on the elevated landscape features and with the existing and proposed vegetation mitigation, would not be particularly visible from the state highway or other locations on the western side of the highway.

Therefore, I conclude that any effects on landscapes and outstanding natural features would be no more than minor

#### 6.4 EFFECTS: CUMULATIVE

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Cumulative effects are included in the s3 of the RMA definition of effect and encompasses two concepts being effects arising over time and effects arising in combination with other effect.

As noted by the s42A report<sup>5</sup> the proposal will result in two further allotments adjoining the Hart property (1305A South Road) being additional to the two existing rural lifestyle properties adjoining that property to the north and south.

The 42A report further notes that the two additional lots create a cluster of rural lifestyle blocks and habitable buildings. The proposal therefore involves further fragmentation of the rural environment

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<sup>5</sup> S42A report- Paras 98-100



and is considered to be inconsistent with the rural character of that environment given there are already two lifestyle lots adjoining the proposal. It raises the question as to when such fragmentation and its scale, brings into question the rural character and amenity being sought by the policy and objective provisions of the District Plan.

Notwithstanding the existence of two lifestyle lots adjacent to the subject site, the enjoyment of rural character and amenity as envisaged by the District Plan is provided for as lifestyle lots as part of the existing environment, and in the wider context of the rural area.

I noted that Mr Balchin highlighted that the Rural Subdivision Design Guidelines identify the clustering of lots and dwellings as ‘good practice,’ but also concur with his view that such clustering needs to be sympathetic to the existing environment and may well be more applicable in situations where there is a more comprehensive development proposal in the rural environment.

The proposal on balance will in my opinion create an adverse cumulative effect, as outlined by Mr Balchin,<sup>6</sup> the additional two lots in the locations proposed, will likely create an adverse cumulative effect as the built form will be more lifestyle than rural, with particular regard to the effects of the adjoining property (Hart) and the rural environment in this locality.

Therefore, the proposal does not contribute to the maintenance of rural character, and it will likely give rise to potential cumulative effects.

#### 6.5 EFFECTS: ACCESS, TRAFFIC AND ROAD SAFETY

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In respect of the ROW intersection with the state highway, Waka Kotahi has provided conditional written approval on the basis that the applicant meets all of that agency’s requirements. The applicant has agreed to these conditions.

It is considered that the intersection has appropriate site distances when vehicles are exiting the ROW.

Ms Ruttle expressed concerns about intersection safety. However, given Waka Kotahi as the road controlling authority, conditional approval subject to imposition of appropriate consent conditions, and that the Council’s Development Engineer was of a similar view, I conclude that any effects in respect of the proposal on the road network would be no more than minor.

The current ROW serves various properties including the farm and creamery business. These are all

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<sup>6</sup> S42A report- Para 100

permitted activities with the applicant having confirmed the vehicle equivalent movements as part of the application documentation.

The s42A report noted that a ROW in the ODP rural zone is required to have a minimum legal width of 6m and a minimum formed width of 3m. The applicant had proposed that the ROW would comply with the relevant standards.

Concerns were expressed by submitters about the potential for increased traffic on the ROW, and Ms Ruttley was concerned about traffic safety, and poor visibility for ROW users and that this would increase with additional lots off the ROW. Advice from Mr Balchin indicated that safety concerns could be addressed through the provision of appropriate consent conditions including hedge removal and the installation of a convex mirror and ensuring that the minimum design standards contained in the ODP, are met for the ROW.

In considering the above matters, I have concluded that any adverse effects through additional traffic on the ROW can be mitigated and that any such effects would be no more than minor.

#### 6.6 EFFECTS: SERVICING

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It is noted that each of the proposed lots are of a size and location that enables them to be suitably serviced to a rural standard. This would include appropriate onsite stormwater management including the provision of a stormwater and geotechnical suitability report for lots 2 and 3 prior to 223/224 certification, if consent was to be granted.

Mr Hart through his submission and presentation at the hearing highlighted an existing concern about stormwater overflows occurring on his property from the subject site. Mr Balchin advised (s42A report) that there is an existing land covenant that allows for the conveyance/drainage of stormwater along the southern boundaries of Lot 1 and 3 DP 447811. These instruments would need be carried over to any new titles and suitably formed within proposed Lot 3 if previously removed.

If consent was granted, then appropriate conditions could be imposed to address Mr Hart's concern regarding stormwater overflows onto his property, and that any effects in respect of servicing of the proposal, can be mitigated to being less than minor.

#### 6.7 EFFECTS: LOSS OF RURAL PRODUCTION LAND

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The current use of the subject site will continue as a dairy farm and creamery business. It is noted that close to a hectare of land would be lost to rural production given the lifestyle sized lots would have little productive potential.

However, it is considered to be of a minor effect given that a balance lot of 19.5 ha is being retained and will continue to have rural production activities located on it.

#### 6.8 EFFECTS: REVERSE SENSITIVITY

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In considering the proposal, I have considered whether there would be reverse sensitivity effects that could arise if the proposal was consented to, given it is for lifestyle purposes with residential dwellings located in a rural environment.

It is noted that a milking shed is located on the subject site but some 130m from the nearest lifestyle lot, separated by land used for pasture grazing. Given this situation, it is considered that any reverse sensitivity effects would be no more than minor.

#### 6.9 EFFECTS: CULTURAL

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The s42A report references the need to consider the Iwi Management Plan given the proximity of the subject site to Te Papakura o Taranaki.

The proposal outlines various mitigation measures such as protection of native vegetation and riparian planting on the balance of the subject property to address potential adverse effects on the cultural values associated with the area. It is considered that the proposal is not contrary to the provisions of the Iwi Management Plan.

It is noted that there has been consultation with Iwi<sup>7</sup> and subsequent correspondence reaffirms there are no specific sites of significance to Maori on the subject site or within immediate proximity and that the identification, formalisation, planting, and protection of waterbodies on site should be provided.

Having considered the proposed mitigation and the response from Iwi, I am of the view that any cultural effects will be no more than minor and that if consent was granted and any effects could be appropriately mitigated, avoided, or remedied.

#### 6.10 EFFECTS: WATERBODIES

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It is noted that a single stream traverses the subject site which is a tributary of the Wairau Stream. This stream is noted as a “priority waterbody” in the ODP and “significant waterbody” in the PDP.

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<sup>7</sup> S42A Report- Paras 96-97

As outlined in the s42A report<sup>8</sup>, the rules associated with the subdivision of land containing waterbodies had immediate effect when the PDP was publicly notified on 23 September 2019. It is further noted that the proposal has had regard to the relevant matters of control and any potential adverse effects would be less than minor.

The s42A report and application documentation noted that the applicant has a long-term commitment toward environmental management of the stream and its riparian margins. I was advised that the stream margins are fenced, and planting undertaken.

I noted that the stream is a minimum of 100m distant from the nearest proposed lot and no concerns have been raised regarding the use of onsite treatment systems for the proposed lots.

The Landscape Mitigation Plan outlines additional protection measures and in conjunction with the existing regional council farm management plan, I am satisfied that any potential effects on the stream within the subject site would be no more than minor.

## **7. DISTRICT PLAN: OBJECTIVES & POLICIES**

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A range of policies and objectives apply in respect of the proposal, and these are outlined in the section 42A report. I note that they primarily focus on the avoidance, remediation, or mitigation of any effects from activities in the Rural Environment Area.

Objectives and policies seek to ensure that activities do not adversely affect the environmental and amenity values within the district and activities are located where their effects are compatible with the character of the area.

The main objectives and policies requiring consideration are Objectives 1 and 4, respectively, being:

*“To ensure activities do not adversely affect the environmental and amenity values of area within the district or adversely affect existing activities.”*

*“To ensure subdivision, use and development of land maintains the elements of rural character.”*

The objectives are supported by a range of policies relating to location of activities where their effects are compatible with the character of the area; and controlling the density, scale, location, and design

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<sup>8</sup> Ibid- Paras 104-107

of subdivision for small lots. Factors for consideration include maintenance of low density; provision of a large balanced area; scale of subdivision; subdivision and resulting development is not highly visible in the landscape.

The policy and objective framework for the Rural Environment Area give a clear direction regarding maintenance of rural character and matters such as amenity values are not adversely affected.

While the mitigation measures proposed relating to limitations on dwelling height, colour reflectivity requirements, setback and landscaping all contribute to mitigation of some adverse effects, I am not convinced that in respect of rural character and amenity, that effects will be no more than minor.

I have considered the analysis of policies and objectives undertaken by Ms Marner and Mr Balchin. While their analysis on many of the objectives and policies is in alignment, there is disagreement particularly in respect of the policies and objectives regarding rural character and amenity. Ms Marner disagreed that the proposal was inconsistent with Objective 1 as she believed the effects on the Hart property could be mitigated as per Mr Bain's mitigation proposals.

Mr Balchin was of the alternative view that the proposal involving the creation of two additional lots creates the potential to adversely impact on the rural character and amenity values of existing activities such as the adjacent Hart property. This would manifest itself through loss of open space, loss of low-density elements that contribute to and retain rural character and amenity values.

Notwithstanding the mitigation proposed, the proposal will change the current rural character of the immediate area through additional two lots and introduce additional lifestyle/ residential activity. While planting and setbacks are proposed, they will not in my opinion reduce or mitigate the potential impact of having two lifestyle lots in close proximity to the existing lifestyle lots and reduce rural character and amenity.

Having considered the relevant matters, I agree with the analysis and conclusions reached by Mr Balchin in his s42A report and conclude that the proposal is not consistent with Objective 1 and Policy 1.2. In addition, I also agree with Mr Balchin's view that the proposal is partly contrary to Policies 4.1 and 4.2 and contrary to Policy 4.5. In respect of Policy 4.5 the proposal in my view would result in a built form given the existing lifestyle lots, that is not generally expected in a rural environment. It would seem if consent was granted to result in a built form that has lifestyle and residential characteristics.

The proposal however is not inconsistent with the range of other applicable objectives and policies that require consideration, and I concur with the relevant assessments of both Ms Marner and Mr Balchin in respect of these.

While any proposal does not need to necessarily find support in respect of all relevant objectives and policies, it is my opinion that the proposal fails to achieve consistency with the key objectives and policies related to rural character and amenity and ensuring that any adverse effects can be mitigated to ensure that rural character and amenity are retained.

## **8. PROPOSED DISTRICT PLAN OBJECTIVES AND POLICIES**

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As noted elsewhere in this decision, decisions on the PDP submissions have not been released and therefore I can give little weight to its provisions.

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Mr Balchin's analysis<sup>9</sup> is of assistance in respect of the relevant objectives and policies and noted that the proposal was inconsistent with the policy direction to avoid incompatible activities such as residential and rural lifestyle activities, where effects on rural character and amenity cannot be avoided, mitigated, or remedied.

I concur that the proposal would result in the creation of rural lifestyle lots where potential adverse effects cannot be adequately mitigated particularly in respect of the adjoining Hart property, as discussed previously.

## **9. SECTIONS 104 & 104B: RESOURCE MANAGEMENT ACT 1991**

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When considering an application as a discretionary activity, the Act requires that a number of matters be considered. These are outlined in sections 104 and 104B.

I have considered the proposal against the objectives and policies of the Operative District Plan. My conclusion is that while the proposal is consistent with a number of objectives and policies, it is contrary to the objectives and policies related to the ensuring that any effects on rural character and amenity can be mitigated and the elements of rural character are maintained.

I have also considered the relevant objectives and policies of the PDP, and while little weighting has been ascribed to its provisions, the proposal is inconsistent with those objectives and policies requiring any adverse effects on rural character through residential or lifestyle activities be mitigated, avoided, or remedied.

It is my opinion that the adverse effects on rural character and amenity have not been appropriately mitigated given the location of the two lots adjacent to the existing lifestyle lots and in particular the

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<sup>9</sup> S42A Report- Para 111

Hart property.

## **10. OTHER MATTERS**

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### **10.1 NATIONAL POLICY STATEMENTS & NATIONAL ENVIRONMENTAL STANDARDS**

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No national policy statements or standards were highlighted to me as being of relevance to my consideration of the proposal.

### **10.2 TARANAKI REGIONAL POLICY STATEMENT**

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In accordance with Section 104 (1) (b) (v) any resource consent application must have regard to the relevant regional policy statement. The Taranaki Regional Policy Statement (RPS) considers regional wide issues on water, soil and land, air, freshwater, indigenous biodiversity, natural and historic features, waste management, minerals, energy, and the built environment.

Section 10 of the RPS discusses natural features and landscapes. It is noted that the proposal is in proximity to, and outstanding natural feature and landscape as discussed in section 6.3 of this decision. The conclusions reached by Mr Bain and Ms Griffiths was that any landscape effects would be very low or less than minor.

In addition, the RPS through AMY Objective 1 and AMY Policy 1 seeks to maintain and enhance amenity values in rural and urban settings. Given it is not considered that the proposal will provide for the maintenance of rural character and amenity, it is not considered to be consistent with the abovementioned objective and policy of the RPS.

### **10.3 TARANAKI IWI MANAGEMENT PLAN**

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Having regard to the discussion contained in section 6.9 of this decision, I consider that the proposal is generally consistent with the Taranaki Iwi's Environmental management plan. The proposal includes locating the additional lots as distant from the National Park and existing waterbody as possible, and through the additional planting and environmental enhancement offered by the applicant, there would be a positive environmental benefit.

## **11. PART 2: RESOURCE MANAGEMENT ACT 1991**

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I have had regard to all Part 2 matters This has been on the basis that the existing ODP has been in place for over 15 years, and that a PDP which provides for a different zoning framework, has been notified and submissions heard.

The purpose of the RMA is to promote sustainable management by enabling people and communities

to provide for their social, economic, and cultural wellbeing, while avoiding, remedying, or mitigating any adverse effects of activities on the environment. Section 5 allows for the balancing of conflicting considerations in relation to their particular significance to the overall outcome and requires an overall board judgement to be made.

In respect of s5 of the RMA, the proposal does not provide for the mitigation of adverse effects of the activity in respect of maintaining rural character and amenity.

In regard to matters of national importance, no specific matters were highlighted, although I note that the proposal is in proximity to an outstanding natural feature and landscape being Mount Taranaki and the Kaitake and Pouakani ranges. In section 6.3 of this decision, I concluded that any effects on that feature and landscape, would be no more than minor.

In respect of sections 7(b)(c) and (f) and as previously discussed, I am of the opinion that the proposal would have adverse effects on rural character and amenity particularly in respect of the adjoining Hart property and therefore would not result in the maintenance and enhancement of amenity values or the quality of the environment in that area.

No matters relating to section 8 (Treaty of Waitangi) were raised with me requiring consideration. However, I wish to note that I consider the proposal not to be contrary to the Taranaki Iwi Management Plan.

Overall, I am of the view that rural character which includes amenity values, is considered to be adversely affected to more than a minor degree, and my overall broad judgment is that the proposal is not in accord with several matters contained in Part 2 of the RMA as discussed in this decision, and that consent be refused.

## **12. CONCLUSION**

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I have considered all matters placed before me including all application documentation, evidence, submissions, and subsequent statements made by the various parties at the hearing and the section 42A report and associated reports from Council staff, together with the relevant RMA and District Plan provisions.

Mr Hart outlined how he and his family appreciated the current rural character being the openness, spaciousness, and rural activity that occurs in proximity to his property. He also conveyed their appreciation of the pleasantness of the rural environment.

While the proposal is consistent with many of the relevant objectives and policies in the planning



instruments, and several of the potential effects can be adequately mitigated so they are no more than minor, I conclude that adverse effects in respect of rural character and amenity particularly related to 1305A South Road, are likely to be greater than minor and unable to be appropriately mitigated.

Accordingly, consent is refused to the proposal.

### **13. DECISION**

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***Pursuant to sections 104, and 104B of the Resource Management Act 1991, the New Plymouth District Council refuses consent to the resource consent application of Layne and Helen Greensill to undertake a subdivision of Lot 3 DP 447811, located at 1303 South Road, Oakura.***

***Consent is refused for the following reasons:***

- a. The proposal is contrary to the policies and objectives of the District Plan and is not consistent with the policies and objectives of the Taranaki Regional Policy Statement; and in particular those objectives and policies related to ensuring the maintenance, and enhancement of rural character and amenity.*
- b. While having regard to section 104(1) of the Resource Management Act 1991, many of the actual and potential adverse effects on the environment can be mitigated or are no more than minor, it is considered that the effects on rural character and amenity are more than minor and as proposed, cannot be avoided, remedied, or mitigated by the imposition of conditions of consent. Therefore, key elements of rural character and amenity such as openness and spaciousness, cannot be maintained in accord with the provisions of the District Plan.*
- c. The proposal does not meet the various statutory provisions to be given regard in terms of the Resource Management Act 1991.*
- d. The proposal is not consistent with the purpose and principles of the Resource Management Act 1991.*



William Wasley  
**Commissioner**  
18 September 2022